

# NATIONAL PLAN FOR THE CONSERVATION OF PHOTOGRAPHIC HERITAGE

February 2015



*In memory of Ángel Fuentes, a leading light in the world of photography - conservator, restorer and teacher of several generations of amateurs and professionals - but above all a colleague and friend. Ángel left us last June, but his memory has accompanied us along the way, and he has left his mark in our hearts and on this document.*

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PLAN  
FOR THE CONSERVATION OF PHOTOGRAPHIC  
HERITAGE**

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# **1. BASIC ASPECTS**

## **1.1. Introduction**

## 1.1. Introduction

The National Plans are instruments for the administration of cultural assets which, on the basis of comprehensive knowledge, serve to develop projects for research, conservation and public enjoyment. They represent a set of strategic planning tools developed by Central Government, in collaboration with the Autonomous Regions, with solid foundations in the establishment of criteria and methodologies for specific action.

Created in the 1980s as a result of the particular conservation needs of cathedral complexes, the national plans, with the National Plan for Cathedrals playing the pioneering role, have seen the implementation by the Ministry of Education, Culture and Sport of more than a thousand research, conservation, restoration and dissemination projects for the cultural heritage of Spain. These projects, performed in continuous cooperation with the regional and local authorities responsible for culture, have guaranteed the preservation of a considerable number of cultural assets of various kinds: defensive, industrial and cathedral architecture, cultural landscapes, etc.

More than two decades since they were first established, the National Plans became in 2010 the focal point of a new theoretical and methodological project, the essential aims of which were to review the plans created to date and to generate new plans corresponding to current needs in the field of Cultural Heritage management. Within the context of this project, objectives, criteria and methodology have been reconsidered for the National Plans for Cathedrals, Defensive Architecture, Industrial Heritage, Cultural Landscape and Monasteries and Convents, along with the establishment of the corresponding parameters for fields such as Preventive Conservation, Heritage Research, Intangible Heritage, Heritage Education and 20th-Century Heritage, with this National Plan for the Conservation of Photographic Heritage marking the end point of this complex task. An initiative which has involved technical specialists in the various facets of cultural asset management, both at the national level, through the Directorates-General for Fine Arts and Cultural Assets and for Archives and Libraries, and also regionally, through the collaboration of a substantial group of representatives of the Directorates-General for Heritage of the Autonomous Regions. All these professionals, forming specific Commissions for each National Plan, have received the support of numerous independent specialists from the university sector and the world of research, through the Higher Council for Scientific Research (CSIC), along with associations and foundations connected with the context for which the plans are responsible.

The National Plan for the Conservation of Photographic Heritage, drawn up in accordance with the dispersal of many of the constituent holdings and the need to structure mechanisms and systems which can facilitate their preservation and dissemination, serves as a framework to define effective working structures for the research, conservation and public enjoyment of such heritage. Structures or methods suitable for each institution to adapt and apply them in accordance with their needs and circumstances, on the basis of the changing context of the vision of photography in the 21st century.

The aim is to highlight the needs and shortcomings in the management of Spanish photographic heritage, and to establish consensus among the various public and private institutions and authorities responsible for its custodianship, so as to guarantee knowledge, preservation and embellishment.

The National Plan for the Conservation of Photographic Heritage is therefore intended, as with the other national plans developed by the IPCE over recent years, as a tool for the management and coordination strategies and the promotion of actions and projects which will offer significant contributions within its operational framework.

### **1.1.1. Characteristics of photography**

Photography, as a technique originating from within contemporary culture, is intrinsically tied to fundamental characteristics of that culture: the industrial nature of society, and an increasingly consumer-based society.

In the context of industrial society, photographic techniques have, since their very beginnings in the 19th century, experienced a constant, rapid and progressively speedy technological transformation, with scientific discoveries and technical improvements arising and overlapping: from the daguerrotype to the talbotype, the cyanotype, albumen paper, wet plate collodion, gelatin bromide, plastic acetate film, autochrome plates, etc., down to the photo-sensitive units of digital technology, which began to be developed in the late 20th century.

Within the context of consumer society, all these technological advances led to the rapid popularisation of photography. The photographic camera emerged as a costly technical novelty affordable at the outset only to professionals and the elite. However, it was relatively simple to operate, above all in comparison with such artistic disciplines as painting and drawing, and its result, the photographic copy, soon became available to average citizens through postcards and studio portraits. This popularisation of the photographic medium was progressively developed and accentuated over the years, prompting the production of millions of photographs laden with heritage value, the conservation and safeguarding of which concerns all society.

In the present day, photographic images are the object of daily, mass and typically inconsequential consumption, and their creation and distribution lie at the fingertips of all, through such common devices as mobile phones.

Within this context, before embarking on a consideration of the state of the matter, a number of preliminary considerations must be set out:

- Photography emerged as a craft technique and was developed as an industry, giving rise ultimately to industrial products intended for popular consumption. Although the very earliest photographers did show an interest in the lasting nature of their works, the fact is that photographic materials were not designed to endure throughout history, and their preservation requires awareness and effort on the part of their custodians.
- A photographic object may be considered an artwork, a historical document, or both, depending on criteria which do not always coincide, and which have progressively changed over the years.

In the former case, the characteristics of the contemporary conception of art, and above all the technical specificities of the photographic medium, with a technology which is increasingly accessible, thereby undermining the importance of the photographic expert, make aesthetic criteria particularly ambiguous when performing an artistic evaluation of photography.

As a historical object, meanwhile, photographs have acquired a progressive value over the years, witnessing and enriching our knowledge of historical realities which have in many cases been lost.

However, a photograph can in itself also constitute a historical antiquity. Not only the end result, the photographic copy, but also the negative, the camera, the enlarger, the photographic darkroom, etc., which are transformed into objects of cultural value which become increasingly appreciable as the information they provide regarding their period of manufacture and use becomes more valuable.

- One final consideration arises today perhaps more clearly than ever as a result of the explosion of digital technology within our society, namely the issue of "original" and "copy". Photography is, in truth, simultaneously:
  - An image, in other words a purely visual, intangible object. The screen of a computer or a telephone displays "photographs", but does not, for example, display "paintings" in the same sense. In other words, people can through their computers view one or numerous "reproductions of Las Meninas", some of them of excellent quality, but anyone wishing to see "Las Meninas" for real must go to the Prado. Meanwhile, in order to view the photograph *"Loyalist Militiaman at the Moment of Death"* by Robert Capa, one need not go to any museum, archive or library, as the image can easily be found on the Internet and viewed on a computer screen in the same way (and perhaps better, with greater precision) than in each of the originals of LIFE magazine from 1937.
  - A material, tangible object, the end result of a threefold process of taking, fixing and treating the negative image, and fixing the image in a positive copy. The positive copy is the intentional end result of the photographer, "photography" in its essence.

Since its origins, photography has been a medium intended to issue numerous "copies" of "a photographic image", and the value of the copy is directly associated (as well as with the quality of the shot taken by the photographer) with the fidelity of the image achieved and captured on the negative (subsequent processes to treat the negative and develop the positive). However, the value is also connected, in addition to other considerations, with the quantity and quality of copies of the same image which can be found today: in the case of a vintage image, a period copy, a copy numbered by the photographer, etc. Today, all these considerations likewise apply to photographs produced using digital technology.

We draw this section to a close with a recognition of the work of photographers, whose effort and creative capacity have led to the existence of works and collections of huge heritage value. As previously mentioned, photography has gradually found its way into each and every facet of human knowledge, with use becoming widespread as a means of communication and medium of artistic expression, as technological advances facilitated the use of cameras and equipment. As a result, many photographs taken spontaneously in a family setting have ultimately become a part of our shared heritage. In addition, though, to the efforts of amateur photographers, we must also recall the valuable contribution made by the professionals who have pursued their careers over the course of history, enriching the cultural heritage of our nation through their works. Without them, and their creations, this plan would have no substance.



### 1.1.2. Identification of risks

The risks affecting photographic heritage are dictated by the need to act on numerous fronts.

One of the most significant is based on the concept of "sustainability", above all with regard to processes for the proper conservation of photographic materials in the short, medium and long terms.

It is clear that efforts to preserve photographic holdings or collections have been designed for their durability over time. However, combining sustainability with durability, taking into consideration the precarious economic and resource situation suffered today by numerous cultural institutions in Spain, along with breakneck technological evolution, which rapidly makes computer applications obsolete, represents no simple task, and must entail a change in strategy with regard to the formulae employed to date.

It is vital to work with a sufficiently flexible plan which, as far as possible, will help avert the the risk of a lack of continuity in institutional photographic heritage conservation policies. As a result, the conservation of large volumes of photographic objects will entail committed decision-making to prioritise needs in accordance with the relevance and characteristics of the holdings and the mission of the centres which are their custodians.

Meanwhile, the inherent nature of the visual idiom of photography, both direct and universal, contrasts with the need to structure interoperable solutions covering the multiple systems of document management employed by the various institutions.

In the 21st century, interoperability exists within the context of applications for the retrieval and exchange of information online. And the risk in this field is dictated by the ongoing lack of consensus as to the application of one descriptive protocol or another. It is vital for the visibility of photographic heritage that the description and dissemination systems employed in order to publish digital images on the Internet are compatible with the needs of researchers and collectors.

This section also entails the risk of failing to retrieve complete collections of photography because of a lack of consistency in the description of certain fields used to perform searches. This inconsistency is often marked by the inadequacy of the systems used to describe the realities of the photographic medium, because of a lack of consensus as to the usage of certain descriptive terminologies, or the need for the standard responsible for the cataloguing of photography to extend their knowledge in this regard.

It may, then, be asserted that in order to avoid risks in the document management of photographic heritage, what is needed is to systematise protocols, adapting them to new technologies, and to generate specialist training for professionals in this medium.

As for the risks derived from the dissemination of photographic heritage, they are in general associated with the following factors: the diversity of cataloguing and management systems, the overriding need to reconcile copyright and intellectual property with the need for the cultural exploitation of images, and educational shortcomings within society in the sphere of visual culture. If we address, as mentioned above, the enhancement and adaptation of management systems, promoting legislation in accordance with the rights and obligations of creators and managers of photographic heritage, and above all do so by extending policies of visual education, it will prove possible to minimise many of these risks.

Meanwhile, in order to extend the protection and safeguarding of photographic heritage, we must address what has come to be called "hidden photographic heritage". Over recent years efforts have been made, with more or less success, to encourage citizens to make photographic collections or archives held at their homes, and often ignored in cupboards or attics, available to society. Such projects have encouraged families to begin to value the images which their grandparents kept, while relatives of professional or amateur photographers are now seeking institutional support to recover such collections, to which value is now being given.

However, the growing availability of this heritage often encounters such obstacles as the lack of appropriate legislation for gifts, purchases and donations, or a lack of resources at host institutions to deal with donations of photographic collections with the most basic safeguards.

Such problems run the risk of losing photographic collections of great heritage value, and it is therefore vital to seek out solutions, both in terms of legal and administrative changes, and through the optimisation of the management plans and programmes of institutions, and the structuring of the systems for collaboration and consultancy.

Shortcomings in the training of the professionals responsible for the custodianship and management of photographic heritage represent another of the risks to be considered within the context of the preservation of photography. To begin with, and with just a few exceptions, there are still scarcely any programmes for the training of technical specialists in photographic heritage. What is more, at the official level there is no provision for the figure of photographic heritage conservator, not only undermining the profession in comparison with other specialist fields, but also leading to a vacuum in terms of the training or skills which could or should be required of such professionals.

Lastly, mention has already been made of the risk for photographic heritage which lies in educational shortcomings in the field of visual idiom, shortcomings which afflict our society from primary education onwards, and which lead to a lack of social consideration and engagement with regard to a type of heritage which enriches identity and collective memory.

To avert the risk associated with an ignorance of photographic heritage we must act in the long term, activating education policies, creating specialist programmes and developing tools to facilitate the dissemination of knowledge in this field. A society with a broad visual culture will be a more intelligent and capable society in the world of the 21st century.

**1. BASIC ASPECTS**  
**1.2.- State of the matter**

### 1.2.1. Digital preservation and conservation

We must first establish the distinction between restoration and conservation.

**Restoration** is the use of protocols for direct intervention on heritage in order to eliminate or limit the alterations caused by pathologies which could affect its conceptual, material or intellectual integrity.

**Conservation** is the set of intellectual approaches, interventions and techniques intended to extend the life expectancy of cultural heritage. This set of strategies may be applied in order to prevent, by means of preventive conservation protocols, patterns of physical, chemical or biological deterioration from arising or extending.

Conservation/restoration, as opposed to repair, is a scientific activity subject to the control of professional codes of practice.

#### **Historical Background**

Since the outset of photography, the physical and chemical instability of processes represented a constant concern of photographers, who found that their records lost density, turned yellow or disappeared. Given all the above, the first attempts to restore photographs were performed by photographers in their own studios.

The publication *The Daguerreian Journal*: devoted to the Daguerreian and photogenic art (1850-1870), later entitled *Humphrey's Journal or The Photographic and Fine Art Journal*, published and edited by Henry Hunt Snelling (1851-1860), includes among its pages numerous articles connected with countless theories as to the origin of the various forms of deterioration which degraded camera originals.

In 1855 the Royal Photographic Society founded the Anti-Fading Commission, which focused its efforts on the research and pursuit of the mechanisms which attacked the structure of the photolytic plate in direct blackening procedures.

Both the results of the research performed by this commission and the content of the articles published in the aforementioned journals, are striking in their rigorous approach and accurate considerations. Unfortunately, the absence of individual documentation on these restoration efforts has seriously limited research, and often all that is available are the conclusions.

Once the production of fungible materials became the preserve of industry, photographers abandoned their pre-industrial techniques and lost their knowledge of most prior photographic procedures, and therefore no longer had the skills required to perform interventions on these collections. It should be borne in mind that in photographic practice it is commonplace for each new technique to lead to the abandonment of previous methods. And so, while it is unthinkable that the use of acrylic materials in painting would lead to the abandonment and loss of temper, oils or watercolours, in photography this is a constant.

From the point at which photographers lost their knowledge of most techniques, and hence their skills for intervention on the originals, tasks of repair were neglected, or performed by collectors, booksellers and dealers, who applied treatments for essentially cosmetic purposes, and which all too often far from alleviating the damage extended the pathologies and reduced the life expectancy of photographic heritage.

During the early decades of the 20th century the protection of different forms of heritage began to receive consideration from governments and academics, above all through the creation of the International Museums Office, dependent on the League of Nations. International meetings were scheduled, and they began to establish the ethical, technical and scientific foundations for conservation and restoration, such as the "Athens Charter" of 1931.

The destruction of European cultural heritage during the Second World War demanded a huge effort to reconstruct and restore properties. There was clearly a need to incorporate scientific criteria for the conservation of such assets. These criteria were expressed in such new documents as the "Venice Charter" of 1964 and the "Restoration Charter" of 1972, which served to define and establish strategy and tactics in order to understand and conserve the materiality of cultural heritage, while also acknowledging its contribution to the history of humanity.

In 1950 the International Institute for Conservation of Historic and Artistic Works (the IIC) was founded, while in 1958 the International Centre for the Study of the Preservation and Restoration of Cultural Property was established under the auspices of UNESCO, and from the 1960s onwards a whole string of institutions, centres and associations spread across Europe and the Americas with the aim of guaranteeing the survival of cultural assets.

During the same period, Spain established its Institute of Conservation and Restoration of Artworks (the ICROA), which includes a section dedicated to graphical documents and prints, with the aim of safeguarding, conserving and restoring this type of work. Those responsible for each section were sent abroad to extend and update their training.

With the creation of the Institute of Conservation and Restoration of Cultural Assets (the ICRBC) in 1985, following completion of the process of the transfer of cultural responsibilities to the autonomous regions, the different centres and services dedicated to conservation were unified, with all of them being transferred to the current headquarters of the Institute of Cultural Heritage of Spain (the IPCE) at Madrid's Ciudad Universitaria academic campus.

Despite the creation of these bodies, the conservation and restoration of photography was addressed by approaches from other specialist fields with points in common, essentially paper, a speciality where the chemical compatibility of treatments and the complexity of the morphological structures of photography was not always well understood. This went hand in hand with the fact that in general society associated photography simply with the image depicted, overlooking its morphological complexity and the differences between the varying procedures employed to generate the photos. As a result, this simplified idea of photography and the materiality of photographic objects, which has often been reflected in this country, likewise directly affects concepts applied to custodianship and conservation.

The conservation of photographic collections is a recently developed science. One need only consider the fact that the first museum dedicated exclusively to the dissemination of photography, the International Museum of Photography at George Eastman House (IMP/GEH), Rochester, New York, founded in 1949 and located in the former mansion of the founder and owner of the Kodak Company, George Eastman, did not see fit to set up a laboratory for the conservation of the museum's collection until 1975.

A few years later, in 1978, the Image Permanence Institute (IPI) was set up at the Rochester Institute of Technology (RIT), dedicated to the preservation of cultural heritage

on a photographic medium. In 1983 the Atelier de Restauration et de Conservation des Photographies de la Ville de Paris was founded in France, while the German School of Conservation and the Dutch Academy of Fine Arts served to disseminate an initial understanding of the medium in Europe.

In the early 1980s the organisation of this professional field under the auspices of science and professional practice began. In 1980 Kodak published *Preservation of Photographs* while the company Light Impressions published the work by de James M. Reilly *The albumen salted paper book: the history and practice of photographic printing 1840-1895*. In 1984, the Direction des Affaires Culturelles de la Ville de Paris published the work *Les papiers salés: altération et restauration des premières photographies sur papier*, by Anne Cartier Bresson. In 1984, the Canadian Conservation Institute, CCI, published Klaus B. Hendriks's *Preservation and Restoration of Photographic Materials in Archives and Libraries: a RAMP study with guidelines*, and in November of the same year Paris staged the seminar *Conservation et Restauration du Patrimoine Photographique*, the third international event in the field, and the first to address in depth the specificity of photographic heritage.

This marked the growing emergence of an interest in the conservation of photography, with this specialist field seeing the establishment of training plans at schools and working groups at professional associations and institutes.

In 1985 Kodak published the work by Georges Eaton *Conservation of Photographs* and in 1986 *Care and Identification of 19th-Century Photographic Prints*, by James M. Reilly, which marked a shift in the understanding and identification of photographic copy materials. 1986 also saw the founding of the Photographic Materials Group at the American Institute for Conservation of Historic & Artistic Works, the AIC. An initiative which proved so fruitful that there is now a photographic materials working group at almost every professional body.

In 1990 Bertrand Lavedrine published his work *La Conservation des Photographies* while in 1993 *The Permanence and Care of Color Photographs: traditional and digital color prints, color negatives, slides, and motion pictures* was produced by Henry Wilhelm, with contributions by Carol Brower.

In other words, in little more than a decade the published literature on the understanding of the mechanisms governing the conservation of photography became consolidated as a specialist scientific discipline.

## **National context**

### **Conservation and restoration of photography in Spain**

The interest in the conservation and restoration of photography in Spain began in the mid-1980s, revealing a fluctuating profile of photographic information and material heritage which did not always coincide.

In 1981, Lee Fontanella published *La Historia de la Fotografía en España desde sus Orígenes hasta 1900*. At the first edition of the International Contemporary Art Fair, ARCO, held in 1982, the Redor gallery presented a collection of authors comprising only photographers. In 1985 the Ministry Culture organised in Madrid the *Primeras Jornadas para la Conservación y Recuperación de la Fotografía*. The aim of this conference was to

set out the different actions performed across the various regions of Spain to study and disseminate the evolution of photography in the country.

The initiative, in particular because of a lack of continuity, ultimately did not fulfil the expectations generated in a field which was revealing both intense activity and significant divergences of criteria. However, it did sound a warning bell as to the state of conservation of photography in the country, regarding certain shortcomings which were evident at the level of training in the field, and the absence of appropriate methodology to address the valuable and substantial photographic heritage held at public and private institutions.

In 1986 Seville hosted the First Congress of History of Photography in Spain, at which, although the authorship of records focused the attention of the speakers, the permanence of images likewise aroused an incipient interest. In 1989, coinciding with the 150th anniversary of the birth of photography, countless exhibitions were staged, and numerous catalogues and books published, covering a century and a half of photographic practice in the various regions of Spain. Particular mention should be made, within the ARCO programme, of the seminars dedicated to the preservation of photography.

The National Library of Spain likewise took a step forward with the publication, also in 1989, of the volume *150 Años de Fotografía en la Biblioteca Nacional*, by Isabel Ortega and Gerardo Kurtz in which various techniques employed by photographers were identified, with a focus on the state of the holdings under custodianship, a work which marked the onset of a paradigm shift. That same year marked the beginning of a relationship between Spanish professionals and institutions in the United States and Central Europe, focusing their efforts on the discipline of conservation and restoration, and making significant contributions to the implementation and development of the professional field in Spain. Spanish experts and technicians travelled to such leading institutions as the International Museum at the George Eastman House and the Image Permanence Institute in Rochester, the Mellon Foundation in New York, the ARCP in Paris, and the Danish Academy of Fine Arts.

This international collaboration led to such theoretical and practical training initiatives as the Huesca Imagen International Conservation Seminars, organised by Angel Fuentes between 1985 and 1998, and dedicated to the preservation of photographic collections from both the general viewpoint and more specialist perspective focusing on black and white copies, photographic negatives and direct camera positives.

Meanwhile, the Centre de Recerca i Difusió de la Imatge (CRDI) run by Girona City Council, began in 1990 its *Jornades Imatge i Recerca*, since when 12 such biennial conferences have been staged. The conferences involve not only presentations and seminars, but also the staging of workshops and publication of proceedings, and therefore represent a first-class contribution to the study and dissemination of photography and archives as a unit.

In 1993, the Provincial Authority of Huelva dedicated the Second La Rábida Latin American Forum Archive Conference to *Photography as a Source of Information*, likewise publishing the proceedings with notable contributions. In 1996 the Spanish Group of the IIC (International Institute for Conservation) was founded, with a photographic materials group in place from day one. One year later, in 1997 Madrid staged the First National Debate on Photography, organised by the Ministry of Culture, although this initiative unfortunately was not continued as desired.

Lastly, as we entered the 21st-century, Carlos III University instigated in 2001 its Image, Culture and Technology Conferences, and in 2002 the COF Foundation organised in San Sebastian its conference Current Perspectives in the Conservation and Restoration of

Photographic Materials. Almost 10 years later, with the contribution made by the Ministry of Culture, La Casa de la Imagen in Logroño held its International Conference *Fotoconservación 2011 "30 years of science in photography conservation"*, dedicated to a review of the highs and lows of recent history in the discipline, with extensive participation by national and international specialists. Lastly, the MAPFRE Foundation, through its LEMFEC (Laboratory for the Study of Contemporary Photographic Materials) research group at Universidad Politécnica de Valencia has since 2012 organised its annual Conference on Preventive Conservation of Contemporary Photography and Electronic Storage Media.

### **Archive perspective of the conservation of photographic heritage**

The dissemination of the principles governing the conservation of photography through archives represents a significant chapter. Despite the paradoxical absence of specific subjects in the study plans of archivists and document managers, the need for training in the field of the management and conservation of photographic archives has been evident since the 1980s. The inherent characteristics of archive institutions and the growing volume of photographic holdings which archives have received, have led associations of archivists to make efforts to redress these shortcomings through training initiatives overseen by these professional bodies.

In the wake of the aforementioned CRDI conferences, a number of archives and professional associations of archivists progressively scheduled courses and conferences with the aim of supplementing the training of their professionals in this field. These would include in particular the initiative programmed in 1995 by National Heritage, "Techniques for classification and protection of photographic holdings", to provide training for document managers involved in the presentation of the Royal Palace collection. Other centres, such as the Fundación para la Etnografía y el Desarrollo de la Artesanía Canaria (FEDAC, Las Palmas de Gran Canaria), the Fototeca de Huesca, the Museo Etnológico de Ribadavia (Ourense), the Fondo Fotográfico de la Universidad de Navarra (Pamplona) and the Institut d'Estudis Fotogràfics de Catalunya (IEFC, Barcelona), have since the late 20th century staged numerous conservation projects for their photographic holdings, and organised series of courses and specific seminars on the conservation of photography, in order to complement the specific training of the technicians responsible for the development of these projects.

The Sociedad de Amigos del Museo Nacional de Ciencias Naturales (SAM, Madrid), the Asociación Española de Documentación Científica (SEDIC, Madrid), the Instituto Andaluz del Patrimonio Histórico (IAPH, Sevilla), the Instituto del Patrimonio Cultural de España (IPCE, Madrid) and, more recently, Estudios de Conservación y Restauración Artística (ECRA, Madrid), have also staged specialist courses in the conservation of photographic heritage.

Very significant improvements have now been made in the conservation and accessibility of numerous photography collections and holdings present at archives and libraries. 20 years of training have assisted the understanding of the photographic medium and improved systems for management and conservation, while also allowing technicians and professionals more precisely to identify any failings and shortcomings in the photographic heritage in their safekeeping.

Current needs with regard to the conservation of photographic heritage in archives, once the raw material to be addressed is understood, are based on the need to engage in massive working programmes, given the vast volume of photographic heritage held at such institutions, and the need to seek out working formulae structured as short-, medium-



and long-term programmes.

Tasks of prioritisation, coordination and organisation of actions intended to safeguard heritage represent the new challenges which archive institutions must address in order to be effective in their missions.

It is now commonplace to find archives developing programmes for the digitisation of photographic holdings, with a view to their preservation and dissemination. Such programmes are based on a commitment to minimise the manipulation of the originals, scanning them just once in order to obtain a "master" copy intended for conservation, and hence employing a high-resolution and uncompressed format. This master can then be used to produce all necessary copies in compressed formats and at varying resolutions, available for regular use and Internet publication (web catalogues, social media, etc.).

### **Conservation of photography and universities**

Over recent years the conservation of photographic materials has progressively been included as a discipline in the curricula of qualifications awarded at a number of universities.

In 2003 a Master's in Conservation of Cultural Heritage was set up at the Universidad Ibero-Americana de La Rábida, Huelva. In 2005 the Universitat Autònoma de Barcelona and the Escola Superior d'Arxivística i Gestió de Documents (ESAGED) organised a Postgraduate in Photographic Document Management, in collaboration with the Associació d'Arxivers de Catalunya (AAC), the Institut d'Estudis Fotogràfics de Catalunya (IEFC) and the Centre de Recerca i Difusió de la Imatge (CRDI).

And in 2012, the Escuela Superior de Archivística y Gestión de Documentos (ESAGED), the Centro de Investigación y Difusión de la Imagen (CRDI), the Asociación de Archiveros- Gestores de Documentos de Cataluña (AAC) and the Instituto de Estudios Fotográficos de Cataluña (IEFC) likewise incorporated, within the context of the Universitat Autònoma de Barcelona, the first edition of the Online Postgraduate Course in the Management, Preservation and Dissemination of Photographic Archives.

The conservation of photographs as a subject is included on other master's courses, such as the Master's in Photography at the Universidad Politécnica de Valencia (the UPV), and a number of schools of restoration, such as for example in Madrid.

Since it was founded in 2006, the Laboratory for the Study of the Behaviour of Contemporary Photographic and materials (lemfc) at the Universidad Politécnica de Valencia has given an annual seminar on *Preventive Conservation of Photographs*.

### **Museums and art galleries**

Within the context of museums and art centres, a distinction should be made between the characteristics of the museum structure as a whole, and recently founded contemporary art Centres. At most museums, photographs are considered to be a museum holding (artwork) or document archive (connected with the history of the museum, its collections or activities). Many photographs comprising the document archives of museums have over the years acquired a historic value and/or undergone a reconsideration of the artistic level of the output of certain professional photographers. As a result, a number of the holdings of these museums have been reclassified as artworks.

With regard to the cataloguing of the photographic holdings of museums, Central

Government has provided a unified cataloguing tool, DOMUS. This document management system covers both specificities of cataloguing: as a museum holding (artwork) or as a document archive. It contains specific fields for cataloguing and fields controlled by thesaurists for the definition both of the type of photography and the subjects/storage media and techniques connected with the photographic material. This goes hand-in-hand with the possibility of cataloguing not only the object, but also the graphical documentation held at the institution and its source, whether analogue or digital.

With regard to spaces for the conservation and dissemination of more recent artworks, from the late 1980s onwards, Spain has seen the creation of a host of contemporary arts centres, to the extent that practically every Spanish province has its own. In most cases the acquisition of photography and exhibitions of photographic work have been a constant feature of such centres.

They include the Museo Nacional Centro de Arte Reina Sofía, the Instituto Valenciano de Arte Moderno, the Centro de Arte 2 de Mayo, the Centro de Arte Tomás y Valiente, the Centro de Arte de Alcobendas, the Museo de Arte Contemporáneo de Castilla y León, the Artium in the Basque Country, the Guggenheim in Bilbao, the CAC in Malaga, the CAAC in Seville, the Fundación Telefónica, Caixa Forum, the Centro de Arte Caja de Burgos, the Museo de Arte Contemporáneo in Barcelona, the Espacio de Arte Contemporáneo de Castellón, the Museo Extremeño e Iberoamericano de Arte Contemporáneo in Badajoz, the Centro de Artes Visuales Fundación Helga de Alvear in Cáceres, the Museo de Arte Contemporáneo de Gas Natural Fenosa, the Patio Herreriano in Valladolid, the Centro de Documentación y Estudios Avanzados de Arte Contemporáneo (CENDEAC) in the Region of Murcia, the Museo Colecciones ICO, the Fundación MAPFRE, the Centro Gallego de Arte Contemporáneo, etc.

As previously mentioned, the nature and type of photography collections determine the actions required for their proper conservation. Most such centres are the custodians of a volume of around a thousand photographic objects, a much smaller number than those held at archive or library institutions.

Meanwhile, the concept of "contemporary art" applied to these institutions dictates the type of photographic heritage which they hold, generally comprising works produced from the last third of the 20th century onwards. Both the timeframe and artistic nature attributed to the photographs at these centres likewise define their morphological variables (these are in general medium and large-sized pieces), and mean that their cultural exploitation and use are limited by the copyright and exhibition rights which characterise artworks.

These observations may help understand the conservation actions undertaken by this type of institution with regard to photographic heritage. As they are recently founded centres, most have established warehouses and conditioned silos for the preservation of artworks. Although these spaces are equipped with climate control systems, the parameters employed are established in general terms for artworks, as the photography collections share their space with other types of work.

As regards digital preservation, the digitisation of the collections at museums takes two different directions. Firstly, practically 100% of collections are digitised at low resolution as a record for cataloguing processes. Meanwhile, many photographic works have their high-resolution digital reproduction as a means of reproduction, (almost a facsimile) in case the work deteriorates, provided that the author agrees with this policy.

This is combined with the fact that on many occasions authors are requested to provide a second copy of their photographic work. These preventive measures indicate the limited

confidence which institutions have in the stability and durability of the photographs in their safekeeping. The balancing of rights of cultural exploitation and the needs of heritage conservation has always represented a challenge.

As regards conservation strategies undertaken by museums and art centres, of whatever kind, they are typically based on preventive conservation or preservation actions. It should not be overlooked that the economic value given to an "artistic" photograph is typically high, and there is therefore great concern with its preservation.

However, although the larger public institutions have conservation and restoration laboratories, photographs are handled by professionals who specialise in other types of work. To date there are practically no organisations which have photography conservation specialists to deal with this type of heritage. As for other institutions, the standard approach is to subcontract such services from specialist firms.

In this regard, there is on occasion a striking absence of reports as to the minimum conditions for the proper conservation of photographic works loaned to third parties for temporary exhibitions. Fortunately, this is becoming less common, and most institutions accompany the loaned work with documents providing information on general and specific conservation conditions. The loaning of facsimiles rather than the original works is likewise becoming commonplace, if because of the characteristics of the exhibition or the lack of appropriate conditions in the galleries where they are to be staged, this is deemed advisable.

### **Specialist photography centres**

Another group of institutions which safeguard photographic heritage are those connected exclusively with photography, in terms of both history and art. Such centres would include: the Fundació Fotocolectania in Barcelona, the PhotoMuseum in Zarautz, the Centro Andaluz de la Fotografía (CAF, Almeria), the Centro de Documentación de la Imagen de Santander (CDIS), the Fototeca de Huesca, the Centro de Tecnología de la Imagen (CTI, Malaga), the Fondo Fotográfico de la Universidad de Navarra (Pamplona), the Institut d'Estudis Fotogràfics de Catalunya (IEFC, Barcelona), the Centro de la Fotografía y la Imagen Histórica de Guadalajara (CEFIHGU), the Centro de la Imagen de la Diputación de Girona (INSPAI), the Centro Nacional de Fotografía de Torrelavega, and the Centro de Fotografía de Tenerife, now incorporated within the TEA.

All these are centres dedicated exclusively to photographic heritage, unlike archives, museums or libraries which have photography under their custodianship together with other types of heritage.

As a group of institutions they represent a widely diverging spectrum, with institutional policies, the types of photographic heritage they hold, the volume of their collections and their human economic and infrastructure resources differing widely.

It would be fair to say that the only characteristic they have in common is their exclusive dedication to photographic heritage. Curiously, initiatives to found this type of centre are based on a regional or local approach to photography. It is not for nothing that such centres have progressively arisen since the 1990s, when autonomous and local governments had established their foundations and viewed photography as a distinctive element of their inherent idiosyncrasy.

In general, the volumes of heritage in their safekeeping are not particularly great, but they are considerable when compared with art centres. As these are widely diverging institutions, the volumes vary from several hundreds of thousands to thousands of photographic objects. Some centres have specific spaces for the storage of photography, although there are substantial differences in terms of capacity and infrastructure.

The types of photographic objects they hold likewise vary widely. Their collections have very often been progressively built up through the acquisition, by means of purchases or donations, of complete collections of photographs in which the originals cover large timespans.

One of the activities to which the greatest efforts are dedicated at such institutions is the digitisation of their collections, for both access and preservation. Each centre adapts its digitisation protocols to the resources which it holds, and there are scarcely any common standards for digital conversion processes. The same occurs with the document management of collections.

With regard to activities for conservation, they are typically directly linked to digitisation processes. On occasion they are limited to a mere cleaning of photographs prior to replacing them in their storage facilities. Such work is often performed by inexperienced staff, or even subcontracted to restoration companies who do not have photography restoration specialists. This is an aspect which has not yet been resolved, despite the fact that Spain has an increasing number of professionals fully trained in photography restoration.

It remains noteworthy in this regard that, although most such institutions have progressively created a dynamic which allows photographic heritage to be handled with certain guarantees, only one of them has provision on its workforce for a specialist photography conservator who cares for the collections on a continuous and full-time basis.

### **The digitisation of photographic heritage**

So-called new technologies have opened up an extraordinarily extensive field for the conservation, knowledge, dissemination and research of cultural heritage, and in particular photography. Although barely 2 decades have passed since the onset of the implementation of digital technology, it has led to very considerable progress in this field. Although it is impossible to summarise all actions regarding the digitisation of photographic heritage which have been performed in Spain to date, we will make an attempt to mention the most significant cases.

The State Archives have been successfully performing photographic holding digitisation tasks as a strategy to guarantee the preservation and dissemination of their collections, in particular since the 1990s. In fact, one of the first digitisation programmes undertaken in Spain was performed at the Archive of the Indies, as a collaboration project involving private entities (IBM, El Corte Inglés) and the Ministry of Culture. This began in 1986 and remains active.

The initiative had such an impact that it marked the path to be followed by many other institutions. Since then, digitisation plans have become a priority and ongoing activity for any organisation holding photographic heritage, to the extent that the recovery of photographic holdings is often exclusively identified with their digitisation. However, the recovery of this type of material includes an entire process of treatment which involves the conditioning and description of the original storage media, and must culminate in initiatives to facilitate dissemination not only of the images, but of the objects and procedures which allowed them to be created and to endure.

Digitisation is, of course, a part of this process, but careful planning is demanded, and compliance with certain basic protocols which must have established parameters in accordance with the volume and significance of the objects to be digitised, their format, photographic procedure, state of conservation, etc. The absence of common criteria and the divergences of institutional policies, with projects often instigated out of circumstantial interests, have led to the premature termination of many efforts made to digitise photographic heritage. This has been exacerbated by the fact that the various digitisation plans have been drawn up in accordance with constantly evolving technologies, and above all without drawing on prior collaboration among information technology and digitisation specialists, and the institutions owning the holdings.

In short, it would seem vital that, on the basis of international standards and guidelines which have already been published and are accessible within the professional sphere, institutions should make an effort to adapt the digitisation projects for their photographic holdings to the reality of the heritage in their safekeeping, and expectations of

conservation and dissemination. This will be consistent not only with technical criteria, but also the ethical principles intrinsic to the concept of heritage.

With regard to the guidelines recommended by international institutions for the digitisation of images, although they do not refer exclusively to photography, mention should be made of such international projects as interPARES, the aim of which was to develop methodological and theoretical knowledge for the permanent conservation of electronic documents, in addition to the development of models, strategies and practical standards.<sup>1</sup> Other documents of particular significance are the "Recommendations of the Commission of 27 October 2011 on the digitisation and online accessibility of cultural material and digital preservation" (2011/711/UE)<sup>2</sup> and the Digital Preservation Manual produced by *The Digital Preservation Coalition* in 2008<sup>3</sup>. Reference must likewise be made to those guidelines which, at the behest of UNESCO, were drawn up by the IFLA in 2002 in collaboration with the ICA (International Council on Archives). These guidelines were translated into Spanish by the Working Group for Digital Collections of the Autonomous Regions and the Ministry of Culture, updated in 2014 with various appendices of particular usefulness<sup>4</sup>.

Following on from this, various autonomous regions have created specific plans, which unfortunately do not always coincide in terms of the operational procedures they propose. Notable efforts in terms of standardisation would include the Steering Plan for Digitisation, Preservation and Dissemination of Basque Cultural Heritage, the Guidelines for Digitisation in Andalusia, and the Recommendations for Digitisation Plans generated by the General Archive of Castile-Leon<sup>5</sup>.

The first digitisation guidelines came from libraries and archives, and initially focused on books and documents, ignoring photography. This led to a divergence of criteria, since photographic heritage presents particular difficulties in that, unlike books and printed documents, digitisation is not a mechanical act. Photographs require specific knowledge for their proper interpretation. Tone, contrast and colour range are intrinsic characteristics of the medium, and an analysis and understanding of how these characteristics are manifested in a specific type of photography is therefore vital in order to be able to perform an accurate digitisation. For example, the digitisation of a glass negative plate must be accompanied by specific knowledge of the tonal spectrum and contrast range of the technology of the era in which it was created, in order to allow this to be translated and adjusted in accordance with new digital systems, thereby presenting the positive copy of the negative plate with the tones, contrasts and shading corresponding to its historical nature.

Meanwhile, the experience built up over recent decades indicates the need to incorporate certain quality control protocols during digitisation processes. These controls are based on the gathering of precise data with regard to the quality which the equipment can ultimately provide, beyond the number of megapixels it is capable of capturing. Measurement of

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<sup>1</sup> <http://www.interpares.org>. One of the achievements of the interPARES is the generation of a standardised vocabulary of digital preservation, the Spanish version of which can be consulted at [http://cuib.unam.mx/archivistica/mex\\_glosario\\_interpares\\_total0112.pdf](http://cuib.unam.mx/archivistica/mex_glosario_interpares_total0112.pdf).

<sup>2</sup> <http://eur-lex.europa.eu/legal-content/ES/TXT/PDF/?uri=CELEX:32011H0711&from=EN>

<sup>3</sup>

<http://www.dpconline.org/component/finder/search?q=handbo>  
[ok](#)

<sup>4</sup> *Guidelines for digitisation projects of collections and holdings within the public domain, in particular for those held at libraries and archives:*

<http://travesia.mcu.es/portalnb/jspui/handle/10421/3342>

<sup>5</sup> [http://www.aefp.org.es/NS/Documentos/Guias-Manuales/JCYLRecomendaciones\\_Digitalizacion\\_Archivos2011.pdf](http://www.aefp.org.es/NS/Documentos/Guias-Manuales/JCYLRecomendaciones_Digitalizacion_Archivos2011.pdf)

performance in accordance with noise, dynamic range, clarity, definition, precision in the reproduction of colour, etc. alongside an analysis of the reinterpretation required in order to adjust the material reality of the photographic object to the intangible reality of the binary code generated following its digitisation, form a part of the working guidelines required at present.

Another issue to be emphasised with regard to be digitisation of photographic heritage in Spain is the need for the technical team responsible for the work to have appropriate understanding in order to be able to strike an accurate balance between respect for the integrity of the original, the recovery of the shading of originals in poor condition, and the usage of retouching techniques, without this constituting a significant alteration of the natural values of such photographs, allowing digitisation to be clearly distinguished from "digital recreation"<sup>6</sup>.

It is therefore important to agree by consensus a digitisation protocol which will establish specific requirements in terms of minimum resolutions, preservation and exchange formats<sup>7</sup>, storage media<sup>8</sup> and servers<sup>9</sup> and the required metadata<sup>10</sup>, without overlooking the fact that digitisation forms a part of actions established by the science of conservation for the proper safeguarding and preservation of photographic collections. This protocol will take into consideration both the indications of the *Committee of Experts* and the guidelines issued by the EC in this regard: [http://europa.eu/rapid/press-release\\_IP-11-17\\_es.htm](http://europa.eu/rapid/press-release_IP-11-17_es.htm).

### **Conclusions on the current status of photographic heritage in the field of conservation**

As may be deduced from the above, since the early days in the early 1980s, there has been considerable progress in Spain in certain aspects covering the conservation of photographic heritage: there is abundant bibliography and trained professionals, along with regular seminars and specific gatherings to facilitate the exchange of experiences.

It may likewise be noted that, after 30 years of study, methodological development and the practical implementation of preventive conservation plans, the scientific criteria to be applied in order to guarantee the permanence of photographic collections and/or holdings and those guaranteeing their accessibility without undermining their degree of protection,

<sup>6</sup> Term coined by Miguel B. MÁRQUEZ in "Restauración digital de la fotografía: un concepto erróneo", in *Ámbitos*, nº especial 9-10, 2º semestre 2002-año 2003 (pp. 313-319), p. 318.

<sup>7</sup> The widely recognised and employed preservation and exchange formats (BMP, GIF, TIFF, JPEG, PDF, SVG, PNG and RAW) are recognised in the "Guide for Application of the Technical Standard for Interoperability of Standards Catalogues" ([http://administracionelectronica.gob.es/pae/Home/pae\\_Estrategias/interoperabilidad-inicio/normas-tecnicas-interoperabilidad.html#DIGITALIZACIONDOCUMENTOS](http://administracionelectronica.gob.es/pae/Home/pae_Estrategias/interoperabilidad-inicio/normas-tecnicas-interoperabilidad.html#DIGITALIZACIONDOCUMENTOS)).

<sup>8</sup> The use of optical discs (CD, DVD) is not advised for storage because of their limited durability. The use of LTO magnetic discs and server storage is preferred ([http://www.aefp.org.es/NS/Documentos/Guias-Manuales/JCYLRecomendaciones\\_Digitalizacion\\_Archivos2011.pdf](http://www.aefp.org.es/NS/Documentos/Guias-Manuales/JCYLRecomendaciones_Digitalizacion_Archivos2011.pdf)).

<sup>9</sup> Storage is perhaps one of the greatest concerns in establishing digitisation plans and projects. The digitisation of photographs generates large files, the storage, management and retrieval of which proves problematic. It is therefore vital that institutions responsible for photographic holdings place a particular emphasis on the virtual storage which could be required for the digitisation of each holding, and have effective management software available in order to handle it.

<sup>10</sup> Guide for Application of the Technical Standard for Interoperability in Document Digitisation ([http://administracionelectronica.gob.es/pae/Home/pae\\_Estrategias/interoperabilidad-inicio/normas-tecnicas-interoperabilidad.html#DIGITALIZACIONDOCUMENTOS](http://administracionelectronica.gob.es/pae/Home/pae_Estrategias/interoperabilidad-inicio/normas-tecnicas-interoperabilidad.html#DIGITALIZACIONDOCUMENTOS)).

have been clearly established.

However, although we have made measurable achievements in the professional field, and have access to information and criteria shared with international associations in other regards, there are still some striking shortcomings.

We would cite in particular the following:

- There is an evident and ongoing difficulty in understanding that conservation and custodianship photographic heritage must be performed on the basis of its material structure, rather than such other intellectual criteria as authorship, schools or artistic movements, which are complementary factors.
- There are likewise problems in distinguishing photographic information from the photograph itself. This is particularly evident in modifications applied to digitised photographic information where, in the interests of legibility, there is recourse to interventions which distance the photographic information from the identity of the record itself. Where digital conversion of physical/chemical photography is performed, the files obtained contain simply photographic information; the heritage content lies in the matter of the heritage, in other words the records. This makes it necessary to establish a clear distinction between digital photography, in other words photography performed using digital cameras, digitised photography, resulting from the digitisation of an analogue photograph, and the digital recreation or virtual restoration of a digitised photograph.
- It is vital to be aware that originals in the custodianship of memory institutions (museums and archives operated at the municipal, regional or national level) are described and managed by means of protocols intended for the access and retrieval of the originals, but are not protected by specific conservation plans implemented in a consistent and nationwide manner.
- In many cases the training plans at schools of archive, library and document management studies, along with the conservation and restoration of cultural assets, lack teaching focused specifically on the custodianship and cultural exploitation of heritage with a photographic storage medium. This gap in the curriculum undermines their ability to contribute effectively to the conservation of holdings.
- Despite various attempts to draw up white papers to deal with photography, the fact is that there is no national map or census with an operational scope covering Spain's photographic heritage, its stated conservation and the needs it reveals<sup>11</sup>. This is a real drawback in the implementation of any tool intended to have a universal scope.

Aside from these general shortcomings regarding the state of conservation of photographic heritage, other weaknesses have also been detected:

- The huge volume of national photographic heritage which has not been quantified.
  - A very considerable number of institutions, with widely divergent characteristics, needs and resources, hold photography collections as simply an additional part of the heritage in their safekeeping.

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<sup>11</sup> *The Census-Guide to Archives of Spain and Latin America, promoted by Spain's State Archives, is a positive project in this regard, and also applies to photographic holdings, although it is limited to the field of archives.*



- Most conservation efforts have been performed independently, and each institution has acted in accordance with its own needs. Assistance was initially sought from professionals in the conservation of graphic (rather than photographic) materials, although there is now a tendency to consult photography experts. There is, though, still a long road ahead.
- Much of the budget assigned to the conservation of photography has been invested in digitisation, relegating the preservation of photographic objects to the background. In many cases, taking advantage of scanning programmes, direct protection materials have been purchased and the originals kept in envelopes and boxes, without addressing the execution of any other type of intervention on the objects. In fact, most restoration work has been performed after some damage has been suffered by the originals
- The criteria employed in digitisation efforts have been and remain entirely disparate, from scrupulous compliance with international standards to the indiscriminate use of scanners with no consideration for quality standards. In this regard, the mass digitisation programmes which have been undertaken since the 1990s have generated thousands of terabytes of information which in many cases is of no use for its intended purpose.
- Despite the fact that storage spaces and the controls applied to them have been considerably improved over recent years, storage facilities still often reveal inappropriate conditions.
- Very few institutions with photography holdings have experts in this field on their staff, and the personnel responsible for such collections are therefore often forced almost to self-teach themselves on the fly.
- Flows of information and inter-institutional collaboration barely exist in the field of photography, and institutions, at least at the official level, rarely discuss the conservation, custodianship and digitisation projects for their collections with other similar bodies which have undertaken comparable projects and which could therefore offer them advice.
- Most institutions have no established and specific policy as to the custodianship and dissemination of their photographic heritage, which means that the lack of short- and medium-term action plans is a constant. Nor have plans, strategies or specific programmes for this type of heritage been drawn up at the political and administrative levels.
- The meaning given by society as a whole to photography is typically limited by the recognition and interpretation of the image represented. The full meaning inherent in photographic heritage has not yet been conveyed: material (object) and intangible (image). This partial approach leads to a social disengagement with professional and economic efforts for the recovery and conservation of such heritage.

## 1.2.2. Description of holdings and collections

### **Introduction**

Photographic collections have historically been held at institutions of various kinds which describe and process information differently: archives, libraries, museums, documentation centres, photo libraries, administrative offices and often public or private entities belonging to different sectors of activity.

The degree and form of description of these collections vary enormously depending on the policy and resources of the centres on which they depend. As a result, large archives, libraries and museums typically catalogue photographic material as a part of their collections, in accordance with the description format applied to the other holdings (ISAD(G), ISBD, Domus, etc.), while at smaller institutions or centres the main function of which is not connected with the preservation and treatment of documentation, photographic collections typically have a more precarious situation: from the total absence of inventory data in the worst of cases, to the existence of descriptions saved on word processors, spreadsheets or generic databases with non-standardised fields.

Given the breakneck evolution of the Web environment and the growing importance of such concepts as accessibility and interoperability, the urgent issue here is perhaps, rather than the desirability of using one cataloguing standard or another as a data entry format, the most effective options in order to obtain output formats which result in metadata which can be collected by search engines, and so provide "transparent" catalogues.

Taking this situation into consideration, two basic needs may be addressed:

- How to process collections which are uncatalogued or have a minimal level of description.
- How to process collections which have been catalogued using standardised formats, to allow their data to be published and shared in collective projects, and to be incorporated in such international initiatives as Europeana.

In both cases, the route to be followed would seem to involve the usage of cataloguing systems which allow for the direct issuance of records in OAI-DC format, collected in "harvestable" repositories by means of OAI-PMH<sup>12</sup>. In essence, an OAI-PMH repository allows metadata to be harvested by search engines. In other words, a Clifford photograph included in the catalogue of a library without an OAI-PMH repository can only be found by searching the catalogue itself, while the same photograph included in an OAI-PMH repository could appear in the results of Internet search engines. Clearly, the latter option multiplies the impact and public utility of collections. However, although the OAI initiative began to take shape in 1999, its consolidation has come only relatively recently, and the cataloguing systems used at most institutions do not allow for the possibility of automatic conversion of metadata to the OAI-DC format.

In other words, most archives, libraries and museums with photographic collections which

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<sup>12</sup> As explained below, OAI-PMH (Open Archives Initiative – Protocol for Metadata Harvesting) is an open file protocol used for the transfer of metadata over the Internet. The metadata to be transferred by OAI-PMH must be coded in Dublin Core without classification (OAI-DC), in order to minimise the problems derived from conversions between multiple formats. As a common format for exchange and standardisation, OAI-DC allows the simple and effective description of multidisciplinary data. The translation into Spanish of the OAI (Open Archival Information System) will shortly be available, serving as a reference model in the field of digital preservation which, having been adapted by ISO in standard 14721, aims to facilitate the long-term preservation of digital objects.

have already been catalogued and classified according to standards, now face the challenge of converting those standards on the basis of IT programs not designed for this purpose. Within this context, collaboration among the managers of collections and owners of their IT systems is crucial, because in some cases the least costly option will be the incorporation of an OAI-PMH interface through an ad hoc IT development, which will require the generation of mapping systems or tables of equivalence for fields with Dublin Core (there are numerous examples already available at the Library of Congress, Europeana, etc.), while in other cases it might prove more functional directly to consider a change of system.

This state of the matter is not, of course, exclusive to photographic collections, but likewise affects digital objects connected with geographical and document holdings.

In short, the following basic requirements could be suggested for an image cataloguing system:

- Online cataloguing.
- Automatic conversion of data to the OAI-DC format.
- Existence of a display system which can increase the size of the images on screen.
- Existence of an OAI repository.

### ***Institutions with photographic collections and holdings in Spain***

The creation of a census or directory of centres with photographic collections and holdings in Spain is a task which unquestionably goes beyond the possibilities and objectives of this state of the matter, but which should be addressed by the competent authorities in order to serve as the starting point for any far-reaching nationwide initiative. This demand has been raised over recent years in various fields<sup>13</sup>, based on the consideration that the existence of an updated census of centres and collections, in the manner of those available in other equivalent countries, is a basic premise in order to promote the understanding and visibility of Spanish photographic heritage.

We will therefore here confine ourselves to highlighting the main information resources and sectoral studies in the field, indicating as one of the lines of development of this Plan the need to perform the identification of centres, holdings and collections of photography currently in existence in this country, on the basis of a set of agreed minimal data.

There are various projects, at both the national and regional levels, which aim to fill this information vacuum. At the nationwide level, the first of these is the directory of holdings and collections of photography in Spain, *dFoto*, which has been under development since 2010 by the Universidad Politécnica de Valencia. More recently and ambitiously, although it would seem not to have moved beyond the design phase, is the project *InFoco*<sup>14</sup>, promoted by the Faculty of Document Science at the Universidad Complutense of Madrid, and which aims to create a census-guide of photographic holdings and collections in Spain, Portugal and Latin America.

At the national archive level, the database of the *Census-Guide of Archives of Spain and Latin America*, maintained by the Archive Document Information Centre of the Ministry of Education, Culture and Sport, contains a total of 107 archive centres of all kinds which declare photographic holdings (see Annex 5.2). State archives specifically hold a vast

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<sup>13</sup> See, among others, Maria-Josep Mulet: "El acceso a la información sobre patrimonio fotográfico en el estado español", *Latente: revista de historia y estética del audiovisual*, nº 5 (2007), pp. 57-72.

<sup>14</sup> Olivera, María; Sánchez Vigil, Juan Miguel; Marcos Recio, Juan Carlos: "Proyecto Infoco para la creación de un censo-guía de fondos y colecciones fotográficas en España, Portugal e Iberoamérica", *Ibersid. Revista de Sistemas de Información y Documentación*, 7 (2013), pp. 117-122.

photographic heritage, as do state museums (see Annexes 5.3 and 5.4).

Other major collections of historical photography are to be found at both the Spanish National Library<sup>15</sup> and the Institute of Cultural Heritage of Spain, without overlooking the Royal Palace-National Heritage. Meanwhile, the Ministry of Defence has substantial photographic holdings belonging to the three Armed Forces, distributed among museums, libraries, archives and other bodies<sup>16</sup>, including 12 particularly notable centres.

At the regional level, Catalonia is the region which has made the greatest progress in this regard since the 1980s. In 1996 a White Paper<sup>17</sup> was presented in this field, followed two years later by the first online photographic archive inventory<sup>18</sup>. More recently (2011), the National Council of Culture and the Arts commissioned the report Study into the State and Future Prospects of the Photography Sector in Catalonia<sup>19</sup>, updating the existing data.

Some considerable progress has also been made in the islands. The Balearic Islands has a Guide to Centres and Collections of Photography and Cinematography<sup>20</sup>, while the Canaries recently presented their Guide-Inventory of Holdings in the Archipelago<sup>21</sup>.

In 2005 Navarre performed an initial stocktaking procedure<sup>22</sup>, while the Basque Country presented two years later its Isurkide project, headed by the **PhotoMuseum of Zarautz**, to create a photography database in the Basque Country.

The Madrid Autonomous Region boasts a recent doctoral thesis on the photographic collections in the Regional Archive and Library<sup>23</sup>. The situation is similar in Galicia, where an initial evaluation has been performed of the holdings at the Kingdom Archive<sup>24</sup>. Superficial information on the most significant centres and holdings in both Castile-La Mancha and the Region of Murcia is to be found in Annex 5.5 to this document (pages 208-218). For all other autonomous regions, in general limited data are available, or the information is more widely scattered (pages 204-208).

As regards University archives, the Conference of Rectors of Spanish Universities groups together at least 35 out of a total of 53 which have photographic holdings according to the most recent data available (2012).

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<sup>15</sup> Gerardo Kurtz and Isabel Ortega: 150 años de fotografía en la Biblioteca Nacional. Guía- inventario de los fondos fotográficos de la Biblioteca Nacional, Madrid, 1989 and Isabel Ortega. "Los fondos fotográficos de la Biblioteca Nacional", en *Imatge i recerca. Ponències, experiències i comunicacions*. VII Jornades Antoni Varés, Girona, Ajuntament de Girona, 2002, pp. 133-149.

<sup>16</sup> The Ministry has issued a number of publications with regard to its photographic holdings, in particular *Ejército y fotografía: crónica en blanco y negro (1850-1930)*, Madrid, Ministerio de Defensa, 2007.

<sup>17</sup> Cristina Zeich (coord.): *Llibre blanc del patrimoni fotogràfic a Catalunya*, Barcelona, 1996.

<sup>18</sup> Albert Blanch (coord.): *Arxius fotogràfics de Catalunya. Inventari d'arxius fotogràfics públics i privats de Catalunya*, Barcelona, Azimut, 1998.

<sup>19</sup> Likewise of interest is the study by Laia Fox: "Patrimonio fotográfico de Catalunya en la red", *El profesional de la información*, vol. 20, no. 4, 2011 (Issue dedicated to: Photography and image banks).

<sup>20</sup> Catalina Aguiló & Maria-Josep Mulet: *Guia d'arxius, coleccions i fons fotogràfics i cinematogràfics de les Balears (1840-1967)*, Palma, 2004. Information on the second update phase of the guide in Maria-Josep Mulet & Catalina Aguiló: "Instrumentos de difusión del patrimonio. La guía de archivos fotográficos de las Baleares", in *Actas de las Quintas Jornadas Imagen, Cultura y Tecnología health and 3 to 5 July 2006 at Universidad Carlos III de Madrid*, Madrid, 2007, p. 69-77.

<sup>21</sup> Carmelo Vega (dir.): *Guía-inventario de fondos y colecciones de fotografía de Canarias*, Fundación general de la Universidad de La Laguna, 2014.

<sup>22</sup> Carlos Cánovas: "Las colecciones fotográficas en Navarra", in *Actas del Primer Congreso de Historia de la Fotografía*, Zarautz, Photomuseum Argazki Euskal Museoa, 2005, pp. 16-26.

<sup>23</sup> Noelia Rodríguez Rey: *Fondos y colecciones fotográficos del Archivo y Biblioteca Regional de la Comunidad de Madrid: descripción y análisis*, Madrid, Universidad Complutense, 2013.

<sup>24</sup> Gabriel Quiroga Barro: "Fondos y Colecciones fotográficas en el Archivo del Reino de Galicia: Adquisición, tratamiento y difusión", en *¿Qué hacemos con las fotografías en los Archivos?: Experiencias de trabajo en descripción, informatización y difusión Web*, Córdoba: Ayuntamiento de Córdoba, 2005.

Information is more fragmented as to private photographic collections and centres, although those of particular significance, such as those belonging to large companies and corporations which also have their own heritage holdings (Iberdrola, Telefónica, etc.) do on occasion have collections of artistic photography<sup>25</sup> (Telefónica, MAPFRE, Juan March, etc.). Likewise of particular interest are the archives of press and photography agencies (EFE, Europa Press, Cover), the media (in particular Prensa Española, which includes the newspaper ABC and the Blanco y Negro weekly, and also La Vanguardia and El País), publishing houses (Espasa-Calpe, with its famous Encyclopaedia Dictionary collection), and old phototype publishers (Thomas and Roisin, mostly at the Institut d'Estudis Fotogràfics de Catalunya), centres such as the Instituto Amatller de Arte Hispánico (which includes, among others, the Mas Archive), aerial photography companies, etc.

### ***Standards and models for the description of photography used at Spanish institutions. Other descriptive and exchange models.***

The descriptive situation of photographic collections in Spain is a varied one, and has alternatively depended on the availability of specialist personnel at cultural institutions and the resources assigned for the automation of descriptive instruments. There is a whole range of possibilities, from "invisibility" of photographs because of a lack of a description and conservation policy, down to a detailed description of each and every one of the photographs of the various holdings and collections kept at a centre, along with mere identification of the main collections.

What truly matters, though, is to ascertain that, as with other so-called "special materials" (maps, plans, drawings, sound and audiovisual recordings, etc.), photographs have been processed and described in accordance not so much with the specificities of the photographic objects, but rather the nature of the centre where they are kept: libraries, archives, museums, documentation centres, administrative units, private collections, etc<sup>26</sup>.

As a result, the same photograph could be described differently depending on whether it is assigned one descriptive standard or another, in accordance with the individual centre where it is located. This circumstance is heightened by the particular characteristics of iconographic information associated with photos, which are described on the basis of the reading of their contents by the cataloguing centre and in accordance with its needs, often without taking into consideration the intentionality of the photographer or the natural or legal person that commissioned the work.

It should likewise be borne in mind that sound cataloguing is a basic premise for conservation, as it avoids the unnecessary manipulation of originals and allows for more precise consultations. Setting aside non-standardised and non-interconnected descriptive models, created ad hoc by certain institutions, we will focus on the most universal standards and their application to photographs.

Photographic collections held at libraries, then, will be described by the ISP standard<sup>27</sup>,

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<sup>25</sup> Un acercamiento a las colecciones de fotografía contemporánea en España, in Cristina Zelich: "Fondos fotográficos en las colecciones españolas. Constitución, evolución y consideraciones", *Mus-A: Revista de los museos de Andalucía*, 9, 2008 (Issue dedicated to: Photography and Museums), pages 42-49.

<sup>26</sup> Of interest in this regard is the work by Jesús Robledano Arillo & Montserrat Canela Garayoa: "Estándares para la descripción de fotografía", *Revista d'arxiu*, nº 6 (2007), pp. 149-188.

<sup>27</sup> International Standard Bibliographic Description (Descripción Bibliográfica Internacional Normalizada).

established in the 1970s, and the MARC21<sup>28</sup> exchange format. The MARC format is typically presented online as an XML-type<sup>29</sup> markup language, by means of a web compatible service, including the OAI-PMH exchange protocol. The ISBD, and its national version of *Spanish Library Cataloguing Rules*, also has the corresponding chapters for the description of graphic materials, both projectable and non-projectable, including various photographic formats (positives, slides, stereograms, etc.). Cataloguing rules are designed above all for library materials, and the format fields must therefore be adapted to the descriptive needs of photographic materials, respecting their specific nature and establishing criteria for the adaptation of the levels of description in accordance with the needs of the different materials, their volume at the institution, and the established objectives.

Meanwhile, photographic funds held in archives are typically described by means of the more recent descriptive standard ISAD(G)<sup>30</sup>, which received its definitive approval in the year 2000, and the first version of which already included examples of the description of sets of photographs. The standard has its corresponding exchange format, EAD<sup>31</sup>, which as early as the 2002 version was already using XML.

We are fortunate enough in Spain to have various applications of the ISAD(G) standard for the description of photographs. In 2001, for example, the Centre de Recerca i Difusió de la Imatge in Girona published its *Manual for the Management of Photographic Collections and Holdings*, developing a descriptive model on the basis of the international standard<sup>32</sup>, while in 2006 the second edition of the *Manual of Multi-level Description* published by the Regional Government of Castile-Leon, provided specific conventions for photographs. The most recent contribution to date is the brief manual Photographic Documentation published by Juan Miguel Sánchez Vigil and Antonia Salvador<sup>33</sup>.

Meanwhile, the State Archives have in place detailed guidelines for photographic description based on ISAD(G) and the remaining standards and formats for archive exchange (ISAAR-CPF, ISDIAH, EAS, EAC) used on the PARES portal (see Annex 5.7).

There are different types of standards which are perfectly valid, although there are certain differences among them. The most significant is that ISBD focuses its priority on the description of individual materials or series publications, although it is true that the MARC21 format likewise allows for cataloguing at different levels. Meanwhile, the ISAD(G) standard is organised as a descriptive tool in which the so-called "multi-level" provides hierarchical information which allows the desired description level to be chosen and related to the descriptive records immediately above, below or alongside. In other words, it can be used to describe photographic collections and holdings, features and single photographic units in an interrelated manner. Meanwhile, the ISAAR(CPF)<sup>34</sup> standard, and its EAC-CPF<sup>35</sup> exchange standard provide significant information as to the context of creation of the photographic document, in other words as to the authors, producers or custodians.

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<sup>28</sup> Machine Readable Cataloging.

<sup>29</sup> eXtensible Markup Language.

<sup>30</sup> General International Standard Archival Description.

<sup>31</sup> Encoded Archival Description.

<sup>32</sup> Boadas, Joan; Casellas Serra, Lluís-Esteve; Suquet, M. Àngels: *Manual para la gestión de fondos y colecciones fotográficas*. Girona: Centro de Recerca i Difusió de la Imatge, run by Girona City Council. Girona, 2001.

<sup>33</sup> Sánchez Vigil, Juan Miguel & Salvador Benítez, Antonia: *Documentación fotográfica*, Barcelona, UOC, 2013.

<sup>34</sup> International Standard Archival Authority Record for Corporate Bodies, Persons and Families.

<sup>35</sup> Encoded Archival Context for Corporate Bodies, Persons and Families Codificado- Instituciones, Personas y Familias).

Museums have in place a descriptive standard for their collections, CIDOC CRM<sup>36</sup>, the first edition of which was presented by the International Council of Museums, ICOM, in 1999, and which is now an ISO standard (21127:2006). Recently, the ICOM itself developed an XML harvesting scheme for the description and dissemination of museum collections, entitled LIDO<sup>37</sup>.

Nonetheless, the disparity between the museum institutions involved in the cataloguing of photography at the national level, and the inertia represented by the traditional resistance to document standardisation at museums, means that there are no commonly accepted descriptive models, the most frequent approach being that each institution will develop its own model based on generally accepted fields (the most widespread in the context of museums is Dublin Core).

The main characteristic revealed by the descriptive models used at museums is the consideration of photographic material as a museum holding, with the tendency to individualise all those aspects which distinguish one object from another, even if they share the same technical characteristics and iconic content. These data models incorporate, alongside purely descriptive aspects, fields connected with the material existence of the object (subject matter, dimensions, state of conservation and treatment received) and other information regarding management (exhibitions in which the holding has been involved, or bibliography in which it is cited), linking the object to the context of the collection by means of the creation of sets or associations.

Given the diversity of museum collections and the blurred boundaries which often seem to divide holdings which have been traditionally associated with libraries, archives or museums, the DOMUS Integrated Museum Documentation System<sup>38</sup>, developed by the Spanish Ministry of Education, Culture and Sport, and which currently catalogues more than 170 collections at museum institutions in Spain, attempted to resolve the issue caused by the consideration of certain materials which were unique copies as museum holdings, by creating the category known as Document Holdings. This subsection is used to catalogue letters, drawings, excavation reports, dance cards, engravings, diaries... and photographs. Clearly the type of museum determines in many cases whether a photograph is included in one category or another: a photograph by Ortiz Echagüe of the series *Types and Costumes* could be considered a Document Holding at the Museum of Costume, or a Museum Holding at the Ribadavia Museum of Ethnology. In any event, the classification of a photograph as a Document Holding does not undermine the control and detail of the cataloguing process, since both databases share most of their information fields.

At the national level, although with an international aim, there are other models for the representation of Cultural Heritage, such as CHARM<sup>39</sup>, developed by the Institute of Heritage Sciences (INCIPIT) at the CSIC. Lastly, one example of a descriptive model for photographs proposed for documentation centres in Spain is the *Photon*<sup>40</sup> system devised by Manuel Blázquez Ochando, proposing one single cataloguing scheme based on elements of library and archive standards, along with the Dublin Core and the EXIF embedded photographic metadata schema.

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<sup>36</sup> Conceptual Reference Model.

<sup>37</sup> Lightweight Information Describing Objects.

<sup>38</sup> AA.VV.: *Normalización documental de museos*, Ministerio de Educación y Cultura, 1998.

<sup>39</sup> Cultural Heritage Abstract Reference Model.

<sup>40</sup> Blázquez-Ochando, Manuel: "Desarrollo de un sistema de catalogación y gestión de fotografías: Photon = Development of a system for cataloging and managing photos: Photon". *Scire*, 2012, vol. 18, no. 2, pages 103-112. Available at: <http://eprints.rclis.org/19106/1/ibersid2012-manuel-blazquez-ochando.pdf>

At the European level, particular mention should be made of the SEPIADES<sup>41</sup> initiative, as a part of the SEPIA<sup>42</sup> project maintained by the European Commission for Preservation and Access (ECPA) with the collaboration of leading institutions, including the National Library of Spain. SEPIADES establishes 21 information fields and recommends the multi-level description of photographic collections already considered by archive standards, while opting for the description of the scene represented in the photograph (the "visual image" in its terminology), irrespective of the "format" employed to denote the different manifestations of the scene represented (slide, print, digital file, negative...). In other words, the approach adopted is based on the image captured, rather than the tangible photographic object.

Lastly, we here make a brief reference to certain metadata models which exist within the context of digital photography. Firstly, EXIF<sup>43</sup>, used by most digital cameras these days, and likewise present in such other devices as telephones, tablets, etc.; and in the field of photojournalism, the IPTC headers format, used for the description and exchange of information among press agencies.

### ***Equivalences among the different descriptive standards and exchange formats***

Given this diverse range of descriptive standards for cultural heritage, the need has emerged to have in place data models which offer interoperability among the different disciplines and applications, so as to facilitate exchange and distribution via Internet platforms.

The most successful basic standard is the Dublin Core Metadata Element Set (Dublin Core or DC): a basic vocabulary of 15 elements or properties used for the exchange of any type of information resource, and which refers both to the content and intellectual property and to formal elements. DC has achieved widespread application as a part of the Open Archive Initiative Protocol for Metadata Harvesting (OAI-PMH), and was ratified as an ISO standard in 2009 (15836: 2009).

With regard to the description of photography, the SEPIADES recommendations contain a chapter entitled "Interoperability. Dublin Core as exchange format for photography", which is based on an analysis of different applications of this standard as an exchange format for photographic descriptions. It proposes a mapping or equivalence between the DC elements and those proposed by SEPIA.

There are numerous examples of equivalences among the descriptive fields of the different standards and formats for exchange and OAI-DC. One example which we could cite is the ICA- AtoM project of the International Council on Archives, which could provide a guideline for the implementation of qualified Dublin Core at different institutions with photographic collections<sup>44</sup>. The problem which arises is how to reduce to the 15 elements of this standard to the rich and complex descriptions of photographic objects which these centres often have. One alternative for consideration would be to adopt the standards established by Europeana: ESE<sup>45</sup>, a metadata model which, taking DC as its basis, has established a total of 37 descriptive elements, or its subsequent evolution, EDM<sup>46</sup>, based on the paradigm of linked

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<sup>41</sup> SEPIA Data Element Set: recommendations for cataloguing photographic collections, Amsterdam, European Commission, 2003.

<sup>42</sup> Safeguarding European Photographic Images for Access.

<sup>43</sup> Exchangeable Image File Format.

<sup>44</sup> The website of the ICA-AtoM project offers a useful table of equivalences among the fields of different document description and exchange models (ISAD(G), RDA, RDA2, EAD, MARC21, DC, MODS, CDWA): [https://www.ica-atom.org/doc/Crosswalks:\\_ISAD\(G\)](https://www.ica-atom.org/doc/Crosswalks:_ISAD(G))

<sup>45</sup> Europeana Semantic Elements

<sup>46</sup> Europeana Data Model. Of potential use as an introduction to this field would be the study Xavier Agenjo and Francisca Hernández Carrascal: "Los modelos de datos en la perspectiva de Europeana, la



data proposed by the semantic Web.

### ***Use of metadata for the exchange of descriptions of photographs and for the conservation and dissemination of digital images***

In the global information world represented by the Internet, it is increasingly important to use standardised metadata schemata for the exchange, dissemination and conservation of digital objects. Among the different models, particular mention should be made of the following<sup>47</sup>:

- OIA-PHM (*Open Archives Initiative Protocol for Metadata Harvesting*)<sup>48</sup> is a protocol used to communicate and harvest metadata in open repositories, which allows, among other benefits, the visibility of the descriptive records through conventional Internet search engines.
- METS (*Metadata Encoding and Transmission Standard*) is an XML metadata model devised for the management of objects in a digital library and the exchange of this type of object among different repositories. It is compatible with standards such as MARC, EAD and Dublin Core, among others, and has in place a specific schema for intellectual property rights: METSRights.
- With regard to the above, PREMIS (*Preservation Metadata: Implementation Strategies*) is a metadata model which gathers information about the capture and characteristics of digital copies for future preservation.

In Spain, these metadata models are present at various libraries and digital repositories, mainly those included within the Hispana aggregator of the Ministry of Education, Culture and Sport. Since 2009, the Ministry has been awarding annual grants for the creation and transformation of digital resources (including photographic collections), along with their preservation and dissemination by means of repositories based on the OAI-PMH protocol. All the subsidised projects, both private and public, must adopt this protocol and comply with its standards. Meanwhile the PARES State Archive Portal is implementing the METS model.

The institutional repositories of university libraries and, in some cases, university archives, also comply at least with the OAI-PMH<sup>49</sup> protocol, with or without associated digital objects<sup>50</sup>.

A number of the photographic collections contained within repositories which comply with these standards are cited below, in the section dedicated to *Main repositories and national websites*.

### ***Commercial and open software applications: advantages and disadvantages***

The current landscape of a lack of economic resources raises huge challenges for institutions in deciding as to the acquisition, maintenance or development of applications which comply with management and dissemination expectations for their collections. The evolution of

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*DPLA y RDA*", *Boletín de ANABAD*, LXIII-3 (2013), pp. 17-32.

<sup>47</sup> For an overview of the main metadata models connected with the dissemination of heritage content, see the information provided in this regard by the National Library of Spain

<sup>48</sup> Open archive initiative protocol for the harvesting of metadata.

<sup>49</sup> [Directory of institutional repositories of the University Library Network](#)

<sup>50</sup> Although the greatest focus is on scientific journals (*e-Prints*), a working line has also been developed for heritage, resulting in the *Catalogue of Digitisation Initiatives for Document Heritage at University and Scientific Libraries* (November 2013), although this does not include photography.

freeware or open source programs extends the range of options, but before decisions are taken consideration must be given to the fact that 'open' does not necessarily mean 'cost-free', and that this type of software typically entails a development and maintenance cost which may prove rather burdensome<sup>51</sup>.

Over recent years *DSpace*, developed initially as a management and dissemination tool for scientific publications, has achieved prominence as an institutional open source repository for digital collections. There are various examples of its use in the field of photography, in particular in Latin America (Costa Rica, Ecuador, Mexico and Brazil), while in Spain it would seem that it has achieved particularly widespread use as a document repository at institutions and universities, while scarcely being used for the dissemination of photographic collections.

The initiative of the International Council on Archives to develop free software for the description of photography resulted in the *ICA-AtoM* program, which in addition to archive description standards is compatible with RDA, Dublin Core, MODS and PREMIS. In Spain, its implementation is limited for the time being, although it has been applied to the management, digitisation and online dissemination of the photographic holdings of the Regional Archive of Madrid and the collections of the University of Malaga's Image Technology Centre (the Albumina project, still at the development stage).

Another open source program devised as an online repository for digital cultural heritage collections is Omeka, developed in 2008 by George Mason University (Virginia, USA), which complies with the OAI-PMH protocol, is compatible with other exchange models (DC, EAD, CSV) and furthermore allows for the creation of virtual exhibitions (and is, for example, used for this purpose by Europeana).

Within the context of libraries, meanwhile, the IFLA (International Federation of Library Associations and Institutions) has developed the open source library management program Koha, which is compatible with OAI-PMH. The Ministry of Education, Culture and Sport used this as the basis for development of the Koha-Kobli version, which is already in operation at a number of institutions belonging to the network of General State Administration Libraries (BAGE). Likewise, the global library consortium OCLC has developed OAI/Cat, open source software for the implementation of OAI repositories. As mentioned previously, the main issue with open source systems is the cost and difficulty of development and updates, and it is therefore advisable to request technical advice before choosing a solution of this type.

### **Main national websites and repositories (or those with Spanish holdings) with descriptive records and/or accessible photographic images**

The aim here is to highlight, without presenting a fully comprehensive list, significant photographic collections the descriptions of which, and in some cases digital reproductions, are accessible online. For practical reasons, image banks, commercial photography websites and social media such as Instagram, Picasa, Panoramio and Flickr are expressly excluded, although the last of these contains a section of interest, "The Commons", where a number of cultural entities from all round the world (although none from Spain for the moment), post photos from their copyright-free collections.

Among the institutional initiatives at the national level in Spain, of particular interest is the Fototeca of the Institute of Spanish Cultural Heritage, the online catalogue of which provides

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<sup>51</sup> The state of the matter may be consulted in the work by Jesús Navas Millán & Antonio Ángel Ruiz Rodríguez: "Análisis y recomendaciones sobre software para archivos de imágenes", *El profesional de la información*, vol. 20, no. 4, 2011 (Issue dedicated to: Photography and Image Banks), pp. 474-481.

access to some 135,000 photographs with heritage content, which can be located by title, date, subject matter, locality, etc.

In the field of museums, the [CER.ES](#) portal (Online Collections: the digital network of museum collections of Spain) provides access to some 15,000 photographs, and has a database including the object/document field, which allows searches by various photographic terms.

Meanwhile, the [Spanish Archive Portal](#), PARES, provides access to a great many images derived from state archives (see Annexes 5.2 and 5.3), while numerous archives at the regional and local levels have websites allowing for photograph description queries, along with the display of digital reproductions. One could by way of example cite a number of archives at the level of the autonomous regions ([Catalonia](#), [Madrid](#), [Murcia](#)<sup>52</sup>), municipalities ([Cordoba](#), [Girona](#), [Toledo](#), [Barcelona](#), [Granada Malaga](#), [Arganda del Rey](#), [Alcoy](#)...), provincial authorities ([Gipuzkoa](#), [Guadalajara](#), [Huesca](#), [Vitoria](#)) and universities ([Navarre](#), [Granada](#)).

At the international level, the Archives Portal Europe, which currently includes 866 archive institutions belonging to 32 European countries, contains under the term "photo" almost 50,000 records, although only some 1,200 correspond to photographs with an associated digital image. A search for the term "photo" returns around 130,000 results, of which slightly more than 6,950 refer to graphic documents and do indeed contain digital copies of photographs. From among these images, 2,312 belong to Spanish institutions, most of them (1,924) the Municipal Archive of Arganda and the rest to state archives.

Lastly, a search of the [Directory of Digital Collections of Hispana](#) employing the term "fotograf\*" returns just over 70 results, of which only 11 (marked with the Open Access icon on the list) comply with the OAI protocol. Among these, the Image Archive of Castile-La Mancha, the Hispanic Digital Library, the Virtual Defence Library, the Digital Collections of the Cervantes Institute, the DARA in Aragon and the Photographic Holding of the University of Navarre.

The growing interest generated by photography has given rise to the implementation of a specific channel for the dissemination of historic images at Europeana: the [Europeana Photography](#)<sup>53</sup> project, which now has some 225,000 photographs. Spanish content providers include the Regional Government of Catalonia (Arxiu Nacional de Catalunya, Museu Nacional d'Art de Catalunya and Museu d'Arqueologia de Catalunya) and the CRDI: Centro de Recerca i Difusió de la Imatge, run by Girona City Council.

Likewise associated with Europeana is the [Europhoto](#) portal, on which around a dozen European press agencies have posted more than 910,000 journalistic photos online, running from the end of the 19th century up to 1990, including Spain's EFE agency, which has provided nearly 119,000 images.

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<sup>52</sup> The portal of the [Carmesí Project](#) (Catalogue of Archives of the Region of Murcia in the Information Society)<sup>52</sup> provides access to a total of 29,522 digitised photographs belonging to 11 holdings of the General Archive of the Region of Murcia, along with 2,672 digital copies from the "Family Album" initiative in the town of San Javier. Meanwhile, the online search engine of the General Archive of the Region of Murcia provides access to some 11,000 descriptive records and/or images of photographs from within its holdings.

<sup>53</sup> *European ancient photographic vintage repositories of digitized pictures of historical quality.*

## **Identification of national and international lists (thesauruses, subject lists, etc.) on techniques, procedures and photographic genres**

Controlled and indexing languages, both pre-coordinated (classifications, subject header lists) and post-coordinated (thesauruses) are particularly useful tools for the creation of points of access and retrieval of information, both of iconic content and formal aspects of photography. There are numerous instruments of this type, in particular with regard to commercial image banks which combine controlled languages with keywords, and even colour tones and forms for retrieval<sup>54</sup>.

At the national level there are generic tools of this type, generated and maintained by such cultural institutions at the Andalusian Institute of Historical Heritage, which has a thesaurus (TPHA) containing a small section dedicated to photographic techniques<sup>55</sup>.

Meanwhile, the Ministry of Education, Culture and Sport has published online, as part of the CER.ES - Museum Network Collections project, a series of thesauruses, including a number of titles with terms of relevance in the field of photography: the Diccionario de materias y técnicas (2008), with definitions of photographic media, and the Tesoro y diccionario de objetos asociados a la expresión artística (2013), by Isabel Trinidad Lafuente, which covers accessories, optical apparatus, cameras, lenses and supports, along with types of photography by content.

Along similar lines, one example of a pre-coordinated language of use for the indexing of photography is the List of Authorities of the National Library of Spain, which contains a sub-list of photographic terms, for both subject matters and genre/form, along with terms for procedures, genres and other photographic information of interest.

As for specific thesauruses dedicated to photography, particular mention should first be made of the BIMA (Image Base)<sup>56</sup> thesaurus, the name given to the image document database of Barcelona City Council. More recently, an advanced issue of the thesaurus produced on the basis of photographic genres has been published<sup>57</sup>.

Other organisations, such as the Centre for Image Research and Dissemination in Girona, or the State Archives of the Ministry of Education, Culture and Sport (see Annex 5.7) have opted to produce and maintain their own controlled vocabularies for procedures, pathologies, storage media, formats, genre, etc.

At the international level, the most recognised and widely used thesauruses for graphic resources, including photography, are as follows:

- Library of Congress: [Thesaurus for graphic materials I: Subject Terms \(TGM I\)](#) & [Thesaurus for graphic materials: Genre and Physical Characteristic Terms \(TGMII\)](#).
- Getty Research Institute: [Art & architecture thesaurus \(AAT\)](#).
- [Tesoro de arte & arquitectura](#). Translation into Spanish of the AAT performed by the Centro de Documentación de Bienes Patrimoniales, dependent on the DIBAM

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<sup>54</sup> For a recent review of these aspects, one useful study is the work by Juan Alonso Fernández: [Digitalización, catalogación y recuperación de información en los archivos fotográficos: un estado de la cuestión](#), II Premi del Col·legi Oficial de Bibliotecaris i Documentalistes de Catalunya al millor treball acadèmic, Barcelona, 2008.

<sup>55</sup> The main terms connected with photography are found in the following hierarchy "Acontecimientos. Actividades. Procesos. Técnicas > Técnica > Técnica de representación gráfica \* > Registro de imágenes > Técnica fotográfica".

<sup>56</sup> Sílvia Domènech: [Tesauro BIMA](#), Barcelona: Barcelona City Council. Arxiu Municipal de Barcelona, 1997, 127 pp.

<sup>57</sup> Miguel García Cárceles & M<sup>a</sup> José Rodríguez Molina: "Elaboración de tesauros para fotografía basados en géneros fotográficos", [Boletín ANABAD](#). LXIV-1 (2014), pp. 87-100.

(Directorate of Libraries, Archives and Museums) in Chile.

- National Library of France: *Thésaurus iconographique: système descriptif des représentations*. François Garnier (Paris, 1984)<sup>58</sup>.

One example of the subject header list is that produced by the Art Libraries Section of the IFLA, *Multilingual Glossary for Art Librarians*, which although it is not specific to photographs, does include many entries connected with them. Meanwhile, the website of *Iconclass*, maintained by the RKD (Dutch Institute of Art History), provides a hierarchical subject classification system for art and iconography, and includes a specific section (48C61) dedicated to photography.

### **Conclusions on the current status of photographic heritage in the field of collection description**

In the light of the national landscape in terms of the description of photographic collections and holdings, the following conclusions may be drawn:

- Lack of updated, accessible and centralised information as to the location and descriptive state of numerous photographic collections in the country, with certain exceptions in the case of particular autonomous regions.
- Diversity of descriptive standards in accordance with the nature of the centres holding photographic collections, often with a lack of standardised descriptions.
- Scant usage of metadata models, such as OAI-PMH, which would allow for the exchange and dissemination of descriptions and images.
- Variety of both commercial and open source computer applications, with highly diverse management functionalities.
- Lack and scattering of websites for digital repositories with digital records and online accessible reproductions of photographs, undermining the visibility of holdings and hampering consultation.
- Numerous indexing tools of different types and specificities, but with few specific developments for the description of photographs.

In short, dispersal or lack of information, lack of descriptive uniformity, scant implementation of exchange formats and difficulties in general for the location and retrieval of records and images.

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<sup>58</sup> Used, for example, for the indexing of the Joconde databases (Catalogue of Collections of the Museums of France): [http://www.culture.gouv.fr/public/mistral/joconde\\_fr](http://www.culture.gouv.fr/public/mistral/joconde_fr).

### 1.2.3. Use and dissemination

#### **Introduction**

The mission of cultural heritage management institutions which have photographic heritage under their custodianship is not confined to the ordering, conservation and cataloguing of their holdings. It is likewise vital for them to disseminate their content and make it available to researchers, the creators of derivative works (Creative and Cultural Industries) and citizens with an interest in cultural heritage.

Such entities currently perform their "use and dissemination" function with great differences in terms of consultation, access, authorised use (private/public) and reuse in derivative works, whether on a non-profit or commercial basis.

In this regard, while institutions such as the Library of Congress of the United States offer reproductions of most of their photographic holdings with scarcely any restrictions on use, other libraries, archives and museums around the world<sup>59</sup> place limitations on the reuse of their images, ranging from various charges for use and reproduction, to specific restrictions for commercial or profit purposes.

In general, there are two schools of thought with regard to the use and dissemination of digital objects produced and managed by public authorities: first those who argue for free access and usage of all holdings, while others argue that a minimal price should be charged in order to cover the payment of marginal costs and copyright, where applicable, while also guaranteeing a basic economic return on the investment made.

The former school is represented by various user groups (cultural and creative industries, researchers and private individuals), and is supported by such initiatives as Europeana, which, within the context of the European Digital Agenda, promotes the release of cultural content and the widespread use of the *Creative Commons* licence CC0 1.0 Universal (free of exploitation rights).

The second school of thought likewise originates in the EU, essentially among photographic holding management entities which are not only forced to deal with the complex issue of copyright, but must also give consideration to the resources invested in order to make such holdings available to the public (costs of acquisition, preservation, storage, digitisation, etc.).

Between these two schools, the real world typically imposes a halfway house solution, since even if efforts can be combined to release photographs belonging to the public domain, reproduction will continue to require economic consideration. This is the case of state archives, libraries and museums, where the reproduction of images is subject to the payment of a charge established in the Order of Public Prices of the Ministry of Culture, compliance with which is mandatory for dependent institutions (Order CUL/1077/2011 of 25 April 2011). The scenario is similar in the Autonomous Regions, which in general apply various public fees and charges for the granting of copies and digital images.

In this regard, European regulations and their transposition into national legislation<sup>60</sup>, although they encourage public sector bodies to authorise the use of documents

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<sup>59</sup> Remaining in the US the Metropolitan Museum, for example, establishes limitations for the commercial use of its photographs and has a scale of fees which vary depending on the required uses: <http://www.metmuseum.org/research/image-resources/image-request-form>

<sup>60</sup> [Directive 2013/37/EU the reuse of public sector information, of the European Parliament](#), and [Guidelines for recommended standard use licences, datasets and charging for the reuse of content](#).



unconditionally, with the most minimal restrictions possible through the use of open licences, establish exceptions vis-a-vis libraries, museums and archives. This thus allows such institutions to charge for the costs of data conservation and rights acquisition, while also adding a reasonable profit margin and establishing different tariffs depending on whether the purpose of reuse is for profit or not, taking into consideration the prices applied by the private sector for the reuse of identical or similar documents.<sup>61</sup>

Taking into consideration all the above, the conclusion which could be reached is that there is a need for cultural institutions to dedicate efforts to analysis, standardisation and consideration in the application of the tariffs governing the use of photographic objects by third parties, distinguishing whether the purposes are for profit or not, whether the requested item has already been digitised, whether there are intellectual property rights which apply, etc. The idea is progressively to instil a change of mentality which would support the reuse of content while designing feasible and phased strategies which will serve to make photographic objects available in digital format to the general public, promoting their re-use.

### ***IT solutions and platforms used at photographic archives***

The range of off-the-shelf IT applications and freeware for the management of photographic collections of archives, libraries and museums is analysed in the chapter on "Description of holdings and collections".

One of the problems raised by current management systems is that, with a very few exceptions, they do not have applications in place which offer a comprehensive approach to both description and online publication, and the usage of traditional database systems which are not linked to online display facilities therefore remains widespread. This requires content periodically to be manually updated, generating greater effort and increasing the margin of error.

As regards comprehensive platforms, the BNE, for example, uses a combination of applications: Digitool (commercial) and Apache SOLR (open source). Among those entities using applications developed with open source software is the Ateneo in Madrid<sup>62</sup> with ICA-AtoM. The company which developed ICA-AtoM also offers a more advanced open source version<sup>63</sup>.

The Provincial Authority of Guipúzcoa has developed an open source platform known as Guregipuzkoa, which allows users to contribute information upload images, and has in place an API to access the content from other programmes.

As regards the European Union, the Europeana project brings together on its platform more than 36 million digital objects drawn from European archives, libraries and museums, among which more than 23 million are images (photographs, engravings, posters, etc.). This is a "catalogue of catalogues" drawing exclusively on the metadata of each entity or provider, with the digital objects remaining in their original catalogues. The initiative is supported by a network of "aggregators" distributed by country, although there are also themed aggregators, such as Europeana Photography and Europeana Fashion. The aggregator in the case of Spain is HISPANA, with more than 5 million digital objects drawn from over 200 repositories (archives, libraries, museums and other cultural institutions).

Europeana is currently evolving from the ESE (Europeana Semantic Elements) description

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<sup>61</sup> Whereas 23 of the aforementioned Directive

<sup>62</sup> <http://archivo.ateneodemadrid.es/>

<sup>63</sup> The "Access to memory" platform by Artefactual: <https://www.accesstomemory.org/es/>. A pilot installation may be viewed at: [http://atom.i2basque.es/index.php/?sf\\_culture=es](http://atom.i2basque.es/index.php/?sf_culture=es)

model, based on Dublin Core, towards the EDM (Europeana Data Model), with a linked data structure. This evolution is in line with "Linked Open Data" (LOD) initiatives which promote the exchange and reuse of digital objects and descriptions enriched with semantic Web technologies.

There are also specialist platforms for orthophotos (vertical aerial photos) which incorporate GIS (Geographical Information System) functionalities. Orthophotos are particularly valuable for researchers in the field of land management, industrial heritage, and any type of work based on information connected with the terrain and the objects which occupy it. This is the case of the Spanish National Geographical Institute (IGN), which holds in its own Virtual Photo Library the orthophotos of the American 1956-57 flight and those of the company CETFA (Ruiz de Alda) of the River Segura Basin (1929-30).

## **Metadata**

Image metadata are typically stored as records in a separate database. They may also accompany the digital file, either as embedded information or as an attached file, or "sidecar". There are well recognised international standards: EXIF, IPTC, DICOM, XMP, etc., among the most versatile of which is XMP<sup>64</sup>, based on the XML metadata language. Created by Adobe for the capture, preservation and exchange of metadata in different digital media and workflows, it was adopted by ISO in 2012<sup>65</sup>.

The capture and digitisation instruments used today, whether scanners or digital cameras, incorporate metadata embedded in the image file. Some of them can be predefined (author, intellectual property, make and model of the device), while others correspond to the characteristics of the digital image (format and compression, size and resolution, date and time, geographical location). It is important to take this circumstance into consideration and to aggregate the metadata with the image in new works and digitisations wherever possible. The *Guide to Application of the Technical Interoperability Standard for Document Digitisation*, published in 2011 by the Directorate-General for the Promotion of Electronic Administration (MPT), offers guidelines in this regard.

However, to date there are very few digital archives which distribute photos with embedded metadata.<sup>66</sup>

## **Offering of digital images, visibility and usage policies**

The quality of digital images and the usage policies applied to online catalogues and platforms vary widely. One example of good practice in access to and usage of publicly owned holdings would be the "Prints & Photographs" collection of the Library of Congress in the United States. Almost all the images in its historical holding can be downloaded in high resolution, free of water marks and with no usage restrictions. However, the library does warn that certain photographs could be subject to copyright, and indicates that users must themselves seek information as to the rights regarding images which do not include an express declaration in this regard ([http://www.loc.gov/rr/print/195\\_copr.html](http://www.loc.gov/rr/print/195_copr.html)).

The situation in Europe may be summarised on the basis of the Europeana portal data, which provides an interesting overview of the offering of digital images and usage policies around the EU, based on copyright information generally offered by means of *Creative Commons*

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<sup>64</sup> eXtensible Metadata Platform

<sup>65</sup> XMP becomes an ISO standard

<sup>66</sup> One example would be the Digital Map Library of the Cartographic and Geological Institute of Catalonia, which provides metadata together with the images in a sidecar file.



licenses:

USAGE OF PHOTOGRAPHS IN EUROPEANA Data obtained on 2/02/2015

Conditions of use	Number of images	Copyright data	% total
CCO	169.574	No rights reserved/no restrictions	0,73
CC BY	855.360	No restrictions	3,69
Public domain	1.862.032	No restrictions	8,02
Unrestricted access; no reuse	11.430.470	No reuse	49,26
CC BY-SA	1.992.032	Commercial use and derivatives permitted, provided that distribution is performed with the same type of licence	8,58
CC BY-NC-ND	2.502.889	Non-commercial; no derivatives	10,79
CC BY-NC-SA	1.479.343	Non-commercial	6,38
CC BY-NC	395.253	Non-commercial	1,70
CC BY-ND	64.522	No derivatives	0,28
Subject to a price; no reuse	1.214.854		5,24
Restricted access / rights reserved	877.991		3,78
Copyright unknown	359.558		1,55
Out of copyright; No commercial use	319		0,00
Orphan work	1		0,00
<b>TOTAL PHOTOGRAPHS: 23.204.198</b>			
Use without restrictions:		12 %	
Use with restrictions:		88 %	

The data reveal that, although Europeana set as a priority for 2015 the reuse of content, and as a challenge for the year 2020 that all material should be freely accessible for reuse<sup>67</sup>, the current situation falls far short of these objectives. This is the case both from the perspective of usage restrictions and from the perspective of the quality and resolution of images, since even those which are offered without restrictions are in many cases provided at resolutions which are too low to permit reuse in publications, exhibitions, etc.

As regards the situation in Spain, despite the aforementioned differences in terms of access and usage of images, it should be acknowledged that public authorities (at both the state and also the regional/local levels) have made huge efforts over recent years to make their cultural resources available to the general public in digital format.

State Authority:

At present, the digital catalogues and platforms of the General State Authority provide free download and access, typically in moderate resolution (JPEG of between 200 and 350 kB) to millions of digital objects which comprise Spain's document heritage, including books, magazine articles, images of antiquities and artworks, archived documents and photographs. Despite access and downloading free of charge, all these institutions charge public prices for the reproduction of high-resolution images, in accordance with Order CUL/1077/2011.

<sup>67</sup> A goal for Europeana

The most significant platforms or catalogues, in terms both of their volume and the significance of their photographic collections, are as follows:

- PARES (Spanish Archives Portal): provides access to more than 33 million images drawn from state archives, including archive documents and photographs.
- Spanish Institute of Cultural Heritage (IPCE) Photo Library: access to 143,000 photographs concerned with heritage matters.
- CER.ES (Digital Network of Spanish Museum Collections): access to 159,000 digital objects drawn from state museums, including more than 16,000 heritage-themed photographs.
- Virtual Bibliographical Heritage Library (BVPB): collective catalogue with access to nearly 70,000 digital objects drawn from the libraries of the State, including 14,222 photographs with resolutions and usage restrictions which vary depending on the conditions established by the management entities.
- Hispanic Digital Library (BNE): access to 5,936 photographic documents (although in some cases these are albums containing several images), downloadable without restriction (except for commercial use) in high resolution and PDF format.

#### Autonomous Regions:

The autonomous regions have likewise made considerable efforts to process and make publicly available their photographic collections, resulting in the creation of numerous online catalogues and portals. The most significant of these would include:

- Girona City Council: providing access to 380,000 antique and modern photographs, in PNG format and at a moderate-low resolution.
- Image archive of Castille-La Mancha: access to 25,353 photographs, dealing with both historical and contemporary themes. Most offered in GIF format and in low resolution, and in some cases cannot be downloaded.
- Gureguipuzkoa: unrestricted access to an indeterminate number of moderate resolution images (between 200 and 800 kB).
- "Digital Memory": a number of regional portals have been created with this generic name, with various conditions for access and use. These include:
  - Digital Memory of the Canaries: unrestricted access to 36,000 high-resolution images dealing with the heritage of the Canaries.
  - Digital Memory of Catalonia: unrestricted access to 33,623 low resolution photographs (under 100 kB) dealing with Catalan heritage.
  - Digital Memory of Asturias: CC 3.0 non-commercial access to images provided by the general public and typically available in low resolution (JPEGs of around 100 kB).

A brief analysis of this landscape reveals the Hispanic Digital Library<sup>68</sup> and Digital Memory of the Canaries<sup>69</sup> as flagship initiatives in terms of the quality of the images offered and the usage conditions. These are in both cases relatively recently created catalogues with a limited volume, facilitating the use of innovative platforms with functionalities which were not available previously to such platforms as PARES and CER.ES, developed in the 1990s. These new functionalities include in particular the opening up of catalogues to public involvement through the possibility of classifying images, sharing them via social media, and adding labels or comments.

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<sup>68</sup> <http://www.bne.es/es/Catalogos/BibliotecaDigitalHispanica/Inicio/>

<sup>69</sup> <http://mdc.ulpgc.es/>

## **Social awareness-raising as to the importance of photographic heritage**

Photographic heritage appeals directly to the sense of identity of peoples and individuals, and arouses the natural interest of the general public. The numerous public, private and individual initiatives intended to compile photographic holdings connected with a particular locality or theme serve to confirm this circumstance.

Although general interest has on occasion given rise to significant publications and projects, a lack of technical rigour is often noted in the description of holdings and collections which, because of the inherent nature of the initiatives, typically deal with digitised images, without considering the original photographs and their context. Although general interest has on occasion given rise to significant publications and projects, a lack of technical rigour is often noted in the description of holdings and collections which, because of the inherent nature of the initiatives, typically deal with digitised images, without considering the original photographs and their context.

The projects to recover and compile photographic heritage which receive direct support from the general public through the contribution of images and collections would include in particular:

- projects addressing a general public audience, following the "family album" model: Caja Madrid (five editions since 2002), Gran Canaria (2007), Region of Murcia (2008).
- Projects employing the holdings of institutions, such as the aforementioned "Digital Memory" model: Asturias, Catalonia, Elche, Madrid, Murcia, Canaries, Lanzarote, etc.
- Projects employing the holdings of institutions, such as the aforementioned "Digital Memory" model:

This general public interest in photography is also seen through social media and Facebook<sup>70</sup>, Pinterest, Instagram, etc., groups with an interest in photography dealing with mining themes<sup>71</sup> and in the various "localpedias"<sup>72</sup>, on occasion organised in an anarchic manner, although it is not uncommon to find contributions by experts who provide data on the images displayed.

## **Public communication activities: exhibitions, festivals, publications**

In this section of the state of the matter, a number of significant cases of the reuse of content in the custodianship of public and private photographic archives are indicated. Such reuse generates economic activity which is reflected in derivative works in various formats (exhibitions, publications, reportage features), facilitating the efforts of creatives, artists, industries and services that have recourse to photographic heritage in order to perform their activities.

### **Exhibitions**

A brief historical account would begin with the 1970s and early 1980s, marking the first emergence of private photography galleries organising exhibitions on a regular and successful basis. However, the main channel for the dissemination of photography during this period came in the form of institutional exhibitions.

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<sup>70</sup> See [San Sebastián desaparecida & Cantabria y Santander en el recuerdo](#) and other similar collections.

<sup>71</sup> [Historic Mining Archive](#), with 11,000 images online stop.

<sup>72</sup> [Arija Photographic Archive: exhibitions](#) and [families](#).

Without wishing to provide a comprehensive list, we would cite the first photography exhibitions staged by the recently created National Exhibition Centre, which had its venue at the National Library of Spain in the early 1980s. The centre combined contemporary art exhibitions, which include photographic works, with shows of photography produced in the first third of the 20th century (*Imágenes de la Arcadia; Idas y Caos*, etc.).

These initiatives generated renewed interest in photography, and the Valencia Provincial Authority's Sala Parpalló included in its calendar a series of exhibitions of such leading photographers as Walker Evans, Robert Frank, Lisette Model, August Sander, etc.

In Madrid, the Círculo de Bellas Artes dedicated its Minerva Gallery to exhibitions of young photographers between 1982 and 1996, while the Museo Nacional Centro de Arte Reina Sofía staged in 1991 the project *Four directions: contemporary Spanish photography, 1970-1990*, offering a review of the national landscape through the works of 50 photographers.

Lastly, in the private sphere mention should be made of the contribution made by the historian Publio López Mondéjar, who in the late 1980s began the project *The Sources of Memory*, highlighting the works of significant photographers who were unknown or unpublished.

Numerous photography exhibitions are currently scheduled in Spain, with holdings drawn from both institutional collections and those of professional photographers and private archives. In Madrid alone there are typically between 30 and 50 shows at any given time<sup>73</sup>, perhaps supported by the fact that, given the nature of the objects employed, the organisation of photography exhibitions is typically simpler and cheaper than those involving other types of work.

Exhibitions typically feature the publication of catalogues which not only arouse interest in themselves, but also help to publicise genres and authors. Given the dispersal of photographic heritage in this country, such activities are probably one of the primary mechanisms which bring users into contact with such holdings, and are an excellent resource for dissemination and social awareness-raising as to the value of photography.

## **Festivals**

With a nod towards *Les Rencontres d'Arles* and the *Mois de la Photo à Paris*, a series of photography festivals have been established in Spain, stimulating an interest in this artistic medium in the country. Almost all these festivals include in their schedule the rediscovery of an early photographer, while contemporary art galleries stage photography exhibitions to coincide with the dates of the events, generating a climate of interest in photography as a phenomenon.

The first festival of this type was the Primavera Fotogràfica de Catalunya, which staged its first edition in 1982, and continued up until 2004, staging biennial exhibitions, competitions, seminars, forums, etc. In addition to exhibitions dedicated to contemporary photographers, the event also made considerable efforts to rediscover photographers from the late 19th and early 20th centuries, a task which was subsequently continued by other initiatives.

The leading festivals at present include in particular the Jornadas Universitarias de Fotografía in Madrid, the Bienal de Fotografía de Vigo, the Fotoencuentros de Murcia, the Festival de Fotografía de Guadalajara, the Jornades Fotogràfiques a València, Tarazona Foto, Huesca Imagen, Visiona, Imago, and lastly PhotoEspaña, one of the most successful initiatives, which is held yearly in Madrid and has other sub-venues in other Spanish and European cities.

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<sup>73</sup> Photography exhibitions in Madrid: <http://kedin.es/madrid/fotografia.html>

## **Publications**

A significant proportion of the books published in the field of photography use content drawn from photographic archives. The "descriptive geographic album" model, with engravings or photographs, has been a constant since the mid-19th century.

Books on the history of photography are another example of the reuse of archive content, as are those based on the recovery of local historical photography. In this regard, images focused on the restoration of a particular town's photographic heritage are now commonplace, using the holdings of private individuals who are typically asked to contribute their images for print or online publications.

The most recent trend is the publication of photography books financed through crowdfunding. It is common to find on such platforms proposals for publications of artistic or historic photography. One good example would be the title "Toledo Olvidado" 1 and 2, in Verkami<sup>74</sup>.

The awards organised by PhotoEspaña for "the best photography books of the year" have brought together a selection of around 100 national and international books specialising in photography. The publications, chosen from among all those submitted for the awards, may be considered a significant sample of editorial output.<sup>75</sup>

Separate mention should be made of dictionaries of photography and photographers, such as the *Diccionario de Fotógrafos Españoles*<sup>76</sup> and the recent *Directorio de Fotógrafos en España (1851-1936)*. The former, sponsored by the Sub-Directorate-General for the Promotion of the Fine Arts, contains entries and images from the 19th to the 21st century corresponding to photographers having produced significant works in Spain. The latter work was published in 2013 by the General and Photographic Archive of the Provincial Authority of Valencia, produced by its authors, M. J. Rodríguez Molina, J. R. Sanchís, through information provided by yearbooks and commercial guides.

## ***New dissemination strategies***

The visibility provided by the Internet to all types of cultural resource, and the popularisation of the use of social networks, has not only increased the proportion of general public participation in every aspect of culture, but also the demand for such involvement.

Specific catalogues and platforms for the consultation of images online must be prepared in order to respond to the demand which has arisen, adapting functionalities and planning new dissemination strategies for collections, which in turn allow for collaboration by the general populace, while helping to specify and enrich the description of images.

Mention has already been made of the functionalities incorporated by certain institutions in their catalogues to facilitate the use of digital objects in blogs and social media, such as the BNE through the Hispanic Digital Library, and the Provincial Authority of Guipúzcoa, with Guregipuzkoa.

However, new media also allow for other dissemination strategies, such as the creation of

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<sup>74</sup> <http://www.verkami.com>

<sup>75</sup> PHotoEspaña, "The Best Photography Books of the Year"

<sup>76</sup> <http://www.mcu.es/promoArte/Novedades/DiccionarioFotografosEsp.html>

virtual exhibitions<sup>77</sup> and thematic micro-sites on institutional websites, as well as the use of blogs and social media (Facebook, Twitter, Flickr, Instagram, Pinterest, Tumblr, etc.) to generate, share and disseminate information and collections.

Public authorities constitute the ideal environment in which to implement such new strategies, requiring the updating both of image management applications and the technical know-how of the staff responsible for the collections.

The process has already been launched, with initiatives and projects in various phases of development at almost every institutional level (archives, libraries, museums and other photographic heritage management centres).

In the context of museums, two examples of social media dissemination would be particularly worthy of mention by way of example: the involvement of the Museum of Costume in Europeana Fashion, with the exhibition of a selection from its collections on Pinterest and Tumblr<sup>78</sup>, and the involvement in Pinterest of the Museums of Andalusia, with its series of "Singular Collections and Spaces"<sup>79</sup>.

Meanwhile, the Sub-Directorate-General for State Archives began a policy of active dissemination through social media in May 2014, focused on the content of PARES. They have Facebook and Twitter accounts, and include archive content on the YouTube Culture Channel. They also belong to @SinergiaALA, a simultaneous dissemination network involving archive communities in Spain, Portugal and nine Latin American countries, used to promote the involvement of archives in social media.

As regards the Sub-Directorate-General for the Spanish Institute of Cultural Heritage, it has had a social media presence since early 2011, through a Facebook profile which has more than 18,000 followers, and another on Twitter with more than 7,500. Both profiles periodically feature news and updates on the holdings included in the Heritage Photo Library online catalogue.

In all cases the publication of photographic collections online has led to a considerable reduction in the number of users attending the centres in person, and an exponential increase in the number of online catalogue queries. This evolution can be clearly seen a comparison of the PARES data over the last 10 years: in 2003, 231,090 in-person consultations were recorded, and 260,000 online, while in 2013, in-person consultations amounted to 77,491, compared with more than 23 million online. In other words, the publication of virtual catalogues leads to an increase in the return and social impact of heritage collections, as it serves to save resources on the part of both the authorities and the general public, while also facilitating unrestricted access to holdings and collections.

Final mention should be made of a State Archive initiative which links heritage photography to mobile telephones. This is a mobile application which allows photos to be viewed on a map, as well as browsing among the photos and access to the information available in the description cards in PARES. The project is at the prototype stage, and so far work has been performed with photographs contained in the holdings of the National Tourism Board, under the custodianship of the General Administration Archive.

### ***New challenges: the reuse of information of public authorities***

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<sup>77</sup> Example of the exhibition featuring the photographer Kati Horna organised by the Sub-Directorate-General for State Archives: <http://www.mcu.es/archivos/CE/ExpoVisitVirtual/kati/index.html>

<sup>78</sup> <https://www.pinterest.com/eurfashion/curation-jewellery-ii/>

<sup>79</sup> <https://www.pinterest.com/museosandalucia/colecciones-y-espacios-singulares/>

A recent Communication by the EU considers that "the contribution by cultural heritage to economic growth and social cohesion is undervalued"<sup>80</sup>, and argues for an integrated focus in order to make such heritage extensively accessible and reusable, so that it can act as a catalyst for the economy (Creative and Cultural Industries, tourism, etc.).

Another document on the "European Digital Agenda" emphasises that the digitisation of cultural heritage offers competitive benefits for cultural industries, as they generate 4% of GDP<sup>81</sup>. It likewise indicates that online accessibility serves to develop new products and services in areas such as tourism, education, architecture, design, games and advertising.

In order to facilitate the use of public domain creations, "calculator" prototypes have been developed to provide an initial impression of the state of works from the perspective of intellectual property rights. In November 2013 the Ministry of Culture and Communication in France commissioned the Open Knowledge Foundation (OKF) to produce a "public domain calculator"<sup>82</sup>, with the aim of providing the cultural sector with a tool to ascertain the legal status of a work, with the information included in the metadata.

Overall, the current in favour of the release of cultural content is a movement which is becoming increasingly powerful, and is being reflected at publicly owned archives thanks to the support of recognised organisations and international projects:

- [Open Knowledge Foundation](#)
- [Wikimedia Commons](#)
- [Open GLAM](#) (funded by the EU)
- [Flickr The Commons](#)
- [Europeana Public Domain Charter](#)

With regard to barriers limiting the use of content, the first is to be found in the legislation in place regarding intellectual property, which, even if one takes into consideration shared EU standards, reveals variations from one country to another.

It is common to encounter problems and impediments to the reuse of digital objects, even for teaching and research purposes. The processes required for reuse, in the form of authorisations, charges and public fees, may vary considerably for the same object in the case of different entities, which on occasion are dependent on the same body. Discrepancies in terms of cost and period, and the lack in some cases of reduced prices for cultural uses, discourage the usage of heritage images, above all on the part of researchers and educators.

Some entities have found that the most effective way to increase the visibility of the heritage in their custodianship and to raise the economic and social returns on all the efforts dedicated to their preservation involves fostering usage. It is therefore increasingly common to come across restriction-free content, even for reuse in any type of derivative work, whether commercial or non-profit.

This is the case of the Library of Congress of the United States, which has an interest in its holdings enjoying good visibility and extensive familiarity, dissemination and re-use. In addition to facilitating unrestricted access free of charge to its images through its online catalogue, in 2008 it published a part of its collection on *Flickr The Commons*. This initiative was subsequently followed by archives and libraries in different countries, although these do not yet include any Spanish entity<sup>83</sup>.

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<sup>80</sup> [Towards an integrated approach to cultural heritage for Europe](#)

<sup>81</sup> [The Digital Agenda Toolbox](#), page 48.

<sup>82</sup> [Le calculateur du domaine public français](#).

<sup>83</sup> [Entities in Flickr The Commons](#)

Meanwhile, Europeana is responsible for promoting the visibility and reuse of cultural heritage through metadata exchange agreements<sup>84</sup>. In 2011 it published the White Paper entitled "*The Problem of the Yellow Milkmaid*", giving as an example the mass dissemination of a defective image in order to analyse the Open Data strategy and the "business model" of cultural entities. The paper reaches the conclusion that, although it is necessary to analyse each case, the release of content is an initiative which increases the visibility of photographic heritage and offers more benefits than drawbacks, and it therefore recommends a more widespread application.

The association *Wikimedia España*, the official chapter of the *Wikimedia Foundation*, likewise adopts a posture in favour of the visibility and re-use of photographic holdings. Its key mission is to obtain images for Wikipedia which are free of usage rights. This involves the organisation of such international events as:

- *WLM 2013* (Wiki Loves Monuments), photographs of Assets of Cultural Interest.
- *WLA 2010* (Wiki Loves Arts), with Foconorte, photographs from museum holdings.

The approach begun by Wikimedia in 2014 aims to release photographic heritage into the public domain. The first collaboration agreement was announced in June this year<sup>85</sup>, and conversations are ongoing with various entities (archives, museums, etc.) to reach similar agreements. Negotiations began in 2012 with the BNE, with the aim of releasing content from the Hispanic Digital Library under CC-BY-SA 3.0, withdrawing the NC (non-commercial) clause from content previously published.

In conclusion, current trends as regards visibility, usage and reuse of digital content argue at management entities (archives, libraries, museums and other cultural organisations) should switch from a traditional "institution-centred" model to a new, more open and collaborative "user-centred" model. Good practice is viewed as covering approaches which aim to maximise the usage of photographic heritage by interested parties: researchers, general public and creative and cultural industries, promoting visibility and free use of collections.

### **Conclusions. Towards a change of model: from the institution to the citizen**

The Heritage Act declares in the preamble that its ultimate aim is access to the assets which represent our Historical Heritage, in order to allow an ever greater number of citizens to view and enjoy the works which are the legacy of the collective capability of a people. We can find no more appropriate terms to express the importance given to the usage and dissemination of cultural assets.

*Directive 2013/37/EU, on the reuse of public sector information, of the European Parliament*<sup>86</sup>, and the *Guidelines on recommended standard licences, datasets and charging for reuse of content*<sup>87</sup>, recently published, aim to allow public sector bodies to authorise the reuse of documents without any conditions, with minimal potential restrictions, while promoting the use of open licences.

They limit possible charges to marginal costs, excluding from this obligation "libraries (including university libraries), museums and archives", which may include the costs of conserving data, and those for the acquisition of rights, together with a reasonable profit margin.

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<sup>84</sup> [Europeana-Oviedo University agreement](#)

<sup>85</sup> [Wikimedia España and Numismática Pliego](#)

<sup>86</sup> <https://www.boe.es/doue/2013/175/L00001-00008.pdf>

<sup>87</sup> [http://eur-lex.europa.eu/legal-content/ES/TXT/PDF/?uri=CELEX:52014XC0724\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/ES/TXT/PDF/?uri=CELEX:52014XC0724(01)&from=EN)



In the case of electronic distribution (downloading) of digital files or documents, the law considers that the average operational costs of a database are low, and continue to fall, and that the free use of this service could therefore be recommendable.

In Spain, with just a few exceptions, the document and photographic holdings of public sector entities are offered without open licences, and are subject to various orders establishing public fees and charges, which should ideally be standardised.

In this regard, the various authorities should consider the weighting of the charges levied, alongside actions to improve accessibility to photographic heritage on the part of all citizens, dedicating renewed institutional efforts to facilitate dissemination.

One reasonable practice proposed, and already widespread in other countries, is the progressive release of public domain content, in other words historic photos already digitised, which could be made publicly available over the Internet in high resolution by means of a CC-BY licence, following the model established by such initiatives as the Hispanic Digital Library.

In short, the proposal is for a shift from the current "*institution-centred*" model to a new "*citizen-centred*" model.

## 1.2.4. Training

### **Introduction**

Training in the field of photography in Spain remains, despite the almost 175 years which have passed since Luis Aragó presented the invention at the Spanish Academy of Science, a rarity on official study programmes in Spain.

Photography had its origins in a distinctly amateur context, and training in photographic techniques was notable, up until the 1970s, for its self-taught connotations. This characteristic led to a degree of stagnation in terms of research, giving the photography of the era a distinctly mimetic character in terms of themes and styles, since not only were techniques but also the motifs to be photographed handed down.

From the 1930s onwards, the recently founded photo clubs were soon to take on the task of training their members. The main characteristic of this training was based on technological aspects and skills in the functioning of cameras and the chemical processes for the development of films and copies.

In the 1970s, schools and private centres specialising in photography teaching emerged, and although they focused on techniques and processes, they soon evolved into a more open form of training, incorporating content addressing the history of photography. The most significant example was the *International Photography Centre of Barcelona* (the CFIB), founded in 1978, which covered earlier experiences developed in Barcelona, following the pattern set by the *International Center of Photography* in New York. The CFIB was home to an exhibition gallery and a school of photography which, despite the distinctly document-based tendency among its teachers, inclined towards a more creative notion of photography. The CFIB was based on the concept of photography as a popular and mass communication art, its aim being to train both professional and creative photographers.

A similar approach was seen in Spain in the late 1970s and early 1980s in the emergence of such other initiatives as the Fotocentro in Madrid, Spectrum in Zaragoza and Visor in Valencia, which championed a change in the concept of photography. This tendency, marked by informal training in photography, continued to spread throughout the final decades of the 20th century, with such events as TarazonaFoto and the Primavera Fotogràfica de Catalunya, followed by PhotoEspaña. In some individual cases support was likewise given to the creation of public spaces dedicated to presentation and education in photography, such as for example the Andalusian Photography Centre founded in 1984.

Meanwhile, issues regarding photography education in this country, at all educational levels, have been and remain one of the great absences in official curriculum programmes. Given the importance which such training has, both in order to understand and attempt to modify social patterns and to understand our past, or even as a platform for creation, calls for the inclusion of photography in the various educational programmes have at certain times been heard, but ultimately not come to fruition in the medium term.

Now, with the authoring of the National Plan for the Conservation of Photographic Heritage, the opportunity once again arises to promote the inclusion of such subjects in programmes of study, in order thereby to generate a structure for the acquisition of knowledge in line with two fundamental aims: firstly, training in the comprehension and understanding of the photographic medium as a whole, and furthermore training in the proper custodianship, safeguarding and conservation of this heritage.

With regard to the former aim, the first aspect to be taken into consideration in any phase of learning in the educational process is that of teaching the gaze, as most members of the general public consume images (whether artistic or for information or advertising) without reflection, unless they are taught at the proper time, in other words during compulsory secondary education.

As for the second aim, the initial situation is one of inadequacy: training in the field of photographic heritage conservation in Spain is practically non-existent, with the result that the few professionals practising in this field are self-taught, or have been trained at institutions abroad. This fact, along with a lack of awareness as to the importance of photography, has led to the disappearance of a great many photographic archives over the course of the 20th century.

It is important to remember, however, that since the 1990s the development of conventions, conferences and workshops to provide training in the understanding of photography from the perspective of custodianship and conservation have seen an upward trend. Likewise, professionals trained abroad have for years been dedicating their time and efforts to the dissemination of the knowledge acquired, thanks to which specific training workshops, conventions and conferences are now continuously being held, albeit in terms of informal training.

In parallel, we see an increase in the demand for formal training in the conservation of photographic heritage, on the part both of working professionals and vocational students of conservation techniques.

In some one-off cases, such as the Institut d'Estudis Fotogràfics de Catalunya and the UPV (Universidad Politécnica de Valencia), postgraduate programmes are being developed in an attempt to fill this training gap. Nonetheless, other initiatives have failed to come to fruition, such as the University Master's Course in Photographic Preservation and Management, which Camilo José Cela University planned to introduce.

The aim of this summary is to highlight the need to increase training efforts in the field of photography at every level, in order to balance out from the grassroots society's perception of photography, while also achieving an understanding of the specific needs of the medium as heritage.

## PHOTOGRAPHY AND IMAGE AT DIFFERENT EDUCATIONAL LEVELS

### ***Photography teaching in informal education. Private centres, courses and workshops***

From the invention of photography until well into the 20th century, Spanish professional photographers, the famed portraitists who ran studios in the cities, and even more so in villages, did not have the slightest cultural or technical training. Only on very few occasions did photographers (some of whom came from the world of painting and the fine arts in the early years of the daguerrotype, while others included the diplomat Christian Franzen and Antonio Cánovas, known as "Kaulak", the nephew of Cánovas de Castillo) gain entry into the country's cultural elites, despite the recognition and respect afforded to the work produced by some of them, such as Eusebio Juliá and Manuel Company. With certain honourable exceptions, most professionals in the days of the Restoration and Regency, around the turn of the century, had scarcely any more technical and theoretical knowledge than those who had gone before them. Kaulak himself offers this description of the professional and artistic training of the members of those generations of photographers:

*"An 'Apprentice Wanted' advert would attract a youngster who might just as easily as a photographer become a cobbler, shop assistant or coachman. Having been taken on, the apprentice was taught how to sweep the gallery or clean the laboratory. In his second year, the kid would have picked up the terms hyposulphite, albumin, silver nitrate and other technical phrases... By the third year, his curiosity would have prompted him to focus and handle shutters, and open and close the camera frame. In the fourth year, his master would have taught him that he could cut his fingers on the glass plates. And that is how youngsters between the ages of 12 and 15 learned and still learn the photographic profession. Many of them do not know how to write, but can focus, shoot, develop, and are, in short, photographers"<sup>88</sup>.*

For years, Spain lacked any kind of educational institution for photography. The typical approach would be for professionals to learn their trade by starting out as apprentices and factotums at long-standing studios. A custom which remained in place up until the Franco era.

Carvajal recounts that his father, when looking for a trade for him at the age of 12, found an opening at Santos Yubero's studio as a "errand boy, studio cleaner and magnesium assistant". And that is how he learned the trade, as had before him "all professionals that ever existed in Spain".<sup>89</sup>

Schools and/or academies of photography were a rare bird indeed, or more often simply non-existent. Only amateurs had access to the teaching provided by Photographic Societies, thanks to which photography owed its existence during those benighted days, much in the same way as monasteries in the Dark Ages.

In the field of photographic education, it was not until the 1970s that the first Cinema, Photography and Video departments were set up at the Faculties of Fine Arts of Madrid and Barcelona, cities which were subsequently and tentatively followed by other towns.

In parallel, private photography education institutions were set up, such as the Grisart Photography School (Barcelona, 1985), where some of the leading photographers of the era were taught; the School of Advanced Image and Design Studies (Barcelona, 1982), the Barcelona International Photography Centre (1973) and the Visor Photography Centre (Valencia), 1982 Spectrum Photographic Workshop (Zaragoza, 1977). These were all the descendants of the pioneering institutions: Barcelona's Institute of Photographic Studies (1972) and PhotoCentro in Madrid (1974), along with the Flash Photography and Video school and the CEV.

Of these institutions, the most important and long-lived is undoubtedly Barcelona's Institute of Photographic Studies, which has also built up a major archive containing various collections of the glass plates of photographers of the stature of Alejandro and Camilo Merletti. The teaching activities of the Institute remain ongoing, with as many as 500 students registering every year.

Madrid's Photoescuela, however, soon closed. From the 1980s onwards, the number of schools mushroomed, and there was no Spanish city without a school of photography or technical training workshop, alongside the education provided at faculties of Fine Arts. The EFTI school was founded in Madrid in 1988, a pioneer of a new style of private photographic

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<sup>88</sup> Cánovas del Castillo ( Kaulak), "La Fotografía Moderna", Madrid, 1912

<sup>89</sup> "Santos Yubero. Crónica fotográfica de medio siglo de la vida española (1925-1975)", Publio López Mondéjar, Lunweg, Madrid, 2010

training, as it was not confined to the scope of education, but also set up postgraduate workshops and a permanent exhibition gallery, along with a form of club where students and ex-students could exchange opinions and experiences.

There are today some outstanding private schools (Blasco 19, Lens, Man Ray, etc.), and a new concept of photographic education (Blank Paper), providing not only classical training but also teaching the artist-photographers of the future to present and justify their work.

In Barcelona, the IDEP, headed by Manel Úbeda, and the GrisArt school, under Antonio Corral, are the landmark private institutions, offering high-quality education and outstanding teaching staff.

In Valencia we have Efedepfoto and Espai d'Art Fotogràfic. In Seville, El Fotómata, Cobertura Photo and the Fundación Valentín de Madariaga, which organises a "Contemporary Photography Specialisation Course", presided over by Eduardo Acosta.

### ***Image in intermediate and vocational education***

As mentioned in the introduction, the teaching of photography at intermediate vocational levels in Spain has been, and remains, extremely scant. In the late 1980s a number of attempts were made to introduce photography education at secondary schools. Those institutions so wishing were provided with a budgetary allowance which they could dedicate to extracurricular courses, and some opted for photography teaching. An attempt was subsequently made to formalise this type of training, with photography-related subjects being included within the educational programmes for the plastic arts. However, training in photography has always at the secondary school level been seen as an extracurricular activity, outside formal education.

By the end of the millennium, research was already being performed by such figures as María del Carmen Moreno Saéz<sup>90</sup> as to the incorporation of photography studies within the education of Spain's young people. It was at this point of technological change, for society and for photography as a medium, that it was found that not all high schools had photography laboratories, and those that did were making clearly inadequate use of them.

This type of study gave rise to external photography training programmes for young people in Spain, such as for example the FOCUS project developed in the Autonomous Region of Madrid. Such projects aimed to make up the shortcomings in the knowledge of both high school teachers and their students. They had a certain impact for a number of years, but did not succeed in addressing the need for visual literacy so urgently noted in Spain.

The situation today has not changed greatly, above all bearing in mind that official training programmes view photography education as being sufficiently covered by the various specialist modules created in the context of Vocational Training. This is an error, above all given that the modules themselves have gradually become obsolete. The training programme can be consulted on the website of the Ministry of Education, Culture and Sport, and includes the following subjects: Development of photo-sensitive media; Positives, enlargement and finishes; Treatment of photographic images by digital procedures; Administration, management and retail sale; Photographic image processes; Training and employment guidance. All the above with the aim of addressing specific job opportunities, namely: Technical processor of photo-sensitive media in colour and black-and-white; Colour, black-and-white positives and enlargement technician; Image treatment technician; Image

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<sup>90</sup> Moreno, María del Carmen, "Sobre la fotografía en la E.S.O.", en *Arte, Individuo y Sociedad* 13, p. 203-209, Madrid 2001.

laboratory technician.

The closing words indicate that "the professional and working environment lies within the area of image laboratories".

We find, then, that vocational training in Spain views photography from employment perspectives which are no longer in demand in society, such as "Technical processors of photo-sensitive media". Above all, though, it focuses photography training through an exclusively technical lens, overlooking historic, social and communicative considerations.

This brief overview of photography training at the level of secondary studies clearly indicates the need to address, through a reasoned and coherent programme, the shortcomings experienced by young people in Spain, and hence all of society, in terms of their understanding and comprehension of the photographic medium.

### ***Art and conservation schools***

Higher level photography studies at Schools of Art have acquired a lead role over recent years, as they are the only official studies which exist in Spain. Although their programmes and content vary depending on the school and region, their focus is generally professional, with an absence of subjects addressing history, theory or conservation. The most notable schools include those in Huesca, Valencia, Alcoy, Murcia and Pontevedra.

The higher schools of conservation and restoration of cultural assets reveal a significant lack of training in photography conservation both now and in the past, despite the fact that attempts have been made for some time to address this issue in their curricula. For example, the School of Conservation in Madrid recently included in its specialist graphic document conservation course, the subject "Evolution and identification of photographic and audiovisual processes and materials" in year three, and "Conservation and restoration of graphic photographic works" in year four. Meanwhile, the Higher School of Art of Asturias now includes in the fourth year of its graphic document conservation and restoration programme "Conservation and restoration of graphic documents, photographic and audiovisual materials".

These curricular areas indicate that the conservation of graphic documents is still confused with specialist photography conservation, revealing the lack of social understanding as to the reality of photographic heritage. This circumstance entails a serious methodological problem when embarking on programmes for conservation and restoration at institutions which subcontract from specialist graphic document firms the execution of restoration and intervention work on the photographic heritage in their custodianship. As a result, many such conservation jobs ultimately do not offer the solutions demanded simply because of a lack of specific knowledge on the part of the staff performing the work.

In order to improve on this situation, a change in attitude would be needed with regard to the knowledge disseminated from higher schools of conservation and restoration of cultural assets with regard to photographic collections.

### ***Photography and image at university***

In 1979, the Schools of Fine Arts became Faculties of Fine Arts, and were given the academic status of university studies. The first study programme, which was then reformed in 1982, included photography within the new curriculum. This circumstance allowed a number of faculties, under pressure from photographers as a body, given the greater awareness of the importance of this form of artistic expression in both Europe and the United States, to

recruit leading artistic and professional photographers of the day to their teaching staff. Nonetheless, neither then nor now was it possible to create departments of photography, with such teachers being attached to the various departments which made up the faculty structure. Such a situation prevented the slightest hint of expansion and planning in the photography education.

The presence of photography subjects, in any aspect or specialist field, is extremely weak, whether we consider courses in Fine Arts and Art History, or Audiovisual Communication, Journalism and Conservation and Restoration.

The current situation is that there are scarcely any photography subjects at Spanish universities, and practically none focus on training in the conservation of photographic media. Meanwhile, though, one of the main problems for the control of photographic heritage remains the lack of specific studies and know-how within the document sciences for the management of such complex materials as those used in photography. This lack of knowledge in the management of photographic materials proves to be the main cause behind the state of abandonment suffered by photography at many of the institutions responsible for its custodianship.

At the heart of this problem lies in the difficulty of applying standards, whether these are descriptive standards (ISAD(G), ISBD, etc.) or exchange standards (DC, EAD) to the specific needs of photographic materials.

### **Universities with photography subjects in Spain**

The only degree courses now being established are those based on application of the Bologna Plan, and photography teaching at Spanish universities is a feature of degrees in Fine Arts, Art and Design, in some cases as an option and in others as a mandatory subject. This does not, though, mean that it occupies a prominent position in these study programmes, since far fewer credits are assigned to it than such traditional subjects as painting, sculpture and drawing.

Without wishing to offer a comprehensive view, a brief look at the photography content taught at the universities in various autonomous regions proves highly enlightening.

#### ***Andalusia***

The Faculty of Fine Arts in Granada offers a core subject in photography in the first year, and a Creative Photography option in the fourth year.

#### ***Aragon***

The Fine Arts degree at Zaragoza University includes as a mandatory subject the History of Photography.

#### ***Balearic Islands***

The Faculty of La Laguna University offers two mandatory subjects, one in Photography and another in Photography and Video. There is also a Photography Criticism Seminar.

#### ***Castile-La Mancha***

The Fine Arts degree at the UCLM includes several subjects on the History of Photography: History of Photography I and II (mandatory) and History of Print Photography (optional).

#### ***Castile-Leon***

The offering at the Faculty of Fine Arts of Salamanca takes the form of two mandatory subjects (Photography I and II) and two options.

### **Catalonia**

The degree programme at the Faculty of Fine Arts of Barcelona University includes a mandatory Photography Laboratory subject, and two optional subjects in years 3 and 4, one dealing with document processes and another entitled Photography.

### **Extremadura**

The University of Extremadura teaches a mandatory subject "History, Theory and Technique of Photography", along with the optional subject "Photography Workshop" on its Audiovisual Communication degree course. The former curriculum also included a subject on the History of Photography as part of the doctorate programme of the Department of Art History.

At the extracurricular level, the Secretariat of Culture Activities of the UEx organises each year its Photography Seminars at its Cáceres and Badajoz sites.

### **Galicia**

The Faculty of Fine Arts of Pontevedra offers a couple of photography subjects: Photographic Techniques (mandatory) and Photographic Projects (optional), although these would seem to be supplemented by audiovisual media subjects.

### **Madrid**

The Complutense University has a mandatory subject in Basic Photography on its Conservation and Restoration degree course.

The Fine Arts degree includes a core subject entitled "Principles of Photographic Image", with two optional subjects being offered: Idioms and Photographic Processes, Photo-sensitive Technologies applied to Printing and Artistic Production.

### **Murcia**

The Art History degree at the University of Murcia offers an optional subject in the History of Photography, and also has a Photography Laboratory dedicated to photo-history, which organises training courses and workshops.

### **Valencia**

The Fine Arts degree at Valencia Technical University has six subjects dedicated exclusively to the photographic medium, all of them on an optional basis: Photographic Procedures; Photography and Graphic Processes; Photo-Image and Graphic Communication; Photography in Contemporary Art; Photography Direction and Photography and Painting.

The University has since 2004 taught a Master's in Photography, Art and Technique. This is currently a qualification certified by the university itself entailing 90 credits, with one qualification as University Specialist in Photography and Art, and another as University Specialist in Professional Photography.

If we change our perspective and consider only subjects dealing with the conservation of photographic materials, the list is drastically reduced.

**Barcelona Autonomous University** has at different times, in collaboration with a number of institutions, promoted a Postgraduate Qualification in Photographic Document Management, while **Valencia Technical University** (UPV) has a module dedicated to the Conservation of Photographic Media as part of its Master's in Photography.

The UPV also recently included a subject dealing with photographic materials as part of its Master's in Heritage Conservation, while the Laboratory for the study of contemporary photographic materials stages a seminar each year in photography conservation.

Lastly, Photography degree courses are taught only at private universities and institutions. One exception is the Technical University of Catalonia, which offers a Degree in Photography and Digital Creation at its Terrassa campus.



In Barcelona the courses on offer are provided by the **IDEP**, with a graduate programme in photography attached to the Abat Oliba CEU University, and Elisava, with a Master's in Photography and Design, attached to Pompeu Fabra University.

In Madrid, the **Universidad Europea** and PhotoEspaña deliver a Master's programme, while the TAI school offers a degree qualification in combination with the Rey Juan Carlos University.

### ***Research and teaching publications***

In accordance with the situation described at Spanish universities as regards the inclusion of photography subjects on their curricula, research in this field is likewise very scant.

Since 1978 when the Ministry of Education set up the TESEO programme to register doctoral theses, barely 200 of the doctoral theses recorded deal with any aspect of photography among their subjects. When compared with other areas of knowledge covered by the Ministry, the figure is negligible, although it is important to emphasise that some such research has been expressed in the form of publications of interest<sup>91</sup>.

The Universitat Politècnica de València began through its Photography Master's in 2004 a research laboratory (Laboratory for the Study of Contemporary Photographic Materials, or LEMFC), which has developed a number of research programmes and been involved as a partner in various European projects. Work is currently being performed on the European Daguerreobase project and its own dFoto initiative.

Consideration should also be given to the work performed by such research groups as those at Universidad de La Laguna, headed by Carmelo Vega, at the Universitat de les Illes Balears, headed by Maria Josep Mulet and at the Universidad Complutense in Madrid, under Juan Miguel Sánchez Vigil. All address the field of Spanish photographic heritage.

In short, research in the field of photography has in general been undertaken outside the sphere of universities, and therefore often removed from the application scientific rigour. There are countless local, provincial, regional and national publications dedicated to photographic issues, and there is therefore a pending need for work to establish compilations in this regard.

Meanwhile, few theses have been published with a photography as their central topic. These would include in particular those by Enric Mara, published in the form of a book entitled "The Photographic Vanguard of the Seventies in Spain", and by Laura Terré, "**AFAL 1956/1963: History of the Photographic Group**", along with Rebeca Romero-Escrivá: "Literature and photography: the two halves of Jacob Riis".

### ***International Context***

#### ***Key reference points: Europe, USA and Latin America***

Without the need for comprehensive research, it could be asserted that in the field of

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<sup>91</sup> Enric Mira. "Nueva Lente y las vanguardias fotográficas de los 70 en España".

Laura Terre. "Historia del grupo fotográfico AFAL. 1956-1963"

M<sup>a</sup> Dolors Tapias. "Xavier Miserachs"

Rebeca Romero-Escrivá. "Literatura y fotografía: las dos mitades de Jacob Riis"

photographic training, Spain is light-years removed from the realities of other neighbouring countries.

The most comprehensive offering of training is perhaps to be found in the **United Kingdom**, which currently has more than 120 degree courses at its various universities, and some 30 master's programmes. These include some of such international standing as that provided by the Royal College. The key centres include: Westminster, Saint Martins, Fahan, Royal College, Brighton, Sunderland and Goldsmiths.

To this should be added the fact that English universities are able to draw on the talents of leading artists as guest professors, irrespective of their nationality, thereby increasing the standing and prestige of their programmes.

**France** has for years now had its École Nationale Supérieure de la Photographie de Arles, a school which has been operating at a high standard since the 1990s. Meanwhile, the Schools of Fine Arts, above all in Paris, deliver the most prestigious theoretical teaching in the country, and feature some of the leading artists.

Paris also has its Atelier de Restauration et de Conservation des Photographies de la Ville de Paris (ARCP), with such teaching staff as Ana Cartier-Bresson and Bertrand Lavédrine and a programme of degree courses.

One of the most prestigious master's programmes in Europe is provided by **Finland** at the Altoo University. Only 12 students are accepted per year, and there is an excellent teaching body dedicated full-time to the master's students. The faculties of Fine Arts also offer a wide range of optional subjects dealing with photography, and there is furthermore a specific degree in the subject.

The Mittuniversitetet in Sundsvall, **Sweden**, has since 2010 taught a master's in photojournalism, founded by the American documentary photographer John Kimmich and the Swedish journalist Maria Nilsson.

However, the country with the greatest offering in terms of photographic training, both in formal and complementary fields, is the **United States**. In addition to the wide range of study programmes at such universities and institutions as the ICP in New York, practically all US universities offer optional photography subjects, whatever the type of course.

Meanwhile, the widespread interest in the preservation of photography means that bodies such as the Mellon Foundation and the Getty Foundation regularly grant bursaries for conservation studies.

Worthy of particular mention are the International Museum of Photography at the George Eastman House and the Image Permanence Institute of the Rochester Institute of Technology (I.P.I.R.I.T.), both in Rochester, NY, along with the Canadian Conservation Institute (CCI) in **Canada**.

In **Latin America** specific photographic study programmes do not in general exist, either at the degree or master's levels, although certain faculties of Fine Arts, above all in Mexico do have an offering of photography subjects of interest, of particular significance with regard to technical studies. The School of Conservation and Restoration at the UNAM is an exception, as it does have a specialist the geography programme.

### ***Conclusions on the current status of photographic heritage in the field of training***

Photography teaching in secondary education, at universities and even on postgraduate courses enjoys limited presence and quality, and is essentially confined to the former Schools of Arts and Crafts, a number of Image and Sound modules in Vocational Training, and certain Faculties of Fine Arts. Photography subjects are barely existent in Conservation and Restoration studies, with the entire field being left in the hands of private schools and academies, which deliver teaching based strictly on technical education, with a complete absence of notions as to the history and theory of photography.

A very substantial proportion of research in the field of photography has been undertaken outside universities, under the auspices of private institutions and the aegis of various festivals or photographic events. The scant interest in photography at universities and the marginalisation to which it was subjected as a creative medium up until the 1990s, prompted photographers themselves to venture to address those facets which professionals in different fields could not cover. Photographers thus served the role of critics, curators, gallery operators and researchers. Much of the photographic heritage which we know today is the result of the actions taken by various photographers and institutions to promote its dissemination. Examples would include such names as Lee Fontanella, Joan Fontcuberta, Cristina Zelich, Publio López Mondéjar, Pep Benlloch, Josep Vicent Monzó, Valentín Vallhonrat, Rafael Levenfeld, Juan Naranjo, Manuel Sendón, José Luis Suárez, Alejandro Castellote, Paco Salinas, etc.

The breadth and impact of the aims of this Plan in the field of photography training should be applicable to the entire educational curriculum, and have a differing focus depending on the needs and levels to which the training refers, in order to fill the gaps which have been detected and promote social consideration and understanding of photographic heritage.

## 1.2.5. Acquisitions policy

### ***International context***

The forms in which photographic heritage is acquired internationally are similar to those in place in Spain, although there are substantial differences as regards tax incentives and similar measures to promote collecting and donations.

The countries registering the greatest number of transactions involving photographic works are the United Kingdom, France and the United States.

### **UNITED KINGDOM**

It accounts for the bulk of the European Union market in photographic works. There is a strong tradition of collecting, and great public awareness as to the importance of art and state ownership for the benefit and enjoyment of all.

Unlike other European countries, the United Kingdom does not have a central body which regulates the acquisitions policies of museum institutions and public art holdings. Both the Government and the *Arts Council England* have their own collections which they manage and increase as they themselves decide, with no connection between them.

One specific aspect as regards funding is the perfect coexistence of public and private contributions for the acquisition of artistic heritage. The public system is supported by non-profit charities, which raise and channel funds for the conservation and purchase of artworks, engaging citizens in the importance of their economic contributions. One notable example is the *Art Fund*, which since it was founded in 1907 has received no form of public subsidy, and currently dedicates some 4% of the monies it raises to the fields of video and photography. Its key operational approaches are:

- Acquisitions
- Management of donations
- Grants for curated projects
- Travelling exhibitions
- Museum of the Year Award

As for the taxation of artworks, they are not subject to donation or export taxes, and the import tax is 5%. For a number of years (1995-1997) the government negotiated a transitional regime at a reduced rate of 2.5% applicable to imports of pre-owned property, artworks, antiquities and collectables.

The country also has a favourable Patronage Act, which allows both companies and private individuals to deduct from their corporation or personal income tax donations made for the funding of artistic activities, provided that those activities are not intended to generate direct revenue for the donor. The deductions can be as much as 70%.

### **FRANCE**

In France, responsibility for the acquisition of artworks lies with the State. The Directorate-General for Museums is responsible for increasing public collections, managing donations and distributing them among the museums.

The main tax benefits for artworks are:

- VAT is very low in comparison with other European countries (10%).

- Donation and inheritance taxes do not have a special regime, but antiquities and artworks or collectables are exempt from asset tax. The import tax is 5.5%, and the export tax 4.5%, for works with a value in excess of €5000.

### Patronage

French Patronage Act 2003<sup>92</sup> created a specific department at the Ministry of Culture, the "Mission du Mécénat", the aims of which focus on the promotion and development of groups of patrons and donors and the promotion of projects.

Companies benefit from a 60% tax deduction on donations made in favour, among others, of public interest entities, cultural associations, museums, corporate foundations, etc. There is a tax deduction of 60% on the capital contribution, which in the case of private individuals is 66%, and can rise to 75%.

### **UNITED STATES**

The country's museums were the first to acquire photographic works in the early 20th century and to set up specialist departments.

The Patronage Act dates back all the way to 1917 with the "War Revenue Act". The country has a greater volume of donations than any other. Tax deductions can be as much as 100%, which means that donors benefit from patronage incentives in their entirety. The concept of philanthropy is studied at universities, and donations are the source of social pride: "American Top Donors".

There are no import taxes, and export taxes vary depending on the work and its market value.

### ***National context***

#### **GENERAL REGULATIONS**

- *LPHE 16/85, of 25 June 1985*
- *Royal Decree 111/86, partially developing the Act*
- *Patronage Act 49/2002, and Foundations Act 50/2002*
- *Royal Legislative Decree 3/2011, of 14 November 2011, approving the consolidated text of the Public Sector Procurement Act.*

There are no specific conditions for the acquisition of photographic holdings among the assets which comprise Spanish Historical Heritage, and such assets are therefore subject to the same regulations as all others. Given that the legislative development of each individual autonomous region with regard to the acquisition of cultural assets is based in almost all cases on the national regulations, the regional laws likewise make no specific references to photography.

As with all public expenditure, the acquisition of photographic holdings is governed by the legislation in force, and is managed in accordance with review and control by various bodies, such as the Delegated Public Finance Inspectorate and the State Attorney's Office. All offers or proposals of acquisition are considered by the Spanish Historical Heritage Assets Classification, Valuation and Export Board, a collegiate body which, unless a similar entity exists in the corresponding autonomous region, has the final say as to the suitability of acquisitions.

<sup>92</sup> LOI n° 2003-2007 du 1<sup>er</sup> août 2003 relative au mécénat, aux associations et aux fondations.

## **ACQUISITION CRITERIA**

Article 46 for the Spanish Constitution establishes as a State obligation the conservation and protection of Spain's cultural heritage and its expansion. The recovery and safeguarding of such heritage must therefore be priority criteria when considering the acquisition of assets.

Meanwhile, public institutions include cultural assets within their stable collections in accordance with the guidelines set out in their corresponding plans for the expansion of their collections. A museum's acquisitions policy must cover gaps in the collection or enrich it, while taking into consideration in all cases the mission and geographical position of the institution and the key characteristics of both its holdings and the collections of neighbouring museums. Spatial limitations on the museums increase the importance of selecting the works required in accordance with their relevance and representativeness within the collection.

Another significant aspect in acquiring photographs is the consideration of the intellectual property rights derived from the works, along with an assessment of what is actually being purchased: only the positive, the negative with the rights to produce a positive image, the right of reproduction or exhibition, etc. The terms of use and intellectual property rights acquired with the assets should be clearly set out in the contracts, in order to avoid acquisitions of works which can not ultimately be put on public display.

## **ASSETS ACQUIRED**

Over a relatively brief period, photography has moved on from being viewed as purely a graphic document to being appreciated as an artistic discipline. This change, which began to occur around the 1970s, brought with it the emergence of a market which previously had barely existed, and the creation of photographic collections both in the public sector (photographic collection of the Centro de Arte Dos de Mayo in the Autonomous Region of Madrid, to cite just one of numerous examples) and the private sector (Mur B Collection).

A distinction should be drawn here between the works acquired for public collections because of the specific interest of an institution, such as a particularly valuable documentary or artistic positive print available at auction, and the acquisition of large volumes of photographic archives, as the result for example of a donation. These two circumstances must be handled differently once the holdings are incorporated within a collection.

In any event, prior to performing a purchase or accepting a donation it is essential to evaluate whether the institution which is to receive it has sufficient human, technical and economic resources in order to manage it appropriately.

## **FORMS OF ACQUISITION**

There are various channels for the enrichment of historic heritage through the acquisition of cultural assets:

1. Purchase by exercising preferential rights of acquisition:
  - a) Pre-emption
  - b) Redemption
  - c) Irrevocable offer of sale
2. Offers of direct sale
3. Acquisitions in foreign auctions
4. Payment in lieu of taxes

5. Donations
6. Loans (these are included in this section since, although they do not represent a form of acquisition of holdings, do provide a means of entry)

### **1. Preferential rights of acquisition**

#### **1.a) Right of pre-emption**

*Spanish Historical Heritage Act 16/1985, Articles 38.1 and 38.2*  
*Royal Decree 111/1986, Articles 40 and 41 and 43*

Pre-emption is a right of preferential acquisition that may be exercised both in the disposal of cultural assets among private individuals and the sale of any type of asset belonging to the historic/artistic heritage of Spain by public auction.

All Public Authorities are entitled to exercise this right on identical terms. However, the State enjoys priority over all others in the case of the acquisition of immovable assets for a museum, archive or state-owned library.

#### Pre-emption among private individuals:

This right may be exercised when the sale of an Asset of Cultural Interest (or 'BIC') is to occur between private individuals, or otherwise the sale of an asset included on the General Inventory of Movable Assets, or any for which the process of BIC declaration has been instigated.

As there are no photographs included within these inventories, this is not a standard procedure for the acquisition of photographic holdings.

#### Pre-emption at public auction

This mode of acquisition has become popular over recent years, and auction houses have gradually included an increasing number of photographic works in their catalogues. So much so that some of them organise specific photography auctions (Soler i Llach in Barcelona), and a number of auction rooms specialising in such works have even been established, such as the Sala Juan Naranjo.

There is likewise a notable increase in the number of applications for attendance at auctions for the acquisition of photographs, and despite the considerable reduction in the budget for acquisitions of the Directorates-General for Fine Arts and Cultural Assets and for Archives and Libraries, as a result of the economic crisis, it has proved possible to exercise the right of pre-emption over a substantial number of works and collections thanks to the relatively affordable price of photography compared with other cultural assets.

In 2013, 49 applications for attendance at auctions were received by the Sub-Directorate-General for Protection of Historic Heritage, 5 of them corresponding to photography, with a further 6 cases having been examined in the first four months of 2014 (employing the budgets of both the Directorate-General and other bodies).

#### **1.b) Right of redemption**

*Spanish Historical Heritage Act 16/1985, Articles 38.3 and 38.4*  
*Real Decreto 111/1986, art. 42*

Redemption may be exercised if proper notification has not been given of the sale among private individuals of an Asset of Cultural Interest, an inventoried asset, or any for which a

BIC declaration process has been instigated, or if notification has not been given of the sale of assets belonging to Spanish historic heritage at a public auction.

This form of acquisition is uncommon, and to date no photographic works have been acquired through this channel.

### **1.c) Irrevocable offer of sale**

*Spanish Historical Heritage Act 16/1985, Articles 32.2, 33 and 50*

The presentation to the Ministry of Culture of an application for a temporary export permit with the possibility of sale or definitive export is considered, according to the regulations, an irrevocable offer of sale in favour of the General State Authority, the price thereof being the same as the value indicated in the export application.

In general, applications for the export of photographs with the intention of sale abroad are practically non-existent, and this means of acquisition is therefore not common.

### **2. Offers of direct sale**

Those public institutions which hold photographic archives in their custodianship quite often receive offers of sale for photographs on the part of private entities and individuals.

These offers are referred to the Spanish Historic Heritage Assets Classification, Valuation and Export Board which, having first requested expert opinions, decides whether the assets offered are of interest or not to the State, to be incorporated in its collections, and whether the price set by the owner is appropriate. If the acquisition is ultimately performed, the Board decides the institution to which the assets will be assigned.

In 2013 this channel was employed to acquire the photographic archive of Ramón Ventura, offered to the State by his heirs. The archive, subtitled "Art, Antiquities and Heritage in Spain, 1995-2000", comprising more than 35,000 original photographic works, was assigned to the IPCE Photo Library because of its thematic specialisation. The collection raised the problem that it did not have a basic inventory to facilitate the identification and cataloguing of the images, but it was nonetheless acquired because of its singularity and interest, with the owners guaranteeing rights of exploitation.

The Sub-Directorate-General for State Archives has likewise seen an increase in offers of direct sale over recent years, in particular the acquisitions of the Bernardo Alonso Villarejo Photographic Archive in 2010 and the Martín Martínez Photographic Archive in 2011.

Specific mention should likewise be made of the acquisition in 2009 of the Agustín Centelles Archive, offered by his heirs and assigned to the Historic Memory Document Centre. This holding includes some 12,000 negatives and 928 glass plates, along with exploitation rights over all of them. The acquisition was supplemented in 2013 by the purchase by means of a direct offer of sale of the photographic archive containing the advertising holdings belonging to the same, comprising 1,857 negatives.

### **3. Acquisitions in foreign auctions**

In the case of acquisitions of cultural assets and public auctions abroad, the State does not enjoy any right of preferential acquisition.



#### **4. Payment in lieu of taxes**

*Spanish Historical Heritage Act 16/1985, Articles 73 and 74.*

The payment of any tax debt may be performed through the handover of assets belonging to Spanish Historic Heritage registered with the General Register of Assets of Cultural Interest and included in the General Inventory of Movable Assets.

In 2010 an attempt was made to acquire by payment in lieu of taxes a part of the photographic archive (advertising holdings) of Agustín Centelles. This acquisition in lieu of payment was not accepted, and the archive was ultimately acquired in 2013 by means of a direct offer of sale.

In 2014 two photographs taken by Humberto Rivas in the 1980s were accepted in lieu of tax payments, leading to the acquisition of these cultural assets in payment of a tax debt. The photographs have been assigned to the Museo Nacional Centro de Arte Reina Sofía.

#### **5. Donations of Cultural Assets**

*Spanish Historical Heritage Act 16/1985, Articles 70.2*

*Royal Decree 111/1986, Article 62.3*

*Act 49/2002, of 23 December 2002, on the tax regime of non-profit entities and tax incentives for patronage.*

*Act 26/2014, of 27 November 2014, on Corporation Tax*

*Act 27/2014, of 27 November 2014, on Corporation Tax*

The Act establishes that donations made in favour of the State and other public agencies of assets comprising Spanish Historic Heritage, or those registered in the General Register of Assets of Cultural Interest or included in the General Inventory of Movable Assets, will be subject to a series of tax benefits.

The 2014 tax reform includes patronage incentives which take effect from 1 January 2015, and may be summarised as follows:

- **Income Tax:** an increase in the general deduction percentages from 25% to 30%, with effect from the 2016 financial year (a 27.5% deduction being applied transitionally during 2015).
- **Micro-patronage:** two income tax deduction bands are established to support such initiatives. A rate of 75% is applied to the first 150 euros, and a general rate of 30% to the remainder. Meanwhile, for those contributions made in favour of the same beneficiary and which remain for more than 3 or more consecutive financial years equal to or greater than the figure for the previous financial year, an additional 5% will be applied, increasing the figure to 35%. The deduction rate for this band will transitionally for the 2015 financial year be 32.5%.
- **Corporation Tax:** support is given to increase the loyalty of those investing in Culture, as this means an additional five percentage point rebate for the beneficiaries, in other words by 2016 the figure will have risen to 40% for the ordinary rebate on this tax, as opposed to the current 35%.

In the case of photographic archives the valuation of donation offers is particularly important, in order to avoid an influx of large volumes of holdings of no particular interest to public institutions. Donations do, though, in general represent an inestimable means of acquisition which allows the State to gain possession of outstanding collections. Examples would include the Count Polentinos Photographic Archive, comprising more than 10,000 glass plates with outstanding images of Spain in the late 19th and early 20th centuries. The archive was donated to the State in 2008 by the photographer's heirs, and assigned to the Spanish

Institute of Cultural Heritage.

## **6. Loans and trusteeships**

According to Articles 1741 to 1752 of the Civil Code, a trusteeship is a contract by means of which one party hands a non-fungible asset to another for its use and enjoyment, with the obligation to return it. This is thus a form of deposit or loan, which essentially attracts no fee, although it does involve obligations for both parties.

As a means of access to state collections, trusteeship may prove problematic unless the conditions are well established, and the expenses involved in management properly valued. It should not be overlooked that this is a form of deposit assigned with the possibility "*of exploiting or making use of the item deposited*" (Article 1768 of the Civil Code), and that this usage of the works held in trusteeship could ultimately require substantial human and economic resources for tasks of conservation, cataloguing, dissemination, etc.

These factors have often not been taken into consideration when accepting works by trusteeship, which then on occasion exceed the capacity of the institution to manage the assets.

In other cases this circumstance arises that the owners withdraw the trusteeship before the expected date (the temporary nature is specified in the contract, on extendable terms), to the great detriment of the institution, which has not had time to gain a "return" on the potential investments made.

### **INSTITUTIONS ACQUIRING PHOTOGRAPHIC WORKS**

1. Central Government:
  - Ministry of Education, Culture and Sport, through its Directorates-General
  - Other Ministries
  - Autonomous bodies INAEM, ICAA, etc.
2. Autonomous Regional Governments:
  - Regional Departments of Culture
  - Autonomous bodies
3. Other public authorities:
  - City Councils, Provincial Authorities, Parliaments, etc.
4. Cultural associations and foundations
5. Private Entities

As regards the autonomous regions, it could be stated that, as in the case of the General State Administration, there is no specific regulation governing the acquisition of photographic holdings.

Some regions, such as Catalonia, Murcia and Andalusia, do have specific bodies in place, such as acquisition or valuation commissions or committees (generally focusing on movable assets), although the reports issued by these bodies are not always mandatory or binding.

Mention should be made of the initiative by certain autonomous regions, such as the Autonomous Region of Navarre, in moving ahead of the national tax incentive and patronage reform by introducing regional laws. This is the case of Devolved Act 8/2014, of 16 May 2014, governing cultural sponsorship and tax incentives in the Autonomous Region of Navarre.

As for the assets acquired, many of the photographic archives incorporated within autonomous regional collections are derived from donations by photographers or their heirs.

Photography is often also acquired by means of the staging of competitions in which the winning works are incorporated within the collections of the organising institutions.

If we focus on the type of holdings, most autonomous regions have centred on the creation of photographic collections of contemporary art, establishing themselves as potential clients in this market.

Since 1986, then, the Autonomous Regional Government of Andalusia has been purchasing photographic works for its photo library, and has a collection of close on 800,000 images. This valuable collection has been built up by bringing together at the Photo Library a number of photographic archives with a shared iconographic content, specialising in movable and immovable Cultural Assets of Spanish Historic Heritage.

Meanwhile, the Autonomous Region Government of Extremadura purchased in 2005 the Happening Vostell Archive, held at the Vostell de Malpartida Museum in Cáceres, comprising some 30,000 photographs taken between 1950 and 1998 to illustrate the life and work of Wolf Vostell, along with the *happening* and *fluxus* artistic movements.

Despite the examples cited, a general lack of interest is noted on the part of institutions in terms of the acquisition of photographic holdings, a factor which has worsened over recent years because of the economic crisis.

## **ACQUISITIONS IN THE PRIVATE SECTOR**

It should never be forgotten that the market also comprises the private sector: foundations, companies, collectors, etc. Acquisitions by such organisations and private individuals offer a different perspective, by combining the urge to collect with an economic investment. There has always been an interest in artwork investments, but particularly so since the 1990s, with an upsurge in the private sector.

One case which must be mentioned is that of the savings banks and regional banking institutions in Spain, with their economic involvement in the acquisition of photographic archives documenting the intangible heritage of the region (as in the case of the acquisition of the "Dolhagaray Archive" in the Basque Country).

## **Conclusions on the current state of photographic heritage as regards acquisitions policy**

- Article 44 for the Spanish Constitution establishes as a State obligation the conservation and protection of Spain's cultural heritage and its expansion. The recovery and safeguarding of heritage must therefore be a priority in considering acquisitions of any type of cultural asset, including photography.
- There are no specific conditions for the acquisition of photographic holdings among the assets which comprise Spanish Historical Heritage, and such assets are therefore subject to the same regulations as all others, and the same means of acquisition.
- Given that all levels of public administration (national, regional and local) to a greater or lesser extent involve in the acquisition of photographic heritage, it is vital to promote coordination among the different administrations, so as to devise a coherent acquisitions policy, and avoid problems such as overlapping collections.
- It would be desirable for public authorities, and in general all institutions managing

collections, to develop uniform evaluation criteria serving to consider the interest in a photographic archive or work prior to proceeding to acquire it, taking into consideration factors such as viability of management, conservation, documentation and dissemination.

- As for the private sector, an upsurge has been noted in acquisitions of photographic works since the 1990s, although this is not as substantial as the importance given to photography in other neighbouring countries.
- Despite the changes made by the tax reform of 2014 to support sponsorship and donation of cultural assets, Spain still needs incentives to encourage the collecting of photography and donations in order to reach the level of those countries which are the most proactive in this field.

## 1.2.6. Intellectual property

Intellectual property regulations applied to photography.

### **International context**

The protection of copyright at the international level began in the mid-19th century in the form of bilateral treaties which:

- Established the mutual recognition of rights.
- Did not have a general scope.
- Were not based on a uniform model.

The need for a uniform regime gave rise to the formulation and adoption, on 9 September 1886, of the Berne Convention for the Protection of Literary and Artistic Works.

- This is the oldest international treaty in the field of copyright.
- It is open to all states.
- The **revisions** of the original text, with the aim of improving the international protection system established, making provision for new techniques, the recognition of new rights, etc., have been as follows:
  - Berlin Revision (1908),
  - Rome Revision (1928),
  - Brussels Revision
  - (1948), Stockholm
  - Revision (1967), Paris
  - Revision (1971)
  - 1979 Modification (affecting only the budgetary system for the Berne Union, which became biennial).
- The countries which have ratified or adhered to the Convention form a union for the protection of copyright over their literary and artistic works, known as the **Berne Union**.
- **Object** (Preamble): "To protect, in as effective and uniform a manner as possible, the rights of authors in their literary and artistic works".
- It is based on **three** fundamental **principles**:
  - Principle of "national treatment"
  - Principle of "automatic protection"
  - Principle of "independence of protection".

Works created in one of the Member States benefit in all other Member States from the same protection as that afforded by the latter to the works of its citizens. National treatment is not subject to any formality; protection is agreed automatically. Enjoyment and exercise of the rights conferred are independent of the existence of protection in the country of origin of the work.

- **Basic rights are set out:**
  - Recognition of exclusive rights regarding the usage of works
  - Recognition of certain moral rights which must be respected
  - The period of protection must at least cover the lifespan of the author and 50 years after his death.

**Photographic works: Article 2.1:** *"literary and artistic works' shall include photographic works to which are assimilated works expressed by a process analogous to photography".*

As a result, **the photographer and his work** are equivalent to other creators, both in terms of the recognition of the author's rights, in both the moral and material aspects, and the system of exploitation of his work by third parties.

The World Intellectual Property Organization (WIPO) is the body which administers the treaty.

- Berne Convention adhesion or ratification instruments must be filed with the Director-General of the WIPO.
- Adhesion to the Berne Convention administered by the WIPO (Contracting parties: 167)

**Universality** of the Berne Convention, as countries of all continents are party to the treaty. **Establishment of the Union** for the protection of authors of literary and artistic works. **Protection**, dependent on compliance with the legislation of the country where the work is to be presented. The country of origin of a work is deemed to be the place where it is first published and, in the case of unpublished works, the country of birth of the author. Protection of the convention is enjoyed **irrespective of nationality. All the Member States of the EU are contracting parties to the Berne Convention.**

- Contracting party: Spain
- Other treaties administered by the WIPO.
- The instruments of relevance are the WIPO Copyright Treaty, subscribed by the European Community and its Member States, and the Agreed Statements Concerning the WIPO Copyright Treaty 1996.

The Universal Copyright Convention of 1952, likewise revised in Paris in 1971, is another international treaty in the field of copyright, administered by the United Nations Organisation for Education, Science and Culture (UNESCO). Spain is among the contracting countries.

Mention must also be made of the 1994 Agreement on Trade-related Aspects of Intellectual Property Rights administered by the World Trade Organization.

The European Union is a party to this agreement, and Spain is likewise a signatory. It incorporates intellectual property regulations within the international trade system.

As we will see, internal and external trade is a strategic issue for the EU in addressing European regulations governing copyright.

## **European context**

### **Treaty on the Functioning of the European Union (TFEU).**

There are underlying tensions between economic/functional integration and cultural integration.

Article 167 of Title XIII, which is dedicated in generic terms to culture, emphasises shared cultural heritage, while taking into consideration other provisions of the treaty in order to respect and promote the diversity of cultures.

In truth, Article Article 167 places limits on EU action in the cultural sphere, and exercises a

safeguarding function to contain potential Community actions in this sector.

The European Commission has nonetheless demonstrated that the issues raised by the information society are not abstract, but of the technical and legal type (Europe's main disadvantage lies in the **fragmentation of its different markets and the absence of large-scale interoperable links**), and are also economic/political in nature. From the perspective of European Community law, it is urgent that a new system of regulations be put in place to govern intellectual property rights. In other words, the achievement of an overall regulatory project which would serve to create one large **Community cultural market**, while integrating that market within the global trade map.

There are two approaches which have been pursued in parallel by the EU:

- *Proposal for a Decision regarding the adherence of the Member States to the Berne Convention (1971 version) and the International Rome Convention on related rights (1961)*, without the EU directly encroaching on regional aspects of culture. Subsequent Community efforts would be based on these two fundamental texts of international private law.
- On the legal basis of Article 114 (formerly Article 95), an instrument is established specifically for the purpose of the creation of the internal market, as it allows the European Community (EC) to adopt the necessary measures regarding the approximation of legal, administrative and regulatory provisions, so as to eliminate barriers to the free circulation of goods and services. One Directive pursuing this approach is known as the InfoSoc Directive, for the partial harmonisation of the protection of copyright in the information society. A set of rules which were subsequently to take on a truly global dimension through supplementation by means of the EC's ratification of the WIPO treaties on the protection of copyright on the Internet and related rights.

This proposal represents only a compromise solution with regard to rights for which competency at the legislative level would be shared by the EC and national legislations. However, the principle of territoriality would always be confined by the conditions of the exception to free circulation and the principle of market unity.

The principle of territoriality has likewise been limited by the Court of Justice, as no validity is given in intra-EU relations to exceptions to the principle of equality of treatment provided in international treaties which allow a State not to grant holders from another Member State equal protection to that granted to its own citizens.

### **European directives**

- Directive No. 92/100/EC, of the Council, of 19 November 1992, on rental right and lending right and on certain rights related to copyright in the field of intellectual property.

Text updated and consolidated in Directive 2006/115/EC.

- Council Directive No. 93/98/EC, of 29 October 1993, harmonising the term of protection of copyright and certain related rights.

Text updated and consolidated in Directive 2006/116/EC.

**Article 1 Duration of authors' rights. Photographs** which are the author's own intellectual creation are protected for the life of the author and for 70 years after his death.

**Article 6. Protection of photographs** "Photographs which are original in the sense that they are the author's own intellectual creation shall be protected in accordance with Article 1. No other criteria shall be applied to determine their eligibility for protection.

*Member States may establish detection for other photographs"*

**Recital 16:** " protection of photographs in the Member States is subject to various regimes. A photographic work according to the Berne Convention must be considered an original if it represents an intellectual creation by the author reflecting his personality, without any consideration being given to any other criterion, such as merit or purpose. The protection of other photographs must be left to national legislation.

**Article Article 7. Protection vis-à-vis third countries**

As may be seen, the concept of a mere photograph is included, regulation being left to the legislation of the different Member States. Original photographs, understood as the intellectual creations of the author himself, are protected by Article 1. The concept of "originality" arises as a key concept in establishing whether a photographic work is an intellectual creation, or a mere photograph. No other criterion may be applied in order to define this aspect, neither merit nor purpose.

- Directive 2001/29/EC, 22 May 2001 (InfoSoc Directive), on the harmonisation of certain aspects of copyright and related rights in the information society.

This marks a major milestone, since it not only **harmonises the regulation of copyright and related rights**, but also responds to changes and transformations which such rights have undergone in the face of the continuous advance of technology, which daily affects the form of exploitation of works. It offers legal guarantees to copyright holders in **the digital environment**. This coincides with the direction in which the 1996 WIPO Treaty has evolved. It promotes new forms of content exploitation which affect the proper functioning of the **internal market of the EU. Security and technology measures** are addressed to guarantee functionality and a supranational legal framework demanding respect of these provisions. The focus is not so much on the moral rights of the author as **exploitation rights** (reproduction, public communication and distribution), adding a new concept of "**making available to the public**", including this among the legal definitions governing public communication, with the specific characteristics of interactivity. A list of **limitations and exceptions** is established for the protection of copyright, which Member States may voluntarily incorporate in their legislations (Article 5). There is a mandatory exception allowing transitory technical reproductions to be performed within the digital context (Article 5.1). **Libraries, museums, archives and other cultural institutions are subject to the application of the exceptions set out in Articles 5.2.(c) and 5.3.(n)**, covered by Recital 34, with regard to education, scientific, etc. purposes. The Directive thus establishes a framework allowing public cultural institutions to perform analogue or digital reproductions for **the purpose of facilitating research and enabling the conservation of heritage**.

Photographs are not covered by this Directive as singular works, but are rather subject to the same terms as any other copyright-protected work.

**It is significant that of this regulation was accompanied by the Proposal for a Decision by the Council "on the approval in the name of the European Community of the WIPO Treaty on copyright and on interpretations or executions and phonograms", in order to give the same extra-territorial coverage and provide a global dimension.**

Directive 2001/84/EC, of the European Parliament and of the Council, of 27 September 2001, on the resale right for the benefit of the author of an original work of art.



The "**resale right**" set out in the Directive affects **photographs** as artistic works, "provided they are made by the artist himself or are copies considered to be original works of art".

- Directive 2004/48/EC of the European Parliament and of the Council, of 29 April 2004, on respect for intellectual property rights.

The aim here is that substantive intellectual property law, forming a part of the *acquis communautaire*, should be effectively applied in the EU, as the protection of intellectual property rights is of vital importance for the **success of the internal market**, along with the need to harmonise the disparities which exist between the regimes of the Member States. The Directive **applies to all violations** of intellectual property rights, as provided in Community law or the national law of the Member States, and promotes the **exchange of information** among them. With regard to the **presumption of copyright** (Article 5), Article 15 of the Berne Convention is applied, whereby the author of a literary or artistic work is considered to be such if his name is printed thereon. The Directive is understood to apply notwithstanding the specific provisions established regarding **exceptions and limitations** in the field of certain copyrights in Community instruments, and in particular in the aforementioned Directive 2001/29/EC (specifically in Articles 2 to 6, and 8). Among the persons legitimately entitled to apply for the application of measures, procedures and remedies are the rights holders, collective intellectual property rights management bodies and professional protection bodies.

- Directive 2012/28/EU, the European Parliament and of the Council, of 25 October 2012, on certain authorised uses of orphan works.

It is deemed necessary to establish a European system for the mutual recognition of orphan works, understood to be those where, although copyright applies, the holders of the rights are unknown, after the performance of a diligent search in a Member State, or otherwise where the holder is known but cannot be located. The objective of the proposal is to provide public access to orphan works which belong to a specific context, allowing the digitisation of such works to be promoted (European Digital Agenda). **This context is confined to printed works published in the form of books, newspapers, weeklies, journals and other formats, to the images contained in such works, contained in the collections of public access libraries, educational establishments, museums or archives**, cinematographic and audiovisual works forming a part of the collections of film libraries, and works produced by public broadcasting bodies and contained in their archives prior to 31 December 2002. The concept of **diligent search** is incorporated, in an attempt to establish the holders of the rights by means of the relevant sources deemed appropriate by each Member State. **The scope of application of this Directive does not apply to plastic artworks, including photographs, unless they are incorporated in books, newspapers, journals or similar**, which represent the main object of the Directive. There remains a **legal vacuum** in addressing the use and dissemination of most orphan works, including photographs, which are held at archives and museums, many of them neither printed nor published. The exclusion of individual photographs from the scope of application of the Directive may be reviewed in 2015.

In order to facilitate the application of this Directive and to structure the so-called diligent search within the European internal market, a prototype *Orphan Works Database*<sup>93</sup> has been developed, with a public access interface which will allow the status of an orphan work to be ascertained at the EU level.

- Directive 2013/37/EU, of 26 June 2013, of the European Parliament and of the

<sup>93</sup> <https://oami.europa.eu/orphanworks>

Council, modifying Directive 2003/98/EC, on the reuse of public sector information.

One of the fundamental changes made by this Directive is that it extends the scope of application of the reuse of documents with regard to those over which libraries, including university libraries, museums and archives, hold intellectual property rights, in accordance with specific conditions set out in Chapters III and IV.

**However, the scope of application expressly excludes documents over which third parties hold intellectual property rights (Article 1. 1. 2(b)).**

Although the exclusion is clear in the Directive, it has evident repercussions for the activities of archives, museums and libraries, including university institutions, as we will see when we analyse the national regulations.

### ***Communications, studies and judgments***

EU actions are structured not only by means of directives, regulations, decisions, rulings, recommendations and mandates, but also by communications and analysis, public consultations and studies performed prior to the formulation of the aforementioned regulatory instruments. Within the scope which here concerns us we would cite:

- *The contribution of copyright and related rights to the European economy based on data from the year 2000. Final report, 20 October 2003.* Study into the economic impact and importance of copyright and related rights in the EU market.
- In 2008 the European Commission approved the Green Paper Copyright in the Knowledge Economy.
- The second part of the paper refers to specific problems connected with exceptions and limitations affecting in particular the dissemination of knowledge, raising the desirability for such exceptions to evolve in the era of digital distribution.
- The Green Paper aims to address all these issues in a balanced manner, taking into consideration the perspectives of publishers, libraries, educational institutions, museums, archives, researchers, people with disability and the public in general.
- Subsequently, on 19 October 2009, the Commission published its Communication entitled Copyright in the Knowledge Economy, which announced a series of initiatives with regard to intellectual property rights resulting from the responses to the consultation stage as a result of the Green Paper. The document identifies diverging positions among the parties involved: archives, libraries and universities register their support for a system of "*public interest*" exceptions which would facilitate access to works, while publishers, collective management societies and other rights holders prefer to maintain the status quo, and establish contracts adapted to each individual case. The Commission undertook to continue its efforts to clarify the legal implications of large-scale digitisation. It likewise announced that it would perform an impact assessment in order to establish what treatment should be applied to orphan works in the EU, and to foster mutual cross-border recognition of such works.

- *Study on the application of Directive 2001/29/EC on copyright and related rights in the information society (the "InfoSoc Directive")*, 16/12/2013.
- Study into the opportunities of a digital, market and the impact of the InfoSoc Directive, taking into account recent decisions passed by the Court of Justice of the EU and other national courts following implementation of said Directive. It focuses in particular on exclusive copyright in the digital context and the exceptions and limitations to such rights in favour of libraries, archives, initiatives for educational and scientific purposes, people with disability, the media and user generated content (UGS).
- *"Assessing the economic impacts of adapting certain limitations and exceptions to copyright and related rights in the EU"*, 01.10.2013.
- *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A single market for intellectual property rights boosting creativity and innovation to provide economic growth, high quality jobs and first class products and services in Europe.* Brussels, 24.5.2011. COM (2011) 287 final.
- *Communication from the Commission. On content in the Digital Single Market.* Brussels, 18.12.2012. COM(2012) 789 final.
- Other studies of interest may be consulted on the EU website.
- Public consultation on the review of the EU copyright rules.
- An initiative of particular interest. The consultation period in an attempt to harmonise other aspects of copyright within the context of the EU ended on 5 March 2014. Particular mention is made of limitations and exceptions to access to the content of archives and libraries (preservation, archiving, mass digitisation, e-lending, etc.) It should be recalled that the Directives established the possibility of setting limitations and exceptions (which were in general not mandatory), while leaving the development thereof as an option for the various regulatory systems of the Member States, which has led to misalignments in terms of classification and application.
- Mention should be given to the particularly recent White Paper on EU Copyright "A copyright policy for creativity and innovation in the EU", published in June 2014. This draft text addresses issues connected with the use of materials subject to copyright and in the public domain on the part of public cultural institutions.

The judgments of the Court of Justice of the European Union likewise provide important guidelines for the uniform interpretation applied by the EU to the regulations, although given their breadth and complexity they are not analysed in this document.

### **EVA European Visual Artists**

European Visual Artists (EVA), founded in 1997, represents the interests of collective artwork copyright management bodies. 25 European rights management entities are registered. They manage the copyright of some 100,000 authors in the fields of the fine arts, illustration, photography, design, architecture and other visual arts. Collective management entities play an important role in maintaining cultural diversity in Europe. Their objectives include those of providing European artists with appropriate moral and financial recognition. EVA is also an

observer entity at the WIPO, and cooperates with this international body in the task of protecting copyright. Spain's rights entity for the plastic arts, the VEGAP (Visual Entidad de Gestión de Artes Plásticas), is an active member of EVA.

As we have seen, irrespective of the relevant and necessary supranational regulatory development, it is vital that appropriate national legislation be established as to copyright, in order to allow works to be protected and disseminated. The protection of copyright within the context of national legislation is the first requirement to be fulfilled in order to establish the conditions allowing national authors to obtain a benefit from the usage of their works, thereby allowing them to continue creating. The protection of the material and moral rights of authors is an essential spur to creation.

- **National context**

Article 1 of the Consolidated Text of the Spanish Intellectual Property Act (Royal Legislative Decree 1/1996), hereinafter referred to as the Intellectual Property Act, indicates that "intellectual property over a literary, artistic or scientific work lies with the author automatically through the act of creation"<sup>94</sup>.

The author (the physical person who creates a literary, artistic or scientific work), enjoys, simply through the act of creation, a series of rights of both a moral and material nature over the work created.

The moral rights (Intellectual Property Act, Article 14) are directly connected to the work and its creator; they are inalienable rights and cannot be waived, which means that the author can never give them up. The moral right of the author is recognised whatever his nationality (Intellectual Property Act, Article 163.5). When a work enters the public domain, the moral rights of authorship and integrity of the work must always be respected, under the terms provided in subsections 3 and 4 of Article 14. It must never be forgotten that the title of a work, when the original, will be protected as a part thereof (Intellectual Property Act, Article 10.2).

In addition to moral rights, the author enjoys "*the exclusive exercise of rights of exploitation in his work in any form, and in particular rights of reproduction, distribution, public communication and transformation, which may not be performed without his authorisation...*" (Article 17). However, these are mutually independent and transferable rights, which means the author may negotiate exploitation with third parties (as, for example, in the case of those authors whose exploitation rights are managed by management entities).

In this context, exploitation rights in photographic works may be managed by:

1. Management entities: non-profit bodies the object of which is "the management of exploitation or other material rights, on behalf and in the interest of various authors or other intellectual property rights holders". To date, the Ministry of Education, Culture and Sport has authorised eight management entities. For the issue which here concerns us (photographic works), the management entity is VEGAP, which represents most of the holders of rights in photographic works.
2. The author himself (if he is alive), his heirs (transfer mortis causa) or others (transfer

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<sup>94</sup> The Official State Gazette recently published Act 21/2014, of 4 November 2014, modifying the Consolidated Text of the Intellectual Property Act, approved by Royal Decree Legislative Decree 1/1996, of 12 April 1996, and Civil Proceedings Act 1/2000, of 7 January 2000. It took effect from January 2015.

*inter vivos*).

According to the Intellectual Property Act, the holders of rights will provide all information possible for proper management thereof, identifying the work, the author or any other rights holder, and also conditions for usage of the protected work (Article 162).

As regards the protection of copyright in photographic works, *Act 21/2014, of 4 November 2014* limits the duration period of contracts between the rights holders and management entities to maximum of three years, which may be renewed for periods of one year (these are currently five-year contracts which can be indefinitely renewed<sup>95</sup>).

In the explanatory preamble, the aforementioned Act considers intellectual property rights management entities to be an essential part of the protection of copyright, as their purpose is the collective management of exploitation rights or other material rights. The new Act, meanwhile, admits problems in the functioning of the model, and aims to improve the system with regard to its efficiency and transparency. In this regard, the aim is for the Act itself to adopt control measures serving to guarantee the management of all copyright and other intellectual property rights holders, deferring to a future Act the possible in-depth revision of the system as a whole.

The measures adopted include a detailed catalogue of the obligations of management entities, with a particular emphasis on accountability before the Public Authorities, establishing a table of violations and penalties, with official liability attaching to such entities in the event of a breach of their legal obligations. An adaptation of the constitutional framework for the distribution of competencies between Central and Regional Government is likewise proposed.

#### ***Exploitation rights over photographs prior to their entry into the public domain. The protection periods for photographic works***

According to the fourth transitional provision of the Intellectual Property Act, rights of exploitation over photographs taken by authors deceased before 7 December 1987 will be of the duration provided in the Act of 10 January 1879 (Article 6), in other words, 80 years in favour of their heirs or rights holders, calculated from the death of the author<sup>96</sup>.

These rights, with the same duration, likewise apply to the foreign authors of States which have signed or adhered to the Berne Convention, and likewise the Member States of the European Union, provided that they exercise their rights under Spanish jurisdiction.

In the case of photographs taken prior to the 1987 Intellectual Property Act by authors living after 7 December 1987, the criterion to determine the generation of the rights over the works in such transitional cases is the date of decease of the author, rather the creation of the work, as revealed by the transitional provisions of the Intellectual Property Act. As a result, photographs taken before 1987 the authors of which died after 1987 are subject to Article 26 of the Intellectual Property Act, which establishes a period of protection of 70 years post mortem auctoris. The first transitional provision of the new legal texts establishes the non-retroactive nature of the legislation where this could prejudice authors' rights acquired

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<sup>95</sup> Act 21/2014, Article 12, provides: A modification is made to subsection 1 of Article 153, in the following terms, deleting subsection 2 of said Article: "The management of rights shall be entrusted by the holders to the management entity by means of a contract the duration of which may not exceed three years, renewable for periods of one year, nor may management of all forms of exploitation be imposed as mandatory" over the entire work or future production. This applies notwithstanding the rights provided in this Act the management of which must be exercised exclusively through management entities".

<sup>96</sup> No additional formalities are required other than creation by the author, such as for example registration of the work in the Intellectual Property Register.

previously.

In this regard, for photographs taken before the 1987 Intellectual Property Act:

- If the author died before 7 December 1987, they are not subject to Article 26 of the current Intellectual Property Act 1/1996, which establishes the duration of the rights of exploitation up to the entry into the public domain 70 years after the death or declaration of decease of the author. • No distinction is applied between photographic works and mere photographs. This does not mean that the previous legislation protects any type of photograph. The Act of 1879 protects only original photographs, in other words photographic works, or to put this another way, prior to 1987 mere photographs were not protected.
- They are exempt from compliance with the formalities for registration with the Register of Intellectual Property.

The period of validity of exploitation rights over photographs taken following the entry into force of the 1987 Intellectual Property Act, now Intellectual Property Act 1/1996, differ in accordance with the classification of the photograph as a photographic work (Article 10.1(h)), or a mere photograph (Article 128).

The Act thus establishes a dual protection system for photography, in accordance with Directive 1993/98/EC, on the harmonisation of the protection period of copyright and related rights, as maintained in Directive 2006/116/EC.

Rights of exploitation corresponding to an original photograph have a period of validity of 70 years after the death of the author or the declaration of decease thereof (Article 26 of Intellectual Property Act 1/26, and Article 6 of Act 3/2008, of 23 December 2008).

Meanwhile, the exploitation rights recognised in a mere photograph, in other words a photograph deemed not to be original, have a shorter duration period: 25 years calculated from 1 January of the year following the date when the photograph or reproduction was produced.

### ***Publication of unpublished photographs in the public domain***

Unpublished photographs by identified authors since whose decease the period established for entry into the public domain has expired may be subject to a new period of protection of 25 years.

According to Article 129 of the Intellectual Property Act, and the corresponding Article 4 of Directive 93/98 (subsequently Directive 2006/116), if photographs are unpublished and are lawfully communicated to the public or published for the first time, the person responsible for said publication or public communication may enjoy a protection equivalent to that of the material rights of the author, with a period of validity of 25 years calculated from 1 January of the year following the year of publication or public communication. In any event, the Intellectual Property Act refers in this case to "works", in other words those photographs which fulfil the requirement of originality<sup>97</sup>. The period of protection of 25 years for unpublished photographs lawfully published by a person other than the author applies only to photographic works, not mere photographs.

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<sup>97</sup> With regard to works within the public domain, the European Commission argues that the digitisation of such works should not generate new rights. This is the opinion given in the Recommendation of 27 November 2011 on digitisation.

The Intellectual Property Act acknowledges on the part of those producing a "mere photograph" a weaker legal position than that of the author of a photographic work. No moral right is attributed, and not all material rights are protected.<sup>98</sup>

### ***Distinction between original photograph and mere photograph***

The key element for this classification lies in the concept of "originality" of the photograph taken, and it should therefore be vital to establish clear criteria both for authors and for the custodians and potential users of photographs in the context of the information society.

#### ***EU law concept of originality***

As seen previously, in both Directive 1993/98 and Directive 2006/116/EC, the EU concept of originality applied to photographs lies in the consideration of photographic works as the intellectual creations of their authors (Article 6). The definition of originality is set out in Whereas 17 (now Whereas 16) of the most recent Directive in the following terms: "A photographic work within the meaning of the Berne Convention is to be considered original if it is the author's own intellectual creation reflecting his personality, no other criteria such as merit or purpose being taken into account".

In other words, the EU regulations explicitly proscribe the application of any criterion other than originality in order to establish the scope of copyright and the protection of photographs. EU law explicitly proscribes the application of criteria of merit or purpose in the consideration of originality.

Taking into account the difficulties in applying this criterion, in many cases the Court of Justice of the European Union is required to issue a pronouncement. The CJEU systematically applies what is known as the "free choice test" (freedom in the form of expression of ideas and freedom in the decisions of the author) as its standard verification criterion. The idea is to apply to photographs the EU concept of originality in order to comply with the aims intended by EU law for the harmonisation of copyright, preventing potential distortions of competition in the internal market.

We should in this regard cite the Judgment of the Court of Justice (Third Chamber) of 1 December 2011 in Case C-145/10, Painer. The judgment serves to establish certain criteria to distinguish photography as an artistic creation protected as an intellectual work, from what are considered mere photographs. We should here cite the following recitals:

*" 87 As regards, first, the question whether realistic photographs, particularly portrait photographs, enjoy copyright protection under Article 6 of Directive 93/98, it is important to point out that the Court has already decided, in Case C-5/08 Infopaq International [2009] ECR I-6569, paragraph 35, that copyright is liable to apply only in relation to a subject-matter, such as a photograph, which is original in the sense that it is its author's own intellectual creation.*

*88 As stated in recital 17 in the preamble to Directive 93/98, an intellectual creation is an author's own if it reflects the author's personality.*

*89 That is the case if the author was able to express his creative abilities in the production of the work by making free and creative choices (see, a contrario, Joined Cases C-403/08 and*

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<sup>98</sup> They are not afforded rights under Article 21, nor the famed *droit de suite* of Article 24, nor compensatory remuneration under Article 25.

*C-429/08 Football Association Premier League and Others [2011] ECR I-0000, paragraph 98).*

*90 As regards a portrait photograph, the photographer can make free and creative choices in several ways and at various points in its production.*

*91 In the preparation phase, the photographer can choose the background, the subject's pose and the lighting. When taking a portrait photograph, he can choose the framing, the angle of view and the atmosphere created. Finally, when selecting the snapshot, the photographer may choose from a variety of developing techniques the one he wishes to adopt or, where appropriate, use computer software.*

*92 By making those various choices, the author of a portrait photograph can stamp the work created with his 'personal touch'.*

*93 Consequently, as regards a portrait photograph, the freedom available to the author to exercise his creative abilities will not necessarily be minor or even non-existent.*

*94 In view of the foregoing, a portrait photograph can, under Article 6 of Directive 93/98, be protected by copyright if, which it is for the national court to determine in each case, such photograph is an intellectual creation of the author reflecting his personality and expressing his free and creative choices in the production of that photograph".*

### **Criterion of originality of photographs in national legislation**

As already mentioned, it was Act 22/1987 which for the first time introduced the distinction between photographic works and mere photographs, with significant repercussions for the period and scope of the protection acknowledged. The EU regulations likewise make this distinction, while leaving to the national level the regulation of those photographs not considered to be "original".

The 1987 Intellectual Property Act specifies in Article 10. 1(h) that "intellectual property applies to all original literary, artistic or scientific creations expressed by any means or medium, whether tangible or intangible, whether known at present or invented in the future, including: h) photographic works and those expressed by a procedure equivalent to photography". The protection granted to such photographic works is unequivocal, although it is subject to their status as "original creations", a notion which takes the form of an indeterminate legal concept, the degree of uncertainty of which is hard to define, and which will therefore require analysis on a case-by-case basis.

Meanwhile, according to Article 128 of the 1987 Act, photographs which are not classified as original will be considered mere photographs. However, the Act does not provide any form of criterion which would serve to clarify the content of originality for the category of work in general, and for photographic works in particular. The consolidated text of Intellectual Property Act 1/1996 makes no amendment to this article and does not add the clarification provided by EU law to the term of originality as "the author's own creation", although this specification is included in subsequent regulations for computer programs and databases<sup>99</sup>.

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<sup>99</sup> Of relevance is the Judgment of the Supreme Court, First Chamber, of 5 April 2011. Pronouncements for consideration: "This Court considers correct the legal principles applied in the ruling here appealed, such that either the lack of originality or otherwise the lack of creativity prevent the photograph from being afforded the status of a photographic work (Article 10.1(h), Intellectual Property Act), and consequently subject to copyright, thereby reducing its status to that of a mere photography with the limited protection of intellectual property of Article 128 of the Intellectual or Property Act... The criterion set out is consistent with the notion of "original creation" in Article 10.1 of



This lack of determination has in some cases led the EU criterion of originality not to be clearly interpreted by the Spanish courts. The Supreme Court continues to demand for originality two principles rejected by the European Directives: the criterion of minimal creative standing and that of novelty, leading to a distortion in the EU harmonisation of copyright.

It would therefore be desirable to resolve the dysfunction which exists between the criterion of *originality* established in EU regulations and case-law, and that taken into account in national legal theory, since a mere photograph is covered by a shorter period before definitively entering the public domain, and as we have seen, enjoys less protection.

Following on from Directive 2001/84/EC, of the European Parliament and of the Council, of 27 September 2001, regarding the resale **right for the benefit** of the author of an original artwork, the transposition into Spanish legislation comprised the repeal of Article 24<sup>100</sup> on the *Resale Right* in the Intellectual Property Act, and the issuance of *Act 3/2008, of 23 December 2008, on the resale right for the benefit of the author of an original artwork*. This Act makes additions with regard to the concept of original artwork, which would likewise include photography:

- As regards the content of the resale right: Article 1: "*The authors of graphic or plastic artworks, such as pictures, collages, paintings, drawings, engravings, prints, lithographs, sculptures, tapestries, ceramics, glass objects, **photographs** and video artworks, shall be entitled to receive from the seller a share of the price of any resale thereof performed following the initial assignment made by the author*".
- As regards the concept of originality: Article 1: "*Copies of artworks covered by this right and produced by the author himself or under his authority shall be deemed original artworks. **Such copies shall be numbered, signed or duly authorised by the author***".
- As for those subject to this right: Article 2: "*The resale right is recognised on the part of the author of the work and the rights holders following his death or declaration of decease*".
- As for those subject to this right: Article 6: "*The resale right is **inalienable, unrenounceable**, shall be transferred only by succession mortis causa, and shall expire 70 years after 1 January of the year following that when the author died or was declared to have deceased*".

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*the Intellectual Property Act, to be understood as "creative originality", the interpretation of which has been underpinned by the reference of the 10th Additional Provision of Industrial Design Legal Protection Act 20/2003, of 7 July 2003: "in terms of the creativity and originality required" for protection as an artistic work, this being the commonly held legal opinion, and it is furthermore of particular relevance with regard to photographs to distinguish artistic creations (photographic works) from mere photographs... Creativity constitutes a contribution through intellectual effort (talent, intelligence, ingenuity, invective or personality, which turns a photograph into an artistic or intellectual creation). Singularity does not lie in the photographic object, nor even in technical precision, but the photograph itself, in its creative dimension".* The distinction between a photographic work and a mere photograph should be based on the originality requirements demanded by Book 1 of the Intellectual Property Act. It will, then, depend on whether the author incorporates within the work "*the product of his intelligence, a distinctly personal circumstance which transcends the mere reproduction of an image*", as stated in the Supreme Court Judgment of 29 March 1996.

<sup>100</sup> Articles 1(a), 2, 3, 4, 5, 6, 7 and 8 of Royal Decree 1434/1992, of 27 November 1992 are likewise repealed, in furtherance of Articles 24, 25 and 140 of Act 52/1987, of 11 November Intellectual Property.

We therefore hold that, following the entry into force of this Act, it is the **author who must document that his photographic work is an original artwork**, although the criterion of originality will always be a quantitative criterion which is difficult to evaluate, in particular for photographs which are currently held in archives, libraries and museums.

### **Orphan Works: exploitation and use**

As mentioned previously, the EU, through Directive 2012/28/EU, of the European Parliament and of the Council, of 25 October 2012, on certain permitted uses of orphan works, found it necessary to establish a European system for the mutual recognition of orphan works, understood as those where, although they are subject to copyright, the rights holders are unknown, following a diligent search performed in a Member State, or otherwise the holders are known, but cannot be located.

Directive 2012/28/EU represents a different focus, introducing in practice an exception to copyright, allowing only certain uses of orphan works without commercial purposes, and only by certain institutions, following the execution of a diligent search process.

The aforementioned Directive 2012/28/EU confined its object and scope of application, according to Article 1, to works published in the form of books, journals, newspapers, magazines or other writings contained in the collections of public access libraries, educational establishments or museums as well as in the collections of archives or of film or audio heritage institutions, and cinematographic or audiovisual works and phonograms produced by public service broadcasting organisations up to and including 31 December 2002.

Furthermore, Article 10, on the review clause, reads literally as follows: *"The Commission shall keep under constant review... and at annual intervals thereafter, submit a report concerning the possible inclusion in the scope of application of this Directive of publishers and of works or other protected subject-matter not currently included in its scope, and in particular stand-alone photographs and other images"*.

Directive 2012/28/EU was incorporated into Spanish legislation almost in its entirety with the entry into force of *Act 21/2014, of 4 November 2014, modifying the Consolidated Text of the Intellectual Property Act, approved by Royal Legislative Decree 1/1996, of 12 April 1996, and Civil Proceedings Act 1/2000, of 7 January 2000*. This transposition by Act will require development by means of a Royal Decree as regards certain issues, as provided in the reform bill itself.

Act 21/2014, of 4 November 2014, sets out in Article 1 the introduction within the Intellectual Property Act of a new Article 37 bis, which establishes the regulations for orphan works, derived from the aforementioned Directive. This transposes the Directive fairly literally.

Paragraphs 1, 2 and 3 of Article 37 bis define Orphan Works, the possibility of the existence of various identified or located rights holders, and the duty to mention the author and authorisation in the event that any of the holders has been identified:

1. *An orphan work shall be understood as any work the rights holders of which are not identified or, if they are, have not been located despite a prior diligent search for them having been performed.*
2. *If there are several rights holders over the same work and not all have been identified, or they have but have not been located despite a prior diligent search for them, the work may be used in accordance with this Act, notwithstanding the rights of any holders who have been identified and located and, where applicable, the need for the corresponding authorisation.*
3. *Any usage of an orphan work shall require the mention of the names of the authors and the identified holders of intellectual property rights, notwithstanding the provisions of Article 14.2.*

The deduction to be drawn from the established terms, in both the Directive and the transposition of Act 21/2014, modifying the Spanish Intellectual Property Act, is that photographs that are not included or incorporated within the works cited in Article 37 bis (4) or do not form an integral part thereof, are not subject to the Orphan Works Directive. The European Commission indicated in this regard the complexity entailed in performing a diligent search for plastic and photographic works, as there are no specific databases allowing this type of search to be performed:

4. *Educational institutions, museums, libraries and press libraries accessible to the public, in addition to public broadcasting bodies, archives, sound and film libraries, may reproduce, for the purposes of digitisation, public availability, indexing, cataloguing, conservation or restoration, and make available to the public, in the manner established in Article 20.2 (i), the following orphan works, provided that such acts are performed on a non-profit basis and in order to achieve objectives connected with their public interest mission, in particular conservation and restoration of the works included in their collection, and the facilitation of access thereto for cultural and educational purposes:*
  - a) *Cinematographic or audiovisual works, phonograms and works published in the form of books, newspapers, journals or other printed materials included in the collections of educational institutions, museums, libraries and press libraries accessible to the public, in addition to archives, sound and film libraries.*
  - b) *Cinematographic or audiovisual works and phonograms produced by public broadcasting bodies up to and including 31 December 2002, and included in their archives.*

The beneficiaries of this limited use of orphan works are therefore educational institutions, museums, libraries and press libraries, public broadcasting bodies, archives, sound and film libraries which, in order to make them available, must first perform the corresponding diligent search, which must be undertaken in good faith, through consultation of at least those sources of information established in the regulations, notwithstanding the obligation to consult additional sources available in other countries where there is evidence of the existence of relevant information regarding the rights holders.

Meanwhile, the holders of intellectual property rights over a work may at any time request of the competent body that it establish by regulation the termination of orphan work status with regard to their rights, and the receipt of fair compensation for the usage performed pursuant to the terms of Article 37 bis of Act 21/2014.

It should be pointed out that Spanish national regulations do not make individual provision for exempt orphan works, nor is there any specific regulation governing them, but they would instead be subject either to Article 10 of the Intellectual Property Act or Article 128 of the

same consolidated legal text, whether they are original photographic works or mere photographs, being thus subject to the general regime covering Intellectual Property. Until an orphan work enters the public domain, there is no express regulation for its use and exploitation by third parties, except for orphan works covered by the aforementioned Directive 2012/28/EU.

As a result, works which do not lie within the regulations governing orphan works may not be used without the prior authorisation of the intellectual property rights holders, except in those cases in which usage of the work could be covered by any of the legally established limits of Chapter II of Title III of Book I of the Intellectual Property Act, since otherwise this could constitute a breach of intellectual property rights. However, the party responsible will in all cases be the individual performing activities in breach of intellectual property rights, as may be deduced from the terms of Title I of Book III: "*On the protection of rights recognised in this Act*" (Articles 138 to 143) of the Intellectual Property Act.

As a result, the problem of the use of orphan works has not yet been fully addressed. Strictly archive documents which are kept in the custodianship of public archives, as well as private institutions, lie outside the scope of application of the Directive, since most orphan works held there are graphic or unpublished written works (photographs, drawings, plans, maps, manuscripts, etc.).

Only libraries in general, and the specialist libraries of archives and museums in particular, contain orphan works included within printed works. However, albeit to a lesser extent, printed works may be incorporated in certain archive files, or cinematic and audiovisual works which could have been transferred to archives, in which case they would be subject to the scope of application of the Directive.

A clear definition likewise remains pending of whether orphan works lie outside the commercial sphere, and may be used only for cultural, educational and research purposes. Nor has it been defined whether unpublished orphan works can be used and, if so, for what purposes, what type of licence could be granted for authorisation of the use of an orphan work, and the system for structuring economic compensation (by means of interim deposit, consideration paid to the management entity, or compensation in the event that the rights holder has been identified and located).

It would therefore be desirable for those responsible for custodianship and also photography users and researchers, to establish a specific regulation, by means of a Community Directive and national legislation, for the use of orphan works found in archives, museums and other cultural institutions and which would seem to be exempt and independent, without forming a part of books, newspapers, journals, magazines or other formats. The current Directive does not make provision for the use of this type of work, nor does the transposition thereof into national legislation.

Meanwhile, our understanding is that by applying to exempt photographs a procedure similar to that set out in the Directive for orphan works included in books, newspapers or journals, progress could be made in the identification or location of the holders, and as a result an understanding of the dates when such works would enter the public domain.

In other words, initiatives such as the obligation to perform a diligent search or the inclusion of a written commitment by the user or request to cover payment of the corresponding copyright when the rights holder or holders can be located, would serve as proactive means to identify authors and rights holders, and as a result the works would lose their orphan status.

In this regard, the Sub-Directorate-General for Intellectual Property of the Secretary of State

for Culture is undertaking a comparative legal study in order to address the issue of orphan works as a whole. The Canadian example set out in Article 77 of the *Canadian Copyright Act* could be of particular use.

### **Limits and exceptions of intellectual property**

As mentioned in previous chapters, many of the European Directives include the possibility of applying certain limits and exceptions to copyright. These exceptions are not mandatory in EU law, and the development and structuring thereof has been left to the legislations of the various Member States.

Chapter II of Title III of the Spanish Intellectual Property Act establishes limits on intellectual property rights within Spain, although these limits should be interpreted as not causing unjustified prejudice to the legitimate interests of the author, and without detriment to the normal exploitation of the works in question.

Of particular significance to cultural institutions are the limits established in Article 37 with regard to the reproduction, loaning and consultation of works by means of specialist terminals at certain establishments.

Copyright holders cannot object to reproductions of works performed by museums, libraries, sound, film and newspaper libraries or publicly owned archives, or similar centres incorporated within institutions of a cultural or scientific nature, provided that the reproduction is performed on a non-profit basis and purely for research or conservation purposes.

Likewise, both the public institutions referred to above and general interest and cultural, scientific or educational non-profit entities and teaching institutions integrated within the Spanish education system will not require authorisation from the rights holders for any loans they perform.

Nor is authorisation required from the author for the communication of works or the making thereof available to specific persons for the purposes of research, if performed by means of a closed and internal network via specialist terminals installed for this purpose.

Within the limits established in the Intellectual Property Act, particular mention should likewise be made of that referred to in Article 40 regarding protection of the right of access to culture, as set out in Article 44 of the Spanish Constitution, and the terms of Article 32 of the Intellectual Property Right, regarding citations and illustrations in education, although such usage may be performed only in the case of works already published, and for purposes of teaching or research, indicating at all times the source and the name of the author of the work employed. This limit or extension was recently extended in Act 21/2014, as it was not considered sufficient in order to cover new everyday needs within the educational context, as it fell far short of the terms permitted by Directive 2001/29/EC.

Particular mention should likewise be made of the limits established in Article 31 bis, regarding reproduction, distribution and communication of previously published works performed for the benefit of people with disability, provided that they are performed for non-profit purposes, and those covered by Article 33 on current issues disseminated by means of social communication media. Nor, of course, should we overlook the private copy limit provided in Article 31 of the Intellectual Property Act.

Within the context of EU debates, archives, museums, libraries and universities register their support for the promotion in EU legislation of a system of public-interest exceptions which would facilitate access to works and to culture.

As a result, there are certain limits and exceptions in accordance with criteria of public interest, absence of profit motives, ease of access to the content of archives, museums and libraries, and for tasks performed by them in support of culture (preservation of heritage, archives, mass digitisation, e-lending, etc.), support for education and research, care for people with disability and media coverage, etc., support for education and research, care for people with disability and media coverage, etc., which may be gradually consolidated in EU law, and correspondingly reflected or transposed in the legislations of the various Member States.

It is precisely the optional development of these limitations within the different national regulations which has led to misalignments in terms of classification and application, thereby undermining the internal market of the EU, and which now is the focus of debate.

### **Reuse of public sector information**

As mentioned in the analysis of EU law, *Directive 2013/37/EU, of the European Parliament and of the Council, of 26 June 2013, modifying Directive 2003/98/EC on the reuse of public sector information*, excludes from its scope of application information or documents which are subject to third-party intellectual property rights (photographs, drawings, maps and plans, manuscripts, posters, etc.).

This is because of the clear impact on the custodians of resources and on the management and documentation of copyright, as it entails the requirement for archives, museums and libraries, and even universities, to bear an additional human and technical resource expense in order to be able properly to identify which documents are affected by this circumstance. All the above within a context in which the holdings and collections in the custodianship of archives, libraries and museums represent complex specificities.

In this regard the Commission, aware of the problems resulting from the identification of intellectual property rights at archives, libraries and museums, included in its proposed modification of the European Directive a specific modification to Article 4.3, establishing that libraries, museums and archives are not obliged to include a reference to the natural or legal person owning the intellectual property rights if there is a reasoned refusal for reuse. This does not prevent such information from being offered if the holder is known.

Nonetheless, at the European level cultural institutions, and among them archives, have registered their concern as to the difficulty in determining, with regard to the documents they hold and which are still subject to intellectual property rights, who the holder is, with the specific and added problem of those works known as orphans.

It is necessary to reflect on the impact of the reuse of information at cultural institutions and the protection of copyright and to weigh up standard or specific licences for which reuse may take effect only once payment of the corresponding intellectual property rights has been made by the requesting party to the corresponding holders (Article 9 of Royal Decree 1495/2011; Article 3.5 of Order CUL/1077/2011). The reuse licence established must likewise always include respect for moral rights, such as for example a mention of the author.

The Commission recently issued its Communication of 24 July 2014 on "*Guidelines for recommended standard licences, datasets and charging for the reuse of documents*" (2014 240/01), which provides guidelines for the transposition of directives governing general reuse,

and also with regard to the reuse of content held in archives, libraries and museums<sup>101</sup>.

### **Image rights**

One incidental issue which could be of interest concerns the right to an individual's own image captured in a photograph, since the right to one's image is a constitutional (fundamental) right, which therefore prevails over non-fundamental rights.

The image right is governed in Spain by *Organic Act 1/1982, of 5 May 1982, on civil protection and the right of reputation, personal and family privacy and own image*. We are likewise entitled to our image as a facet of our personality, which means that in general the capture, reproduction and publication of a (recognisable) image of a person is forbidden, except by express consent. Consent (for capture, reproduction and publication) may be revoked.

No express consent is required in the following cases:

- In the case of public personages (because of their profession or position) at public events or in locations open to the public, such as a politician at a political rally or in the street.
- If there is a news interest, in other words in the case of graphic information about a circumstance or event to which the image appears in an accessory manner, provided that two vital requirements are fulfilled: the information must be true (based on the principle of diligence) and the information must be in the public interest (affecting public life: social, political, etc.).
- In the case of parodies.

In certain specific cases, consideration would likewise need to be given to *Organic Act 1/1996, of 15 January 1996, on the legal protection of minors, partially modifying the Civil Code and the Civil Proceedings Act*, since Article 4 thereof is concerned with the protection of the image of minors: "an unlawful encroachment on the right of reputation, personal and family privacy and the image of a minor is deemed to have occurred in the event of the usage of the image or name thereof in the media which could undermine that minor's honour or reputation, or would violate the minor's interests, even if he or his legal guardians have given their consent."

The right of the person photographed to his or her own image must likewise be taken into consideration by the author of the photograph, prior to, during and after capture. On the same basis, the photographer enjoys copyright over the work produced, while the individual depicted or photographed enjoys image rights over the photograph. Meanwhile, the work could belong to a third party as the holder of the *corpus mechanicum*.

### **Documentation of intellectual property rights**

It should be borne in mind that acquisition of the physical medium of a work is not the same as the acquisition of intellectual property rights, which may be exploited directly by the author, or even assigned to third parties. This circumstance entails the need to document the identity of the holders/managers of these exploitation rights, in order to request permission from them to authorise usage (in particular for public communication, reproduction, distribution and transformation) of the works acquired.

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<sup>101</sup> <http://eur-lex.europa.eu/legal-content/ES/TXT/PDF/?uri=CELEX:52014XC0724%2801%29&from=EN>

The documentation of rights refers to various spheres, and requires that the following aspects be determined:

- Who is the holder of the rights.
- What uses are permitted of the work, and whether they are subject to payment of economic compensation to the rights holder.
- Territorial and time scope of application of the rights. The absence of a time reference limits the transfer to 5 years, and the absence of a territorial scope limits it to the country where the assignment is performed (Article 43 of the Intellectual Property Act).
- Form of reference to rights which must always accompany a reproduction of the work, in accordance with the indications of the holder.

However, the party acquiring property of the medium or the owner of the original is entitled to exhibit the work publicly (Article 56 of the Intellectual Property Act).

Proper documentation of intellectual property rights must address both the establishment of the conditions under which the specific institution possessing a photograph can communicate and reproduce it, and a reference to moral intellectual property rights. In Spain, the documentation which each institution maintains as to agreements and contracts with rights holders remains highly varied, given the huge disparity of criteria in existence. Meanwhile, references to rights continue to lack control, even in those cases where there is a management entity overseeing appropriate references to rights, such as VEGAP.

Furthermore, strict copyright limitations ("all rights reserved") have led to the emergence of international movements known as *copyleft*: groups of licences which allow each author to control and communicate which rights are reserved and which are unrestricted. Over recent years, given the disparity of national regulations, a number of international attempts have been made to create licences which can inform the user of the conditions of use to which a particular image is subject. The aim is to agree a common idiom serving clearly to identify permitted uses and limitations, the most well-known and widespread being the *Creative Commons* (CC) licences.

All CC licences allow non-commercial redistribution and include the obligation to mention the author. As regards the remaining conditions, *Creative Commons* licences are based on four limitations which are used in combination to create six types of licence. Each of these elements is accompanied by an abbreviation preceded by the acronym "CC", which can be combined to acknowledge the limitations for each licence. The four conditions are:

- Attribution (BY): mandatory reference to the author. This forms a part of all *Creative Commons* licences.
- Share Alike (SA): the creation of derivative works is permitted, and they must be covered by the same licence as the original work, or a similar licence (in the event that the licence has been modified or is under another jurisdiction).
- Non-Commercial (NC): no use of the work for commercial purposes is permitted.
- No Derivative Works (ND): no form of modification of the work is permitted.

The six licences which exist by combining these conditions or limitations are (ordered from less to more restrictive):

- Attribution (CC BY): this is the broadest licence, allowing others to distribute, mix, adjust and create using the work subject to the licence, including for commercial purposes, provided authorship of the original creation is acknowledged.
- Attribution-Share Alike (CC BY-SA): this license allows remixing, retouching and



creation based on the work subject to the licence, including for commercial purposes, provided that the obligation to mention the author is respected. It is likewise required that the licence applied to derivative works have the same conditions. This is the licence used by Wikipedia, and it is recommended for materials incorporating Wikipedia content and projects with similar licences.

- Attribution - No Derivative Works (CC BY-ND): this licence permits commercial or non-commercial redistribution, provided that the work is circulated in its entirety and unchanged, and the author is mentioned.
- Attribution- Non-Commercial (CC BY-NC): This licence allows distribution, remixing, retouching and creation on the basis of the work subject to the licence, but for non-commercial purposes. It includes the requirement that the author be mentioned, but not that similar licences be applied to the resulting work.
- Attribution-Non-Commercial-Share Alike (CC BY-NC-SA): This license allows others to distribute, remix, retouch and create on the basis of the work subject to the licence in a non-commercial manner, provided that the author is mentioned and a similar licence is applied to the derivative works.
- Attribution-Non-Commercial-No Derivative Works (CC BY-NC-ND): This licence is the most restrictive of the six main licences, and only allows works to be downloaded and shared with other individuals, provided that authorship is acknowledged, but does not allow any modification or commercial use.

A special licence known as "CC0" also exists, which means that the work is to be left in the public domain. This is recommended by the EU as a legal instrument serving to suspend copyright and industrial rights over public sector information.

### ***Conclusions as to the state of the matter regarding photographic heritage in terms of intellectual property***

- Legislation on intellectual property is extensive and complex. Certain international, EU and national regulations apply, and heritage managers therefore require proper training as regards the applicable intellectual property legislation.
- The European Union has, through the approval of a pair of Directives, taken fundamental efforts to harmonise the substantive national law of its member states with regard to intellectual property, viewing this matter to be of particular relevance for the development of the European internal market. The Directives represent a major instrument for standardisation, as their transposition into the national legal structures of the respective states is mandatory.
- In turn, the member states of the EU have been encouraged to adhere to the Berne Convention and the WIPO Copyright Treaty, thereby consolidating a shared regulatory framework.
- Meanwhile, the EU has attempted to respond to the changes and transformations which copyright and similar rights have undergone, given the continuous advance of technology which directly affects the means of exploitation of works, so as to offer legal guarantees to copyright holders within the digital environment.
- Nonetheless, intellectual property rights represent a legislative competency shared by the EU and the different national jurisdictions. In Spain, the recent approval of Act 21/2014, of 4 November 2014, modifying the consolidated text of the Intellectual Property Act approved by Royal Legislative Decree 1/1996, of 12 April 1996, and Civil Proceedings Act 1/2000, of 7 January 2000, represents the fundamental national regulation governing intellectual property rights nationwide.

- Act 21/2014, which took effect in January 2015, transposes recent European directives and makes modifications to the Intellectual Property Act in order to adapt to social, economic and technological changes which have unfolded over recent years, and provide effective instruments serving for the protection of legitimate intellectual property rights and a legal offering within the digital environment.
- Professionals working at archives, libraries, museums and other cultural institutions face major challenges as regards the identification of copyright over their photographic archives, holdings and collections, and it is vital to dedicate sufficient resources in order to identify the authors, determine the protection periods covering the photographic works in their custodianship, and where applicable to perform the relevant diligent search for those works the authors of which have not been identified or located. In other words, it is a matter of urgency to document intellectual property rights over photographic works in the custodianship of the various institutions, and to establish relationships with the corresponding management entity (VEGAP).
- The management entities, and more specifically the VEGAP, must structure new mechanisms for transparency and accountability before the public authorities, for effective management of copyright and other intellectual property rights holders.
- Likewise, the treatment of photographic archives, collections and holdings with regard to their use and potential reuse must be performed without prejudice to the protection of such intellectual property rights, and while taking into consideration the peculiarities and exceptions established for libraries, archives and museums in Directive 2013/37/EU and the transposition of the Directive into national legislation. It is necessary to establish agreements and licences for use to guarantee the protection of third-party copyright, and where necessary to promote the use of *Creative Commons* (CC) licences, in particular for photographs which are in the public domain.
- National regulations must in turn move forward and clarify certain aspects such as "originality", adapting this to the equivalent EU concept in order to facilitate a distinction between a photographic work and a mere photograph. Consistent criteria would also need to be set for the use and exploitation of orphan works, which are excluded from the application of Directive 2012/28/EU.
- Meanwhile, authors must play an active role in documenting the originality and photographic work status of the photographs they have created.
- Lastly, efforts must be made at the European level to define throughout the EU exceptions and limitations on intellectual property rights allowing, where the public interest takes precedence, the facilitation of access to cultural works (in the case of research, teaching, etc.). Lastly, efforts must be made at the European level to define throughout the EU exceptions and limitations on intellectual property rights allowing, where the public interest takes precedence, the facilitation of access to cultural works (in the case of research, teaching, etc.).

## **2. METHODOLOGICAL ASPECTS**

### **2.1. Plan objectives**

## 2.1. Plan objectives

1. Establishment of methodological and professional criteria for the management, preventive conservation, digital preservation, description, use and dissemination of photographic collections.
2. Support for research into the various aspects of photographic heritage management, underpinning the development of innovative techniques and good practice.
3. Generation of guidelines and procedures governing the management of donations, loans and acquisitions of photographic collections on the part of public or private institutions, taking into consideration the legislative framework in force regarding intellectual property.
4. Promotion of initiatives to facilitate access to photographic heritage and encourage usage thereof by researchers, creative and cultural industries and the general public.
5. Support training initiatives which implement, both in educational curricula and informal spheres of education, programmes connected with the various forms of knowledge, techniques and professions which converge in the context of photography.
6. Development and promotion of social awareness-raising strategies for the understanding and consideration of photographic heritage and photography as a historical document and as a cultural asset.
7. Fostering of communication and coordination among public authorities, and policies focused on the exchange of information among professionals and centres which own or hold photographic collections.
8. Creation of a Photographic Heritage Observatory to provide consultancy in the field of management, conservation and dissemination of photography, and to promote the creation of a national network of centres.

Starting point

What to do

How

Why?

Conservation of photographic heritage

Conserve  
Manage  
Disseminate

Conditioning  
Inventorying  
Deposit  
Documentation  
Digitisation  
Restoration  
Cataloguing  
Digital management  
Consideration  
Acquisition  
Education  
Research  
Publication / Access  
Exhibition  
Reuse  
Awareness-raising

Systematisation

Cooperation

Custodianship and social value of photographic heritage

## **2. METHODOLOGICAL ASPECTS**

### **2.2. Operational criteria**

## **2.2.1. Conservation**

### **Collection management**

A sound heritage conservation policy must include as a basic criterion the understanding and consideration of originals. An understanding of holdings guides us as to the true extent of their economic and cultural value, assists in the prioritisation of the actions to be taken in accordance with the stability of the originals, indicates guidelines for manipulation and provides information to optimise document management systems, and facilitates decision-making with regard to digitisation protocols. In other words, an in-depth understanding of the material and historical characteristics of a particular holding is a vital task in order to facilitate and expedite all actions for the preservation, usage and management thereof.

Likewise, the proper maintenance of collections in the long term is another essential issue, and the necessary measures must be taken to guarantee this, taking into consideration sustainability over time. With this purpose in mind, the recommendation is for the generation of a collections conservation plan, the authoring of which will take into consideration all levels of the institution involved in the conservation of photographic heritage held in custodianship. The conservation plan will establish the levels and phases for action and will define the key aspects to be taken into consideration in the treatment of photography collections (environmental conditions and control measures, organisation of the storage space and type of furniture, direct protection systems, etc.) in addition to criteria for accessibility and dissemination of holdings.

It is likewise indispensable to incorporate simultaneously with the task of inventorying and cataloguing, metadata information structures which can describe the technical details of the items and their identifying, iconographic, authorship details, etc. Support will therefore be given to initiatives which promote projects in this direction.

### **Treatment of originals**

The treatment of photographic holdings will take into consideration the two characteristics of each type of object when establishing criteria for intervention on them, along with their potential cultural uses. This thus covers a twofold objective: firstly, care for the integrity of photographs and collections, and secondly facilitation of efforts for dissemination and access, optimising methods and resources.

It is likewise vital to balance the interests of the institution and the needs of the photographic materials in accordance with the characteristics. As a result, initiatives for the conservation of a particular photographic holding must be coordinated in accordance with institutional policies and the prioritisation of needs, in order to facilitate economic management and achieve the greatest returns on the efforts made.

### **Digitisation and digital preservation**

As regards preservation of digital objects, whether originally digital photographs or digitised images, it is vital to act on three fronts: the treatment and conservation of native digital photography; the proper digitisation of photographic holdings to guarantee their conservation and dissemination; and the effective management of all materials which, more or less successfully, have already been digitised.

In the case of digital photography it is desirable for custodian institutions to have access to sufficient resources and training in order to handle the entry of holdings with diverse descriptive metadata, a range of capture resolutions and different types of storage medium.

In the process of digitising holdings and collections, entities must have access to effective guidelines which will guarantee the proper conservation of the originals and provide clear instructions as to the metadata required and preservation formats. They must likewise have access to an appropriate storage space, with the specific conditions for each type of material.

As regards the copious material already digitised in accordance with divergent criteria and using technology which in many cases is now out of date or obsolete, it will be necessary to develop management plans serving to optimise the use of such images.

The application of these criteria will allow for effective management of digital objects, with a view not only to their conservation, but also to their use and dissemination.

## **2.2.2. Description of holdings and collections**

### **Metadata and description formats**

The recommendation is for the use of standardised formats for the inventory and cataloguing of photographic holdings, in accordance with the content description standards which exist in various fields (archives, libraries, museums, documentation centres), based on the principle that all terms described in these formats are valid.

It is likewise advisable to document and clearly display, by means of the corresponding elements or description fields established in national and international standards, all data connected with intellectual property rights over the images: mention of authorship, title given by the photographer (if any) and conditions for reproduction, use and exploitation of the work (see the chapter on Intellectual Property).

Unification and standardisation of the description in the fields covering the specific characteristics of the photographic material must likewise be ensured, such as techniques and procedures on the one hand, and genres on the other. It is advisable to make use of available lists of materials in order to index photographs and adopt the approach deemed most appropriate in accordance with the mission, needs and objectives of each centre.

### **Metadata and exchange formats**

With regard to digital objects as a means for the dissemination of photographic heritage, the recommendation is to provide metadata embedded in the image files (EXIF, XMP) and to use standardised information exchange formats in XML (MARCXML, EAD, etc.).

It is likewise advisable to use metadata harvesting and dissemination models based on "mapping" between the different standards, with a particular focus on OAI-DC (Open Archives Initiative-Dublin Core) as the basic schema. It is in this regard increasingly important to have in place OAI-PMH repositories which will facilitate the shared use of data and increase the visibility of collections (see the chapter dedicated to Use and Dissemination).



## **2.2.3. Use and dissemination**

### **IT solutions and tools for online access to heritage**

The large-scale dissemination of photographic heritage began with the "Internet era". Since the 1990s, there have been numerous projects which have progressively been developed to make such heritage available via the web, with a particular emphasis on digitisation and distribution. Some of the initial efforts became obsolete, while constant technological advances are now forcing a redesign and updating of tools and catalogues which previously played a pioneering role.

In establishing criteria and recommendations it is therefore necessary to distinguish between those platforms already in operation, which will require an individual analysis to detect their merits and failings, and newly created projects, which have the advantage of access to successful models on which to base their strategy.

With regard to the latter, in the evaluation of new systems for the management and dissemination of photographic holdings, the recommendation is to comply with the following criteria:

- Prioritise the use of open source tools in order to encourage both the exchange and reuse of information and the description/management software itself.
- Demand an online cataloguing module in accordance with international description standards applied both to the description of cultural assets and the digital object serving as the storage medium.
- Require the use of standard models for the dissemination and harvesting of metadata, with OAI-DC as the basic schema proposed for access to digital harvesters.
- Have in place an OAI-PMH repository connected to the cataloguing module in order to ensure automatic updating of metadata for description and exchange.
- Integrate the relevant legal notices for the protection of third party rights.
- Confirm the implementation of collaborative tools allowing users to contribute information images.
- Ensure that the system facilitates the possible migration of data to other platforms.

### **Public communication activities**

Photographic heritage management centres, both public and private, are encouraged to promote the understanding of their collections through initiatives which combine educational and dissemination strategies:

- Guided activities (visits, workshops) focused in accordance with the target audience (professionals, interest groups, children, etc.)
- Physical and virtual exhibitions which cover both the photographic field itself (history, photographers, techniques) and the range of heritage issues covered by photography
- Publications, both general interest and scientific or technical
- Awareness-raising campaigns in the media
- Online communication initiatives (websites and social media)
- Support for the creation of derivative works

### **Access and use of collections**

The recommendation for all institutions managing heritage, whether public or private, is to continue promoting the public availability of high-quality cultural content on the Internet, in order to encourage research, culture and education.

It is likewise recommendable that public authorities and the private sector both encourage the reuse of cultural content, including photographic heritage, to support Creative and Cultural Industries, in accordance with the existing legal framework.

Historic photos are highly appreciated by the general public, who must have access to photographic heritage on the best possible terms. This interest is demonstrated by public responses to initiatives following the "Digital Memory" model. The recommendation is to set resources aside for the public presentation of as yet unpublished collections and to improve conditions for access and use of these holdings, limiting as far as possible any restrictions in the case of public domain materials.

## 2.2.4. Training

At the general level, training in photography should serve to develop a progressive social awareness as to the value of photographic heritage and its importance as a historical and artistic record and a symbol of the identity of peoples and individuals.

Training activities must address all levels of education, both formal and informal, offering programmes suited to different audiences and needs. Beyond the clear differences which exist across the content to be incorporated at each educational level (primary, secondary and university education), the same training would not be devised for amateur photographers as for professionals in the industrial photography, advertising or fashion sectors, artistic photographers, photography training supplements for the staff of archives and collections.

Firstly, photography must take on a prominent role in secondary education, not only in order to train future university students, but also to contribute to the education of the critical, cultured, creative and informed citizens of the future. In addition to specific skills in image technologies (whether photography, video or infography), secondary education requires a commitment to comprehensive and skills-based teaching about photography as a medium. The proposal is to include the study of tools for the capture and distribution of images, along with subjects focused on the communicative and informative function of photography. In order to combine both facets, the recommendation is to teach History of Photography and Cinema, to extend social subjects with content for the analysis and evaluation of images, and to include courses on contemporary art created by means of new technologies.

Reflections on social media, the quest for reliable sources, respect for copyright and the obligation to cite authorship in each image, are other issues which should be emphasised in secondary education. Without overlooking the dissemination of the use of such initiatives as *copyleft*, introducing students to the global ethics of sharing. In this regard, it is important to raise the awareness of teaching staff as to the change which has occurred through the technological image revolution in the field of arts and sciences.

Meanwhile, the teaching of photography at the university level must evolve towards more extensive training which covers the various agents who take part in the creation, acquisition, conservation, description, usage and dissemination of photographic holdings, including issues of intellectual property and the analysis tools for the management of digital collections.

As regards training in the preservation of photographic heritage, schools of conservation must promote an understanding of the photographic medium and its specific needs. There likewise needs to be promotion, through the corresponding institutional structures, of recognition of the specialist field of Photographic Heritage Conservation.

Meanwhile, the training of active professionals with responsibilities associated with photographic heritage must take into consideration consensus-based criteria in order to ensure that institutions have access to technicians trained in the proper interpretation of the work to be performed (conditioning, cataloguing, digitisation, restoration, etc.) whether these tasks are performed by in-house or external personnel.

## 2.2.5. Policy of acquisitions and expansion of holdings

With regard to the Patronage Act, the recommendation is to move closer to such European models as those of France, the United Kingdom, Germany and Italy.

The incentivisation of micro-patronage, covered by the tax reform which took effect on 1 January 2015, is vital in order for the general public to engage with heritage through small-scale economic contributions which could facilitate new acquisitions.

It would be advisable to standardise criteria for the evaluation of assets, so as to facilitate and improve valuations prior to proceeding to acquire photographic heritage, whether by purchase or by donation (see Annex 5.10). Consideration should be given to the following aspects:

- Connection with the objectives and interest of the institution for which the holdings are required.
- Historic importance of the photographic object.
- Additional information associated with the item (documentation, objects, etc.) which could contextualise the collection.
- Representativity of the item within the oeuvre of the author.
- Consistency of information.
- Risk of destruction or dispersal if the acquisition is rejected.
- Age.
- Rarity.
- Originality.
- Symbolic value.
- Medium.
- Granting of copyright.
- Contractual obligations.
- Restrictions on use and reproduction.
- Viability of management (storage, condition, conservation, description, dissemination, etc.).
- Economic viability of the purchase, donation or loan.

Encouragement is given to support for the recovery of Spanish photographic heritage located abroad, and which is vital in order to complete existing collections, along with the promotion of the corresponding research.

Support is given to the fostering of coordination and cooperation between the State and Autonomous Regions. In this regard, the development of joint bodies or interdisciplinary working groups will be supported in accordance with national or regional regulations, so as to evaluate, value and proceed in accordance with the law for the acquisition of photographic collections holdings.

When contracts and agreements are structured for purchases, donations or loans, proper documentation of the copyright associated with the newly acquired collections and holdings is to be recommended (rights holders, uses permitted of the work, territorial and temporal scope of application of the rights, reference to rights which must always accompany reproductions, etc.).

In the case of loans, it is likewise advisable to set out clear commitments between the institution and the lender.

In general, transparency of information must be encouraged on the part of the public authorities with regard to purchases, donations, and trusteeships of photographic heritage.

## 2.2.6. Intellectual property

### **For Public Authority administrators**

The achievement of a sound policy with regard to intellectual property should take into account the following considerations:

- Encourage the development of the process to be applied in the case of orphan works not covered by Directive 2012/28/EU, in order to authorise possible uses thereof and encourage their dissemination, comprehension and research. Two challenges arise here:
  - Promote the re-examination clause set out in the aforementioned Directive.
  - Develop automated systems, in cooperation with the autonomous regions, for the identification and control of those orphan works not covered by the Directive and, where applicable, establishment of the procedure to authorise use and comprehension of such works, in all cases based on principles which offer guarantees and benefit the potential rights holders.
- Participate in European studies regarding exceptions and limitations to copyright as established in EU regulations, and promote classification and harmonised application within the context of the European Union. It is necessary to adapt national regulations to any regulatory advances which might occur in this field.
- Harmonise the EU concept of originality with the criterion established in national regulations regarding the originality of photographs, rejecting the usage of criteria of merit or purpose in consideration of the condition of originality.
- Promote the dissemination of regulations regarding copyright, and also access to regulations and procedures followed by the centres which are the custodians of photographic works protected by such rights, in order to facilitate understanding and interpretation on the part of photography professionals, researchers and the general public.
- Promote the execution of public awareness-raising campaigns intended to inform the general public of the use of photographic works and respect for copyright.
- Facilitate via public authorities lists of photographs available for reuse, including the corresponding legal notices to protect any intellectual property rights which might be held by third parties.
- Promote good practice and criteria of transparency to ensure that copyright managed by management entities benefits the corresponding holders (the authors and rights holders of the photographic work).

### **For centres administering photographic heritage, both public and private**

- Properly document the copyright of the holdings and collections in their custodianship, and establish clear criteria as to the rights associated with any acquisitions of photography which might take place in the future.

Where applicable, in accordance with Article 37 bis of the Intellectual Property Act, it will be necessary to perform and document a diligent search with regard to certain uses of photographs considered to be orphan works and those included in magazines, newspapers and other publications.

- Ascertain the dates of entry into the public domain on the part of the holdings under custodianship, and source information as to the impact which subsequent national laws regarding intellectual property could have on these time periods.
- Adopt objective and legally compliant criteria to identify photographic works and distinguish them from "mere photographs".
- Dedicate efforts to technical investment in order to support the identification of the copyright of photos in custodianship, and provide information on opportunities for reuse. The proposal in this regard is to promote the development of computerised applications which would serve to document and share information about copyright.
- Define clear criteria to ensure that authorisation for reuse is given only for documents subject to intellectual property rights if the required assignment of exploitation rights has been given by the corresponding rights holders.
- Establish agreements and licences for use which guarantee the protection of third-party rights. The recommendation here is to use *Creative Commons* (CC) licences.
- Collaborate with intellectual property rights management entities (VEGAP in the case of photographic works) for the proper application of these rights within the sphere of the institution.
- Verify, in the case of the mass distribution of digitised images via Internet portals, whether the photographic documents distributed are protected by specific copyright, and proceed where applicable in accordance with the law.
- Promote, at all times and in particular, the protection of the moral rights of the author when distributing or assigning photographic holdings and collections to third parties.

#### **For members of the public and researchers**

- Respect the intellectual property rights of photography rights holders and pay the corresponding exploitation fees in the event of use or reuse.
- Respect the moral rights of the photographers, even if their works have entered the public domain.
- Source information as to the functioning of management entities.
- Achieve familiarity with regulations regarding intellectual property, in order to recognise the rights of authors and make appropriate use of creative works.

- Where applicable, document the diligent search performed with regard to photographs considered to be orphan works.

### **For photographers**

- Number, sign or duly authorise photographic copies, as provided in Article 1 of Act 3/2008, of 23 December 2008, on the right of participation, in order to ensure that the photographic work is clearly documented.
- Protect works and authors from abusive clauses which violate intellectual property rights.

### **3 - PROGRAMMES AND LINES OF ACTION**



### **3.1. Lines of action derived from the general objectives**

#### **Promote the generation and maintenance of the national map of centres, both public and private, which have photographic holdings in their custodianship.**

- Establish, via an online platform (newly created or using one of the existing initiatives, such as the Census-Guide to Archives) and updatable census map setting out information about such centres, including their location and contact details and a summary of the services they provide.
- Devise a template with basic details regarding the holdings in the custodianship of each institution (volume, dates, formats, main themes, descriptive status, accessibility, etc.), allowing for a precise evaluation of the state of the matter in this country, and to help detect shortcomings, prioritise initiatives and define management strategies.

#### **Support the creation of a Photographic Heritage Observatory, to promote the structuring of a network of photography centres**

The diverse range of holdings and institutions containing photographic heritage in Spain, and the disparate approaches by which tasks of management, conservation, description and dissemination of collections are addressed by the different entities, confirm the need to coordinate actions and promote the creation of mechanisms to facilitate interinstitutional collaboration.

Countries within our cultural milieu, such as Mexico, Chile, Brazil and Portugal, have national centres or networks of specialist centres which can provide an example as regards the structure and functioning of cooperation initiatives (see Annex 5.6).

The proposal in this regard is therefore the creation of a Photographic Heritage Observatory, which would act as an advisory body in all spheres connected with the management, conservation and dissemination of photography, based on the criteria set out in this National Plan.

Aside from consultancy tasks, the Observatory will be created with two fundamental missions:

- The structuring of a network of photographic heritage management centres, establishing its form, functions and services.
- The creation of a portal of information resources connected with photographic heritage, with links to centres and catalogues, publications, online resources, etc.

In order to perform its function this body will need to be endowed with the necessary technical, human and economic resources.

## **3.2. Conservation of originals and digital preservation**

### **Management of collections and conservation of originals**

- Disseminate the existing bibliography regarding the methodology for the identification of photo-chemical processes associated with photographic materials (camera originals, negatives and copies). The proposal here is to foster research into procedures for the identification of poorly studied materials, such as the bulk of those employed over the course of the 20th century: copy paper, colour materials, plastic media, flexible 35mm rolls, etc.
- Author and distribute a manual of good practice establishing protocols for the manipulation of originals, guidelines for the review of their state of conservation, levels of protection, preventive conservation measures and environmental controls as required for the storage and temporary exhibition of collections. This manual could be adapted on the basis of existing publications, as substantial bibliography is available in this regard.
- Promote the development of research projects into the historical evolution of photography and photographic techniques in Spain.
- Incentivise an understanding of the photographic holdings and collections which exist in this country, through cooperation initiatives involving private individuals and institutions.
- Facilitate, through cooperation and advice programmes, the generation of conservation plans for photographic holdings at those institutions which have such collections in their custodianship.
- Promote the recognition of the conservation photography as a distinct specialist field, separate from the conservation of graphic materials.
- Promote and facilitate practical experience placements with regard to conservation at various specialist or flagship institutions, in order to supplement the training of future conservators and the refreshment of active personnel.
- Disseminate operational protocols for exhibitions, covering the prior state of conservation of photographic objects and defining the most appropriate conditions for preventive conservation for the installation and packaging of exhibits, in addition to optimal environmental measures and monitoring parameters.
- Support initiatives to guarantee the permanence of the works of contemporary photographers.

### **Digitisation and digital preservation**

- Establish basic common standards for the reception, management and storage of digitally created photography (format (TIFF, RAW, JPEG), resolution, associated metadata and storage medium), and propose models for review in accordance with technological developments.

- Generate a procedure setting out basic common standards for the digitisation of photographic holdings, on the basis of guidelines established both nationally and internationally. Guidance must be offered with regard to the interpretation of the originals, calibration, capture resolutions, formats for preservation and exchange, mechanisms for storage and preservation strategies.
- Promote the scheduling of periodic inspections of digital objects in order to detect possible problems or damage (corruption of the documents or files, deterioration of the storage media, obsolescence of reading and management software, etc.). Plans must be in place for the migration or transfer of archives, capable of implementation whenever required.
- Promote the exchange of information and experiences among entities with photographic holdings in their custodianship, both nationally and internationally, in order to adopt successful solutions as regards the selection of storage media, formats, capture and management software and metadata.
- Emphasise and encourage the inclusion of metadata at all levels, both descriptive and administrative (technical, rights management and preservation) in order to guarantee the effective management of digital objects and their interoperability with external platforms.

### 3.3. Description of holdings and collections

- Promote the generation of a manual of good practice for the description of photography, covering the following aspects:
  - Proposal for use of a multi-level description, drilling down from general to specific (holding, collection, reportage, photograph).
  - Establishment of basic descriptive standards, with a particular emphasis on the standardisation of terminology as regards the technical aspects of photography (procedures, formats, storage media, deterioration...).
  - Adaptation of the descriptive content standards used in various fields (archives, libraries, museums, documentation centres), in order to promote interoperability, on the basis of open source computer programs and XML exchange formats.
  - Encouragement for the use of context information in descriptive fields (data regarding collections and archives, producers, publications, etc.) in order to assist an understanding of the photographic object within its historic reality.
  - Proposal for a descriptive plan indicating preferential priority guidelines for those collections and photographs of greatest significance.
  - Study and evaluation of the main thesauruses, lists of subjects and controlled idioms available for the indexing of photography, so as to establish a list of authorities in Spanish which can be cross-referenced with other international thesauruses and lists.
- Promote the conversion to the OAI-PMH protocol of existing descriptive photograph records, catalogued with other standards. This initiative would facilitate harvesting by large-scale aggregators at the national (Hispana) and international level (Europeana), and would increase the visibility of photographic collections.

### **3.4. Use and dissemination**

#### **IT solutions and tools for online access to heritage**

- Identify the functionalities required of an information and dissemination system for photographic heritage in order to fulfil needs of description, conservation, use and dissemination of such heritage, and facilitate the management of exploitation rights.
- Promote the adaptation of current platforms and catalogues providing access to photographic holdings, in order to allow for an appropriate response both to new needs for data interoperability and demands of general public collaboration raised as a result of the emergence of social media. The recommendation in this regard is to support the development of APIs which would facilitate access to digital objects and their metadata, and would allow for the implementation of collaborative mechanisms.
- Foster the creation of public and private support funding for the generation and dissemination of digital repositories of photographic collections holdings at archives, libraries and museums. Such funding should establish basic quality requirements in the descriptions, and include a commitment to participation with national harvesters.
- Promote collaborative institutional programmes which would serve to save efforts and share resources for the dissemination of photographic heritage.
- Encourage the development of cultural apps, promoting the organisation of online hackathon events by Europeana (<http://pro.europeana.eu/hackathons>).

#### **Public communication activities**

Support the dissemination of unknown or unpublished heritage collections, both those in the hands of private individuals and those managed by public authorities, prioritising the following lines of action:

- Support for collaboration between the public and private sectors for the organisation of physical and online exhibitions both of photographic documents and collections and of techniques and equipment (cameras, spotlights, tripods, printing and exposure materials, etc.) which have made possible their creation and continuity over the course of history.
- Identification and presentation of types of photography which are typically relegated to the background, such as collections of old postcards which represent "living documents" of inestimable historical and social value.
- Promotion of other dissemination mechanisms, both traditional (study days, conventions, publications, etc.) and those associated with new technologies (mobile apps, social media, etc.).
- Promotion of legal protection measures to facilitate the long-term maintenance of collections of particular significance and to support their preservation and dissemination (declaration of Assets of Cultural Interest, tax breaks, etc.).

Overall, dissemination activities should focus not only on the presentation of photographic heritage, but also the development of a progressive social awareness as to the tasks involved in conservation and protection: the range of work to be performed (conditioning, description, digitisation, data processing, research into authorship and rights, etc.), the way in which this work is performed and the resources dedicated.

### **Access and use of collections**

- Foster the reuse of content, in order to promote the Creative and Cultural Industries and encourage science, culture and education through the public availability of high-quality descriptive and visual information.
- Extend the offering of CC-BY or CC-BY-SA licensed images as a strategy to increase the impact and dissemination of public domain holdings, and catalyse the creation of derivative works of various kinds.
- Promote inter-institutional digital copies/loans free of charge, and the possibility of sharing catalogues and objects (metadata and archives) with other entities.
- Establish indicators as to the consultation and use of images and user types, compiling information directly and indirectly as regards access and use of digital objects.

### 3.5. Training

- Promote the design and implementation of collaborative institutional programmes on a public/private basis, to foster the training of active professionals in two directions:
  - Preservation of photography: recognition of techniques and storage media; principles for the conservation photograph materials; restoration initiatives, etc.
  - Collection management: new interoperability idioms for online catalogues (APIs, SKOS schemata, RDF, etc.); application of copyright regulations; expert consultancy and evaluation of acquisition offers, etc.
- Encourage the creation of funding programmes and collaboration agreements with universities and other bodies to stimulate photography research in various aspects: conservation, authors, history, collections, etc. conservation, authors, history, collections, etc.
- Promote the organisation of seminars and conventions on the preservation and dissemination of photographic heritage, with the involvement of the State, autonomous regions and other agents involved in the field of photography.
- Encourage the implementation of content connected with photography in both the curricula of formal education and non-formal education initiatives promoted by public or private institutions. In particular:
  - Support the introduction of technological subjects dealing with image (photography and video) within compulsory education.
  - In the field of Vocational training, underpin Vocational Image Training cycle programmes with the aim of delivering teaching better aligned with current needs, including theoretical and historical subjects.
  - Strengthen and extend photography subjects in Image and Sound studies and consolidate the training cycles at Art Schools (formerly Arts and Crafts Schools) and Schools of Conservation.
  - Encourage the inclusion of photography subjects in degree programmes where such study is considered relevant, this being deemed vital in those connected with Teacher Training, Art History, Library and Document Management, Conservation and Restoration, Journalism and Archive Management.
  - Support the creation of photography degree programmes which offer valid training both in the field of creation and for applied photography professionals.
  - Support the range of specialist master's courses available in the fields of artistic creation, conservation of photographic materials and collection management. Given that the occupational demand in this field is limited, market studies would need to be performed in order to detect the main shortcomings.

## **3.6. Acquisitions policy**

### **Patronage**

- Support the reform of the Patronage Act in Spain to promote tax deductions to favour the existence of a greater number of donations for public use.
- Encourage the development of mixed public and private contributions with shared purposes.
- Promote the autonomous management of institutions to allow contributions to be dedicated to specific acquisition projects.

### **Cooperation**

- Promote international programmes based on reciprocal collaboration agreements, to facilitate the recovery of Spanish photographic heritage located abroad, with priority given to Latin America the Philippines.
- Develop joint and complementary policies by and between the State and Autonomous Regions with regard to the acquisition of photographic heritage.

### **Standardisation**

The proposal is to draw up a manual of good practice for the acquisition of photographic holdings, including the following chapters:

- Research and comparative study of systems or policies for the acquisition of photographic works in the European, Anglo-Saxon and Latin American contexts.
- Definition of fields of focus for the study (public authorities and natural and legal persons in the private sector).
- Identification of the regulatory framework for the acquisition of photography nationally and internationally.
- Proposal of uniform and verifiable criteria for the evaluation and valuation of acquisitions.

### **Transparency**

- Review of trustee agreements by means of which photographic collections and holdings are deposited at public institutions. Of particular relevance would be the inclusion of an estimate of the expenses generated by the depositing of assets, and establishment of a possible economic penalty in the event of a breach of the established assignment period.
- Encourage the generation of lists and indices of holdings and collections acquired, with indications as to their relevance, evaluation criteria, cost and permitted uses. These lists must be accessible for online public consultation in order to encourage transparency and collaboration among public authorities, private sector entities and the general public.



### 3.7. Intellectual property

Incentivise a pilot project for the identification of authors, holders and managers of intellectual property rights in the field of photography, taking into consideration the following points:

- Definition of content and procedures for the development of a plan for the identification of authors, holders and intellectual property rights managers with a particular focus on:
  - Criteria for the identification of orphan works.
  - Criteria for the execution of a diligent search.
  - Verification of the ownership of rights over photographic works of known authorship.
- Study and investigation of works by unknown authors and owners of works of identified authorship.
- Generation of a census of orphan works, in synergy with the *Orphan Works* Database of the European Union.
- Incorporation of information obtained in standardised description structures.

## **4 - EXECUTION AND MONITORING**

## 4.1. Economic and Financial Study

This Plan is established as a shared methodological tool for coordinated actions by the various public authorities, private entities and individuals with regard to the conservation of Photographic Heritage.

The plan is for both the Ministry Education, Culture and Sport, through the Spanish Cultural Heritage Institute (IPCE), and other national and regional government bodies, within the context of their responsibilities, to contribute to the implementation of the various initiatives covered by this National Plan.

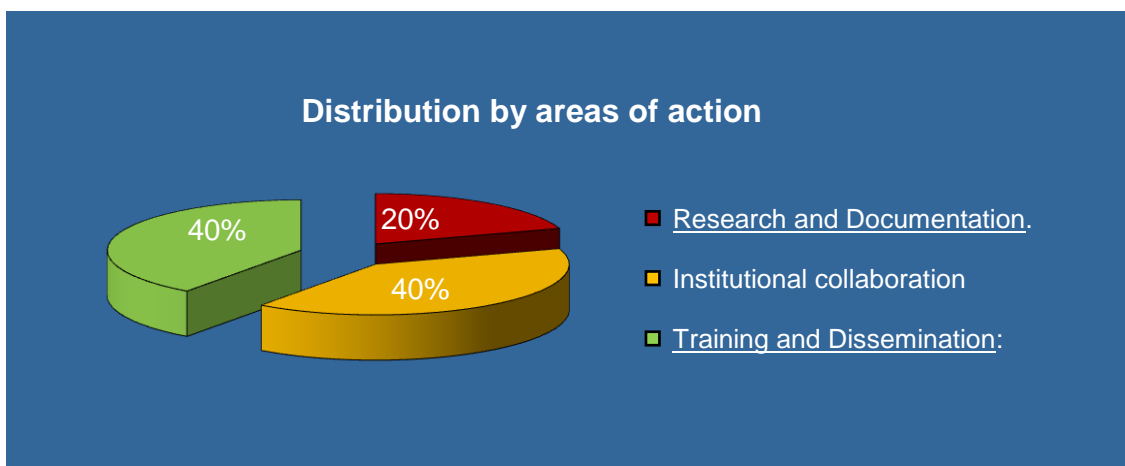
Likewise, local authority bodies, foundations, associations and other institutions will be in a position to perform initiatives which could be included within the National Plan.

The economic investment will focus essentially on three areas:

- Research and Documentation. Generation of reports, studies, manuals and research projects connected with the various lines of action covered by the Plan: conservation, description, use and dissemination, training, acquisitions policy and intellectual property issues.
- Institutional collaboration: Within the lines of action of the Plan, priority will be given to projects involving institutional collaboration, both with regard to the various levels of public authorities and lines of cooperation with universities, foundations and other photographic holding custodianship and management bodies. In the initial phase of application of the Plan, priority will likewise be given to projects connected with the preservation and public presentation of holdings collections.
- Training and Dissemination: In order to promote the scope of the terms of this Plan, training and dissemination actions will be scheduled with a twofold focus: Firstly on the dissemination of procedures and standards for the proper conservation and administration of photographic collections, and furthermore promotion of the social showcasing of such heritage through initiatives education, awareness-raising and public involvement.

The plans for the distribution of investment by programme will be as set out in the following table:

PROGRAMME	PERCENTAGE	2015	OTHER YEARS	PLAN TOTAL (10 years)
<u>Research and Documentation</u> .	20%	40.000	80.000	760.000
Institutional collaboration	40%	80.000	160.000	1.520.000
Training and Dissemination	40%	80.000	160.000	1.520.000
TOTAL	100%	200.000	400.000	3.800.000



## 4.2. Control and monitoring

Approval of the Plan by the Historical Heritage Council, will be followed by a proposal for the creation of a Technical Monitoring Commission of an interdisciplinary nature, comprising technical staff representing Central and Regional Government Authorities, together with external experts.

The working dynamic, meetings and communications of this Commission will be established once it has been convened. This Commission will draw up reports and evaluations of the fulfilment of the objectives and methodology set out in the National Plan, to be presented to the Historical Heritage Council for monitoring of said administrative instrument.

It will likewise have the function of validating and/or proposing fundamental lines of work, studies into criteria and methodology, and priority interventions in accordance with the lines drawn up. Meanwhile, oversight of fulfilment of each line of action will be the responsibility of the Technical Monitoring Commission for the Plan.

So as to establish full and permanent communication and coordination among the public authorities, the autonomous regions may appoint interlocutors in order to channel information.

## 4.3. Validity and reviews of the plan

The National Plan for the Conservation of Photographic Heritage will apply for a period of ten years, with a review of the objectives achieved after five years. This will serve to identify organisational aspects or focuses of the plan which have not been properly formulated or developed, realigning them with the desired objectives

