

International Conference of Terra Mosana: Sustainable Digital Heritage

“What legal framework for digitized human remains ?”

The digitization of cultural heritage requires the elaboration of legal frameworks in order to determine several rights and obligations following that process, and this is particularly the case for the digitization of human remains. Specific legal and ethical questions arise when digitizing human remains, even more so if these human remains come from other geographical origins and might be subject to repatriation. This paper examines the legal framework for 3D-scanned human remains as well as for the digitized documents/archives related to these remains in the Belgian context. First, one may ascertain that, unless these 3D models or digitized archives are original in themselves, they are not protected under copyright law, nor subject to any other intellectual property rights, except for the software used (if sufficiently new and inventive there may be a patent, or if the coding follows an original writing in an artificial language, there may be copyright).

Second, the data of these scanned human remains are normally not subject to data protection legislation as personal data protection ceases after death, but there is some continuity of one's digital personality, implying a kind of objective legal protection. According to Belgian law the deceased himself or his/her heirs could also exercise a right to his/her image up to 20 years after death, which will however probably be time lapsed for most human remains.

Third, even if there would be no intellectual property right nor any data protection right linked to the digitized human remains, access to these digital data is not always easy nor desirable. Could access be refused because of ethical considerations linked to (the absence of) consent from the deceased or his/her family? When discussing the repatriation of human remains, the digital aspect is often neglected even though it may be fundamental for the community and/or country of origin to determine how these data may be used and accessed. This paper will rely on case studies coming from a larger research project: “HOME: Human Remains Origin(s) Multidisciplinary Evaluation” (2020-2022) focusing on historical collections of human remains in a network of seven institutional partners, including three museums, and funded by the Belgian Science Policy Office (BELSPO).