



RODIN 3D SCAN ACCESS CAMPAIGN

COSMO WENMAN

January 2017 — March 2021

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cosmowenman.com/BMAMuseeRodinThinker3DScan

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OVERVIEW

COSMO WENMAN

Cosmo Wenman is an artist specializing in 3D design, 3D scanning, and 3D printing applications. He is a design and fabrication consultant to artists and foundries seeking to incorporate digital techniques into their traditional workflows.

Wenman is also an open access activist. In 2019 he completed a successful 3-year [freedom of access campaign](#) to access and publish for the first time the Egyptian Museum of Berlin's 3D scan of the 3,000 year-old *Bust of Nefertiti*.

Wenman argues that museums and private collectors should make 3D scans of important public domain works freely available to the public. He maintains that with 3D scanning and related technologies, private collectors and museums have an unprecedented opportunity to become engines of new cultural creation. They should digitize their three dimensional collections and project them outward into the public realm to be adapted, multiplied, and remixed in new, unpredictable ways that will shape the arts for millennia. They should do this because the best place to celebrate great art is in a vibrant, lively, and anarchic popular culture.



In [The Archetypes Burst In](#), Wenman's 2016 presentation at the REAL2016 conference on 3D scanning, he contrasts museums' 19th-century practice of sharing their collections via plaster casts with modern museums' secrecy with their 3D data.

Wenman's open access-related projects are at cosmowenman.com

His professional services are at conceptrealizations.com

Wenman lives in Southern California.

Email: cosmo.wenman@gmail.com

SUMMARY

Auguste Rodin died in 1917. All his works passed into the public domain 70 years later; anyone can make copies of his sculptures without anyone's prior permission.

Shortly before his death, Rodin willed his estate to the French government, which created the Musée Rodin and assigned to it *droit moral* ("moral rights") in Rodin's oeuvre. By these rights the museum is permitted under French law to manufacture and sell a limited quantity of modern, posthumous bronze casts and represent them as "original" Rodin works. Musée Rodin earns considerable income from sales of such posthumous casts, as well as unlimited, simple reproductions.

Musée Rodin's moral rights apply only within French jurisdictions, and only in very limited circumstances. They do not impinge on the public domain status of Rodin's works, nor on the public's right to freely copy them, even within France. However, because Musée Rodin has a strong commercial interest in limiting the production of copies of Rodin's works, Wenman contends that the museum is motivated to commit [copyfraud](#) against the public—to overstep its rights and abuse its influence by creating extralegal difficulties for any artist or museum anywhere in the world that facilitated the manufacture of high-quality copies of Rodin's works.

An opportunity to test Wenman's theory appeared in 2014, when the Baltimore Museum of Art (BMA) [announced](#) it had produced a high-quality 3D scan of its over-life-size bronze cast of Rodin's *The Thinker*, and that it planned to make its scan freely available to the public as a public domain dedication. Despite its announcement, BMA never published its scan. Wenman wanted to find out why.

In 2017 when Wenman asked BMA for access to their *Thinker* scan, BMA told him he must first obtain permission from Musée Rodin. Musée Rodin denied his request. Both institutions offered inadequate, nonsensical, and evasive explanations of their policies limiting access to public domain works.

In November 2018, with the help of attorney at the Paris bar Alexis Fitzjean Ó Cobhthaigh, Wenman made a formal demand to Musée Rodin under French freedom of information laws, seeking copies of all Musée Rodin's 3D scans and all their correspondence with BMA.

When Musée Rodin refused to comply, Wenman and Fitzjean Ó Cobhthaigh brought the matter before the government's *Commission d'accès aux documents administratifs* (CADA). In June 2019, CADA published its first-of-its-kind [legal opinion](#), confirming that French freedom of information law requires Musée Rodin to provide its 3D scans to anyone who requests them.

Wenman and Fitzjean Ó Cobhthaigh subsequently discovered communication from Musée Rodin to the Ministry of Culture in which the museum described its fear of this matter becoming public, warned of "disastrous consequences" should the CADA opinion be confirmed, and confided its intention to ignore CADA's guidance.

When Musée Rodin indeed ignored CADA's guidance, in December 2019, Fitzjean Ó Cobhthaigh brought Wenman's case to court, filing a lawsuit in the Administrative Tribunal of Paris. The suit asks the court to enforce the CADA legal finding and compel the museum to produce its scans. In the year following, Musée Rodin remained silent, failing to respond to Wenman's lawsuit and refusing to speak about it with the press.

In February, 2021 the Administrative Tribunal of Paris directed the museum to present a defense. Wenman and Fitzjean Ó Cobhthaigh currently await the court to set a trial date.

The outcome of Wenman's case will affect every national museum in France, inform policies at institutions across the EU and around the world, and have interesting effects on the art market.

CHRONOLOGY

The documents on the following pages are shown in chronological order. However, the correspondence directly between Musée Rodin, the government's *Commission d'accès aux documents administratifs* (CADA), and the Ministry of Culture, **marked***, were only revealed to Wenman and his attorney months after they were exchanged privately between those organizations.

January 19, 2017 – October 17, 2018

Wenman corresponds with the Baltimore Museum of Art, Musée Rodin, and a member of the Conseil d'Etat overseeing a Ministry of Culture commission on 3D digitization policy.

September 2018

Maître Alexis Fitzjean Ó Cobhthaigh, attorney at the Paris bar and expert in French freedom of information law and procedure and specialist in open culture and civil liberties issues, agrees to represent Wenman in this matter *pro bono*.

November 8, 2018

Wenman's attorney, Fitzjean Ó Cobhthaigh, sends Musée Rodin a formal records request for a list of all its 3D scans, all the scans themselves, and, among other documents, all its correspondence with the Baltimore Museum of Art.

December 8, 2018

Musée Rodin responds, refusing to provide any of the documents requested, listing a number of irrelevant excuses.

December 24, 2018*

Musée Rodin *privately* asks the CADA for its legal guidance, asking about the validity of its objections to Wenman's documents request, thereby demonstrating that the museum did not have confidence in the positions and reasoning it had just offered Wenman's attorney.

February 7, 2019*

The CADA agency *privately* responds to Musée Rodin, informing it that *none* of the museum's objections were valid, that the requested documents were public records, and that French law required the museum to provide them to Wenman.

February 8, 2019

Wenman's attorney, Fitzjean Ó Cobhthaigh, responds to Musée Rodin's refusal, reiterating the documents demand, and refuting the museum's objections. This response also informs the museum that Wenman will formally engage the CADA and ask for its official legal opinion on the dispute.

February 8, 2019

Fitzjean Ó Cobhthaigh formally asks the CADA to review Musée Rodin's refusal, and to issue a public legal opinion. (This request was submitted through the CADA website, which is why there is no letter recorded here. It included Fitzjean Ó Cobhthaigh's correspondence with the museum, the museum's refusal, and a simple request that CADA review the dispute and issue its opinion on the matter.)

April 26, 2019*

The director of Musée Rodin *privately*, personally writes to the Ministry of Culture's Director General of Patrimony, warning him about Wenman's records request and "unexpected consequences of the French State's policy on openness and sharing of public data," and warning of "disastrous consequences" if the

CADA opinion in my favor should be confirmed. The director of the Musée Rodin also tells the Director General that she fears that the matter will be brought to court and become known to the public. Furthermore, before Wenman even formally engages CADA, the museum's director informs the Ministry of Culture that the museum intends to *ignore* CADA's legal guidance.

May 2, 2019*

CADA asks the museum for information about the dispute, having been formally engaged by Wenman's attorney.

May 21, 2019*

Musée Rodin responds to CADA, and warns of "disastrous consequences" of making its 3D scans available to the public, and explains it will not follow CADA's guidance. The museum also sends CADA a copy of its April 26, 2019 letter to the Ministry of Culture.

June 6, 2019

CADA publishes its official legal opinion, again rejecting all of Musée Rodin's objections, and reiterating that the museum is required by law to provide the documents in question.

July 8, 2019

Fitzjean Ó Cobhthaigh requests and receives from CADA copies of CADA's own correspondence with Musée Rodin, which are themselves public records. This novel FOIA-within-a-FOIA maneuver is how we came to obtain the documents above **marked ***; Musée Rodin's earlier, private request to CADA for guidance; CADA's private response telling the museum its reasoning was in error; the museum's announcement of its intent to ignore the CADA; and the museum's letter to the Ministry of Culture's Director General of Patrimony.

November 15, 2019

Fitzjean Ó Cobhthaigh writes to Musée Rodin, referring to the CADA's official opinion in support of Wenman's position, and noting the lack of response from the museum. Fitzjean Ó Cobhthaigh offers the museum one week to finally produce the requested documents before filing suit. (The museum does not respond.)

December 9, 2019

Fitzjean Ó Cobhthaigh files suit on Wenman's behalf in the Administrative Tribunal of Paris.

December 12, 2019

Wenman writes to the Baltimore Museum of Art alerting it to the CADA opinion and his lawsuit which seeks, in part, copies of any correspondence between BMA and Musée Rodin. Wenman encourages BMA to reconsider its unwarranted deference to Musée Rodin.

February 8, 2021

More than a year having passed with the museum failing to respond to Wenman's lawsuit, the Administrative Tribunal of Paris directs Musée Rodin to present a defense.

March 5, 2021

Musée Rodin files its *Mémoire en défense* with the Court and makes several significant concessions.

Wenman and Fitzjean Ó Cobhthaigh are currently awaiting the court to set a hearing date.

CORRESPONDENCE

Correspondence between Wenman, the Baltimore Museum of Art, Musée Rodin, and a representative of the Conseil d'Etat overseeing Ministry of Culture misisions on related policy.

[Jump to correspondence with Musée Rodin](#)

[Jump to correspondence with BMA, Musée Rodin, and Ministry of Culture](#)

Correspondence with Baltimore Museum of Art:

On January 19, 2017 I called the Baltimore Museum of Art's Rights & Reproductions department and talked briefly with Colleen Hollister about accessing their *Thinker* scan. I followed up with this email:

January 19, 2017, from Cosmo Wenman to BMA's Rights & Reproductions Department

Subject: Digital asset request: 3D scan of Rodin's "Thinker" sculpture

Hi Colleen,

Here is BMA's 2014 announcement about the 3D scan that I am seeking:
<http://blog.artbma.org/2014/07/3d-scanning-auguste-rodins-the-thinker/>

It explains that the scan file was intended to be made available to the public as a public domain work. And the BMA's gift shop explains that its own reproductions were made with the scan, so we know that the scan was actually produced, and is already in a ready-to-use state.

But as far as I can tell, the scan is not yet up on BMA's collection.artbma.org site.

My understanding is that the BMA personnel who were involved in this project, Nancy Proctor and Suse Cairns, are no longer at BMA, but perhaps they can advise you on who at BMA has this digital asset if it's not already under your department's control.

If it's not to be found in BMA's possession, I'm sure that the scanning contractor, Direct Dimensions, still has the original files and would be able to provide them to you.

Please let me know what you find.

Thanks,
 - Cosmo

January 24, 2017 Rights & Reproductions wrote:

Dear Cosmo,

I am currently checking into your request, but will need some more information to take to the appropriate departments. Can you tell me more about your intended use? You mentioned on the phone a commercial use, but your email here implies you're simply curious and looking for more information. If you do have a specific use in mind, can you send me as many details as you have about your use and final product?

Thank you,
Colleen Hollister

January 24, 2017 at 9:05 AM, Cosmo Wenman wrote:

Hi,

I am currently producing seven small bronze casts of a creative adaptation of Rodin's *The Thinker*. I'd like to use the BMA's scan of that work as my design's foundation. The bronzes will be approximately ten inches tall. They would not [be] replicas; they will have altered features and new elements, and would not be mistaken for replicas.

However, I am also asking about the scan's status because I would like to see it become available to the general public as a public domain work—at no cost and without any usage restrictions—which was BMA's original intention for the scan according to its 2014 announcement.

Rodin's works are public domain under US law, which is how the BMA is able to make and sell its own *Thinker* replicas. I want the general public to be able to make their own replicas and adaptations too. So it was great news when BMA announced its plans to make its scan freely available to the public.

If those plans have been abandoned or reconsidered, I would very much like to know the thinking behind the change of heart.

Thanks,
- Cosmo

January 26, 2017 Cosmo Wenman wrote:

Hi Colleen,

Aside from the broader question of BMA making the Thinker scan available to the public, if I can use the scan myself for my current project, is it possible that I might have it this week?

The 3D data file type is likely to be ".obj" or ".stl". (There may also be associated color data in the form of .jpg or .png image files, though that is not likely.)

Thanks,
- Cosmo

January 26, 2017 at 11:32 AM, Rights & Reproductions wrote:

Dear Cosmo,

I'm afraid this week won't be possible -- we release this material on a case-by-case basis. I'll have to set up a meeting with the curatorial staff to discuss this particular use, and that might take a few days. I'm also of course checking into the history of this project and any potential broader use -- but like I said, right now we're releasing it on a case-by-case basis.

Thank you very much for the details you've sent on your use and final product -- I'll definitely be in touch as soon as I can, certainly by next week.

Best,
Colleen

January 31, 2017 Rights & Reproductions wrote:

Dear Cosmo,

I've spoken with our curatorial staff on this matter and they've told me any future uses of this scan will need to be cleared by the requester first. The appropriate channel should be through the Musée Rodin. More information can be found here <http://www.musee-rodin.fr/en/musee-rodin/respecting-moral-right>

Once you've secured permissions for this use, contact us again to receive access to the 3d scan.

Thank you,
Colleen Hollister

January 31, 2017 Cosmo Wenman wrote:

Hi,

Which curator should I contact for more information on how they reached this decision about my specific request, and about BMA's previous plans to make the scan available to the public?

Thanks,
- Cosmo

January 31, 2017 Rights & Reproductions wrote:

Cosmo,

You can contact the European Painting and Sculpture department: European@artbma.org

Best,
Colleen Hollister

February 1, 2017 Cosmo Wenman wrote:

Hi Colleen,

BMA's website does not list staff. Can you please let me know who is the head of the European Painting and Sculpture department?

I'd like to know who I'm writing to and that they're the right person.

Thanks,
- Cosmo

February 1, 2017 Rights & Reproductions wrote:

Cosmo,

The address I gave you will take you to the right department. Our departments are small and easy to reach via the email addresses on the website. The head curator of European Painting and Sculpture is Katy Rothkopf.

Again, please contact the Musee Rodin to clear your use; if cleared, we would be glad to supply the scan.

Colleen

February 1, 2017 Cosmo Wenman wrote:

Dear Ms. Rothkopf,

I recently made a request to the BMA's Rights & Reproductions department to use BMA's 3D scan of *The Thinker*. Your colleagues there have informed me of your department's decision that I would need to first clear my intended use of the scan with Musée Rodin.

It's not clear to me what BMA would have me ask of Musée Rodin, or why BMA would defer to them on this matter. Can you please clarify if there is some arrangement between Musée Rodin and BMA regarding the scan that I should refer to in my query to Musée Rodin? Does Musée Rodin own the scan? Is it aware that the scan exists?

While Musée Rodin has a narrow legal right to produce posthumous casts that are marketed as "original" Rodins, it is not in a position to "clear" anyone's other uses of Rodin's works, as all copyrights in Rodin's works expired decades ago. Musée Rodin doesn't perform any usage-clearing function and it doesn't pretend to, as everyone knows there is no need for it because all of Rodin's works are in the public domain throughout the world. For example, BMA did not need anyone's permission to make and sell its own *Thinker* replicas.

Can you please clarify Musée Rodin's role in this matter, and what you are asking me to request of it? Permission to access BMA's scan? Permission to make use of a public domain work?

If for some reason BMA did ask Musée Rodin for permission to make its own replicas, may I have a copy of BMA's request so that I may use it as a template for my own?

Thank you,

- Cosmo

February 3, 2017 European Painting & sculpture wrote:

Dear Mr. Wenman,

Thank you for contacting The Baltimore Museum of Art. Katy Rothkopf is out of the country, and will not return to the Museum until the end of next week. At that time, I will forward your correspondence to her.

With many thanks,

Laura
Curatorial Assistant
Departments of Conservation and European Painting and Sculpture

February 20, 2017 Cosmo Wenman wrote:

Hi,

Please let me know if you will be able to respond to my request for clarification soon. I would like to move forward with my request and access the *Thinker* scan as soon as possible.

Thank you,

- Cosmo

March 6, 2017 Cosmo Wenman wrote:

Dear Ms. Rothkopf,

I would appreciate any clarification you can offer about the clearances your department would have me seek from Musée Rodin. Please see my questions below. Also, please let me know if there is someone in particular I should contact there.

Thank you,
- Cosmo

March 15, 2017 Cosmo Wenman wrote:

Dear Ms. Rothkopf,

I would appreciate any clarification you can offer about the clearances your department would have me seek from Musée Rodin. Please see my questions below. Also, please let me know if there is someone in particular I should contact there.

Thank you,
- Cosmo

March 16, 2017 Rights & Reproductions wrote:

Dear Cosmo,

Rodin donated all his works and rights to the French government. The Musée Rodin, therefore, stands in stead of an estate; we and other museums require requesters to clear their use of images through copyright holders or estates, and this is a similar process. The Musée Rodin takes their "moral right" very seriously, and as a cultural institution ourselves, we would like to respect that.

We've instituted this policy for all users of the scan; it is not specific to your use. At our original conversation I had incomplete information, so I apologize for any confusion that may have ensued.

As for what you should include in your permissions request, I can tell you that when the BMA requests permission to use an image, we include all specific details of the final product: print run, pricing, publisher, authors, title, how the image will be used (in terms of size, color, interior or cover). These are of course details for a publication, but you can do similarly with your product: how many pieces you will be producing, when and where you will be producing them, what your purpose is in producing them, how you will be producing them and of what materials. If the pieces are commercial, to be sold where and to whom, when and for how much, how long they will be made available. If they are not for profit, to whom they will be distributed and on what occasion. You see what I'm getting at. You will need to know the specific use and end product, as most institutions, including ours and the Musée Rodin, do not issue blanket permissions.

At the Musée Rodin, please contact:

Clémence Goldberger
goldberger@musee-rodin.fr

The following web page might be also helpful: <http://www.musee-rodin.fr/en/musee-rodin/respecting-moral-right>

When you receive permission, please contact me with the same details about your production that you gave the Musée Rodin, and I can draw up the paperwork and determine appropriate fees.

Thank you,

Colleen Hollister
 Image Services and Rights Coordinator
 Baltimore Museum of Art

March 17, 2017 Cosmo Wenman wrote:

Hi Colleen,

Thank you for your response.

This policy seems to be a complete reversal of BMA's forward-thinking [2014 plans](#) to make its 3D scan of *The Thinker* freely available to the public as a public domain dedication.

Can you please tell me who was responsible for forming those plans, and who was responsible for changing them? And if Musée Rodin weighed in? I would like to ask them some questions about how this all came about.

Thank you,
- Cosmo

March 17, 2017 Rights & Reproductions wrote:

Dear Cosmo,

Our policy is not debatable. Until you provide a permission agreement from the Musée Rodin, we don't have anything else to discuss.

Sincerely,
Colleen Hollister

March 17, 2017 Cosmo Wenman wrote:

Hi Colleen,

I didn't mean to be confrontational. I certainly don't question BMA's right to set whatever policies it chooses. I've made other arrangements to obtain a scan, and I have abandoned my own plans to use BMA's scans. I'm not looking for an exception or policy change at this time.

But I am looking for insight into how the policy was made. I am an advocate for museums making their 3D scans of public domain works available to the public, and I frequently speak with artists and GLAM people who make policy on these matters, and we are all very interested in how different institutions arrive at these important decisions. BMA obviously thought it was worthwhile to announce its plans in 2014. The decision to reverse course is of public interest too.

Is there someone who was involved in making these decisions you can put me in touch with who would be able to shed some light on what happened to BMA's 2014 plans for the scan?

Thank you,
- Cosmo

April 6, 2017, Cosmo Wenman wrote to Anne Mannix Brown, Director, Communications and Marketing at BMA

Dear Ms. Brown,

I am an advocate for museums making their 3D scans of public domain works available to the public. I speak frequently with artists who make use of such scans, and with GLAM people who set policies on making them available to the public. We are all very interested in how different institutions craft their policies on sharing these important resources.

In 2014 the Baltimore Museum of Art announced that it was going to make its 3D scan of Rodin's The Thinker available to the public as a public domain dedication, for free and without restrictions on its use. BMA announced that it was "looking forward to seeing how it might be used by scholars and the public all over the world." (see: <http://blog.artbma.org/2014/07/3d-scanning-auguste-rodins-the-thinker/>)

In early 2017 I sent a request to BMA's Rights & Reproductions department, asking for access to that scan. I also asked why BMA had not yet made the scan freely available to the public, and why it had apparently abandoned its plan to do so.

Colleen Hollister in the Rights & Reproductions department informed me that Katy Rothkopf--curator of the European Painting & Sculpture department--had determined that I would need to obtain permission from Musée Rodin in Paris before BMA would allow me to access the scan. Also, that I would need to give BMA a detailed account of my intended use of the scan and pay a licensing fee.

I have been unable to get clarification from Ms. Hollister or Ms. Rothkopf on how or why BMA came to change its original plan to freely share the scan. (I've attached my correspondence with Ms. Hollister, and my repeated attempts to contact Ms. Rothkopf, for your reference.)

BMA's original plan to freely share its 3D scan of one of the most famous sculptures in the world was of public interest, and so is BMA's change of heart. I hope you can shed light on how this came about. Would you please let me know:

- Who was responsible for BMA's original plan to share the scan?
- Why and when was that plan abandoned?
- Who at BMA made that decision?
- Did Musée Rodin intervene in this matter?
- Is Musée Rodin aware of the existence of BMA's scan?
- Does BMA dispute that Rodin's works are in the public domain?
- Did BMA obtain permission from Musée Rodin before producing its own Thinker replicas, which it sells on its website?
- Have any third parties made use of BMA's scan? (I don't need to know who--I simply want to know if anyone outside BMA has made use of the scan or if it is in a state of disuse.)

Thank you very much.

- Cosmo

April 6, 2017, Anne Mannix-Brown wrote:

Thank you for contacting me. I am out of the office during the week of April 2. If you need immediate assistance, please call 443-573-1870 and ask for Jessica Novak or Sarah Pedroni. Otherwise, I'll follow-up with you upon my return.

Best regards,
Anne

April 18, 2017, Cosmo Wenman wrote:

Hi,

Will you be able to respond to my inquiry?

Thanks,
- Cosmo

April 18, 2017, Anne Mannix-Brown wrote:

Dear Mr. Wenman,

My apologies for the delay in getting back to you. I am looking into this issue for you and will respond as soon as I can.

Best regards,
Anne

May 16, 2017, Cosmo Wenman wrote:

Hi,

Will you be able to respond to my inquiry soon?

Thanks,
- Cosmo

May 16, 2017, Anne Mannix-Brown wrote:

Cosmo,

I'm sorry this has taken longer than I expected. I have been out of the office since late March caring for my mother who died two weeks ago and then I had to go on a business trip last week. I promise I'll get to this as soon as I can, but it will probably not be sooner than next week.

Anne

May 25, 2017, Cosmo Wenman wrote:

Hi,

I have been seeking information about how BMA crafted (and reversed) its policy regarding its *Thinker* scan for 5 months.

Will you be able to provide the information I have requested by the end of this week?

If that's not going to be possible, will you please apprise BMA's director and board chair of my inquiries and let them know I will be contacting them about this matter?

Thank you,

- Cosmo

May 26, 2017, Anne Mannix-Brown wrote:

Dear Mr. Wenman,

I'm sorry this has been such a source of frustration for you, for such a long time.

The issue regarding the release of the 3D scan of *The Thinker* came from the curatorial department, who knew of concerns raised by some French artists' estates that other staff were not aware of when the announcement was made in 2014. That is why we are deferring the decision to the Musée Rodin. If the use is approved by them, we will release the data to you and others who request it and obtain the same approval.

Sincerely,

Anne Brown

May 26, 2017, Cosmo Wenman wrote:

Hi,

I was looking for more specific responses to the questions I sent you.

Please let BMA's director and board chair know I will be contacting them about this important policy matter, and seeking their comments on my questions.

Thank you.

- Cosmo

Correspondence with Musée Rodin:

July 5, 2017, from Cosmo Wenman to Musée Rodin

To: goldberger@musee-rodin.fr
 From: Cosmo Wenman
 Cc: European Painting & Sculpture <European@artbma.org>, Rights & Reproductions <Rights@artbma.org>
 Subject: Baltimore Museum of Art's Thinker 3D scan

Madame Goldberger,

I would like to use the Baltimore Museum of Art's 3D scan of Rodin's *The Thinker*. BMA tells me that they will allow me to use their *Thinker* 3D scan if Musée Rodin grants me permission. They gave me your name and email, and told me I should contact you about this matter.

May I please have Musée Rodin's permission to use BMA's *Thinker* 3D scan?

For your reference, this is the 3D scan mentioned in this 2014 BMA announcement, <http://goo.gl/9wmCT5> and the same scan BMA uses to make the reproductions it sells in its gift shop: <http://goo.gl/GUwmnc>. If you need to confer with BMA about this matter, I am informed that Katy Rothkopf, curator of BMA's European Painting and Sculpture department (cc'd in this message), is responsible for this new access policy which now requires Musée Rodin's cooperation.

Thank you,

Cosmo Wenman

Cosmo Wenman Incorporated / cosmo.wenman@gmail.com / cosmowenman.com

July 5, 2017, from Musée Rodin to Cosmo Wenman

To: Cosmo Wenman
 From: goldberger@musee-rodin.fr
 Cc: BMA European Painting & Sculpture, BMA Rights & Reproductions
 Subject: Re: Baltimore Museum of Art's Thinker 3D scan

Dear Cosmo Wenman,

what use will you do with this scan of the Thinker ?

Please give us any details, is it a personal or professional use ? Are you a company or an individual ?

Thank you
 Clémence Goldberger
 Chef du service communication, publics et mécénat
 du [musée Rodin](http://musee-rodin.fr)
 T : [+33 1 44 18 61 86](tel:+33144186186)

July 5, 2017, from Cosmo Wenman to Musée Rodin

To: goldberger@musee-rodin.fr
From: Cosmo Wenman
Cc: BMA European Painting & Sculpture, BMA Rights & Reproductions
Subject: Re: Baltimore Museum of Art's Thinker 3D scan

Mme Goldberger,

My corporation would use the BMA's scan for professional, commercial use; to make bronze reproductions in a variety of sizes, in unlimited quantities.

To avoid any infringement of Musée Rodin's moral rights under French law, they would be manufactured, advertised, and sold outside France, and they would not be advertised as "original" Rodin works. My use would therefore be consistent with the public domain status of Rodin's works.

Thank you,

Cosmo Wenman

Cosmo Wenman Incorporated

July 20, 2017, from Cosmo Wenman to Musée Rodin

To: goldberger@musee-rodin.fr
From: Cosmo Wenman
Cc: BMA European Painting & Sculpture, BMA Rights & Reproductions
Subject: Re: Baltimore Museum of Art's Thinker 3D scan

Madame Goldberger,

Will you be able to give me Musée Rodin's response to my request soon?

Thank you,

Cosmo Wenman

Cosmo Wenman Incorporated

July 21, 2017, from Musée Rodin to Cosmo Wenman

To: Cosmo Wenman
From: goldberger@musee-rodin.fr
Cc: BMA European Painting & Sculpture, BMA Rights & Reproductions
Subject: Re: Baltimore Museum of Art's Thinker 3D scan

Mr Wenman,

The answer is negativ to your request.

If you want explanations feel free to contact Mr Cyril Duchene, duchene@musee-rodin.fr business manager of the museum. He is on vacation until august but should be able to discuss the project with you.

Best regards
 Clémence Goldberger
 Chef du service communication, publics et mécénat
 du [musée Rodin](http://musee-rodin.fr)
 T : [+33 1 44 18 61 86](tel:+33144186186)

July 21, 2017, from Cosmo Wenman to Musée Rodin

To: goldberger@musee-rodin.fr
From: Cosmo Wenman
Cc: BMA European Painting & Sculpture, BMA Rights & Reproductions
Subject: Re: Baltimore Museum of Art's Thinker 3D scan

Madame Goldberger,

That is disappointing. I will contact Mr. Duchene soon for more information.

Thank you,

Cosmo

Cosmo Wenman Incorporated

February 6, 2018, from Cosmo Wenman to Musée Rodin

To: duchene@musee-rodin.fr

From: Cosmo Wenman

Cc: Clémence Goldberger, BMA European Painting & Sculpture, BMA Rights & Reproductions

Subject: Re: Baltimore Museum of Art's Thinker 3D scan

M. Duchene,

In July 2017 I requested permission from Musée Rodin to use the Baltimore Museum of Art's 3D scan of *Le Penseur*. My intention was to use the 3D scan to make bronze reproductions for sale outside France.

Musée Rodin's Mme Goldberger denied my request, and referred me to you for an explanation. (Our correspondence is included below.)

Can you please let me know why Musée Rodin would deny me access to the Baltimore Museum of Art's digital copy of a public domain work?

Was there a legal basis for this response, or was it a commercial decision?

Will Musée Rodin please reconsider the matter, and grant me the permission I seek?

Thank you,

Cosmo Wenman

Cosmo Wenman Incorporated

March 15, 2018, from Cosmo Wenman to Musée Rodin

To: duchene@musee-rodin.fr

From: Cosmo Wenman

Cc: Clémence Goldberger, BMA European Painting & Sculpture, BMA Rights & Reproductions

Subject: Re: Baltimore Museum of Art's Thinker 3D scan

Dear Mr. Duchene, Ms. Goldberger,

Will anyone at Musée Rodin be able to provide an explanation for Musée Rodin's refusal to allow me to access BMA's *Thinker* 3D scan?

I am particularly interested in knowing if Musée Rodin claims a legal right, based in *droit moral*, to prevent my access to another institution's digital copy of a public domain work.

Any insights into Musée Rodin's decision would be very helpful.

Thank you,

Cosmo Wenman

Cosmo Wenman Incorporated

March 30, 2018, from Cosmo Wenman to Hugues Herpin, Musée Rodin's Chef du service des affaires stratégiques et événementielles éditions originals de bronzes

To: herpin@musee-rodin.fr
From: Cosmo Wenman

Subject: Musée Rodin + le domaine public

Dear Mr. Herpin,

My friend Charles Cronin gave me your contact information, and tells me you are responsible for Musée Rodin's intellectual property-related policies. I hope you can help me with a matter relating to the public domain.

Musée Rodin is preventing me from accessing the Baltimore Museum of Art's 3D scan of The Thinker, which, as you know, is a public domain work. I have been seeking an explanation of BMA's and Musée Rodin's policies for over one year, yet no one has been willing to explain this strange situation.

BMA referred me to your colleague Clémence Goldberger, who denied my request to access BMA's scan. Ms. Goldberger referred me to Cyril Duchene for an explanation. But they both now ignore my inquiries.

From my perspective, it appears that Musée Rodin is unjustly--and knowingly--preventing public access to a copy of a public domain work. But perhaps this is the result of a simple misunderstanding.

May I please send you a few questions about this important matter? (In English?) I would also be happy to send you my previous correspondence with BMA and Musée Rodin.

Thank you,

Cosmo Wenman

Cosmo Wenman Incorporated

April 10, 2018, from Hugues Herpin to Cosmo Wenman

To: Cosmo Wenman
From: herpin@musee-rodin.fr

Monsieur,

Pour faire suite à votre email du 30/03, je vous informe qu'une mission du Ministère de la Culture est actuellement en cours sur le sujet que vous évoquez. Le musée Rodin en tant que musée national est sous tutelle de ce même ministère, à ce titre, il doit attendre les conclusions de la mission en cours avant de se prononcer sur des questions liées à l'utilisation des scans 3D.

Je vous prie d'agréer, Monsieur, l'expression de mes salutations distinguées.

Hugues Herpin

[Translation via Google translate]

Sir,

In response to your email of 30/03, I inform you that a mission of the Ministry of Culture is currently underway on the subject you mention. The Rodin museum as a national museum is under the supervision of this same ministry, as such, it must wait for the conclusions of the current mission before deciding on issues related to the use of 3D scans.

Please accept, Sir, the expression of my best regards.

Hugues Herpin

April 10, 2018

Dear Mr. Herpin,

Thank you for your response.

Is there any information about this mission you can share with me? Is the Ministry making any accommodations for public comments?

Would you have any contact information for the Ministry participants (names, emails, etc.) you can send me?

I would very much like to add my comments to this process and follow its deliberations.

Thank you,

Cosmo

April 25, 2018

Catherine Chevillot
Directrice, Musée Rodin
chevillot@musee-rodin.fr

Christopher Bedford
Director, Baltimore Museum of Art
cbedford@artbma.org



Madame Chevillot, Mr. Bedford,

I am an artist with an interest in digitization, the public domain, and open access. I frequently work with other artists and journalists with similar interests, and with GLAM professionals who shape their organizations' access policies.

Will you both please help me and the interested public understand important decisions the Baltimore Museum of Art and Musée Rodin have made regarding BMA's 3D scan of *The Thinker*?

In 2014 BMA announced that it had produced a high-quality 3D scan of its 1904-1917 cast of *The Thinker*, which, as you know, is in the public domain. BMA explained that it was going to make its 3D scan freely available to the public as a public domain dedication. BMA's announcement is here: <https://goo.gl/qLdasq>

Freely sharing a 3D scan of such an important and beloved public domain work would have put BMA at the forefront of museum digitization efforts around the world. Unfortunately, sometime after its announcement, BMA reversed its decision. BMA never published its 3D scan or explained its reversal.

In January 2017 I asked BMA for access to its 3D scan of *The Thinker*. BMA's reproductions department told me that I must first obtain permission from Musée Rodin. This was a surprise to me.

Aside from making vague references to Musée Rodin's *droit moral*, BMA has been unwilling to explain why it would be necessary to seek anyone's permission to access a copy of a public domain work. BMA informed me that its decision was made by BMA's Senior Curator for European Painting & Sculpture, Katy Rothkopf. Ms. Rothkopf did not respond to my requests for clarification. BMA's reproductions department insisted that I seek permission from Musée Rodin, and referred me to Musée Rodin's communications chief, Clémence Goldberger.

When I asked Ms. Goldberger for permission to access BMA's 3D scan, she asked me why I wanted it. I told her I wanted to use it to make bronze copies for sale outside France. She denied my request and referred me to Musée Rodin's business manager, Cyril Duchene, for an explanation. Mr. Duchene did not respond to my requests for explanation; neither he nor Ms. Goldberger have responded to my subsequent inquiries.

No one, including Musée Rodin, has any legal right in copyright or *droit moral* to prevent BMA from publishing copies of *The Thinker*. Musée Rodin's limited moral rights notwithstanding, French courts recognize that Rodin's oeuvre, including *The Thinker*, is in the public domain. Yet BMA and Musée Rodin both are acting, in error, as though Musée Rodin has total, exclusive, world-wide control over copies of this public domain work.

From my point of view, it appears that BMA may be deferring to Musée Rodin as a courtesy to Musée Rodin, and confuses the matter with irrelevant references to *droit moral*. In turn, Musée Rodin appears to be unjustly advancing its commercial interests by taking advantage of BMA's deference and misguided policy. BMA is enabling Musée Rodin to prospectively deny the public access to digital and physical copies of a public domain work in a way that greatly exceeds Musée Rodin's legal rights, compromises both institutions' missions, and harms the public domain.

In April of this year, Musée Rodin's Hugues Herpin kindly responded to my most recent plea for assistance. Mr. Herpin informed me that the Ministère de la Culture is conducting a commission that will issue guidance to French national museums regarding the management of 3D records, and that Musée Rodin must wait for the commission's conclusions before deciding on issues relating to 3D scans. However, the events I have recounted here pre-date the recent formation of this commission; Musée Rodin *already* decided to refuse my request without hesitation. Musée Rodin already has its own policy, and it is not transparent.

As my own experience demonstrates, French museums' policies have a direct impact on public access to digital copies of innumerable three-dimensional public domain works around the world. The extent to which even the most narrowly defined intellectual property-related rights can be improperly wielded against the public domain is a serious and timely issue. Before it issues new directives to French national museums, the Ministère de la Culture should have a complete view of the actual extralegal dynamics, incentives, and tacit, informal agreements that obstruct public access to digital copies of three-dimensional public domain works.

I include on this letter Mr. Olivier Japiot at the Conseil d'Etat, who presides over the Ministère de la Culture's *Mission du CSPLA sur l'élaboration d'une charte de bonnes pratiques en matière d'impression 3D*: <https://goo.gl/Hfe556> This commission, policy makers around the world, and the public, would all benefit from a full account of BMA's and Musée Rodin's decisions in this matter to-date.

To this end, will BMA and Musée Rodin please clarify:

- Do BMA and Musée Rodin dispute that *The Thinker* is in the public domain?
- Do BMA and Musée Rodin believe that Musée Rodin has a legal right to *prospectively* prevent public access to, and copying of any public domain work? Within France and abroad?
- Is there a legal basis for Musée Rodin to deny anyone permission to access and copy BMA's 3D scan of *The Thinker*? Is there a contract between the two institutions to this effect? If so, may I see it?
- Was Musée Rodin involved in BMA's decision to abandon its 2014 plans to make its 3D scan available to the public?
- Did BMA seek Musée Rodin's permission before producing and selling its own 3D scan and 3D print-derived copies of *The Thinker* in its gift shop?
- Why did BMA stop advertising the sale of its own 3D scan-derived copies of *The Thinker* sometime after my inquiries began?
- Was Musée Rodin's negative response to my request for access the result of commercial considerations, to prevent competition?
- Does Musée Rodin use BMA's 3D scan to produce any of its own reproductions? (Including this one, for example, which has obvious defects typical of low-quality 3D printing: <https://goo.gl/Rrp3BB>)
- If anyone else produced or sold Rodin copies of comparable low-quality, would Musée Rodin consider that low quality to violate the integrity of the work, and to be an infringement of its moral rights?
- Does Musée Rodin currently have 3D scans of any other works? If so, which ones?

- Are Musée Rodin’s 3D scans public records, subject to disclosure under freedom of information laws?
- Is Musée Rodin aware of any Rodin-related 3D scans held by other organizations? If so, which works and organizations?
- Has Musée Rodin been involved in any other museums’ or collections’ decisions regarding the publication of scans of any other Rodin-related works? If so, which museums and collections, and which works?
- Would Musée Rodin seek to prevent BMA from freely publishing its 3D scan to the public? Or seek damages from, or otherwise punish or prosecute BMA or any other organization or individual for doing so?

I have been asking BMA and Musée Rodin to clarify this situation for more than 14 months. Both institutions’ reluctance to account for their policies is troubling.

Something here is broken, and I ask you both to help me repair it. Will you both please look into this important matter and respond to my questions? Finally, will you please make BMA’s 3D scan of *The Thinker* freely available to the public?

Thank you,



Cosmo Wenman

Cc: Olivier Japiot
Conseiller d’Etat, Conseil d’Etat
olivier.japiot@conseil-etat.fr

P.S. All my correspondence with BMA and Musée Rodin is available for review at
<http://cosmowenman.com/BMAMuseeRodinThinker3DScan>

P.P.S. For my view of the larger historical context and opportunities at stake at this technological moment, please see my presentation, *The Archetypes Burst In*, https://youtu.be/IZCoDV_TzVI

April 25, 2018, from Cosmo Wenman to Olivier Japiot, Conseil d'Etat

Dear Mr. Japiot,

I have sent you a letter concerning the Baltimore Museum of Art's 3D scan of *The Thinker* and Musée Rodin.

Your current commission on 3D printing appears to be focused on protecting rights-holders against abuses by the public. Before you make recommendations that may expand intellectual property-related rights, or constrain the public's access or use of new technologies, I sincerely hope your commission will also consider current and potential abuses *by* right-holders *against the public*.

Serious harm can already be done to the public domain through informal, extralegal suasion, as the BMA case demonstrates. Many institutions already overstep their bounds, to the detriment of the public domain. The damage can be much worse if rights-holders are granted yet more power.

I imagine that you will hear many compelling testimonials from organizations that have a stake in your commission's report. But I also imagine that it may be difficult to find real-world accounts of the way their policies are actually implemented--the experiences of the public that many of those same organizations are meant to serve; independent artists and the public who simply love art and want to access it.

I hope you will include my experience in your commission's deliberations, and that you will contact me if I can be of any assistance. (I have had other, similar--and worse--experiences in other countries; most notably with the Prussian Cultural Heritage Foundation and their 3D scan of Nefertiti, which I would be happy to share with you.)

Sincerely,

Cosmo Wenman

April 26, 2018, from Olivier Japiot to Cosmo Wenman

Dear Mr. Wenman,

Thanks for your message and letter.

I'll come back to you within a few weeks after discussing with the Musée Rodin and the ministry of culture.

Best regards,

Olivier Japiot

May 24, 2018, from Cosmo Wenman to Olivier Japiot

Dear Mr. Japiot,

Can you please tell me if you have had an opportunity yet to discuss my letter with Musée Rodin? Is there anything you can share with me about their view of the *Thinker* 3D scan situation and my inquiries?

Is there anything you tell me about how the Ministry of Culture views this matter, even if only preliminarily? Is there a possibility that the Ministry will issue guidance to the Musée specifically on how to respond to me?

I am also curious if you are considering contacting the Baltimore Museum of Art to see how Musée Rodin may have influenced their decisions.

At some point I would like to follow up with both organizations, and eventually direct journalists' attention to this matter. But I would like to see if anything results from your inquiries first.

Thank you very much,

Cosmo

June 4, 2018, from Olivier Japiot to Cosmo Wenman

Dear Mr. Wenman,

The question you've raised is not so easy to solve.

I'll come back to you before the end of this month.

Best regards,

O. Japiot

June 5, 2018, from Musée Rodin's Hughes Herpin Cosmo Wenman

[Translated from French via Google]

Sir,

Further to your email from 30/03 and 25/04 I confirm that a mission of the Ministry of Culture is currently underway on the subject that you mention. The Rodin Museum is a national museum under the supervision of the Ministry. As such, it should await the conclusions of the mission in progress before deciding on issues relating to the use of 3D scans.

Please accept, sir, the assurances of my highest consideration.

Hughes Herpin

June 6, 2018, from Cosmo Wenman to Hughes Herpin/ Musée Rodin and BMA

Dear Mr. Herpin,

Thank you for your reply.

My request is that Musée Rodin and BMA answer my questions *before* the Ministry's commission issues its report. The commission and the public need to be informed beforehand, in order to evaluate appropriate policy options.

Musée Rodin and BMA surely already know with certainty the answers to many of my questions. For example, does Musée Rodin dispute that *The Thinker* in the public domain? Did Musée Rodin intervene in BMA's plans to publish its 3D scan? Did BMA seek Musée Rodin's permission to produce and sell its own *Thinker* copies? Does Musée Rodin use BMA's *Thinker* scan to make its own gift shop copies? Did Musée Rodin refuse my request in order to prevent commercial competition? Does Musée Rodin have 3D scans of other Rodin works?

These questions and others in my letter are direct and retrospective, regarding facts already known to Musée Rodin. These facts have important implications for future policies that will affect the public and institutions around the world. Musée Rodin should make these facts available for evaluation by policy-makers and the public now, not later.

Please provide whatever answers you can at this time, so we can all be fully informed as we move forward to a resolution.

Thank you,

Cosmo

July 19, 2018, from BMA to Cosmo Wenman

[BMA sent this email after I left a voicemail for Christopher Bedford and spoke with his assistant, Alexa Milroy, asking to speak with him]

Mr. Wenman:

I wanted to reach out and close the loop on your correspondences with the BMA. First, I apologize that I cannot answer all of the questions that you directed to Mr. Bedford in April. Additionally, I want you to know that the information my colleague Anne Brown conveyed to you in May 2017 has not changed: we are deferring the use of the 3D scan to the Musée Rodin. Please know that if you obtain their approval, we will be happy to release the scan.

What I can tell you is that the blog post from 2014 was posted in absence of any BMA policy in regards to 3D scans and that later discussions clarified that scan requests should be treated as any art object reproduction request is treated. BMA staff did not make this decision under the instruction of Musée Rodin, but rather in keeping with standard reproduction requests made between cultural institutions, artist estates, artist studios, etc. all of the time.

When the BMA requests to reproduce an artwork in promotional, salable, and educational materials, we include all of the details of the final product, including print runs or placements, any alterations (cropping, overprinting, etc) that we would be making, our context or purpose, and where and how the reproductions will be created. And, sometimes our requests are not approved.

I appreciate the rigor with which you've approached the issue of the use of this scan. And I hope I've been able to provide a bit of clarity.

All my best,

Melanie

--

Melanie Martin
Chief Innovation Officer
The Baltimore Museum of Art
<https://artbma.org>

August 13, 2018, from Cosmo Wenman to Christopher Bedford/BMA

Dear Mr. Bedford,

BMA appears unwilling to acknowledge the point I've raised; *The Thinker* is in the public domain. No one's permission is needed to make or distribute copies of it.

Musée Rodin's moral rights don't change this fact, not even in France. Musée Rodin knows full well there is no legal basis for it to prevent anyone—including BMA and the community it serves—from reproducing Rodin's works.

By referring *Thinker* scan access requests to Musée Rodin, BMA is helping Musée Rodin commit copyfraud against the public—over one of the world's most famous sculptures, no less.

BMA's policy of withholding its scan and deferring to Musée Rodin may help BMA's relations with Musée Rodin, but it harms the public. If BMA had made its *Thinker* scan freely available to the public in 2014, it would have been downloaded hundreds of thousands of times by now and used, studied, and enjoyed by countless artists, students, and art-lovers around the world. This unseen loss is real and ongoing.

Is anyone at BMA bothered by this situation?

The public would benefit if BMA recognized the public domain status of many of the works in its collection—including its digital copy of *The Thinker*—and better facilitated public access to them. I hope you are interested in making that happen.

Will you please speak with me about this?

Thank you,
Cosmo

July 3, 2018, from Cosmo Wenman to Hughes Herpin/ Musée Rodin and BMA

Dear Mr. Herpin,

Please respond to my questions about Musée Rodin's past involvement with BMA's Thinker 3D scan, and please do so now, before the Ministry issues its report and policy recommendations.

Keeping the facts of Musée Rodin's past actions secret can only serve to promote bad public policy and harm the public.

Please respond.

Cosmo

July 3, 2018, from Cosmo Wenman to Olivier Japiot

Dear Mr. Japiot,

As you can see from my correspondence with Musée Rodin, they appear to intend to completely ignore my questions about their past actions; actions that directly affected me and the public, and appear to have obstructed worldwide access to a public domain work.

I hope they are giving you a full account of their involvement with BMA's *Thinker* scan, and that you intend to make your findings available to the public.

What can you share with me?

Regards,

Cosmo

July 4, 2018, from Olivier Japiot to Cosmo Wenman

Dear Mr. Wenman,

I've discussed with Musée Rodin officials who told me that they are dealing with the questions you've raised.

I've no authority on them, and this very particular point isn't in the scope of my mission for the ministry of culture.

I copy this message to Mr. de Nervaux who is the head of the service in charge of intellectual property questions at the ministry of culture. Maybe he can be of some help to you.

Best regards

O. Japiot

July 4, 2018, from Cosmo Wenman to Olivier Japiot

Dear Mr. Japiot,

Musée Rodin believes this matter is within the scope of your commission.

Musée Rodin has abused its influence and exceeded its intellectual property rights in a very crude way. Instead of answering my questions about their actions, Musée Rodin tells me they are waiting for guidance from your commission's report. This is why I contacted you.

I realize you are not my personal advocate in this matter. However, I hope you are aware that Musée Rodin clearly hopes to find in your report some retrospective justification for their abusive behavior.

If your report advocates new intellectual property rights over 3D digitizations of public domain works--and if your recommendations are adopted into law--institutions like Musée Rodin will surely use their new powers to the limit, and beyond, to the detriment of the public domain. I hope your report considers this outcome.

I would appreciate anything you can share with me about what Musée Rodin told you about the *Thinker* 3D scan matter. I still hope to find someone who can help me get a full account of Musée Rodin's recent actions, and correct their behavior.

Thank you for referring me to Mr. de Nervaux. I will contact him soon.

Regards,
Cosmo

August 14, 2018, from Cosmo Wenman to Olivier Japiot

Dear Mr. Japiot,

Can you please tell me when your report will be available?

Would it be possible for you to send me a copy?

Thanks,

Cosmo

August 15, 2018, from Olivier Japiot to Cosmo Wenman

Dear Mr. Wenman,

My current mission for the French ministry of culture doesn't imply the writing of a report. I'm just requested to help French stake holders to reach an agreement on a code of conduct in 3D-Printing. The negotiation is not finished yet. I hope to come to a result by the end of the year. The code of conduct will then be published on the Ministry's website.

Best regards

O. Japiot

August 15, 2018, from Cosmo Wenman to Olivier Japiot

I misunderstood from the letter forming your commission that it was to be complete on July 31, and I had assumed the result would be a report similar to your previous commission.

Can you tell me if Musée Rodin is among the stakeholders you are consulting?

As you know, Musée Rodin is refusing to answer any of my questions about its denying me access to the Baltimore Museum of Arts' 3D scan of *Le Penseur* until after your "report" is published.

You have told me that this matter is outside the scope of your commission. Would I be correct if I told Musée Rodin that you assure me that your commission has nothing to say about this matter?

Thank you,

Cosmo

August 15, 2018, from Olivier Japiot to Cosmo Wenman

Musée Rodin is participating to the preparation of the code of conduct indeed.

I've already told them that your dispute isn't in the scope of my mission.

Best regards

September 7, 2018

To: Catherine Chevillot/ Musée Rodin

Cc: Chris Bedford/BMA, Katy Rothkopf/BMA, Olivier Japiot

From: Cosmo Wenman

Mme Chevillot,

Please see my letter, attached, concerning Musée Rodin's ongoing refusal to explain its interference with my access to BMA's 3D scan of *The Thinker*.

Thank you,

Cosmo

September 7, 2018

Catherine Chevillot
Directrice, Musée Rodin
chevillot@musee-rodin.fr



Mme Chevillot,

As you know, more than one year ago Musée Rodin interfered with my access to the Baltimore Museum of Art's 3D scan of their cast of *The Thinker*, which is in the public domain. Despite my repeated requests—including to Musée Rodin's communications director, business director, head of strategic affairs, and to you, its director—Musée Rodin has refused to explain its interference.

Your administration's evasiveness reflects poorly on Musée Rodin. It creates the appearance that under your leadership Musée Rodin is knowingly abusing the public's trust and BMA's deference in order to commit copyfraud against the public; unethical behavior too embarrassing for your colleagues to acknowledge.

Your colleague Hugues Herpin tells me Musée Rodin is waiting until a Ministry of Culture commission relating to 3D data and 3D printing is complete before Musée Rodin will explain to me its interference. This is absurd; the Ministry's commission cannot possibly guide decisions Musée Rodin *has already made*.

Furthermore, I have been assured by Olivier Japiot, who is conducting the Ministry of Culture's commission, that the Musée Rodin/BMA *Thinker* 3D scan matter is outside the scope of his commission. He tells me he has already informed Musée Rodin of this fact.

I also understand from Mr. Japiot that Musée Rodin is a consultant to the Ministry's commission. As a national museum accountable to the public, it is wildly inappropriate and irresponsible for Musée Rodin to contribute to official deliberations on new public policy for 3D data while keeping its own policies and recent actions secret.

There is no reason—other than delay and obfuscation—for your office to wait for anything from the commission before explaining Musée Rodin's actions of over one year ago.

I insist that Musée Rodin now cease its evasions and respond to the questions I asked in my letter of April 25, 2018. Your office needs to explain why—and by what authority—Musée Rodin denied me permission to access BMA's 3D scan of *The Thinker*, a work that is in the public domain.

If Musée Rodin made an error, it must correct it by acknowledging the simple facts that *The Thinker* is in the public domain, and that no one needs Musée Rodin's permission to access or use any third-party's physical or digital copies of it.

I hope you take this matter seriously, and I look forward to Musée Rodin's prompt explanation of its interference with my access to a public domain work.

Cosmo Wenman

Cc: Christopher Bedford
Director, Baltimore Museum of Art
cbedford@artbma.org

Olivier Japiot
Conseiller d'Etat, Conseil d'Etat
olivier.japiot@conseil-etat.fr

MUSÉE
RODIN
19 BD DES INVALIDES
75007 PARIS
TEL +33 1 44 18 61 10
FAX +33 1 44 18 61 30
WWW.MUSEE-RODIN.FR

Paris, le

14 SEP 2018

Monsieur Cosmo Wenman
cosmo.wenman@gmail.com

REF COURRIER
CCH/JC/ 1086

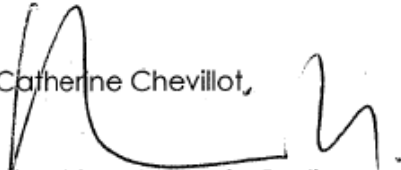
Affaire suivie par :
Catherine Chevillot
Directrice du Musée Rodin
Conservateur général du
patrimoine
chevillot@musee-rodin.fr
tel. 01 44 18 61 10

Monsieur,

Depuis près d'un an, contrairement à vos affirmations, les agents du musée Rodin ont adressé des réponses à vos innombrables sollicitations. Nous n'avons rien à ajouter.

Par ailleurs, le musée Rodin reste seul juge des conseils et documents dont il souhaite s'entourer ou se munir. Enfin il ne peut répondre que dans le périmètre de ses attributions définies par son décret, et dans les limites du décret n°81-255 du 3 mars 1981 sur la répression des fraudes auquel je vous renvoie.

Veuillez agréer, Monsieur, l'expression de mes salutations les meilleures.

Catherine Chevillot,

Directrice du Musée Rodin
Conservateur général du patrimoine

(TRANSLATION VIA GOOGLE)

MUSÉE
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19 RD DES INVALES
75007 PARIS
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WWW.MUSEE-RODIN.FR

Paris, le

14 SEP 2018

Monsieur Cosmo Wenman
cosmo.wenman@gmail.com

REF COURRIER
CCH/JC/ 1086

Affaire suivie par :
Catherine Chevillot
Directrice du Musée Rodin
Conservateur général du
patrimoine
chevillot@musee-rodin.fr
tel. 01 44 18 61 10

September 14, 2018

Sir,

For almost a year, contrary to your assertions, the agents of the Rodin museum have responded to your innumerable requests. We have nothing to add.

In addition, the Rodin Museum remains the only judge of the advice and documents that it wishes to surround itself with or bring itself. Finally it can only respond within the scope of its powers defined by its decree, and within the limits of Decree No. 81-255 of 3 March 1981 on the repression of fraud to which I refer you.

Please accept, Sir, the expression of my best regards.

Catherine Chevillot,

Directrice du Musée Rodin
Conservateur général du patrimoine



October 17, 2018

Catherine Chevillot
Directrice, Musée Rodin
chevillot@musee-rodin.fr

Mme Chevillot,

Thank you for your letter of September 14, 2018. In fact, in the fourteen months prior to that response, Musée Rodin had refused to provide any explanation whatsoever for its interference. Hence my repeated requests to you and your staff. Now that we have established a substantive dialogue, I hope we can resolve this matter quickly.

Thank you for confirming that Musée Rodin's powers in this matter are limited by [Decree No. 81-255 of 3 March 1981](#).

Neither Decree No. 81-255 nor *droit moral* empower Musée Rodin to interfere with the public's lawful access to or reproduction of public domain works. In fact, by establishing requirements for the identification of reproductions, Decree No. 81-255 *confirms* the public's right to copy public domain works.

Furthermore, Decree No. 81-255 and *droit moral* certainly do not empower Musée Rodin to *preemptively* judge or prevent lawful copies from being produced. Alleged violations of this decree and *droit moral* are, of course, adjudicated by courts of law *after* an infraction is alleged, not beforehand by Musée Rodin.

Finally, Decree No. 81-255 and *droit moral* give Musée Rodin *no power at all* to prevent copies lawfully produced and marketed outside France.

Musée Rodin knows these facts very well.

There is no legal basis for Musée Rodin's interference with the public's lawful access to or copying of Rodin's works. Musée Rodin is harming the public by grossly exceeding its legal authority and public mandate with such interference.

Regarding my own plans to produce copies of *The Thinker*, I repeat my original statement of July 5, 2017 to Musée Rodin:

My corporation would use the BMA's [Baltimore Museum of Art's] scan for professional, commercial use; to make bronze reproductions in a variety of sizes, in unlimited quantities. To avoid any infringement of Musée Rodin's moral rights under French law, they would be manufactured, advertised, and sold outside France, and they would not be advertised as "original" Rodin works.

My planned *Thinker* copies would not violate Musée Rodin's moral rights nor any provision of Decree No. 81-255. To be perfectly clear; I am not seeking to commit fraud, and I will comply with laws governing the relevant jurisdictions. Furthermore, to respect the integrity of Rodin's work, my copies' quality would be far superior to that of Musée Rodin's own copies, shown at <http://boutique.musee-rodin.fr/en/miniature-reproductions/380-the-thinker-miniature.html>, which have obvious defects from low-quality 3D printing.

Musée Rodin's unjustified, extralegal interference with my lawful commercial activity and rightful use of a public domain work has caused me and my company financial damage. This situation is ongoing and must be remedied immediately.

In consideration of the foregoing, I demand that by November 2, 2018 your office confirm in writing to me and the Baltimore Museum of Art the following:

- (i) That Musée Rodin has no legal authority to interfere with or prevent the public's lawful access to any third-party's editions or copies of public domain works.
- (ii) That Musée Rodin has no legal authority to interfere with or prevent the public's lawful reproduction of public domain works.
- (iii) That Musée Rodin has ceased, withdrawn, and disclaimed its extralegal interference with my access to the Baltimore Museum of Art's digital copy of *The Thinker*.

Thank you for your attention to this matter.



Cosmo Wenman

Cc: Christopher Bedford
Director, Baltimore Museum of Art
cbedford@artbma.org

Olivier Japiot
Conseiller d'Etat, Conseil d'Etat
olivier.japiot@conseil-etat.fr

PRE-LITIGATION

In September 2018, Maître Alexis Fitzjean Ó Cobhthaigh, attorney at the Paris bar and expert in French freedom of information law and procedure and specialist in open culture and civil liberties issues, agrees to represent Wenman in this matter *pro bono*.

Fitzjean Ó Cobhthaigh sends Musée Rodin a formal request for documents, including; a list of all Musée Rodin's 3D scans; any other institutions' scans in its possession; copies of the scans themselves; the museum's correspondence with BMA; its internal correspondence regarding Wenman's inquiries to date; documentation about revenue the museum derives from the use of its 3D scans. Fitzjean Ó Cobhthaigh cites French law and numerous supporting precedents, including cases in which software source code, medical X-ray images, and images from surveys of a shipwreck were determined to be public, administrative documents.

Fitzjean Ó Cobhthaigh advises the museum that if it refuses the request, he will engage the *Commission d'accès aux documents administratifs* (CADA), the government agency which advises administrative agencies on compliance with freedom of information laws. In case of the museum's refusal, Fitzjean Ó Cobhthaigh will request the CADA issue a formal analysis of the museum's legal position.

CADA opinions are non-binding, but plaintiffs in freedom of information disputes are required to first obtain the agency's legal opinion before they may file a lawsuit. This is because the courts are typically very reliant on CADA's analysis—and the courts typically uphold CADA opinions. As a result, it is very unusual for an administrative agency to ignore a CADA opinion; in the vast majority of disputes in which a CADA opinion affirms a request for administrative documents, the agency in question immediately complies. (See [page 9 of Freedom of Information in France - Law and Practice](#))

ALEXIS FITZJEAN Ó COBHTHAIGH

(JUMP TO ENGLISH)

Avocat au Barreau de Paris | Attorney at the Paris Bar

Chargé d'enseignement à l'Université Paris II Panthéon-Assas

Musée Rodin

77, rue de Varenne

75007 Paris

A Paris, le 8 novembre 2018

Par LRAR n° 1A 148 042 7744 5

Objet : demande de communication de documents administratifs

A l'attention de Mme Catherine Chevillot, Directrice du musée Rodin, conservateur général du patrimoine

Madame la Directrice,

Je vous contacte au nom et pour le compte de mon client, M. Cosmo Wenman afin de vous demander la communication des documents administratifs suivants :

- les fichiers contenant la version numérisée tridimensionnelle (scan 3D) du « Penseur » de M. Auguste Rodin, y compris la version utilisée pour imprimer les copies du *Penseur* dont la promotion est assurée sur l'adresse suivante : <https://boutique.musee-rodin.fr/en/sculpture-reproductions/380-the-thinker-miniature.html>, de même que tout autre version de meilleure qualité ;
- la liste de l'ensemble des fichiers, actuellement en votre possession, contenant des versions numérisées tridimensionnelles des sculptures composant les collections du musée Rodin ou d'autres collections (les jeux de scan 3D en votre possession), ainsi que lesdits fichiers ;
- l'ensemble des courriels, échangés, envoyés ou reçus par le musée Rodin, un de ses employés ou un des membres de son équipe dirigeante, ayant pour objet, traitant ou mentionnant les précédentes demandes de M. Wenman ;
- l'ensemble des notes internes, analyses, rapports, études, lignes directrices, directives, échanges de courriels ou tout autre document relatif à la politique du musée Rodin à l'égard des fichiers contenant des versions numérisées tridimensionnelles d'une sculpture composant les collections du musée Rodin ou d'autres collections, en particulier la politique du musée concernant l'accessibilité à ces données ;
- l'ensemble des accords, contrats, conventions, traités liant le musée Rodin et le *Baltimore Museum of Art*, en particulier, ceux ayant pour objet, traitant ou mentionnant les fichiers contenant la version numérisée tridimensionnelle (scan 3D) du « Penseur » de M. Auguste Rodin, ou de tout autre sculpture ;
- tout document démontrant que le musée Rodin a obtenu des revenus de l'utilisation des fichiers contenant la version numérisée tridimensionnelle (scan 3D) du « Penseur » de M. Auguste Rodin à des fins de fabrication de répliques ;

- tout document démontrant que le musée Rodin a obtenu des revenus de licences octroyées à des tiers à propos de l'utilisation de n'importe lequel des fichiers contenant des versions numérisées tridimensionnelles des sculptures composant les collections du musée Rodin ou d'autres collections ;
- en particulier, pour la période s'étendant du 1^{er} janvier 2014 à la réception de la présente demande : l'ensemble des correspondances entre le musée Rodin et le *Baltimore Museum of Art*, l'ensemble des courriels internes, des notes internes, analyses, rapports, lignes directrices ou tout autre document relatif à l'impression en trois dimension et des correspondances, échangés, envoyés ou reçus entre le musée Rodin, un de ses employés ou un des membres de son équipe dirigeante, d'une part, et le ministère de la culture, d'autre part, ayant pour objet, traitant ou mentionnant l'impression tridimensionnelle, la numérisation tridimensionnelle ou le *Baltimore Museum of Art* ;
- en particulier, pour la période s'étendant du 1^{er} janvier 2018 à la réception de la présente demande, l'ensemble des correspondances échangées, envoyées ou reçues entre le musée Rodin et M. Olivier Japiot, conseiller d'Etat membre du Conseil supérieur de la propriété littéraire et artistique.

Comme vous le savez, le musée Rodin est un établissement public national à caractère administratif placé sous la tutelle du ministre chargé de la culture (cf. article 1^{er} du décret n° 93-163 du 2 février 1993 relatif au musée Rodin) qui a notamment pour mission de faire connaître l'œuvre d'Auguste Rodin (cf. article 2 du décret n° 93-163) et qu'à cette fin il édite et commercialise des reproductions d'œuvre d'Auguste Rodin, des publications et des produits audiovisuels (cf. 6° de l'article 2 du décret n° 93-163). Il entre donc dans le champ d'application des dispositions de l'article L. 300-2 du code des relations entre le public et l'administration.

Aux termes de ces dispositions :

« Sont considérés comme documents administratifs, au sens des titres Ier, III et IV du présent livre, quels que soient leur date, leur lieu de conservation, leur forme et leur support, les documents produits ou reçus, dans le cadre de leur mission de service public, par l'Etat, les collectivités territoriales ainsi que par les autres personnes de droit public ou les personnes de droit privé chargées d'une telle mission. Constituent de tels documents notamment les dossiers, rapports, études, comptes rendus, procès-verbaux, statistiques, instructions, circulaires, notes et réponses ministérielles, correspondances, avis, prévisions, codes sources et décisions. »

En application des dispositions de l'article L. 311-1 du même code, vous êtes donc tenu de publier en ligne ou de communiquer les documents administratifs que vous détenez aux personnes qui en font la demande.

Or, les documents faisant l'objet de la présente demande et dont la liste est précisément dressée ci-dessus sont des documents administratifs au sens du Livre III du code des relations entre le public et l'administration et doivent, en

conséquent, être communiqués lorsqu'une demande ayant un tel objet, comme la présente, est reçue.

En effet, dès lors qu'ils sont échangés au sein d'un service administratif pour les besoins de ce service, les courriers électroniques constituent des documents de nature administrative et sont donc soumis au droit d'accès (cf. CADA, 14 mars 2002, *Directeur général de l'AFSSA*, n° 20020741).

De même, un courrier adressé par un parlementaire à un préfet peut constituer un document administratif (cf. CE, 30 décembre 1998, *Association de sauvegarde des vallées et de prévention des pollutions*, n° 172761, Rec. T. p. 912).

Constituent également des documents administratifs des images de travail tournées par une chaîne publique, qui se rattachent à la mission de service public dont est chargée la société (cf. TA Paris, 8 février 2007, *Société Media Ratings*, n° 067137, concl. Célérier, AJDA 2007, p. 752), ou encore l'enregistrement sonore d'une séance du conseil municipal (cf. CADA, 25 août 2005, *Maire de Saint-Jean-de-Védas*, n° 20053313), ou encore des images recueillies lors d'une mission de surveillance de l'Erika (cf. CADA, 21 décembre 2006, *Préfet maritime de l'Atlantique*, n° 20065534), ou encore des clichés radiographiques figurant dans un dossier médical (cf. CADA, 23 janvier 2003, *Directeur de l'hôpital « Le Bocage »*, n° 20030330).

De même, il résulte de l'article L. 300-2 du code des relations entre le public et l'administration que les codes sources produits ou reçus par l'administration dans le cadre de ses missions de service public, constituent des documents administratifs (cf. CADA, 28 juin 2018, *NextINpact*, avis n° 20181049).

La Commission d'accès aux documents administratifs (CADA) a déjà précisé

« que le droit d'accès ouvre, en complément de la communication éventuelle du code source, dont la compréhension nécessite des compétences techniques en codage informatique, des explications complémentaires, explicitant les règles de traitement mises en œuvre et les principales caractéristiques de celle-ci » (cf. CADA, 28 juin 2018, *NextINpact*, avis n° 20181049 ; CADA, 19 novembre 2015, conseil n° 20155079).

Enfin, je vous rappelle que le Conseil d'Etat a récemment jugé qu'il résulte des dispositions de l'article 1^{er}, du c) de l'article 10 et de l'article 11 de la loi n° 78-753 du 17 juillet 1978 que les articles 15 et 16 de cette loi – dispositions désormais codifiées dans le code des relations entre le public et l'administration –, qui prévoient les conditions dans lesquelles la réutilisation d'informations publiques peut donner lieu au versement d'une redevance pouvant, le cas échéant, inclure une part au titre des droits de propriété intellectuelle, régissent de manière complète les conditions dans lesquelles les personnes mentionnées à l'article 1er de la loi du 17 juillet 1978 ainsi que les établissements, organismes ou services culturels qui en relèvent, exercent les droits de propriété intellectuelle ou les droits voisins que, le cas échéant, ils détiennent sur les informations publiques, comme sur les procédés de collecte, de production, de mise à disposition ou de diffusion de ces informations. Il s'ensuit que ces dispositions font obstacle à ce que les personnes et services qui viennent d'être mentionnés, qui ne sont pas des tiers au sens et pour l'application du c) de l'article 10 de la loi du 17 juillet 1978, puissent se fonder sur les droits que tient le producteur de bases de données de l'article L. 342-1 du code de la propriété intellectuelle, pour s'opposer à l'extraction ou à la réutilisation du contenu de telles bases, lorsque ce contenu revêt la nature d'informations publiques au sens des dispositions du même article (cf. CE, 8 février 2017, *Société NotreFamille.com*, n° 389806, Rec. T.).

Je vous remercie de bien vouloir me communiquer les documents administratifs susévoqués par courrier électronique à mon adresse courriel : afoc@afocavocat.eu, en application du 3° de l'article L. 311-9 du code des relations entre le public et l'administration.

Je me permets, enfin, d'attirer votre attention sur l'article L. 300-4 du code pour les relations entre le public et l'administration qui impose que la mise à disposition soit effectuée dans un standard ouvert, aisément réutilisable et exploitable par un système de traitement automatisé. Je vous remercie vivement par avance de bien vouloir avoir la gentillesse d'y veiller.

En cas de réponse négative de votre part ou à défaut de réponse dans un délai d'un mois suivant la réception de la présente demande (cf. articles R. 311-12 et R. 311-13 du code des relations entre le public et l'administration), je me verrais malheureusement contraint de saisir la Commission d'accès aux documents administratifs (CADA).

Restant naturellement à votre entière disposition pour échanger à propos de la présente demande, je vous prie de recevoir, Madame la Directrice, l'expression de ma parfaite considération.

ALEXIS FITZJEAN Ó COBHETHAIGH

*Avocat au Barreau de Paris | Attorney at the Paris Bar
Chargé d'enseignement à l'Université Paris II Panthéon-Assas*

(TRANSLATION VIA GOOGLE)

ALEXIS FITZJEAN Ó COBHTHAIGH*Avocat au Barreau de Paris | Attorney at the Paris Bar**Chargé d'enseignement à l'Université Paris II Panthéon-Assas*

Rodin Museum

77, rue de Varenne

75007 Paris

In Paris, November 8, 2018

By letter n° 1A 148 042 7744 5**Subject** : Request for communication of administrative documents**For the attention of Ms. Catherine Chevillot, Director of the Rodin Museum,
General Curator of Heritage**

Madam Director,

I am contacting you on behalf of my client, Mr. Cosmo Wenman to request the submission of the following administrative documents:

- the files containing the three-dimensional digitized version (3D scan) of Mr. Auguste Rodin's "Thinker", including the version used to print the *Thinker* copies, which are promoted at the following address: <https://boutique.musee-rodin.fr/en/sculpture-reproductions/380-the-thinker-miniature.html>, as well as any other higher quality version;
- the list of all the files currently in your possession, containing digitized three-dimensional versions of the sculptures composing the collections of the Musée Rodin or other collections (the 3D scans in your possession), as well as the said files;
- all e-mails, exchanged, sent or received by the Rodin Museum, one of its employees or a member of its management team, whose purpose is, treating or mentioning the previous requests of Mr. Wenman;
- all internal notes, analyses, reports, studies, guidelines, directives, email exchanges or any other document related to the Rodin Museum's policy regarding files containing digitized three-dimensional versions of a sculpture comprising the collections of the Musée Rodin or other collections, in particular the museum's policy concerning the accessibility of these data;
- all the agreements, contracts, conventions, treaties linking the Rodin Museum and the Baltimore Museum of Art, in particular, those whose purpose is to process or mention files containing the three-dimensional digital version (3D scan) of the "Thinker" of Auguste Rodin, or any other sculpture;
- any document demonstrating that the Rodin Museum has obtained income from the use of files containing the three-dimensional digitized version (3D scan) of Mr. Auguste Rodin's "Thinker" for the purposes of making replicas;
- any document demonstrating that the Rodin Museum has obtained license fees from third parties for the use of any of the files containing digitized three-dimensional versions of the sculptures composing the Musée Rodin's collections or other collections;

- in particular, for the period beginning January 1, 2014 to the receipt of this application: all correspondence between the Rodin Museum and the Baltimore Museum of Art, all internal emails, internal notes, analyzes, reports, guidelines or other document relating to three-dimensional printing and correspondence, exchanged, sent or received between the Rodin Museum, one of its employees or a member of its management team, on the one hand, and the Ministry of Culture, on the other hand, dealing with or referring to three-dimensional printing, three-dimensional digitization or the Baltimore Museum of Art;

- in particular, for the period from 1 January 2018 to the receipt of this application, all correspondence exchanged, sent or received between the Rodin Museum and Mr. Olivier Japiot, State Councilor, Member of the Superior Council of Property literary and artistic.

As you know, the Musée Rodin is a national public institution administrative character placed under the supervision of the Ministry of Culture (See Article 1 of Decree No. 93-163 of 2 February 1993 concerning the Rodin Museum) which mission to make known the work of Auguste Rodin (see article 2 of Decree No. 93-163) and for this purpose it edits and markets reproductions of Auguste Rodin's oeuvre, publications and audiovisual products (see 6 ° of Article 2 of Decree No. 93-163). It therefore falls within the scope of the provisions of Article L. 300-2 of the Code of Relations between the Public and administration.

According to these provisions:

"Such are considered as administrative documents, within the meaning of the titles I, III and IV of this book, irrespective of their date, place of conservation, their form and their support, the documents produced or received, as part of their public service mission, by the State, the local authorities and other legal persons public or private law persons in charge of such a mission. Such documents include records, reports, studies, minutes, minutes, statistics, instructions, circulars, ministerial notes and replies, correspondence, opinions, forecasts, source codes and decisions."

In application of the provisions of article L. 311-1 of the same code, you are therefore to publish online or to communicate the administrative documents that you hold to people who request it.

The documents which are the subject of this application and whose list is specifically set out above are administrative documents within the meaning of the III of the Code of relations between the public and the administration and must, therefore, be communicated when an application with such an object, such as present, is received.

In effect, as soon as they are exchanged within an administrative service for the needs of this service, e-mails are administrative nature and are therefore subject to the right of access (see CADA, 14 March 2002, *Director General of AFSSA*, No. 20020741).

Similarly, a letter sent by a parliamentarian to a prefect may constitute a administrative document (see EC, 30 December 1998, *Safeguard Association valleys and prevention of pollution*, No. 172761, Rec. T. p. 912).

Also constituting administrative documents are working images made by a public channel, which relate to the public service mission which is responsible for the company (see TA Paris, February 8, 2007, *Media Ratings Company*, No. 067137, concluded Celebrate, AJDA 2007, p. 752), or the sound recording of a meeting of the municipal council (see CADA, August 25, 2005, *Mayor of Saint-Jean-de-Védas*, n ° 20053313), or images collected during the *Erika* monitoring mission (see CADA, 21 December 2006, *Préfet Maritime Atlantic*, No. 20065534), or X-rays in a medical file (see CADA, 23 January 2003, *Director of the hospital "Le Bocage"*, No. 20030330).

Similarly, it follows from Article L. 300-2 of the Code of relations between the public and administration that the source codes produced or received by the administration in the framework of its public service missions, constitute documents administrative staff (see CADA, 28 June 2018, *NextINpact*, opinion no 20181049).

The Commission for Access to Administrative Documents (CADA) has already specified *"That the right of access opens, in addition to the possible communication of the source code, the understanding of which requires technical expertise in coding, additional explanations explaining the rules of implemented and the main characteristics of it"*(cf. CADA, June 28, 2018, *NextINpact*, Notice No. 20181049; CADA, November 19, 2015, Council No. 20155079).

Finally, I remind you that the Council of State has recently held that it results from Article 1 c) of Article 10 and Article 11 of Law No. 78-753 of 17 July 1978 that Articles 15 and 16 of that law – now codified in the code of relations between the public and the administration – which provide the conditions under which the reuse of public information may give rise to the payment of a fee which may, where appropriate, include a share of intellectual property rights, govern completely the conditions under which the persons mentioned in Article 1 of the Act of 17 July 1978 and the establishments, organizations or services related cultural rights, exercise intellectual property rights or neighbors that, if any, they hold on public information, such as on methods of collection, production, provision or dissemination of this information. It follows that these provisions preclude persons and services just mentioned, who are not third meaning and for the purposes of Article 10 (c) of the Law of 17 July 1978, to rely on the rights of the database producer of Article L. 342-1 of the Intellectual Property Code, to oppose the extraction or reuse of the content of such databases, where that content takes on the nature public information within the meaning of the same Article (see EC, 8 February 2017, *Company OurFamily.com*, No. 389806, Rec. T.).

Thank you kindly for providing me with administrative documents abbreviated by email to my e-mail address: afoc@afocavocat.eu, pursuant to paragraph 3 of Article L. 311-9 of the Code of relations between the public and the administration.

Allow me, finally, to draw your attention to Article L. 300-4 of the Code for the relationship between the public and the administration which requires that the provision be made in an open standard, easily reusable and exploitable by a automated processing system. I thank you very much in advance for want to be kind enough to take care of it.

In the event of a negative answer from you or if there is no answer within one month following receipt of this application (see Articles R. 311-12 and R. 311-13 of the code of relations between the public and the administration), I would see myself unfortunately forced to go to the Commission for Access to Documents Administrative staff (CADA).

Remaining naturally at your disposal to discuss about the present request, please accept, Madam Director, the expression of my perfect consideration.

ALEXIS FITZJEAN Ó COBHTHAIGH
Avocat au Barreau de Paris | Attorney at the Paris Bar
Chargé d'enseignement à l'Université Paris II Panthéon-Assas

**MUSÉE
RODIN**
19 BD DES INVALIDES
75007 PARIS
TEL +33 1 44 18 61 10
FAX +33 1 44 18 61 30
WWW.MUSEE-RODIN.FR

Paris, le 11 décembre 2018

(JUMP TO ENGLISH)
(Copier via ROC)

Maître Alexis FITZJEAN O COBHTHAIGH
Avocat au Barreau de Paris
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LRAR
REF COURRIER 1615
Affaire suivie ar:
Hélène Brunel
Chargée des affaires juridiques
brunel@musee-rodin.fr
tél. 01 44 18 61 56
fax. 01 44 18 61 80

Maître,

Par une LRAR n° 1A 148 042 7744 5 du 8 novembre 2018, réceptionnée par le musée Rodin le 15 novembre 2018, vous nous avez saisis d'une demande de communication de plusieurs documents pour le compte de votre client, Monsieur Cosmo Wenman :

- 1) *« Les fichiers contenant la version numérisée tridimensionnelle (scan 3D) du «Penseur » de M. Auguste Rodin (...), de même que tout autre version de meilleure qualité ;*
- 2) *La liste de l'ensemble des fichiers (...) contenant des versions numérisées tridimensionnelles des sculptures composant les collections du musée Rodin ou d'autres collections (...), ainsi que lesdits fichiers ;*
- 3) *L'ensemble des courriels, échangés, envoyés ou reçus par le musée Rodin, un de ses employés ou un des membres de son équipe dirigeante, ayant pour objet, traitant ou mentionnant les précédentes demandes de M. Wenman ;*
- 4) *L'ensemble des notes internes, analyses, rapports, études, lignes directrices directives, échanges de courriels ou tout autre document relatif à la politique du musée Rodin à l'égard des fichiers contenant des versions numérisées tridimensionnelles d'une sculpture composant les collections du musée Rodin ou d'autres collections, en particulier la politique du musée concernant l'accessibilité à ces données ;*
- 5) *L'ensemble des accords, contrats, conventions, traités liant le musée Rodin et le Baltimore Museum of Art, en particulier, ceux ayant pour objet, traitant ou mentionnant les fichiers contenant la version numérisée tridimensionnelle (scan 3D) du « Penseur » de M. Auguste Rodin, ou de tout autre sculpture ;*
- 6) *Tout document démontrant que le musée Rodin a obtenu, des revenus de l'utilisation des fichiers contenant la version numérisée tridimensionnelle (scan3D) du « Penseur » de M. Auguste Rodin à des fins de fabrication de répliques ;*

- 7) *Tout document démontrant que le musée Rodin a obtenu des revenus de licences octroyées à des tiers à propos de l'utilisation de n'importe lequel des fichiers contenant des versions numérisées tridimensionnelles des sculptures composant les collections du musée Rodin ou d'autres collections ;*
- 8) *En particulier, pour la période s'étendant du 1er janvier à la réception de la présente demande: l'ensemble des correspondances entre le musée Rodin et le Baltimore Museum of Art, l'ensemble des courriels internes, des notes internes, analyses, rapports, lignes directrices ou tout autre document relatif à l'impression en trois dimensions et des correspondances, échangées, envoyés ou reçus entre le musée Rodin, un de ses employés ou un des membres de son équipe dirigeante, d'une part, et le ministère de la culture, d'autre part, ayant pour objet, traitant ou mentionnant l'impression tridimensionnelle, la numérisation tridimensionnelle ou le Baltimore Museum of Art ;*
- 9) *En particulier, pour la période s'étendant du 1er janvier 2018 à la réception de la présente demande, l'ensemble des correspondances échangées, envoyées ou reçues entre le musée Rodin et M. Olivier Japiot, conseiller d'Etat membre du Conseil supérieur de la propriété littéraire et artistique. »*

Le droit à communication ou publication des documents administratifs tel que définis à l'article L. 300-2 du code des relations entre le public et l'administration est rappelé à l'article L. 311-1 du même code. Ainsi :

« Sous réserve des dispositions des articles L. 311-5 et L. 311-6, les administrations mentionnées à l'article L. 300-2 sont tenues de publier en ligne ou de communiquer les documents administratifs qu'elles détiennent aux personnes qui en font la demande, dans les conditions prévues par le présent livre. »

Outre les réserves mentionnées par l'article précédemment cité, l'administration ne saurait faire droit à des demandes dépourvues de la précision nécessaire (Conseil d'Etat du 27 septembre 1985, Ordre des avocats au barreau de Lyon c/Bertin n° 56543, pour exemple : Avis CADA 20156102 - Séance du 28/04/2016, Conseil CADA 20060413 - Séance du 19/01/2006, Avis CADA 20161343 Séance du 12/05/2016). Cette position concerne vos demandes n° 2 à 9 listées ci-avant.

Dans ces conditions, le musée Rodin vous invite à faire vos demandes et préciser de quelles notes, rapports, directives, accords, contrats, conventions ou traités vous souhaitez obtenir la communication et sur quelle période. Le musée Rodin vous invite également à préciser de quelles sculptures composant les collections du musée Rodin ou d'autres collections vous désiriez obtenir la communication.

De la même façon, si des courriers électroniques peuvent être considérés comme des documents administratifs communicables, il vous revient de préciser vos demandes en indiquant de quelles correspondances vous sollicitez la communication, en précisant les identités de l'émetteur et du destinataire, la date de la correspondance ainsi que l'objet de celle-ci.

En tout état de cause, « *l'exercice du droit d'accès est bien sûr subordonné à la condition qu'une copie de ces courriers ait été conservée soit sous forme papier, soit sous forme numérique* » (Conseil CADA 20020741 Séance du 14/03/2002).

De plus, pour que l'administration puisse faire droit à une demande de communication de documents il est nécessaire que celle-ci porte sur un document existant ce qui suppose de ne pas être tenu de faire des recherches en vue de collecter l'ensemble des documents éventuellement détenus, ni d'établir un document en vue de procurer les renseignements ou l'information souhaités (Avis CADA 20164946 - Séance du 15/12/2016).

De manière complémentaire et surabondante avec le premier motif, une telle objection pourrait être opposée à vos demandes n° 4 à 8 listées ci-avant. Plus particulièrement, aucune liste de contenus numérisés tridimensionnels des sculptures composant les collections du musée Rodin ou d'autres collections n'a été établie.

Enfin, s'agissant de la demande relative à la communication de la « *version numérisée tridimensionnelle du « Penseur » de M. Auguste Rodin de même qu'une autre version de meilleure qualité* », le musée Rodin ne peut pas non plus donner une suite favorable à cette demande de communication.

En effet, le musée Rodin conteste que les numérisations tridimensionnelles d'oeuvres constituent des documents administratifs communicables au sens CRPA, en particulier au regard de l'article L. 311-4 de ce code selon lequel « *les documents administratifs sont communiqués ou publiés sous réserve des droits de propriété littéraire et artistique* », étant rappelé que le musée Rodin est investi de la qualité d'ayant droit de Rodin au sens des dispositions légales sur la propriété littéraire et artistique.

En outre, les marques R, RODIN, AUGUSTE RODIN et musée RODIN sont la propriété exclusive du musée Rodin. Ainsi, toute reproduction, usage, apposition, imitation ou altération, de quelque manière que ce soit, de l'une ou plusieurs de ces marques, est constitutif de contrefaçon engageant la responsabilité de son auteur et strictement prohibé au sens de l'article L 716-1 du Code de la Propriété Intellectuelle.

En application des articles L. 311-14 et R. 311-15 du CRPA, la présente décision peut faire l'objet d'une saisine de la Commission d'accès aux documents administratifs dans un délai de deux mois à compter du refus opposé par la présente.

Je vous prie d'agréer, Maître, l'expression de mes meilleures salutations.

Catherine Chevillot
Directrice du musée Rodin

(TRANSLATION VIA GOOGLE)

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Paris, December 11, 2018

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Maître,

By letter LRAR No 1 A 148 042 7744 5 of November 8, 2018, received by the Rodin museum November 15, 2018, you have made a request for access to several documents on behalf of your client, Mr. Cosmo Wenman :

- 1) *"The files containing the three-dimensional digital version (3D) scan of "Thinker" by Mr. Auguste Rodin (...) and any other version of higher quality;*
- 2) *The list of all files (...) containing three-dimensional digitizations of sculptures composing the Rodin museum's collections or other collections (...), as well as said files;*
- 3) *All e-mails exchanged, sent or received by the Rodin Museum, one of its employees or a member of its management team, whose purpose is to treat or mention Mr. Wenman's previous requests;*
- 4) *All internal notes, analyses, reports, studies, guidelines, e-mail exchanges or any other policy document relating to the Rodin Museum's files containing three-dimensional digitizations of sculptures comprising the collections of the Musée Rodin or other collections, especially the museum's policy regarding accessibility of these data;*
- 5) *The set of agreements, contracts, agreements, treaties binding the Rodin Museum the Baltimore Museum of Art, in particular those concerning dealing or mentioning the files containing the 3D digitization (3D scan) of Mr. Auguste Rodin's " Thinker", or any other sculpture;*
- 6) *Any document demonstrating that the Rodin Museum has obtained income from the use of files containing the three-dimensional digitized version (scan3D) of Mr. Auguste Rodin's "Thinker" for the purposes of making replicas;*

- 7) *Any document proving that the Rodin Museum has obtained license fees from third parties for the use of any of the files containing digitized three-dimensional versions of the sculptures composing the Musée Rodin collections or other collections;*
- 8) *In particular, for the period from January 1 to the receipt of this application: all correspondence between the Rodin Museum and the Baltimore Museum of Art, all internal emails, internal notes, analyses, reports, guidelines or other documents relating to the printing in three dimensions, and correspondence, exchanged, sent or received between the Rodin Museum, one of its employees or a member of its management team, on one hand, and the Ministry of Culture, on the other hand, dealing with or mentioning three-dimensional printing, three-dimensional digitization, or the Baltimore Museum of Art;*
- 9) *In particular, for the period from January 1, 2015 to the receipt of this application, all correspondence exchanged, sent or received between the Rodin Museum and Mr. Olivier Japiot, State Councilor of the High Council for Literary and Artistic Property. "*

The right to communicate or publish administrative documents as defined in Article L. 300-2 of the Code of relations between the public and the administration is recalled in Article L. 311-1 of the same code. So :

" Subject to the provisions of Articles L. 311-5 and L. 311-6, the Administrations mentioned in Article L. 300-2 are required to publish online or to communicate the administrative documents that they hold to the persons who make the request, under the conditions envisaged by this book. "

Beyond the reservations mentioned in the article cited above, the administration cannot accede to requests lacking the necessary precision (Conseil d'Etat of 27 September 1985, Bar Association of Lyon c/ Bertin n° 56543, for example: Opinion CADA 20156102 - Meeting of 28/04/2016, CADA Council 20060413 - Meeting of 19/01/2006, Opinion CADA20161343 Meeting of 12/05/2016). This position concerns your requests Nos. 2 to 9 listed above.

In these conditions, the Rodin museum invites you to perfect your requests and specify which notes, reports, directives, agreements, contracts, conventions, or features you would like to be communicated, and over what period. The Rodin Museum also invites you to specify which sculptures make up the collections of the Musée Rodin or other collections you would like to obtain communication.

Similarly, if e-mails are considered to be communicable administrative documents, it is your responsibility to specify your requests by indicating which correspondences you request communicated, specifying the identity of the sender and recipient, date of the correspondence and the purpose of the correspondence.

In any event, *"the exercise of the right of access is of course subject to condition that a copy of these letters has been preserved either in paper or digital form"* (CADA Board 20020741 Meeting of 14/03/2002).

Moreover, for the administration to be able to grant a request of communication of documents it is necessary that it concerns an existing document, which supposes not to be required to carry out research in order to collect all the documents that may possibly be held, and neither to prepare a document to provide the information sought (Opinion CADA 20164946 - Session of 15/12/2016).

In a complementary and superabundant way with the first reason, such an objection could be opposed to your requests Nos . 4 to 8 listed above. More specifically, no list of three dimensional digitizations of the sculptures composing the collections of the Musée Rodin or other collections has been established.

Finally, with regard to the request relating to the communication of the '*version digitized three-dimensional "The Thinker" of Mr. Auguste Rodin as well as any other version of better quality* ', the Rodin Museum can not give a favorable response to this request for communication.

Indeed, the Rodin Museum contests that three-dimensional digitizations of works constitute administrative documents that can be communicated in the CRPA sense, in particular with regard to Article L. 311-4 of this Code, according to which "*administrative documents are communicated or published subject to the rights of literary and artistic property* ", being reminded that the Rodin museum is invested with the quality of entitled of Rodin in the meaning of the legal provisions on the property literary and artistic.

In addition, the marks R, RODIN, AUGUSTE RODIN, and musée RODIN are the exclusive property of the Rodin Museum. Thus, any reproduction, use, apposition, imitation, or alteration, in any way whatsoever, of one or more of these marks, constitutes an infringement that incurs the responsibility of its author and is strictly prohibited within the meaning of Article L. 716-1 of the Intellectual Property Code.

Pursuant to articles L. 311-14 and R. 311-15 of the CRPA, this decision may be subject to a referral to the Commission for access to administrative documents [CADA] within two months of the refusal hereby.

Please accept, Maître, my best wishes.

Catherine Chevillot
Directrice du musée Rodin



Paris, le 24 DEC 2018

(JUMP TO ENGLISH)

Commission d'accès aux documents administratifs (Copier via ROC)

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Objet : *Demande de conseil de l'établissement public du musée Rodin concernant les numérisations tridimensionnelles d'œuvres du musée Rodin*

Annexes :

- *Demande de communication de documents administratifs adressée au musée Rodin par Maître Alexis Fitzjean O Cobhthaiigh pour son client, Monsieur Cosmo Wenman (annexe n°1)*
- *Réponse du musée Rodin à la demande précitée (annexe n°2)*

Madame, Monsieur,

Sur le fondement de l'article R. 342-4 du Code des Relations entre le Public et l'Administration, l'établissement public du musée Rodin saisit par la présente la Commission d'accès aux documents administratifs d'une demande de conseil concernant les numérisations tridimensionnelles d'œuvres du musée Rodin.

Avant de vous exposer les différents aspects de notre demande, nous souhaités; porter à votre connaissance les éléments de contexte suivants :

- Auguste Rodin a fait donation à l'Etat français de l'ensemble de son œuvre ainsi que des droits de propriété artistique y afférents. Partant, le musée Rodin est investi de la qualité d'ayant droit de Rodin au sens des dispositions légales sur la propriété littéraire et artistique. A cet égard l'article 2 du décret n° 93-163 du 2 février 1993 modifié relatif au musée Rodin prévoit notamment que le musée a pour mission de « faire connaître l'œuvre de Rodin et de faire respecter le droit moral qui y est attaché ».
- Au titre de l'article 12 du décret n° 93-163 précité, les recettes du musée Rodin comprennent notamment «*le produit de la vente des éditions originales de bronze des reproductions plastiques ou graphiques, des publications et photographies* ».
- Le musée Rodin est le seul établissement public administratif sous tutelle du ministère de la Culture à s'autofinancer pour l'intégralité de son budget de fonctionnement.

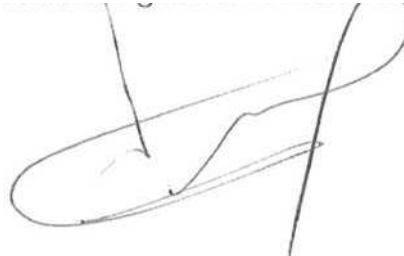
- Plusieurs exemplaires du Penseur d'Auguste Rodin existent à travers le monde. Un exemplaire en bronze fondu en 1928 a notamment fait l'objet d'un don au Baltimore Muséum of Art.
- Dans un contexte de nombre croissant de « reproductions » ou « surmoulages » en bronze dont la présentation entretient la confusion avec des éditions originales de bronze autorisées par l'artiste ou le musée Rodin, le musée Rodin refuse toute mise à disposition des moules et des modèles originaux issus de l'atelier de Rodin conservés dans ses collections. En outre, les marques R, RODIN, AUGUSTE RODIN et RODIN sont la propriété exclusive du musée Rodin, rendant toute reproduction, utilisation, apposition, imitation ou altération, de quelque manière que ce soit, de ces dernières marques, constitutifs de contrefaçon engageant la responsabilité de son auteur et strictement prohibé au sens de l'article L. 716-1 du Code de la Propriété Intellectuelle.
- Des numérisations tridimensionnelles des oeuvres d'Auguste Rodin ont été réalisées par le musée Rodin à des fins d'étude, mais servent également à des fins d'exploitation commerciale pour le musée dans le cadre de la réalisation de reproductions miniatures en résine de sculptures du musée Rodin destinées à la vente.
- Un prestataire de numérisation et de reproductions tridimensionnelles, américain a contacté le musée Rodin pour obtenir la communication d'un certain nombre de documents (et. annexe n°1), au titre desquels les numérisations tridimensionnelles réalisées à ce jour par le musée demande à laquelle le musée Rodin a décidé de ne pas répondre favorablement (et. annexe n°2).
- Si la logique de donnée ouverte est promue par le législateur, notamment dans la loi n° 2016-1321 du 7 octobre 2016 pour une République numérique, la question de la communication de numérisations tridimensionnelles d'oeuvres d'art n'a pas fait l'objet d'un traitement spécifique au regard :
 - de leur caractère ou non de document administratif communicable ;
 - du respect des droits de propriété intellectuelle s'y attachant ;
 - de l'impact de telles communications, le cas échéant, sur les risques liés à la contrefaçon d'oeuvres d'art ;
 - des conséquences de telles communications, le cas échéant, sur les ressources propres des établissements publics culturels.

Au vu de ces éléments de contexte, nous vous consultons sur les questions listées ci-après:

- 1) Des numérisations tridimensionnelles d'œuvre d'art peuvent-elles être considérées comme des documents administratifs au sens de l'article L. 300-2 du Code des Relations entre le Public et l'Administration ?
- 2) Si les numérisations tridimensionnelles d'œuvres d'art peuvent être reconsidérées comme des documents administratifs en principe communicables, la réserve de l'article L. 311-4 du Code des Relations entre le Public et l'Administration selon laquelle « *les documents administratifs sont communiqués ou publiés sous réserve des droits des propriétés littéraire et artistique* », dont peut se prévaloir le musée Rodin au titre du droit moral dont il est titulaire en sa qualité d'ayant droit de l'artiste, est-elle de nature à fonder un refus de communication (étant rappelé que la mise à disposition des moules originaux est refusée par le musée) ?
- 3) La réutilisation à des fins commerciales des numérisations tridimensionnelles dont il est demandé la communication peut-elle fonder un refus de communication au regard des enjeux que cela pourrait représenter pour les recettes de l'établissement ?
- 4) Le droit moral, dont dispose le musée Rodin en sa qualité d'ayant droit, et le droit de la propriété intellectuelle, en particulier le droit des marques, peuvent-ils fonder le refus de toute réutilisation des numérisations tridimensionnelles si ces dernières devaient être considérées comme des documents administratifs communicables ? Dans le cas contraire, pouvez-vous préciser le périmètre de l'utilisation des numérisations tridimensionnelles qui pourrait être faite par un tiers (notamment dans un contexte croissant de reproductions d'œuvres dont la présentation entretient la confusion avec les œuvres originales de l'artiste) ?
- 5) Si les numérisations tridimensionnelles devaient être considérées comme des documents administratifs communicables, le mode de financement du musée, tel qu'encadré par l'article 12 du décret n° 93-163 précité peut-il fonder un refus de réutilisation de ces documents ? Dans le cas contraire, pouvez-vous préciser le périmètre de l'utilisation des numérisations tridimensionnelles par un tiers et l'encadrement qui pourrait en être fait aux fins de compenser les pertes de recettes de l'établissement liées à une éventuelle communication ?
- 6) Seuls les documents existants dans leur version définitive peuvent être considérés comme des documents administratifs communicables et non les documents provisoires ?

Dans l'attente des conseils de votre Commission sur l'ensemble de ces questions, je vous prie d'agréer, Madame, Monsieur, l'expression de mes meilleures salutations.

Xavier Teboul
Secrétaire général du musée Rodin



(TRANSLATION VIA GOOGLE)

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Paris, le **24 DEC 2018**

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Subject : *Request for advice from the Rodin Museum's public institution concerning the three-dimensional digitization of works by the Musée Rodin*

Annexes :

- *Request for communication of administrative documents addressed to the Rodin Museum by Mr. Alexis Fitzjean O Cobhthaiigh for his client, Mr. Cosmo Wenman (Annex No. 1)*
- *Response of the Musée Rodin to the aforementioned request (appendix n ° 2)*

Madame, Monsieur,

On the strength of Article R. 342-4 of the Code of Relations between the Public and the Administration, the public institution of the Rodin Museum presently engages the Commission of access to administrative documents of a request for concerning the three-dimensional digitizations of works of the Rodin museum.

Before you expose the different aspects of our application, we desired; bring to your attention the following contextual elements:

- Auguste Rodin has donated to the French State all of his work as well as related artistic property rights. As a result, the Rodin Museum is invested with the status of Rodin's rightful claimant within the meaning of the legal provisions on literary and artistic property. In this regard, Article 2 of Decree No. 93-163 of 2 February 1993, as amended, pertaining to the Rodin Museum provides, notably, that the museum's mission is "to make known Rodin's work and to uphold the moral right that is therein attached".
- Under Article 12 of Decree No. 93-163 cited above, the revenues of the Rodin Museum include "the proceeds from the sale of original editions of bronze, plastic or graphic reproductions, publications and photographs."



- The Rodin Museum is the only public administrative body under the supervision of the Ministry of Culture to be self-financing for the entire operating budget.
- Several copies of Auguste Rodin's Thinker exist throughout the world. An example bronze, cast in 1928, was donated to the Baltimore Museum of Art.
- In a context of increasing number of "reproductions" or "overmoldings" in bronze whose presentation is confusing with original bronze editions authorized by the artist or the Rodin museum, the Rodin museum refuses any provision of molds and original models from Rodin's studio preserved in his collections. In addition, the brands R, RODIN, AUGUSTE RODIN and RODIN museum are the exclusive property of the Rodin museum, making any reproduction, use, apposition, imitation or alteration, in any way whatsoever, of one or several of these marks, constituting infringement involving the responsibility of its author and strictly prohibited within the meaning of Article L. 716-1 of the Code of Intellectual Property.
- Three-dimensional digitizations of the works of Auguste Rodin have been made by the Rodin museum for study purposes, but are also used for the purposes of commercial exploitation for the museum as part of the production and sale of miniature reproductions in resin of the sculptures of the Rodin museum
- An American provider of digitization and three-dimensional reproduction services contacted the Rodin Museum to obtain the communication of a number of documents (and Annex No. 1), for which the three-dimensional digitizations carried out to date by the museum, which the Rodin museum has decided not to answer favorably (and, appendix n ° 2).
- If the logic of open data is promoted by the legislator, in particular in the law n° 2016-1321 of October 7, 2016 for a digital Republic, the question of the communication of three-dimensional digitizations of works of art has not been the subject a specific treatment to look at:
 - whether or not they are a communicable administrative document;
 - respect for the intellectual property rights attached to it;
 - the impact of such communications, if any, on the risks of counterfeiting works of art;
 - the consequences of such communications, if any, on the resources of public cultural institutions.

In view of these contextual elements, we consult you on the questions listed below:

- 1) Can three-dimensional scans of art works be considered as administrative documents within the meaning of the article 300-2 of the Code of Relations between the Public and the Administration?
- 2) If three-dimensional digitizations of works of art can be considered as administrative documents which are in principle communicable, the reservation of Article L. 311-4 of the Code of Relations between the Public and the Administration according to which *"the administrative documents are communicated or published subject to the rights of literary and artistic property"*, which the Rodin museum is entitled to under the moral rights which it holds in its capacity as trustee of the artist, is it as such a basis for a refusal of communication (being reminded that the provision of the original molds is refused by the museum)?
- 3) Can the commercial re-use of the three-dimensional scans being requested lead to a refusal of communication regarding the issues that this could pose for the institution's revenue?
- 4) Can the moral right, which the Rodin Museum disposes of as its rightful claimant, and the law of intellectual property, in particular the right of marks, justify the refusal of any reuse of three-dimensional digitization should it be considered as communicable administrative documents? If not, can you specify the scope of the use of three-dimensional scans that could be done by a third party (particularly in the context of increasing reproductions of works whose presentation is confusing with the original works of the artist)?
- 5) If three-dimensional scans were to be considered as common administrative documents, can the museum's method of financing, as set out in Article 12 of Decree No. 93-163, be a basis for refusal to reuse these documents? If not, can you specify the scope of the use of third-party scans by a third party and the framework that could be used to compensate the losses of revenue of the establishment related to a possible communication??
- 6) Only existing documents in their final version can be considered as communicable administrative documents and not provisional documents?

Awaiting your Commission's advice on all of these issues, please accept, Madame, Monsieur, the expression of my best greetings.

Xavier Teboul
Secrétaire général du musée Rodin





(JUMP TO ENGLISH)

(Copier via ROC)

COMMISSION D'ACCÈS AUX DOCUMENTS ADMINISTRATIFS

Cada

Le Président

Conseil n° 20190026 du 07 février 2019

La commission d'accès aux documents administratifs a examiné dans sa séance du 24 janvier 2019 votre demande de conseil relative :

- 1) au caractère communicable des numérisations tridimensionnelles d'œuvres d'art, au regard de la qualité d'ayant droit de l'artiste du musée ;
- 2) à la possibilité de réutiliser, à des fins commerciales, des numérisations tridimensionnelles dont il est demandé la communication, au regard du droit de la propriété intellectuelle et du risque de contrefaçon ;
- 3) à la possibilité de réutiliser des numérisations tridimensionnelles au regard du mode de financement du musée prévu à l'article 12 du décret n° 93-163 du 2 février 1993.

La commission vous rappelle d'abord qu'aux termes de l'article L300-2 du code des relations entre le public et l'administration : « Sont considérés comme documents administratifs, au sens des titres 1er, III et IV du présent livre, quels que soient leur date, leur lieu de conservation, leur forme et leur support, les documents produits ou reçus, dans le cadre de leur mission de service public, par l'Etat, les collectivités territoriales ainsi que par les autres personnes de droit public ou les personnes de droit privé chargées d'une telle mission. »

La commission relève qu'aux termes du décret n° 93-163 du 2 février 1993 relatif au musée Rodin, le musée est un établissement public national à caractère administratif placé sous la tutelle du ministre chargé de la culture qui a pour mission de faire connaître l'œuvre de Rodin et de faire respecter le droit moral qui y est attaché. A cette fin : 1. Il présente au public les collections comprenant les objets donnés ou légués par Auguste Rodin et les œuvres acquises ultérieurement, en assure la garde, la conservation et la mise en valeur ; 2. Il organise des expositions, des colloques et toute activité éducative et culturelle susceptible de concourir au rayonnement de l'œuvre de Rodin et de la sculpture ; 3. Il est habilité à acquérir toute œuvre ou tout document présentant un intérêt pour la connaissance de l'œuvre de Rodin et de la sculpture ; 4. Il exécute ou fait exécuter tous travaux d'aménagement ou d'extension des locaux du siège du musée ou de son annexe ; 5. Il procède ou fait procéder, sous son contrôle, à des éditions originales de bronzes tirées à partir des moules et des modèles en plâtre figurant dans les collections. Ces éditions sont limitées à douze, numérotées de 1/8 à 8/8 et de I/IV à IV/IV, y compris les éditions originales existantes ; 6. Il édite et commercialise des reproductions d'œuvres de Rodin, des publications et des produits audiovisuels.

La commission en déduit que les numérisations d'œuvres dont vous assurez la conservation, à des fins à la fois d'étude et d'exploitation commerciale, constituent des documents administratifs au sens des dispositions précitées, dès lors que vous les avez élaborées et les détenez dans le cadre de la mission de service public qui vous est confiée. Elles sont donc, en principe, communicables à toute personne qui en fait la demande, sur le fondement de l'article L311-1 du

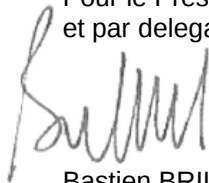
même code, sous réserve qu'ils ne présentent plus un caractère préparatoire à une décision que vous n'auriez pas encore prise.

La commission vous précise, ensuite, que dans sa décision du 8 novembre 2017 n° 375704, le Conseil d'État a jugé que l'article L311-4 du code des relations entre le public et l'administration, qui dispose que : « Les documents administratifs sont communiqués ou publiés sous réserve des droits de propriété littéraire et artistique. », implique, avant de procéder à la communication de documents administratifs grevés de droits d'auteur n'ayant pas déjà fait l'objet d'une divulgation au sens de l'article L121-2 du code de la propriété intellectuelle, de recueillir l'accord de leur auteur. Or, la commission constate que les documents sollicités ne sont pas eux-mêmes grevés de droits d'auteur, et il n'apparaît pas douteux que les œuvres du sculpteur Auguste Rodin dont les reproductions tridimensionnelles sont sollicitées ont déjà fait l'objet d'une divulgation au sens du code de la propriété intellectuelle. Les dispositions de l'article L311-4 du code des relations entre le public et l'administration ne sauraient dès lors légalement fonder un refus de communication, non plus que les considérations tirées du mode de financement de l'établissement public qui sont inopérantes en matière de communication des documents administratifs.

La commission souligne, enfin, que la qualité d'ayant droit de Rodin, chargé de faire respecter le droit moral du sculpteur est également insusceptible de fonder un refus de communication, à charge pour le musée, comme il le fait aujourd'hui, de veiller au respect de l'œuvre lors de la réutilisation des documents sollicités.

En ce qui concerne les conditions de réutilisation, la commission vous précise que l'article L323-1 du code des relations entre le public et l'administration prévoit que la réutilisation d'informations publiques peut donner lieu à l'établissement d'une licence et qu'une telle licence est obligatoire lorsque la réutilisation est soumise au paiement d'une redevance. Si la réutilisation d'informations publiques est, en principe, gratuite, aux termes de l'article L324-1 du même code, son article L324-2 prévoit la possibilité d'une redevance lorsque la réutilisation porte « sur des informations issues des opérations de numérisation des fonds et des collections des bibliothèques, y compris des bibliothèques universitaires, des musées et des archives, et, le cas échéant, sur des informations qui y sont associées lorsque ces dernières sont commercialisées conjointement. Le produit total du montant de cette redevance, évalué sur une période comptable appropriée, ne dépasse pas le montant total des coûts de collecte, de production, de mise à disposition ou de diffusion, de conservation de leurs informations et d'acquisition des droits de propriété intellectuelle. » Les modalités de calcul de cette redevance sont précisées à l'article R324-4-3 du même code. Ainsi, lorsque le musée aura établi une tarification pour la réutilisation de ses numérisations tridimensionnelles, laquelle devra être publiée sur son site internet, le musée pourra-t-il soumettre leur réutilisation à une licence et l'assortir d'un tarif conforme à ces dispositions.

Pour le Président
et par delegation



Bastien BRILLET
Rapporteur général
Premier conseiller de tribunal administratif

[Obtained July 8, 2019 via secondary FOIA request directly to CADA]



(TRANSLATION VIA GOOGLE)
(Handwritten underlines in original)

COMMISSION D'ACCÈS AUX DOCUMENTS ADMINISTRATIFS

Cada

Le Président

Conseil n° 20190026 du 07 février 2019

The board of access to administrative documents examined in your meeting of January 24, 2019 your request for advice on:

- 1) the communicable nature of three-dimensional digitizations of works of art, with regard to the quality of the artistic rights of the museum ;
- 2) the ability to reuse, for commercial purposes, three-dimensional scans that are requested for disclosure, in terms of intellectual property law and the risk of counterfeiting;
- 3) the possibility of reusing three-dimensional scans with regard to the method of financing the museum provided for in Article 12 of Decree No. 93-163 of 2 February 1993.

The commission reminds you first of all that according to the article L300-2 of the code of the relations between the public and the administration: "Are regarded as administrative documents, within the meaning of titles 1, III and IV of this book, whatever their date, their place of conservation, their form and their support, the documents produced or received, as part of their public service mission, by the State, the local authorities as well as by other persons of public law or private law persons in charge of such a mission."

The Committee notes that, pursuant to Decree No. 93-163 of 2 February 1993 on the Musée Rodin, the museum is a national public administrative institution under the supervision of the Minister of Culture whose mission is to promote the work of Rodin and to uphold the moral rights attached to it. To this end: 1. It presents to the public the collections including the objects donated or bequeathed by Auguste Rodin and the works acquired later, in the care, preservation and enhancement; 2. It organizes exhibitions, symposia and any educational and cultural activity likely to contribute to the influence of Rodin's work and sculpture; 3. It is entitled to acquire any work or document of interest for the knowledge of Rodin's work and sculpture; 4. It executes or causes to be carried out any work of development or extension of the premises of the seat of the museum or its annex; 5. It makes or has made under his control, original editions of bronzes drawn from the molds and plaster models contained in the collections. These editions are limited to twelve, numbered from 1/8 to 8/8 and from I / IV to IV / IV, including existing original editions; 6. It edits and markets reproductions of Rodin's works, publications and audiovisual products.

The commission deduces from this that the digitization of works which you keep for purposes of both study and commercial exploitation constitute administrative documents within the meaning of the aforementioned provisions, provided that you have elaborated them and hold them within

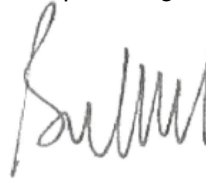
the framework of the public service mission entrusted to you. They are therefore, in principle, communicable to any person who makes the request, on the basis of Article L311-1 of the same Code, provided they are no longer preparatory to a decision that you would not yet taken.

The commission then tells you that in its decision of 8 November 2017 no. 375704, the Conseil d'État ruled that Article L311-4 of the Code of relations between the public and the administration, which provides that: "The administrative documents are communicated or published subject to the rights of literary and artistic property", implies, before proceeding to the communication of copyrighted administrative documents not already the subject of a disclosure in the sense Article L121-2 of the Intellectual Property Code, to obtain the agreement of their author. However, the Committee notes that the documents requested are not themselves copyrighted, and it does not appear doubtful that the works of the sculptor Auguste Rodin whose three-dimensional reproductions are requested have already been the subject of a disclosure within the meaning of the intellectual property code. The provisions of Article L311-4 of the Code of Relations between the Public and the Administration can not therefore legally constitute a refusal of communication, and consideration of the method of financing the public establishment is immaterial to the communication of administrative documents.

Lastly, the Committee emphasizes that having Rodin's rights to enforce the moral right of the sculptor is also insusceptible as the basis of a refusal to communicate, as the museum is doing today, to ensure the respect of the work when reusing the requested documents.

Regarding the conditions of reuse, the commission informs you that Article L323-1 of the Code of relations between the public and the administration provides that the reuse of public information may lead to the establishment of a license and such a license is mandatory when the reuse is subject to the payment of a fee. If the reuse of public information is, in principle, free under Article L324-1 of the same code, Article L324-2 provides for the possibility of a fee when the re-use relates to "information from operations digitization of fonds and collections of libraries, including university libraries, museums and archives, and, where appropriate, related information when they are marketed jointly. The total revenue from the amount of this royalty, measured over an appropriate accounting period, does not exceed the total amount of the costs of collecting, producing, making available or disseminating, keeping their information and acquiring the rights of intellectual property. The methods for calculating this fee are specified in article R324-4-3 of the same code. Thus, when the museum has established a fee for the reuse of its three-dimensional scans, which will have to be published on its website, the museum will be able to submit their reuse to a license and match it with a rate in accordance with these provisions.

Pour le Président
et par delegation



Bastien BRILLET
Rapporteur général
Premier conseiller de tribunal administratif

ALEXIS FITZJEAN Ó COBHTHAIGH[\(JUMP TO ENGLISH\)](#)*Avocat au Barreau de Paris | Attorney at the Paris Bar**Chargé d'enseignement à l'Université Paris II Panthéon-Assas*

Rodin Museum
 77, rue de Varenne
 75007 Paris

A Paris, le 8 février 2019
Par LRAR n° 2C 135 548 1005 6

Objet : demande de communication de documents administratifs

A l'attention de Mme Catherine Chevillot, Directrice du musée Rodin, conservateur général du patrimoine

Madame la Directrice,

Par LRAR n° 1 A 148 042 7744 5 du 8 novembre 2018, je vous ai saisi d'une demande de communication d'une série de documents administratifs pour le compte de mon client, M. Cosmo Wenman.

Par courrier du 11 décembre 2018, réceptionné le 17 décembre suivant, vous avez refusé de faire droit à ma demande de communication.

D'emblée, je vous indique que je conteste la totalité de vos refus, sur tous les plans, et que je saisis d'ores et déjà la Commission d'accès aux documents administratifs (CADA). La présente a pour objet de vous détailler uniquement certains points précis fondant ma contestation, dans l'espoir de vous amener à reconsidérer votre position. Le reste des motifs fondant ma proposition sera détaillé, en temps utile, une fois que la CADA aura rendu son avis. Le présent courrier sera joint à ma saisine de la CADA, pour sa parfaite information.

D'abord, vous commencez par m'opposer les dispositions des articles L. 311-5 et L. 311-6 du code des relations entre le public et l'administration. Je vous avoue qu'en l'absence de plus amples précisions de votre part, je ne comprends pas très bien en quoi ces dispositions seraient susceptibles de fonder votre refus. Je vous serai infiniment reconnaissant de bien vouloir m'éclairer à cet égard.

Ensuite, vous m'invitez à « parfaire » mes demandes et à préciser les documents dont je souhaite la communication et vous m'indiquer, en outre, qu'aucune liste des contenus numérisés

tridimensionnels des sculptures composant les collections du musée Rodin ou d'autres collections n'aurait été établie.

Je vous rappelle qu'est communicable un document qui n'existe pas en l'état mais peut être obtenu par un traitement automatisé d'usage courant (cf. CADA, 25 mai 2000, *Ministre de l'emploi et de la solidarité*, n° 2000-2162, 10ème rapport, p. 111 : concernant la liste des entreprises soumises à la loi relative à l'emploi de travailleurs handicapés ; CADA, 29 mai 2000, *France Télécom*, n° 2000-1674, 10ème rapport, p. 15 : s'agissant d'une liste d'agents d'une entreprise publique).

L'administration peut ainsi être conduite à extraire des données contenues dans des fichiers qu'elle détient afin d'établir le document objet de la demande de communication (cf. CADA, 25 mai 2000, *Directeur général de France Télécom*, n° 2000-2163, 10ème rapport, p. 112).

D'une part, s'agissant des correspondances mentionnant mon client, il vous suffirait ainsi de faire une simple recherche dans votre système de traitement automatisé de données avec les discriminants suivants : « Cosmo », « Wenman » et « Cosmo Wenman », ainsi que « BMA », « artbma.org » et « Baltimore » et de me communiquer ensuite les résultats de cette recherche.

D'autre part, à supposer même que la liste des contenus numérisés tridimensionnels des sculptures composant les collections du musée Rodin ou d'autres collections, dont je demande la communication, n'aurait pas été établie, une telle liste pourrait aisément être constituée.

Par suite, les arguments que vous m'opposer à cet égard sont insusceptibles de venir justifier utilement votre position. Etant précisé, au demeurant, que je vois difficilement comment ma demande pourrait être plus précise que la liste extrêmement précise et détaillée que je vous ai adressée et que je rappelle, à toutes fins utiles, ci-dessous pour mémoire :

- les fichiers contenant la version numérisée tridimensionnelle (scan 3D) du « Penseur » de M. Auguste Rodin, y compris la version utilisée pour imprimer les copies du *Penseur* dont la promotion est assurée sur l'adresse suivante : <https://boutique.musee-rodin.fr/en/sculpture-reproductions/380-the-thinker-miniature.html>, de même que tout autre version de meilleure qualité ;
- la liste de l'ensemble des fichiers, actuellement en votre possession, contenant des versions numérisées tridimensionnelles des sculptures composant les collections du musée Rodin ou d'autres collections (les jeux de scan 3D en votre possession), ainsi que lesdits fichiers ;
- l'ensemble des courriels, échangés, envoyés ou reçus par le musée Rodin, un de ses employés ou un des membres de son équipe dirigeante, ayant pour objet, traitant ou mentionnant les précédentes demandes de M. Wenman ;
- l'ensemble des notes internes, analyses, rapports, études, lignes directrices, directives, échanges de courriels ou tout autre document relatif à la politique du musée Rodin à l'égard des fichiers contenant des versions numérisées tridimensionnelles d'une sculpture composant les

collections du musée Rodin ou d'autres collections, en particulier la politique du musée concernant l'accessibilité à ces données ;

- l'ensemble des accords, contrats, conventions, traités liant le musée Rodin et le *Baltimore Museum of Art*, en particulier, ceux ayant pour objet, traitant ou mentionnant les fichiers contenant la version numérisée tridimensionnelle (scan 3D) du « Penseur » de M. Auguste Rodin, ou de tout autre sculpture ;

- tout document démontrant que le musée Rodin a obtenu des revenus de l'utilisation des fichiers contenant la version numérisée tridimensionnelle (scan 3D) du « Penseur » de M. Auguste Rodin à des fins de fabrication de répliques ;

- tout document démontrant que le musée Rodin a obtenu des revenus de licences octroyées à des tiers à propos de l'utilisation de n'importe lequel des fichiers contenant des versions numérisées tridimensionnelles des sculptures composant les collections du musée Rodin ou d'autres collections ;

- en particulier, pour la période s'étendant du 1er janvier 2014 à la réception de la présente demande : l'ensemble des correspondances entre le musée Rodin et le *Baltimore Museum of Art*, l'ensemble des courriels internes, des notes internes, analyses, rapports, lignes directrices ou tout autre document relatif à l'impression en trois dimension et des correspondances, échangées, envoyés ou reçus entre le musée Rodin, un de ses employés ou un des membres de son équipe dirigeante, d'une part, et le ministère de la culture, d'autre part, ayant pour objet, traitant ou mentionnant l'impression tridimensionnelle, la numérisation tridimensionnelle ou le *Baltimore Museum of Art* ;

- en particulier, pour la période s'étendant du 1er janvier 2018 à la réception de la présente demande, l'ensemble des correspondances échangées, envoyées ou reçues entre le musée Rodin et M. Olivier Japiot, conseiller d'Etat membre du Conseil supérieur de la propriété littéraire et artistique.

Du reste, vous semblez soutenir que les correspondances dont je demande la communication, qui constituent essentiellement des correspondances dématérialisées, n'auraient pas été conservées. Je vous avoue que je peine à croire que la totalité des correspondances dont je demande la communication et qui ont été échangées de manière particulièrement récente n'aurait opportunément pas été conservée. Je vous serai donc éminemment reconnaissant de bien vouloir procéder aux vérifications nécessaires sur ce point.

Enfin, s'agissant de ma demande concernant la communication des documents administratifs que constitue la version numérisée tridimensionnelle du « Penseur » de M. Auguste Rodin de même que de toute autre version de meilleure qualité (communément appelée « scan 3D ») et qui sert à façonner des reproductions à l'aide d'une « imprimante 3D », vous m'opposez, là

encore, un refus, au motif que vous disposeriez de droits de propriété littéraire et artistique qui feraient obstacle à cette communication.

Je ne partage pas votre analyse.

Le droit d'auteur recouvre, d'une part, le droit moral de l'auteur et, d'autre part, son droit patrimonial. Le droit moral (*cf.* articles L. 121-1 à L. 121-9 du code de la propriété intellectuelle), « *perpétuel, inaliénable et imprescriptible* » (*cf.* article L. 121-1, alinéa 3, du code de la propriété intellectuelle), qui reste attaché à la personne de l'auteur (*cf.* article L. 121-1, alinéa 2 du code de la propriété intellectuelle), n'autorise en aucun cas les entraves à l'utilisation d'une oeuvre, mais seulement les limitations aux usages susceptibles de porter atteinte à l'image de l'artiste. Il n'est donc en aucun cas susceptible de venir légalement fonder le refus de communication que vous m'opposez.

Le droit patrimonial quant à lui confère un monopole d'exploitation économique sur l'oeuvre, pour une durée variable au terme de laquelle l'oeuvre entre dans le « domaine public » (au sens du code de la propriété intellectuelle, non au sens du droit de la domanialité publique). C'est ce droit seul qui est éventuellement susceptible de venir légalement fonder une interdiction de la reproduction et de la représentation publique d'une oeuvre (*cf.* articles L. 122-1 à L. 122-12 du code de la propriété intellectuelle). Ces droits s'éteignent toutefois, en principe, 70 ans après le décès de l'artiste (*cf.* article L. 123-1 du code de la propriété intellectuelle).

Une oeuvre de l'esprit entrée dans le domaine public est libre de droits patrimoniaux, de sorte qu'un tiers peut parfaitement exploiter une telle oeuvre, par exemple par reproduction, d'une oeuvre d'art dont les droits patrimoniaux sont désormais éteints, sous la seule réserve de ne pas porter atteinte au droit moral qui demeure perpétuel.

Or, les oeuvres de M. Rodin sont entrées dans le domaine public depuis de nombreuses années. Vous ne disposez donc d'aucun droit patrimonial exclusif sur ces oeuvres.

En outre, si le droit moral d'un tiers peut, éventuellement, venir s'opposer à la communication d'un document administratif qui serait grevé de droits de propriété littéraire ou artistique, cette opposition n'est valable que lorsque les documents administratifs faisant l'objet de la demande n'ont pas fait l'objet d'une divulgation, au sens de l'article L. 121-2 du code de la propriété intellectuelle et en l'absence d'accord de leur auteur. Or, il n'est pas sérieusement contestable que les oeuvres de M. Rodin, en particulier le « Penseur », ont fait l'objet d'une divulgation au public depuis bien des années.

Au demeurant, la circonstance que le musée Rodin dispose de marques déposées est insusceptible de s'opposer à la communication des documents dont je demande la communication pour mon client.

Dans ces conditions, je vous serai éminemment reconnaissant de bien vouloir reconsidérer votre position. Comme je vous l'indiquais au début de ce courrier, je saisis d'ores et déjà la CADA et joins la présente à ma saisine.

Je vous rappelle que vous pouvez vous faire conseiller par un de mes confrères. Je vous remercie, le cas échéant, de bien vouloir me communiquer ses coordonnées afin que je prenne directement attache avec lui, ou de lui transmettre les miennes.

Je reste naturellement à votre entière disposition pour évoquer ce dossier.

Je vous prie de croire, Madame la Directrice, en l'expression de ma parfaite considération.

ALEXIS FITZJEAN Ó COBHTHAIGH

Avocat au Barreau de Paris | Attorney at the Paris Bar

Chargé d'enseignement à l'Université Paris II Panthéon-Assas

(TRANSLATION VIA GOOGLE)

ALEXIS FITZJEAN Ó COBHTHAIGH*Avocat au Barreau de Paris | Attorney at the Paris Bar**Chargé d'enseignement à l'Université Paris II Panthéon-Assas*

Rodin Museum77, rue de Varenne
75007 Paris

Paris, February 8, 2019

By LRAR n° 2C 135 548 1005 6**Subject** : Request for communication of administrative documents**For the attention of Mme Catherine Chevillot, Directrice du musée Rodin, conservateur général du patrimoine**

Madam Director,

By letter LRAR No. 1 A 148 042 7744 5 of November 8, 2018, I have made a request for the submission of a series of administrative documents on behalf of my client, Mr. Cosmo Wenman.

By mail of December 11, 2018, received the following December 17, you have refused to grant my request for communication.

From the outset, I am telling you that I am challenging all of your refusals, in all respects, and that I am already engaging the Commission on Administrative Documents Access (CADA). The purpose of this letter is to provide you with just a few specific points on which I base my dispute, in the hope that you reconsider your position. The rest of the reasons for my proposed position will be detailed, in due course, once CADA has rendered its opinion. This letter will be attached to my request to CADA, for its perfect information.

First, you begin by opposing the provisions of Articles L. 311-5 and L. 311-6 of the Code of relations between the public and the administration. I confess that in the absence of further clarification from you, I do not understand very well how these provisions would be a basis for your refusal. I will be very grateful if you will enlighten me in this regard.

Subsequently, you invite me to "perfect" my requests and to specify the documents which I wish to be communicated and tell me, in addition, that no list of digitized three-dimensional sculptures in the Musée Rodin's collection or other collections has been established.

I remind you that a document that does not currently exist can be obtained by automated processes in common use (see CADA, 25 May 2000, *Ministre de l'emploi et de la solidarité*, n° 2000-2162, 10ème rapport, p. 111: concerning the list of enterprises subject to the law on the employment of disabled workers; CADA, May 29, 2000, *France Télécom*, No. 2000-1674, 10th report, p. 15: in the case of a list of agents of a public company).

The administration can thus be led to extract data contained in files it holds in order to establish the document that is the subject of the application for communication (see CADA, May 25, 2000, *Directeur général de France Télécom*, No. 2000-2163, 10th report, p. 112).

On the one hand, in the case of correspondence mentioning my client, it would suffice to do a simple automated search in your data with the following discriminants: "Cosmo", "Wenman" and "Cosmo Wenman", as well as "BMA", "artbma.org" and "Baltimore" and then tell me the results of this research.

On the other hand, even assuming that the list of digitized three-dimensional sculptures composing the collections of the Musée Rodin or other collections, which I request the communication, would not have been established, such a list could easily be formed.

Consequently, your arguments in this regard are not likely to justify your position. To be specific, moreover, I hardly see how my request could be more precise than the extremely precise and detailed list of information that I sent to you which I repeat, for all purposes, below for the record:

- the files containing the three-dimensional digital version (3D scan) of the *Thinker* by Mr. Auguste Rodin, including the version used to print the *Thinker* copies promoted on the following address: <https://boutique.musee-rodin.fr/en/sculpture-reproductions/380-the-thinker-miniature.html>, as well as any other version of better quality;
- the list of all files, currently in your possession, containing digitized three-dimensional versions of the sculptures composing the collections of the Musée Rodin or other collections (the 3D scans in your possession), as well as said files;
- all e-mails, exchanged, sent or received by the Musée Rodin, one of its employees or a member of its management team, with the subject matter, dealing with, or mentioning the previous requests of Mr. Wenman;

- all internal notes, analyses, reports, studies, guidelines, directives, e-mails or any other documents relating to Musée Rodin's policies regarding files containing three-dimensional digitizations of sculptures in the collection of Musée Rodin or other collections, in particular museum policy regarding the accessibility of these data;
- all agreements, contracts, conventions, treaties linking the Musée Rodin and the *Baltimore Museum of Art*, in particular, those dealing with, or mentioning files containing the three-dimensional digitization (3D scan) of the *Thinker* of Mr. Auguste Rodin, or any other sculpture;
- any document proving that Musée Rodin has obtained income from the use of files containing the three-dimensional digitized version (3D scan) of the *Thinker* of Mr. Auguste Rodin for the fabrication of replicas;
- any document proving that the Musée Rodin has obtained income from licenses granted to third parties concerning the use of any files containing digitized three-dimensional versions of sculptures composing the collections of Musée Rodin or other collections;
- in particular, for the period from January 1, 2014 to the receipt of this application: all correspondence between Musée Rodin and the *Baltimore Museum of Art*, all internal emails, internal notes, analyses, reports, guidelines, all internal documents relating to three-dimensional printing and correspondences, exchanged, sent, or received between the Musée Rodin, one of its employees or one of members of its management team, on the one hand, and the Ministry of Culture, on the other hand, having as its object, treating, or mentioning the three-dimensional printing, three-dimensional scanning, or the *Baltimore Museum of Art* ;
- in particular, for the period from January 1, 2018 to the reception of this application, all correspondence exchanged, sent or received between Musée Rodin and Olivier Japiot, conseiller d'Etat member of the Conseil Supérieur on literary and artistic property.

Moreover, you seem to maintain that the correspondence which I request be communicated, which essentially constitute dematerialized correspondence, would not have been preserved. I confess to you that I find it hard to believe that all the correspondence of which I request the communication and which have been exchanged in a particularly recent manner would not have been conveniently preserved. I would therefore be most grateful if you would proceed with the necessary checks on this point.

Finally, with regard to my request concerning the communication of administrative documents constituting the three-dimensional digitized version of the *Thinker* of Mr. Auguste Rodin, as

well as any other version of better quality (commonly referred to as "3D scans") and which are used in the manufacture of reproductions using a "3D printer", you oppose me again, a refusal on the grounds that you have literary and artistic property rights which would hinder this communication.

I do not share your analysis.

The right of authorship covers, on the one hand, the moral rights of the author and, on the other hand, his patrimonial right. Moral rights (see Articles L. 121-1 to L. 121-9 of the Intellectual Property Code), "perpetual, inalienable and imprescriptible " (see article L. 121-1, paragraph 3, of the Intellectual Property Code), which remains attached to the person of the author (see Article L. 121-1, paragraph 2 of the Intellectual Property Code), do not authorize any interference with the use of a work, except to limit uses likely to damage the image of the artist. It is therefore in no way likely to legally serve as a foundation for the refusal of communication that you object to me.

The patrimonial right confers a monopoly of economic exploitation on the work, for a variable length of time after which the work enters into the "public domain" (within the meaning of the Intellectual Property Code, not within the meaning of public domain law). It's this right alone that is eventually likely to legally establish a ban on reproduction and public representation of a work (see Articles L. 122-1 to L. 122-12 of the Intellectual Property Code). However, these rights are extinguished, in principle, 70 years after the death of the artist (see article L. 123-1 of the Intellectual Property Code).

A work of the mind entering the public domain is free of patrimonial rights, so that a third party can fully exploit such a work, for example by reproduction of a work of art whose economic rights are extinguished, subject only to not impairing the moral right that remains perpetual.

However, the works of Mr. Rodin entered the public domain many years ago. You therefore have no exclusive patrimonial rights over these works.

In addition, if the moral right of a third party may eventually come to oppose the communication of an administrative document which would be subject to literary or artistic property, this opposition is only valid when the administrative documents which are the subject of the application have not already been the subject of a disclosure, within the meaning of Article L. 121-2 of the Intellectual Property Code and in the absence of agreement of their author. However, it is not seriously questionable that the works of Mr. Rodin, in particular the *Thinker*, have been the subject of a public disclosure for many years.

Moreover, the fact that Musée Rodin has registered trademarks cannot oppose the disclosure of the documents I request communication of for my client.

In these circumstances, I would be most grateful if you would reconsider your position. As I indicated at the beginning of this letter, I have already engaged the CADA and join this letter to my referral.

I remind you that you can get advice from an attorney. I thank you, if need be, kindly to communicate to me their contact information so that I can communicate directly with them, or transmit mine to them.

I remain naturally at your disposal to discuss this matter.

I beg you to believe, Madam Director, in the expression of my perfect consideration.

ALEXIS FITZJEAN Ó COBHTHAIGH
Avocat au Barreau de Paris | Attorney at the Paris Bar
Chargé d'enseignement à l'Université Paris II Panthéon-Assas

**MUSÉE
RODIN**
19 BD DES INVALIDES
75007 PARIS
TEL +33 1 44 18 61 10
FAX +33 1 44 18 61 30
WWW.MUSEE-RODIN.FR

[Obtained July 8, 2019 via secondary FOIA request directly to CADA]

Paris, le 26 APRIL 2019

(JUMP TO ENGLISH)

(Copier via ROC)

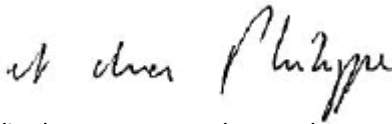
**Monsieur Philippe Barbat Directeur
Général des Patrimoines**

182, rue Saint-Honoré
75001 Paris

LRAR 513
REF COURRIER
CCh/XT/ELS

Affaire suivie ar:
Hélène Brunel
Chargée des affaires juridiques
brunel@musee-rodin.fr
tél. 01 44 18 61 56
fax. 01 44 18 61 80

Monsieur le Directeur general,



J'ai l'honneur de vous écrire afin d'attirer votre attention sur les conséquences inattendues de la politique de l'Etat français en matière d'ouverture et de partage des données publiques.

Désireuse d'inscrire le musée Rodin dans le mouvement de l'Open Data, j'ai toutefois été récemment alertée sur les effets pervers de la communicabilité des numérisations tridimensionnelles d'œuvres d'art (dites «3D») dans le cadre d'un pré-contentieux en cours, opposant le musée à un prestataire américain de numérisation et de reproductions tridimensionnelles, souhaitant obtenir la communication d'un certain nombre de nos documents parmi desquels les numérisations tridimensionnelles réalisées à ce jour par le musée Rodin.

La mission statutaire première du musée que je dirige est de faire connaître l'œuvre de Rodin et de faire respecter le droit moral qui y est attaché. Le musée Rodin remplit les missions habituelles de tout musée de France ; pour ce faire et en raison de son objectif d'autonomie financière, il exerce en régie directe des missions commerciales et notamment la production d'éditions originales de bronzes et de reproductions en résine, dont la vente permet le financement de ses missions dites « de service public ». La sectorisation fiscale du musée reflète d'ailleurs la nature de ses différentes activités (secteur non lucratif, secteur lucratif, secteur mixte).

Les numérisations tridimensionnelles d'œuvres d'art pouvant servir à la réalisation de reproductions destinées à la vente, voire à la réalisation de bronzes entretenant de facto la confusion dans l'esprit du public entre original et reproduction, leur diffusion en vue de leur exploitation par des tiers présente plusieurs types de risques pour l'établissement : des risques liés à la contrefaçon, à la fraude artistique, au parasitisme et à la concurrence déloyale, d'une part, et des risques de grande fragilisation de son modèle économique et ses ressources propres, d'autre part.

Or, saisie par nos soins, la Commission d'accès aux documents administratifs (CADA) a récemment considéré que lesdites numérisations, dont le musée assure la conservation à des fins d'études et d'exploitation commerciale, constituent des documents administratifs par principe communicables à toute personne qui en fait la demande. Dans son conseil n°20190026 en date du 07 février 2019, la CADA précise en effet que ni les droits de propriété

littéraire et artistique, ni les considérations tirées du mode de financement de l'établissement, ni même la qualité d'ayant droit de Rodin, ne peuvent fonder un refus de communication de ces données. Puis, elle conclut en évoquant la possibilité pour le musée de soumettre la réutilisation de ces numérisations à une licence et de l'assortir du paiement d'une redevance (solution inappropriée pour le musée Rodin, ces numérisations pouvant permettre la réalisation de reproductions d'oeuvres de Rodin).

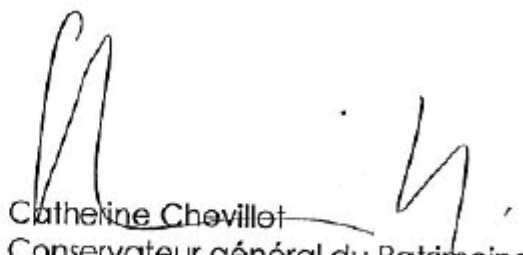
L'application de cette recommandation, si elle devait se confirmer, aurait des conséquences désastreuses non seulement pour le modèle économique du musée Rodin, mais également pour d'autres opérateurs du ministère comme la RMN, en ce qu'elle consisterait tout simplement à remettre gratuitement à de potentiels concurrents et faussaires notre outil de production.

En l'absence de traitement spécifique par le législateur et compte tenu du caractère non contraignant de l'avis rendu par la CADA, le musée Rodin refuse pour l'instant de faire droit aux demandes de communication de numérisations tridimensionnelles d'oeuvres qu'il reçoit. Toutefois, les sollicitations réitérées du prestataire de numérisations et reproductions tridimensionnelles susmentionné me font craindre que cette affaire ne soit portée devant les tribunaux et rendue publique. C'est pourquoi je me permets de solliciter par la présente vos conseils sur la position à défendre, d'autres établissements culturels ayant également dû s'interroger sur ces questions de communication et de réutilisation des numérisations tridimensionnelles de leurs collections.

Vous remerciant de l'attention que vous porterez à la présente, je vous prie de croire, Monsieur le Directeur general, en l'expression de ma respectueuse considération.

et avec Philippe

Bien à vous


Catherine Chevillot
Conservateur général du Patrimoine
Directrice du musée Rodin

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(TRANSLATION VIA GOOGLE)

Paris, le **26 APRIL 2019**

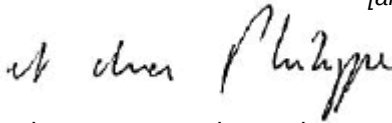
**Monsieur Philippe Barbat Directeur
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[and dear Philippe]

Monsieur le Directeur general,



I have the honor to write to you to draw your attention to the unexpected consequences of the French State's policy on openness and sharing of public data.

Wishing to register the Rodin Museum in the Open Data movement, I was recently warned about the perverse effects of the three-dimensional digitization of works of art (called "3D") in the context of a pre-litigation in progress, opposing the museum to an American requester of digitization and three-dimensional reproductions, wishing to obtain the communication of a number of our documents among which are the three-dimensional scans carried out to date by the Rodin Museum.

The primary statutory mission of the museum that I lead is to publicize Rodin's work and to uphold the moral rights attached to it. The Rodin Museum fulfills the usual missions of any museum in France; to do this and because of its objective of financial autonomy, it exercises in direct management of commercial missions and in particular the production of original editions of bronzes and reproductions in resin, the sale of which allows the financing of its missions known as "public service ." The fiscal sectorization of the museum also reflects the nature of its various activities (non-profit sector, lucrative sector, mixed sector).

Three-dimensional scans of works of art that can be used for the production of reproductions for sale, or even for the production of bronzes, which in effect confuses the public's mind between original and reproduction, and their dissemination for the purpose of their exploitation by third parties presents several types of risks for the institution: risks related to counterfeiting, artistic fraud, parasitism and unfair competition, on the one hand, and risks of great fragility of its economic model and its own resources, on the other hand.

However, the Administrative Records Access Commission (CADA), recently engaged by us, has considered that these scans, for which the museum preserves for the purpose of study and commercial exploitation, constitute administrative documents that are in principle communicable to anyone who asks for it. In its council no 20190026 dated February 7, 2019, the CADA specifies that neither the literary and artistic property rights, nor the considerations derived from

the financing model of the establishment, nor even the quality of having the right to Rodin, can not be a basis for a refusal to communicate this data. Then, it concludes by mentioning the possibility for the museum to submit the reuse of these scans to a license and to match it with the payment of a royalty (an inappropriate solution for the Rodin museum, as these scans could allow the realization of reproductions of works by Rodin).

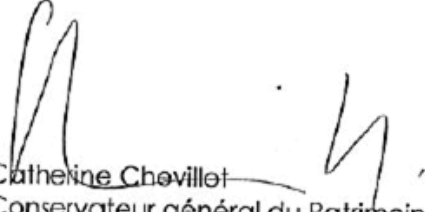
The application of this recommendation, if it were to be confirmed, would have disastrous consequences not only for the Rodin Museum's economic model, but also for other operators of the ministry such as the RMN [Réunion des Musées Nationaux], in that it would simply provide free of charge to potential competitors and counterfeiters our production tools.

In the absence of specific treatment by the legislature and taking into account the non-binding nature of the opinion given by the CADA, the Rodin museum refuses for the moment to grant the requests it receives for communication of three-dimensional digitizations of works. However, the requestor's reiterated solicitations for the aforementioned digitizations and three-dimensional reproductions make me fear that this case will be brought to court and made public. That is why I am hereby seeking your advice on the position to be defended, as other cultural institutions have also had to consider these questions of communication and the reuse of the three-dimensional digitizations of their collections.

Thanking you for the attention you will pay to this letter, I beg you to believe, Monsieur le Directeur general, in the expression of my respectful consideration.

et avec Philippe

Bien à vous


 Catherine Chevillot
 Conservateur général du Patrimoine
 Directrice du musée Rodin

Catherine Chevillot
 Conservateur général du Patrimoine
 Directrice du musée Rodin

FEBRUARY 8, 2019

Fitzjean Ó Cobhthaigh formally asks CADA to review Musée Rodin's refusal, and to issue a public legal opinion.

This request was submitted through a form on the CADA website, which is why there is no letter recorded here. It included Fitzjean Ó Cobhthaigh's correspondence with the museum, the museum's refusal, and a simple request that CADA review the dispute and issue its opinion on the matter.

CADA responds by sending the first of the following documents to the museum; a *pro forma* letter asking the museum to describe the situation, context, and provide copies of relevant correspondence.



(JUMP TO ENGLISH)

COMMISSION D'ACCÈS AUX DOCUMENTS ADMINISTRATIFS

Cada

Paris, le

[2 MAI 2019]

Réponse dans les quinze jours
suivant la réception de la
présente demande

Le Président

Objet : Application du livre III du code des relations entre le public et l'administration

Références à rappeler : Demande d'avis de

PJ : dossier de saisine de la CADA e

La commission d'accès aux documents administratifs a été saisie, sur le fondement des dispositions du livre III du code des relations entre le public et l'administration, par le demandeur cité en référence, d'une demande d'avis à la suite du refus, exprès ou implicite, qui aurait été opposé par vos services à sa demande de :

La commission doit rendre et notifier son avis dans le délai d'un mois à compter de sa saisine conformément aux dispositions de l'article R. 343-3 du code des relations entre le public et l'administration. Afin de lui permettre d'instruire la demande qui lui a été adressée et de respecter ce délai, les points suivants vous sont rappelés :

1. Dans l'hypothèse où vous avez déjà transmis le ou les documents sollicités sous la forme demandée, il convient que vous en informiez immédiatement la commission en lui adressant une copie du ou des courriers établissant que cette communication a été opérée et mentionnant précisément les documents communiqués, sans qu'il soit nécessaire de lui transmettre ces derniers. La commission constatera alors que la demande d'avis est devenue sans objet.

2. Si la non-communication des documents à l'expiration des délais légaux, qui s'assimile à un refus de communication, résulte uniquement du retard pris par vos services à traiter la demande ou des délais requis par le traitement de celle-ci en raison du volume des documents concernés ou de leur ancienneté, mais que vous ne voyez pas d'obstacle à ce qu'ils soient transmis au demandeur, vous êtes invité à procéder sans attendre à cette communication et à informer parallèlement la commission de la liste précise des documents communiqués. Celle-ci pourra alors constater que la demande est devenue sans objet.

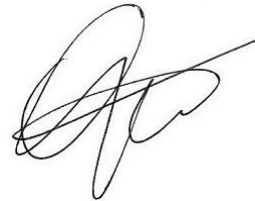
3. Dans le cas où la demande ne vous semble pas pouvoir être satisfaite, au regard des dispositions régissant l'accès aux documents demandés, pour des raisons tenant notamment à leur nature ou leur contenu, vous voudrez bien faire parvenir à la commission vos observations et tous documents – particulièrement ceux dont la commission doit apprécier le caractère communicable – et informations utiles à son instruction.

Dans tous les cas, il est rappelé qu'il n'appartient pas à la commission de procéder elle-même à la communication des documents au demandeur, cette tâche incombant à l'administration saisie.

En raison de la brièveté des délais, vous êtes invité à communiquer votre réponse par courriel à l'adresse cada@cada.pm.gouv.fr, à laquelle vous pourrez joindre les pièces nécessaires à l'instruction à un format numérique usuel, sans qu'il soit nécessaire de doubler l'envoi par courrier postal. Vous indiquerez le numéro de référence du dossier et les coordonnées de la personne chargée de suivre cette affaire.

Enfin, je signale à votre attention que **le site Internet de la CADA (www.cada.fr) comporte des fiches thématiques** qui, dans une grande majorité de cas, sont propres à vous éclairer sur la conduite à tenir et, ainsi, à simplifier votre tâche dans un souci d'efficacité administrative. N'hésitez pas à les consulter.

Pour le Président,
La Secrétaire générale

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a series of loops and a long horizontal stroke extending to the right.

Christelle GUICHARD



(TRANSLATION VIA GOOGLE)

COMMISSION D'ACCÈS AUX DOCUMENTS ADMINISTRATIFS

Cada

Paris, le

[2 May 2019]

Reply within fifteen days
of receipt of this application

Le Président

Objet : Application of Book III of the Code of Relations between the Public and the Administration

Références à rappeler : Request for advice

PJ : CADA referral file

The Commission of Access to Administrative Documents was seized, on the basis of the provisions of Book III of the Code of relations between the public and the administration, by the referenced applicant, of a request for an opinion following the refusal, express or implied, that your services would have opposed to his request to:

The commission must render and notify its opinion within one month of its referral in accordance with the provisions of Article R. 343-3 of the Code of relations between the public and the administration. In order to allow it to investigate the request addressed to it and to respect this deadline, the following points are reminded to you:

1. In the event that you have already sent the requested document (s) in the requested form, you should immediately inform the Commission by sending a copy of the letter or letters stating that the communication was made and specifically mentioning the documents communicated, without it being necessary to transmit them. The Commission will then find that the request for an opinion has become devoid of purpose

2. If the non-disclosure of documents after the expiry of the legal deadlines, which amounts to a refusal of communication, results solely from the delay of your services to process the request demande or the time required for the processing of the document because of the volume of the documents concerned or their age, but you do not see any obstacle to their being transmitted to the applicant, you are invited to proceed without delay to this communication and to inform the Commission at the same time of the precise list of the documents communicated. It may then find that the application has become irrelevant.

3. In case the request does not seem to you to be satisfied, in view of the provisions governing access to the requested documents, for reasons relating in particular to their nature or content, you are kind enough to send to the Committee your observations and all documents - particularly those which the Commission must assess as communicable - and information useful for its instruction.

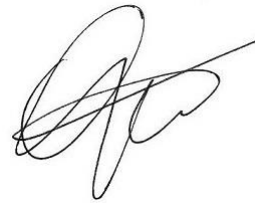
In all cases, it is recalled that it is not the responsibility of the committee to make

the documents available to the applicant himself, this task being incumbent on the administration seized.

Due to the short timeframe, you are invited to send your response by email to the address cada@cada.pm.gouv.fr, to which you can attach the necessary documents to the instruction in a usual digital format, without that it is necessary to double the sending by postal mail. You will indicate the reference number of the file and the contact details of the person responsible for following this case.

Finally, I would like to point out that **the CADA website (www.cada.fr) contains fact sheets**, which, in the vast majority of cases, are designed to enlighten you as to the course of action and, thus, to simplify your task for the sake of administrative efficiency. Do not hesitate to consult them

Pour le Président,
La Secrétaire générale

A handwritten signature in black ink, appearing to be 'CG' or similar, written in a cursive style.

Christelle GUICHARD

[\(JUMP TO ENGLISH\)](#)

De: H     Brunel <brunel@musee-rodin.fr>
Envoy  : mardi 21 mai 2019 18:05
  : CADA Cada
Cc: Catherine Chevillot; Xavier Teboul; Elisabeth Saillant; Pauline G  roux
Objet: LE (06-06-2019) Mus  e Rodin : R  ponse    la demande d'informations de la CADA (r  f  rence : 20192300)
Pi  ces jointes: R  ponse MR 21052019.pdf; Annexe 1.pdf; Annexe 2.pdf; Annexe 3.pdf; Annexe 4.pdf; Annexe 5.pdf
Importance: Haute

Bonjour,

Je vous prie de bien vouloir trouver ci-joint la r  ponse de la Directrice du mus  e Rodin et ses annexes (n  1    5)    la demande d'informations de la CADA re  ue le 06 mai 2019 suite    la saisine de Ma  tre Alexis Fitzjean O'Cobhthaigh pour le compte de Monsieur Cosmo Wenman (r  f  rence : 20192300). Vous en souhaitant bonne r  ception, nous restons    votre disposition pour tout enseignement compl  mentaire dans le cadre de l'instruction de ce dossier.

Cordialement,

H    ne BRUNEL
 Charg  e des affaires juridiques
 Service des ressources humaines et des affaires juridiques
 Mus  e Rodin
 01.44.18.61.56

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[Obtained July 8, 2019 via secondary FOIA request directly to CADA]

(JUMP TO ENGLISH)
(Copier via ROC)

Paris, le 21 MAY 2019

**Commission d'accès aux documents
administratifs**

A l'attention de Madame Christelle GUICHARD
Secrétaire générale
cada@cada.pm.gouv.fr

LRAR 671
REF COURRIER
CCh/XT/ELS

Affaire suivie ar:
Hélène Brunel
Chargée des affaires juridiques
brunel@musee-rodin.fr
tél. 01 44 18 61 56
fax. 01 44 18 61 80

Objet : Réponse du musée Rodin à la demande d'informations de la CADA reçue le 06 mai 2019 suite à la saisine de Maître Alexis FITZJEAN O'COBHTHAIGH pour le compte de Monsieur Cosmo WENMAN (référence : 20192300)

Annexes :

- Demande de communication de documents administratifs adressée au musée Rodin par Maître Alexis FITZJEAN O'COBHTHAIGH pour le compte de son client Monsieur Cosmo Wenman (annexe n° 1)
- Réponse du musée Rodin à la demande précitée (annexe n°2)
- Demande de conseil adressée par le musée Rodin à la CADA concernant les numérisations tridimensionnelles d'œuvres d'art (annexe n°3)
- Réponse de la CADA à la demande précitée (annexe n°4)
- Lettre envoyée par le musée Rodin à Monsieur Philippe BARBAT, Directeur général des patrimoines (annexe n°5)

Madame la Secrétaire générale,

Par lettre en date du 2 mai 2019, reçue le 6 mai dernier, vous m'indiquiez que la Commission d'accès aux documents administratifs a été saisie d'une demande d'avis de Maître Alexis FITZJEAN O'COBHTHAIGH pour le compte de son client Monsieur Cosmo WENMAN, à la suite du refus opposé par le musée Rodin à sa demande de communication de documents administratifs. Je vous confirme par la présente qu'aucun des documents sollicités n'a à ce jour été communiqué à Monsieur Cosmo WENMAN, la direction du musée Rodin considérant que cette demande ne peut être satisfaite. Afin que la CADA puisse rendre son avis, je vous prie de bien vouloir trouver ci-après tous documents, observations et informations utiles à l'instruction de ce dossier.

A titre préliminaire, je tiens à vous préciser que l'établissement public du musée Rodin dont la mission statutaire première est de faire connaître l'œuvre de Rodin et de faire respecter le droit moral qui y est attaché ne s'est pas encore doté de politique interne en matière d'ouverture et de partage des numérisations tridimensionnelles d'œuvres d'art ; œuvres dont il assure en tant

que musée la présentation, la garde, la conservation et la mise en valeur, d'une part, et sur lesquelles il détient, indépendamment de sa qualité d'établissement public agissant dans le cadre d'une mission de service public un droit, un droit moral en sa qualité d'ayant droit des oeuvres de Rodin, d'autre part. La demande de communication de Monsieur Cosmo WENMAN est l'occasion pour les équipes du musée de s'emparer de ce sujet. Néanmoins, les effets pour l'établissement de la communication des numérisations tridimensionnelles de sculptures de ses collections me préoccupent et je souhaiterais éviter que le musée Rodin crée un précédent en cédant ses fichiers à des tiers sans avoir recueilli au préalable l'avis du ministère de la Culture.

Pour revenir sur les faits. Monsieur Cosmo WENMAN, prestataire américain de numérisation et de reproductions tridimensionnelles, a écrit au musée Rodin le 8 novembre 2018, par l'intermédiaire de son conseil Maître Alexis FITZJEAN O'COBHTHAIGH, dans le but d'obtenir la communication d'un certain nombre de documents de l'établissement (cf. annexe n°1), au titre desquels les numérisations tridimensionnelles des sculptures des collections du musée ; demande à laquelle mes équipes et moi-même avons répondu par la négative le 11 décembre 2018 (cf. annexe n°2). En réponse à ce refus. Maître Alexis FITZJEAN O'COBHTHAIGH écrivait de nouveau au musée Rodin le 8 février dernier pour contester nos motivations et nous informer de son intention de saisir la CADA.

En parallèle, je me permets de vous rappeler que le musée Rodin a lui-même saisi la CADA le 24 décembre 2018 d'une demande de conseil concernant les numérisations tridimensionnelles d'oeuvres d'art (cf. annexe n°3). Dans son conseil n°20190026 en réponse, daté du 07 février 2019 (cf. annexe n°4), la CADA a considéré que les numérisations tridimensionnelles, dont le musée assure la conservation à des fins d'étude et d'exploitation commerciale, constituent des documents administratifs par principe communicables à toute personne qui en fait la demande. Or, la teneur de cette recommandation m'inquiète, car sa mise en application - si elle devait se confirmer - aurait des conséquences désastreuses non seulement pour le modèle économique du musée Rodin, mais également pour d'autres opérateurs du ministère de la Culture comme la Réunion des Musées Nationaux - Grand Palais, en ce qu'elle consisterait tout simplement à remettre gratuitement à de potentiels concurrents et faussaires notre outil de production. A titre de comparaison, il ne serait en aucune façon admis ou même envisagé de solliciter une telle dépossession de la part d'un opérateur privé, qui pourrait se prévaloir du secret des affaires ou de juteuses licences pour ne pas porter atteinte à son modèle économique.

En effet, ces fichiers « 3D » constituent notamment un outil servant à la réalisation de reproductions de sculptures destinées à la vente. Leur diffusion en vue de leur exploitation par des tiers présente plusieurs types de risques pour le musée : des risques liés à la contrefaçon, à la fraude artistique, au parasitisme et à la concurrence déloyale, d'une part, et des risques de grande fragilisation de son modèle économique et ses ressources propres, d'autre part. Pour rappel, le musée Rodin qui remplit les missions habituelles de tout musée de France est le seul musée national à s'autofinancer intégralement pour son budget de fonctionnement. Pour ce faire, il exerce en régie directe des missions commerciales et notamment la production d'éditions originales de bronzes et de reproductions en résine, dont la vente permet le financement de ses missions dites « de service public ». La sectorisation fiscale de l'établissement reflète d'ailleurs la nature de ses différentes activités (secteur non lucratif, secteur lucratif, secteur mixte). J'ai donc écrit à Monsieur Philippe BARBAT, Directeur général des patrimoines, le 26 avril 2019, afin d'attirer son attention sur les effets de la communication de ces documents et de solliciter ses conseils et son soutien (cf. annexe n°5).

Enfin, les numérisations tridimensionnelles d'oeuvres d'art servent à documenter l'état actuel du patrimoine culturel. A ce titre, elles constituent des ressources précieuses pour les spécialistes qui assurent la conservation des oeuvres d'art et les chercheurs qui les étudient, ainsi que pour

l'élaboration de supports de diffusion auprès du grand public. Il est donc primordial pour l'établissement de pouvoir garantir l'intégrité de ces données, en sa qualité de musée, investi de surcroît de la qualité d'ayant droit de Rodin.

La question spécifique des numérisations tridimensionnelles d'œuvres mise à part, le musée Rodin a pris le parti d'attendre que la CADA se prononce sur l'ensemble des demandes de Monsieur Cosmo WENMAN. D'après le conseil du musée dans ce dossier, Maître Raphaël CRESPELLE, la communication d'un certain nombre de documents demandés par Monsieur Cosmo WENMAN peut légitimement être refusée par le musée, en raison de l'imprécision des demandes et/ou compte tenu du fait que les documents demandés n'existent pas. La liste des documents dont la communication nous est demandée est reprise ci-dessous avec nos observations point par point :

- 1) *Les fichiers contenant la version numérisée tridimensionnelle (scan 3D) du « Penseur » de M. Auguste Rodin, y compris la version utilisée pour imprimer les copies du Penseur dont la promotion est assurée sur l'adresse suivante : <https://boutiaue.musee-rodin.fr/en/sculpture-reproductions/380-the-thinker-miniature.html>, de même que toute autre version de meilleure qualité ;*

Compte tenu du caractère non contraignant du conseil n°20190026 de la CADA précité et des forts risques pour l'établissement de compromettre son modèle économique et en l'absence de position du ministère de la Culture sur le sujet, le musée Rodin refuse à ce jour de faire droit à la demande de communication des fichiers susvisés et n'exclut pas de s'en remettre au juge avant d'y procéder ;

- 2) *La liste de l'ensemble des fichiers, actuellement en votre possession, contenant des versions numérisées tridimensionnelles des sculptures composant les collections du musée Rodin ou d'autres collections (les jeux de scan 3D en votre possession), ainsi que lesdits fichiers ;*

A ce jour, le musée Rodin ne possède pas de liste des fichiers en sa possession contenant des versions numérisées tridimensionnelles des sculptures de ses collections et pour les motifs évoqués plus haut (point 1), le musée Rodin refuse de faire droit à la demande de communication des fichiers susvisés ; par ailleurs, le musée Rodin déclare ne pas avoir en sa possession de fichiers contenant des versions numérisées tridimensionnelles de sculptures d'autres collections ;

- 3) *L'ensemble des courriels, échangés, envoyés ou reçus par le musée Rodin, un de ses employés ou un des membres de son équipe dirigeante, ayant pour objet, traitant ou mentionnant les précédentes demandes de M. Wenman ;*

A supposer que les courriels susmentionnés constituent des documents administratifs communicables et que la présente demande soit pourvue de la précision nécessaire, le musée Rodin est enclin à y répondre favorablement ;

- 4) *L'ensemble des notes internes, analyses, rapports, études, lignes directrices, directives, échanges de courriels ou tout autre document relatif à la politique du musée Rodin à l'égard des fichiers contenant des versions numérisées tridimensionnelles d'une sculpture composant les collections du musée Rodin ou d'autres collections, en particulier la politique du musée concernant l'accessibilité à ces données ;*
Comme évoqué plus haut, le musée Rodin ne s'est encore doté d'aucune politique en matière d'ouverture et de partage des numérisations tridimensionnelles d'œuvres d'art; la présente demande ne peut donc être satisfaite ;
- 5) *L'ensemble des accords, contrats, conventions, traités liant le musée Rodin et le Baltimore Muséum of Art, en particulier, ceux ayant pour objet, traitant ou mentionnant les fichiers contenant la version numérisée tridimensionnelle {scan 3D} du « Penseur » de M. Auguste Rodin, ou de tout autre sculpture ;*
Aucun accord, contrat, convention ou traité ne lie le musée Rodin et le Baltimore Muséum of Art ; la présente demande ne peut donc être satisfaite ;
- 6) *Tout document démontrant que le musée Rodin a obtenu des revenus de l'utilisation des fichiers contenant la version numérisée tridimensionnelle (Scan 3D) du « Penseur » de M. Auguste Rodin à des fins de fabrication de répliques ;*
A ce jour, un tel document n'existe pas ;
- 7) *Tout document démontrant que le musée Rodin a obtenu des revenus de licences octroyées à des tiers à propos de l'utilisation de n'importe lequel des fichiers contenant des versions numérisées tridimensionnelles des sculptures composant les collections du musée Rodin ou d'autres collections ;*
Le musée Rodin ne permet pas la réutilisation par des tiers des numérisations tridimensionnelles de ses collections et ne détient pas de version numérisée tridimensionnelle de sculptures d'autres collections, il n'a défini aucune licence, ni tiré aucun revenu, en lien avec l'exploitation des fichiers susvisés ;
- 8) *En particulier, pour la période s'étendant du 1er janvier 2014 à la réception de la présente demande : l'ensemble des correspondances entre le musée Rodin et le Baltimore Muséum of Art, l'ensemble des courriels internes, des notes internes, analyses, rapports, lignes directrices ou tout autre document relatif à l'impression en trois dimensions et des correspondances, échangés, envoyés ou reçus entre le musée Rodin, un de ses employés ou un des membres de son équipe dirigeante, d'une part, et le ministère de la Culture, d'autre part, ayant pour objet, traitant ou mentionnant l'impression tridimensionnelle, la numérisation tridimensionnelle ou le Baltimore Muséum of Art;*
Le musée Rodin n'a pas de correspondances ni aucun accord avec le Baltimore

Muséum of Art: le musée Rodin n'a pas non plus établi de documentations internes sur l'impression en trois dimensions, sa politique sur le sujet n'étant pas définie ; le musée Rodin n'a pas eu d'échanges avec le ministère de la Culture au sujet du Baltimore Muséum of Art: les seuls échanges que le musée Rodin ait eu au sujet de l'impression tridimensionnelle impliquent non pas le ministère de la Culture, mais le Président du Conseil supérieur de la propriété littéraire et artistique, tel qu'évoqué au point 9 ; concernant la numérisation tridimensionnelle, le musée Rodin n'a pas eu d'échanges doctrinaux avec le ministère de la Culture, seuls ont été recensés à ce jour la lettre susmentionnée envoyée par le musée à M. Philippe BARBAT et des échanges de 2010 et 2011 concernant les plans nationaux de numérisation du ministère, à supposer que ces documents doivent être communiqués, le musée Rodin est enclin à y donner suite favorablement ;

- 9) En particulier, pour la période s'étendant du 1er janvier 2018 à la réception de la présente demande, l'ensemble des correspondances échangées, envoyées ou reçues entre le musée Rodin et M. Olivier Japiot, conseiller d'Etat membre du Conseil supérieur de la propriété littéraire et artistique ;**

A supposer que les courriels susmentionnés constituent des documents administratifs communicables et que la présente demande soit pourvue de la précision nécessaire, le musée Rodin est enclin à y répondre favorablement.

Vous souhaitant bonne réception de ces éléments et restant à votre disposition pour tout complément, je vous prie d'agréer. Madame la Secrétaire générale, l'expression de mes meilleures salutations.

Catherine Chevillot
Conservateur général du Patrimoine
Directrice du musée Rodin

(TRANSLATION VIA GOOGLE)

From: Hélène Brunel <brunel@musee-rodin.fr>

Date: mardi 21 mai 2019 18:05

To: CADA Cada

Cc: Catherine Chevillot; Xavier Teboul; Elisabeth Saillant; Pauline Géroux

Subject: LE (06-06-2019) Musée Rodin : Réponse à la demande d'informations de la CADA (référence : 20192300)

Attachments: Réponse MR 21052019.pdf; Annexe 1.pdf; Annexe 2.pdf; Annexe 3.pdf; Annexe 4.pdf; Annexe 5.pdf

Importance: Haute

Bonjour,

Please find enclosed the response of the Director of the Rodin Museum and its annexes (n°1 to 5) to the CADA request for information received on May 06, 2019 following the referral of Maître Alexis Fitzjean O'Cobhthaigh on behalf of Mr. Cosmo Wenman (reference: 20192300). Wishing you good reception, we remain at your disposal for any further education in the context of the investigation of this file.

Cordialement,

Hélène BRUNEL
Chargée des affaires juridiques
Service des ressources humaines et des affaires juridiques
Musée Rodin
01.44.18.61.56

**MUSÉE
RODIN**
19 BD DES INVALIDES
75007 PARIS
TEL +33 1 44 18 61 10
FAX +33 1 44 18 61 30
WWW.MUSEE-RODIN.FR

[Obtained July 8, 2019 via secondary FOIA request directly to CADA]

(TRANSLATION VIA GOOGLE)

Paris, le **21 MAY 2019**

**Commission d'accès aux documents
administratifs**

A l'attention de Madame Christelle GUICHARD
Secrétaire générale
cada@cada.pm.gouv.fr

LRAR 671
REF COURRIER
CCh/XT/ELS

Affaire suivie ar:
Hélène Brunel
Chargée des affaires juridiques
brunel@musee-rodin.fr
tél. 01 44 18 61 56
fax. 01 44 18 61 80

Objet : *Rodin Museum's response to the CADA request for information received on May 06, 2019 following the referral of Maître Alexis FITZJEAN O'COBHATHAIGH on behalf of Mr. Cosmo WENMAN (reference: 20192300)*

Appendices :

- *Request for the communication of administrative documents addressed to the Rodin Museum by Maître Alexis FITZJEAN O'COBHATHAIGH on behalf of his client Mr Cosmo Wenman (annex n ° 1)*
- *Musée Rodin's response to the aforementioned request (appendix 2)*
- *Request for advice from the Rodin Museum to CADA concerning three-dimensional digitizations of works of art (Appendix 3)*
- *CADA's response to the above request (Annex 4)*
- *Letter sent by the Rodin Museum to Mr. Philippe BARBAT, Director General of Heritage (Annex No. 5)*

Madame la Secrétaire générale,

By letter dated May 2, 2019, received on May 6, you told me that the Commission for Access to Administrative Documents had received a request for an opinion from Maître Alexis FITZJEAN O'COBHATHAIGH on behalf of his client Mr Cosmo WENMAN, following the refusal by the Rodin Museum to his request for communication of administrative documents. I hereby confirm that none of the requested documents has so far been communicated to Mr. Cosmo WENMAN, the management of the Rodin Museum considering that this request can not be satisfied. In order for the CADA to give its opinion, please find below all documents, observations and information useful for the preparation of this file.

As a preliminary, I would like to inform you that the public institution of the Rodin Museum, whose first statutory mission is to publicize Rodin's work and to uphold the moral rights attached to it, has not yet established internal policy on openness and sharing of three-dimensional digitizations of works of art; works for which it insures as a museum the presentation, custody, conservation and presentation, on the one hand, and over which it holds, irrespective of his

status as a public institution acting within the framework of a mission of public service a right, a moral right in its capacity as the owner of Rodin's works, on the other hand. The request for communication from Mr Cosmo WENMAN is an opportunity for museum teams to seize this topic. Nevertheless, the effects for the establishment of the communication of three-dimensional scans of sculptures from its collections are of concern to me and I would like to avoid that the Rodin Museum creates a precedent by relinquishing its files to third parties without having first obtained the opinion of the Ministry of Culture.

To return to the facts. Mr. Cosmo WENMAN, an American provider of digitization services and three-dimensional reproductions, wrote to the Musée Rodin on November 8, 2018, through his counsel Maître Alexis FITZJEAN O'COBHTHAIGH, in order to obtain the communication of a number of documents of the establishment (see Annex No. 1), including the three-dimensional scans of the sculptures of the museum's collections; request to which my teams and I answered in the negative on December 11, 2018 (see appendix n ° 2). In response to this refusal, Maître Alexis FITZJEAN O'COBHTHAIGH wrote again to the Musée Rodin on February 8 to challenge our motives and inform us of his intention to seize the CADA.

At the same time, I would like to remind you that the Rodin Museum itself asked CADA on December 24, 2018, for a request for advice concerning the three-dimensional scanning of works of art (see appendix n ° 3). In its answer no 20190026, dated February 7, 2019 (see appendix n°4), the CADA considered that the three-dimensional digitizations, which the museum preserves for the purposes of study and commercial exploitation, constitute administrative documents which are in principle communicable to any person who requests them. However, the content of this recommendation worries me, since its implementation - if it were to be confirmed - would have disastrous consequences not only for the Rodin museum's economic model, but also for other operators of the Ministry of Culture such as the Réunion des Musées Nationaux - Grand Palais, as it would simply provide free of charge to potential competitors and forgers our production tool. By way of comparison, it would in no way be admitted or even envisaged to solicit such deprivation on the part of a private operator, who could avail himself of business secrecy or lucrative licenses in order not to undermine his economic model.

In effect, these "3D" files are in particular a tool for producing reproductions of sculptures for sale. Their dissemination for exploitation by third parties presents several types of risks for the museum: risks related to counterfeiting, artistic fraud, parasitism and unfair competition, on the one hand, and risks of great fragility of its economic model and its own resources, on the other hand. As a reminder, the Rodin museum, which fulfills the usual missions of any museum in France, is the only national museum that is fully self-financing for its operating budget. To do this, it is in direct charge of commercial missions including the production of original copies of bronzes and resin reproductions, the sale of which allows the funding of its missions called "public service". The tax sectorization of the establishment also reflects the nature of its various activities (non-profit sector, lucrative sector, mixed sector). I therefore wrote to Mr. Philippe BARBAT, Director General of Heritage, on April 26, 2019, in order to draw his attention to the effects of the communication of these documents and to seek his advice and support (see Annex No. 5).

Finally, three-dimensional digitizations of works of art are used to document the current state of cultural heritage. As such, they are invaluable resources for specialists who conserve works of art and researchers who study them, as well as for the development of media for dissemination to the general public. It is therefore essential for the institution to be able to guarantee the integrity of these data, as a museum, invested in addition with the quality of the rights of Rodin.

The specific issue of three-dimensional digitizations of works aside, the Rodin Museum has decided to wait for the CADA to decide on all the requests of Mr Cosmo WENMAN. According to the museum's counsel in this matter, Maître Raphaël CRESPELLE, the communication of a certain number of documents requested by Mr. Cosmo WENMAN may legitimately be refused by the museum, because of the vagueness of the requests and/or taking into account that the requested documents do not exist. The list of documents for which we are requested is reproduced below with our observations point by point:

- 1) *Files containing the three-dimensional digitized version (3D scan) of Mr. Auguste Rodin's "Thinker", including the version used to print the Thinker copies promoted on the following address: <https://boutiaue.musee-rodin.fr/en/sculpture-reproductions/380-the-thinker-miniature.html> as well as any other version of better quality;*
Given the non-binding nature of the aforementioned CADA Board No. 20190026 and the strong risks for the institution to compromise its economic model and in the absence of a position of the Ministry of Culture on the subject, the Musée Rodin refuses today to grant the request for communication of the aforementioned files and does not exclude to defer to the judge before proceeding;
- 2) *The list of all the files currently in your possession, containing digitized three-dimensional versions of the sculptures composing the collections of the Musée Rodin or other collections (the 3D scans in your possession), as well as the said files;*
To date, the Rodin Museum does not have a list of the files in its possession containing digitized three-dimensional versions of the sculptures in its collections and for the reasons mentioned above (point 1), the Rodin Museum refuses to grant the request for communication of the aforementioned files; In addition, the Rodin Museum declares that it does not have in its possession files containing digitized three-dimensional versions of sculptures from other collections.;
- 3) *All e-mails exchanged, sent or received by the Rodin Museum, one of its employees or a member of its management team, for the purpose of processing or mentioning the previous requests of Mr. Wenman;*
Assuming that the aforementioned e-mails constitute communicable administrative documents and that the present request is provided with the necessary precision, the Rodin Museum is inclined to respond favorably;
- 4) *All internal notes, analyzes, reports, studies, guidelines, directives, email exchanges or any other Rodin Museum policy document regarding files containing digitized three-dimensional versions of a sculpture comprising the collections the Musée Rodin or other collections, in particular the museum's policy regarding the accessibility of these data;*
As mentioned above, the Rodin Museum still has no policy in terms of opening up

and sharing three-dimensional digitizations of works of art; this application can not be satisfied;

- 5) *All the agreements, contracts, conventions, treaties linking the Rodin Museum and the Baltimore Museum of Art, in particular, those whose purpose is to process or mention files containing the three-dimensional digital version (3D scan) of the "Thinker" of M Auguste Rodin, or any other sculpture;*

No agreement, contract, convention or treaty binds the Rodin Museum and the Baltimore Museum of Art; this application can not be satisfied;

- 6) *Any document demonstrating that the Rodin Museum has obtained income from the use of files containing the three-dimensional digitized version (3D Scan) of the "Thinker" of Mr. Auguste Rodin for the purpose of making replicas;*

To date, such a document does not exist;

- 7) *Any document demonstrating that the Rodin Museum has obtained royalties from licenses granted to third parties concerning the use of any of the files containing digitized three-dimensional versions of the sculptures composing the Musée Rodin collections or other collections;*

The Rodin Museum does not allow the reuse by third parties of three-dimensional scans of its collections and does not hold a three-dimensional digitized version of sculptures from other collections, it has defined no license, nor revenue, in connection with the exploitation of the aforementioned files;

- 8) *In particular, for the period from January 1, 2014 to the receipt of this application: all correspondence between the Rodin Museum and the Baltimore Museum of Art, all internal emails, internal notes, analyzes, reports, guidelines or any other document relating to three-dimensional printing and correspondence, exchanged, sent or received between the Rodin Museum, one of its employees or a member of its management team, on the one hand, and the Ministry of Culture, on the other hand, dealing with or mentioning three-dimensional printing, three-dimensional digitization or the Baltimore Museum of Art;*

The Rodin Museum has no correspondence or agreements with the Baltimore Museum of Art: the Rodin Museum has also not established internal documentations on printing in three dimensions, its policy on the subject not being defined; the Rodin Museum did not have any exchanges with the Ministry of Culture about the Baltimore Museum of Art: the only exchanges that the Rodin museum had about three-dimensional printing imply not the Ministry of Culture, but the President of the Higher Council for Literary and Artistic Property, as referred to in paragraph 9; concerning the three-dimensional digitization, the

Rodin museum did not have any doctrinal exchanges with the Ministry of Culture, only the aforementioned letter sent by the museum to Mr. Philippe BARBAT and the exchanges of 2010 and 2011 have been recorded so far concerning the Department's national digitization plans, assuming that these documents must be communicated, the Rodin Museum is inclined to follow up on them favorably;

- 9) In particular, for the period from 1 January 2018 to the receipt of this application, all correspondence exchanged, sent or received between the Rodin Museum and Olivier Japiot, conseiller d'Etat member of the Superior Council of literary and artistic property; Assuming that the aforementioned e-mails constitute communicable administrative documents and that the present request is provided with the necessary precision, the Rodin Museum is inclined to respond favorably.***

Wishing you good reception of these elements and remaining at your disposal for any complement, I beg you to accept, Madame la Secrétaire générale, the expression of my best regards

Catherine Chevillot
Conservateur général du Patrimoine
Directrice du musée Rodin



(JUMP TO ENGLISH)

COMMISSION D'ACCÈS AUX DOCUMENTS ADMINISTRATIFS

Cada

Le Président

Avis n° 20192300 du 06 juin 2019

Maître Alexis FITZJEAN O COBHTHAIGH, pour le compte de Monsieur Cosmo WENMAN, a saisi la commission d'accès aux documents administratifs, par courrier enregistré à son secrétariat le 8 février 2019, à la suite du refus opposé par la directrice du musée Rodin à sa demande de communication des documents suivants :

- 1) les fichiers contenant la version numérisée tridimensionnelle (scan 3D) du « Penseur » de Monsieur Auguste RODIN, y compris la version utilisée pour imprimer les copies du Penseur dont la promotion est assurée sur l'adresse suivante : <https://boutique.musee-rodin.fr/en/sculpture-reproductions/380-the-thinker-miniature.html>, de même que tout autre version de meilleure qualité ;
- 2) la liste de l'ensemble des fichiers, actuellement en votre possession, contenant des versions numérisées tridimensionnelles des sculptures composant les collections du musée Rodin ou d'autres collections (les jeux de scan 3D en votre possession), ainsi que lesdits fichiers ;
- 3) l'ensemble des courriels, échangés, envoyés ou reçus par le musée Rodin, un de ses employés ou un des membres de son équipe dirigeante, ayant pour objet, traitant ou mentionnant les précédentes demandes de Monsieur WENMAN ;
- 4) l'ensemble des notes internes, analyses, rapports, études, lignes directrices, directives, échanges de courriels ou tout autre document relatif à la politique du musée Rodin à l'égard des fichiers contenant des versions numérisées tridimensionnelles d'une sculpture composant les collections du musée Rodin ou d'autres collections, en particulier la politique du musée concernant l'accessibilité à ces données ;
- 5) l'ensemble des accords, contrats, conventions, traités liant le musée Rodin et le Baltimore Museum of Art, en particulier, ceux ayant pour objet, traitant ou mentionnant les fichiers contenant la version numérisée tridimensionnelle (scan 3D) du « Penseur » de Monsieur Auguste RODIN, ou de tout autre sculpture ;
- 6) tout document démontrant que le musée Rodin a obtenu des revenus de l'utilisation des fichiers contenant la version numérisée tridimensionnelle (scan 3D) du « Penseur » de Monsieur Auguste RODIN à des fins de fabrication de répliques ;
- 7) tout document démontrant que le musée Rodin a obtenu des revenus de licences octroyées à des tiers à propos de l'utilisation de n'importe lequel des fichiers contenant des versions numérisées tridimensionnelles des sculptures composant les collections du musée Rodin ou d'autres collections ;
- 8) pour la période s'étendant du 1er janvier 2014 à la réception de la présente demande : l'ensemble des correspondances entre le musée Rodin et le Baltimore Museum of Art, l'ensemble des courriels internes, des notes internes, analyses, rapports, lignes directrices ou tout autre document relatif à l'impression en trois dimension et des correspondances, échangés, envoyés ou reçus entre le musée Rodin, un de ses employés ou un des membres de son équipe dirigeante, d'une part, et le ministère de la culture, d'autre part, ayant pour objet, traitant ou mentionnant l'impression tridimensionnelle, la numérisation tridimensionnelle ou le Baltimore Museum of Art ;
- 9) pour la période s'étendant du 1er janvier 2018 à la réception de la présente demande, l'ensemble des correspondances échangées, envoyées ou reçues entre le musée Rodin et Monsieur Olivier JAPIOT, conseiller d'État, membre du Conseil supérieur de la propriété littéraire et artistique.

Pour ce qui concerne en premier lieu les fichiers contenant la version numérisée tridimensionnelle d'œuvres mentionnés aux points 1) et 2) :

La commission rappelle d'abord qu'aux termes de l'article L300-2 du code des relations entre le public et l'administration : « Sont considérés comme documents administratifs, au sens des titres Ier, III et IV du

présent livre, quels que soient leur date, leur lieu de conservation, leur forme et leur support, les documents produits ou reçus, dans le cadre de leur mission de service public, par l'État, les collectivités territoriales ainsi que par les autres personnes de droit public ou les personnes de droit privé chargées d'une telle mission. »

La commission relève qu'aux termes du décret n° 93-163 du 2 février 1993 relatif au musée Rodin, le musée est un établissement public national à caractère administratif placé sous la tutelle du ministre chargé de la culture qui a pour mission de faire connaître l'œuvre de Rodin et de faire respecter le droit moral qui y est attaché. A cette fin : « 1. Il présente au public les collections comprenant les objets donnés ou légués par Auguste Rodin et les œuvres acquises ultérieurement, en assure la garde, la conservation et la mise en valeur ; 2. Il organise des expositions, des colloques et toute activité éducative et culturelle susceptible de concourir au rayonnement de l'œuvre de Rodin et de la sculpture ; 3. Il est habilité à acquérir toute œuvre ou tout document présentant un intérêt pour la connaissance de l'œuvre de Rodin et de la sculpture ; 4. Il exécute ou fait exécuter tous travaux d'aménagement ou d'extension des locaux du siège du musée ou de son annexe ; 5. Il procède ou fait procéder, sous son contrôle, à des éditions originales de bronzes tirées à partir des moules et des modèles en plâtre figurant dans les collections. Ces éditions sont limitées à douze, numérotées de 1/8 à 8/8 et de I/IV à IV/IV, y compris les éditions originales existantes ; 6. Il édite et commercialise des reproductions d'œuvres de Rodin, des publications et des produits audiovisuels. »

La commission en déduit que les numérisations d'œuvres dont le musée Rodin assure la conservation, à des fins à la fois d'étude et d'exploitation commerciale, constituent des documents administratifs au sens des dispositions précitées, dès lors qu'elles ont été élaborées et sont détenues dans le cadre de la mission de service public qui est confiée à cet établissement. Elles sont donc, en principe, communicables à toute personne qui en fait la demande, sur le fondement de l'article L311-1 du même code.

La commission précise, ensuite, que dans sa décision du 8 novembre 2017 n° 375704, le Conseil d'État a jugé que l'article L311-4 du code des relations entre le public et l'administration, qui dispose que : « Les documents administratifs sont communiqués ou publiés sous réserve des droits de propriété littéraire et artistique. », implique, avant de procéder à la communication de documents administratifs grevés de droits d'auteur n'ayant pas déjà fait l'objet d'une divulgation au sens de l'article L121-2 du code de la propriété intellectuelle, de recueillir l'accord de leur auteur. Or, la commission constate que les documents sollicités ne sont pas eux-mêmes grevés de droits d'auteur, et il n'apparaît pas douteux que les œuvres du sculpteur Auguste Rodin dont les reproductions tridimensionnelles sont sollicitées ont déjà fait l'objet d'une divulgation au sens du code de la propriété intellectuelle.

En réponse à la demande qui lui a été adressée, la directrice du musée Rodin a souligné les inconvénients que comporterait la communication des fichiers sollicités, tant au regard des ressources de l'établissement, de la préservation de l'intégrité des données collectées qu'au regard des risques de contrefaçons et de fraude artistique. La commission en prend note mais ne peut que constater qu'aucune des dispositions du livre III du code des relations entre le public et l'administration ne permet d'opposer légalement un refus de communication d'un document administratif pour de tels motifs.

La commission émet dès lors un avis favorable à la communication à Monsieur WENMAN, par l'intermédiaire de son conseil, des fichiers contenant la version numérisée tridimensionnelle d'œuvres.

La commission rappelle que le musée Rodin, en sa qualité d'ayant droit de l'artiste, est chargé de faire respecter le droit moral du sculpteur et devra veiller au respect de l'œuvre lors de la réutilisation des documents sollicités.

Par ailleurs, l'article L323-1 du code des relations entre le public et l'administration prévoit que la réutilisation d'informations publiques peut donner lieu à l'établissement d'une licence et qu'une telle licence est obligatoire lorsque la réutilisation est soumise au paiement d'une redevance. Si la réutilisation d'informations publiques est, en principe, gratuite, aux termes de l'article L324-1 du même code, son article L324-2 prévoit la possibilité d'une redevance lorsque la réutilisation porte « sur des informations issues des opérations de numérisation des fonds et des collections des bibliothèques, y compris des bibliothèques universitaires, des musées et des archives, et, le cas échéant, sur des informations qui y sont associées lorsque ces dernières sont commercialisées conjointement. Le produit total du montant de cette redevance, évalué sur une période comptable appropriée, ne dépasse pas le montant total des coûts de collecte, de production, de mise à disposition ou de diffusion, de conservation de leurs informations et d'acquisition des droits de propriété intellectuelle. » Les modalités de calcul de cette redevance sont précisées à l'article R324-4-3 du même

code. Le musée Rodin pourra ainsi établir soumettre la réutilisation des numérisations tridimensionnelles à une licence et l'assortir d'un tarif conforme à ces dispositions.

Pour ce qui concerne en deuxième lieu la liste de l'ensemble des fichiers contenant des versions numérisées tridimensionnelles mentionnée au point 2) :

La directrice du musée Rodin, en réponse à la demande qui lui a été adressée, a indiqué à la commission ne pas détenir une telle liste. La commission en prend note mais rappelle que le livre III du code des relations entre le public et l'administration garantit à toute personne un droit d'accès aux documents administratifs existants comme aux documents administratifs susceptibles d'être obtenus par un traitement automatisé d'usage courant. La commission émet dès lors un avis favorable à la communication de la liste sollicitée, dans l'hypothèse où elle pourrait être obtenue par un tel traitement.

Pour ce qui concerne en troisième lieu les documents relatifs aux demandes de Monsieur WENMAN mentionnés au point 3) :

La commission estime que ces documents, sous la réserve qu'ils ne présentent plus un caractère préparatoire à une décision qui n'aurait pas encore été prise, sont communicables à l'intéressé en application de l'article L311-6 du code des relations entre le public et l'administration. Elle émet donc un avis favorable à leur communication, le cas échéant après occultation des mentions dont la communication serait susceptible de porter atteinte à la protection de la vie privée d'un tiers.

Pour ce qui concerne en quatrième lieu les documents mentionnés aux points 4), 5), 6) et 7) :

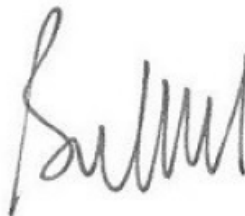
En réponse à la demande qui lui a été adressée, la directrice du musée Rodin a informé la commission que ces documents n'existent pas, en l'absence de politique définie sur les numérisations, d'accord avec le Baltimore Museum of Art et de réutilisation des numérisations par des tiers. La commission ne peut dès lors que déclarer la demande d'avis sans objet sur ces points.

Pour ce qui concerne en dernier lieu les documents mentionnés aux points 8) et 9) :

En réponse à la demande qui lui a été adressée la directrice du musée Rodin a indiqué à la commission que seuls des échanges avec le ministère de la culture concernant les plans nationaux de numérisation en 2010-2011 et avec le Conseil supérieur de la propriété littéraire et artistique sont intervenus au sujet de la numérisation et de l'impression tridimensionnelles. La commission, qui n'a pas pu prendre connaissance de ces échanges, estime que ces documents constituent en principe des documents administratifs communicables à toute personne qui en fait la demande, en application de l'article L311-1 du code des relations entre le public et l'administration, pour autant qu'ils ne revêtent plus de caractère préparatoire à une décision qui n'aurait pas encore été prise et sous les réserves prévues par les articles L311-5 et L311-6 du même code.

La commission émet donc un avis favorable à la communication de ces documents, dans cette seule mesure. Elle ne peut, pour le surplus, que déclarer la demande d'avis sans objet.

Pour le Président
et par délégation



Bastien BRILLET
Rapporteur général
Premier conseiller de tribunal administratif



(TRANSLATION VIA GOOGLE)

COMMISSION D'ACCÈS AUX DOCUMENTS ADMINISTRATIFS

Cada

Le Président

Avis n° 20192300 du 06 juin 2019

Maître Alexis FITZJEAN O COBHATHAIGH, on behalf of Mr. Cosmo WENMAN, seized the commission for access to administrative documents by registered mail at its secretariat on 8 February 2019, following the refusal by the director of the Rodin Museum to his request for disclosure of documents following:

- 1) the files containing the three-dimensional digital version (3D scan) of the "Thinker" of Mr. Auguste RODIN, including the version used to print the Thinker copies whose promotion is insured on the following address: <https://boutique.musee-rodin.fr/en/sculpture-reproductions/380-the-thinker-miniature.html>, as well as any other higher quality version;
- 2) the list of all the files, currently in your possession, containing digitized versions three-dimensional sculptures composing the collections of the Musée Rodin or other collections (the games 3D scan in your possession), as well as said files;
- 3) all e-mails exchanged, sent or received by the Rodin Museum, one of its employees or a members of its management team, whose purpose is to deal with or mention previous requests by Mr WENMAN;
- 4) all internal notes, analyzes, reports, studies, guidelines, guidelines, exchanges of e-mails or any other document relating to the Rodin Museum's policy regarding files containing digitized three-dimensional versions of a sculpture composing the collections of the Musée Rodin or other collections, in particular the museum's policy regarding accessibility of these data;
- 5) all agreements, contracts, conventions, treaties linking the Rodin Museum and the Baltimore Museum of Art, in particular, those whose purpose is to process or mention the files containing the digitized version three-dimensional (3D scan) of the "Thinker" of Monsieur Auguste RODIN, or any other sculpture;
- 6) any document proving that the Rodin Museum has obtained income from the use of files containing the three-dimensional digital version (3D scan) of Mr. Auguste RODIN's "Thinker" for the purpose of manufacture of replicas;
- 7) any document proving that the Rodin Museum has obtained license revenues from third parties the use of any of the files containing three-dimensional digitized versions sculptures making up the collections of the Musée Rodin or other collections;
- 8) for the period from 1 January 2014 to the receipt of this application: all correspondence between the Rodin Museum and the Baltimore Museum of Art, all internal emails, internal notes, analyzes, reports, guidelines or any other document related to printing in three dimension and correspondence, exchanged, sent or received between the Musée Rodin, one of its employees or a member of its management team, on the one hand, and the Ministry of Culture, on the other hand, having for object, treating or mentioning three-dimensional printing, three-dimensional scanning or the Baltimore Museum of Art;
- 9) for the period from 1 January 2018 to the receipt of this application, all the correspondence exchanged, sent or received between the Rodin Museum and Mr Olivier JAPIOT, State Councilor, member of the Superior Council of Literary and Artistic Property.

Firstly, files containing the three-dimensional digitized version of works mentioned in points 1) and 2):

The Committee recalls firstly that under Article L300-2 of the Code of Relations between the Public and administration: "Are considered as administrative documents, within the meaning of Titles I, III and IV of the book, whatever their date, their place of preservation, their form and their support, the documents products or received, as part of their public service mission, by the State, local authorities as well as by other persons of public law or persons of private law responsible for such mission."

The Committee notes that, pursuant to Decree No. 93-163 of 2 February 1993 concerning the Musée Rodin, the museum is a national public administrative institution under the supervision of the ministry responsible for culture whose mission is to publicize Rodin's work and to uphold the moral right that is attached. To this end: "1. It presents to the public the collections comprising the objects donated or bequeathed by Auguste Rodin and the works acquired later, will take care of it, preserve it and put it into value ; 2. It organizes exhibitions, colloquia and any educational and cultural activity likely to contribute to the influence of Rodin's work and sculpture; 3. It is entitled to acquire any work or any document of interest for the knowledge of Rodin's work and sculpture; 4. It carries out or causes to be carried out any work of arrangement or extension of the premises of the head office of the museum or of its annex; 5. It shall make or have made under its control, original editions of bronzes drawn at from molds and plaster models in the collections. These editions are limited to twelve, numbered 1/8 to 8/8 and I / IV to IV / IV, including existing original editions; 6. It edits and commercializes reproductions of Rodin's works, publications and audiovisual products."

The commission deduces that the digitizations of works of which the Rodin Museum ensures conservation, purposes of both study and commercial exploitation, constitute administrative documents within the meaning of the aforementioned provisions, since they have been drawn up and are held in the framework of the public service entrusted to this establishment. They are therefore, in principle, communicable to all persons who makes the request, on the basis of Article L311-1 of the same code.

The Committee then states that in its decision of 8 November 2017 no. 375704, the Conseil d'État Article L311-4 of the Code of Relations between the Public and the Administration, which provides that: "administrative documents are communicated or published subject to the rights of literary and artistic ownership," implies, before proceeding to the communication of administrative documents encumbered by rights of authorship and not already having been the subject of a disclosure within the meaning of Article L121-2 of the property code intellectual property, to obtain the agreement of their author. However, the Committee notes that the documents requested are not themselves copyrighted, and there is no doubt that the works of the sculptor Auguste Rodin whose three-dimensional reproductions are requested have already been the subject of a disclosure within the meaning of the Intellectual Property Code.

In response to the request addressed to her, the director of the Rodin museum pointed out the inconvenience of communicating the requested files, both in terms of the institution's resources, and the preservation of the integrity of the data collected against the risks of counterfeiting and artistic fraud. The Committee takes note of this, but cannot but note that none of the provisions of Book III of the Code of Relations between the Public and the Administration makes it possible to legally oppose a refusal to provide an administrative document for such reasons.

The committee therefore gives a favorable opinion to the communication to Mr WENMAN, through his counsel, files containing the digitized three-dimensional version of works.

The Committee recalls that the Musée Rodin, in its capacity as rightsholder of the artist, is responsible for upholding the moral rights of the sculptor and must ensure the respect of the work when reusing the requested documents.

Moreover, Article L323-1 of the Code of Relations between the Public and the Administration provides that the reuse of public information may give rise to the establishment of a license and that such a license is mandatory when reuse is subject to payment of a fee. If the reuse of public information is, in principle, free under Article L324-1 of the same code, Article L324-2 provides for the possibility of a fee when the re-use relates to "information from operations digitization of fonds and collections of libraries, including university libraries, museums and archives, and, where appropriate, related information when they are marketed jointly. The total revenue from the amount of this royalty, measured over an appropriate accounting period, does not exceed the total amount of the costs of collecting, producing, making available or disseminating, keeping their information and acquiring the rights of intellectual property. The methods for calculating this fee are specified in article R324-4-3 of the same code. The Rodin museum will thus be able to establish the submission of the reuse of three-dimensional scans to a license and match it with a tariff that complies with these provisions.

Secondly, the list of all files containing digitized versions three-dimensional mentioned in point 2):

The director of the Rodin Museum, in response to the request addressed to her, told the committee that she did not have such a list. The Committee takes note of this, but notes that Book III of the Code of

Relations between the Public and the Administration guarantees everyone the right of access to existing administrative documents as well as to administrative documents that may be obtained by automated processing in common use. The committee therefore gives a favorable opinion to the communication of the list requested, in the event that it could be obtained by such treatment.

Third, the documents relating to Mr WENMAN's applications mentioned in point 3):

The Committee considers that these documents, provided that they are no longer preparatory to a decision which has not yet been taken, may be communicated to the person concerned pursuant to Article L311-6 of the Code of Relations between the Public and the Administration. It therefore gives a favorable opinion to their communication, if necessary after concealment of the information whose communication would be likely to infringe the protection of the privacy of a third party.

Fourthly, the documents referred to in points 4), 5), 6) and 7):

In response to the request addressed to her, the Director of the Rodin Museum informed the Committee that these documents do not exist, in the absence of a defined digitization policy, an agreement with the Baltimore Museum of Art, and reuse of scans by third parties. The commission can therefore only declare that the request for opinion is not applicable on these points.

As regards lastly the documents referred to in points 8) and 9):

In response to the request addressed to her, the Director of the Rodin Museum informed the Committee that the only exchanges with the Ministry of Culture on national digitization plans were in 2010-2011 and with the Superior Council of Literary and Artistic Property which spoke on the subject of three-dimensional scanning and printing. The Commission, which was unable to review these exchanges, considers that these documents constitute in principle administrative documents communicable to any person who requests them, pursuant to Article L311-1 of the Code of Relations between the Public and the Administration, provided that they are no longer preparatory in nature to a decision which has not yet been taken and subject to the reservations provided for in Articles L311-5 and L311-6 of the same code.

The Committee therefore gives a favorable opinion to the communication of these documents, to this extent alone. For the rest, it can only declare the request has no object.

For the President
and by delegation

Bastien BRILLET
General Reporter
First Administrative Court Counselor

JULY 8, 2019

Fitzjean Ó Cobhthaigh requests and receives from CADA copies of CADA's own correspondence with Musée Rodin, which are themselves public records. This request was made through a form on CADA's website, which is why there is no letter recorded here.

This novel FOIA-within-a-FOIA maneuver is how Fitzjean Ó Cobhthaigh and Wenman obtained three documents shown on the preceding pages; Musée Rodin's initial, private request to CADA for guidance; CADA's private response telling the museum its reasoning was in error; and the museum's dramatic letter to the Ministry of Culture's Director General of Patrimony warning about this case, and announcing its intent to ignore the CADA. That letter appears to be an effort by the museum to politicize the dispute and impress the CADA.

These documents were surely not intended for Fitzjean Ó Cobhthaigh and Wenman's eyes, and reveal the museum's bad faith and the incoherence and disarray of its position and pre-litigation strategy.

ALEXIS FITZJEAN Ó COBHATHAIGH[\(JUMP TO ENGLISH\)](#)*Avocat au Barreau de Paris | Attorney at the Paris Bar**Chargé d'enseignement à l'Université Paris II Panthéon-Assas*

Musée Rodin
 77, rue de Varenne
 75007 Paris

A Paris, le 15 novembre 2019
Par LRAR n° 2C 135 548 7161 3

Objet : demande de communication de documents administratifs

A l'attention de Mme Catherine Chevillot, Directrice du musée Rodin, conservateur général du patrimoine

Madame la Directrice,

Je reviens vers vous à la suite de l'avis rendu par la Commission d'accès aux documents administratifs (CADA). Comme vous le savez, cet avis – dont je vous joins une copie – est positif : la CADA a jugé que les documents administratifs dont je vous ai demandés la communication dans mes précédents courriers, dans l'intérêt de M. Cosmo Wenman, sont bien communicables.

A ce jour, sauf erreur de ma part, je n'ai toujours reçu aucun de ces documents.

Je vous remercie de bien vouloir me faire parvenir les documents sollicités dans les meilleurs délais, de préférence sous forme numérisée. A défaut de réponse positive de votre part sous huitaine, je me verrai malheureusement contraint de saisir le tribunal administratif de Paris afin de faire respecter les droits de mon client.

Avec l'espoir que nous puissions trouver une issue précontentieuse favorable à ce litige et restant naturellement à votre disposition et à celle de vos conseils habituels pour évoquer ce dossier, je vous prie de croire, Madame la Directrice, en ma parfaite considération.

Pièce jointe : avis positif de la CADA

Fait à Paris, le 15 novembre 2019

Alexis FITZJEAN Ó COBHATHAIGH
Avocat au Barreau de Paris

(TRANSLATION VIA GOOGLE)

ALEXIS FITZJEAN Ó COBHETHAIGH*Avocat au Barreau de Paris | Attorney at the Paris Bar**Chargé d'enseignement à l'Université Paris II Panthéon-Assas*

Musée Rodin
 77, rue de Varenne
 75007 Paris

A Paris, le 15 novembre 2019
Par LRAR n° 2C 135 548 7161 3

Subject : Request for communication of administrative documents

For the attention of Mme Catherine Chevillot, Directrice du musée Rodin, conservateur général du patrimoine

Madam Director,

I return to you following the opinion issued by the Commission d'accès aux documents administratifs (CADA). As you know, this notice – of which I attach a copy – is positive: CADA has judged that the administrative documents for which I have requested the communication in my previous letters, in the interest of Mr. Cosmo Wenman, are well communicable.

To this day, unless I am mistaken, I have still not received any of these documents.

I will thank you for sending me the requested documents as soon as possible, preferably in digital form. In the absence of a positive response from your share within a week, I will unfortunately be forced to go to court at the Administrative Tribunal of Paris in order to enforce the rights of my client.

With the hope that we can find a favorable pre-litigation outcome to this dispute and naturally remaining at your disposal and that of your usual advice to discuss this matter, please believe, Madam Director, in my perfect consideration.

Attachment : positive opinion from the CADA

Fait à Paris, le 15 novembre 2019

Alexis FITZJEAN Ó COBHETHAIGH
Avocat au Barreau de Paris

LITIGATION

ALEXIS FITZJEAN O COBHTHAIGH
Avocat au Barreau de Paris
 5, rue Daunou - 75002 PARIS
 Tél. 01.53.63.33.10 - Fax 01.45.48.90.09
afoc@afocavocat.eu

TRIBUNAL ADMINISTRATIF DE

PARIS

REQUÊTE

POUR : M. Cosmo Wenman, domicilié 2369, Andersen Lane à Vista (CA 92083) aux Etats-Unis d'Amérique

CONTRE : La décision du 11 décembre 2018 de la directrice du musée Rodin (i.e. Mme Catherine Chevillot) – dont le siège est 19, boulevard des Invalides à Paris (75007) – refusant la communication de divers documents administratifs.

December 9, 2019

The museum having failed to respond, Fitzjean Ó Cobhthaigh files suit on Wenman's behalf in the Administrative Tribunal of Paris.

Wenman and Fitzjean Ó Cobhthaigh have both the CADA advisory to Musée Rodin and the public CADA opinion, each affirming Wenman's documents request with specific refutations of the museum's objections. Fitzjean Ó Cobhthaigh's court filing in part reiterates the CADA's own analysis. It asks the court to annul the museum's refusal to produce its documents, compel the museum to deliver those documents to Wenman, to charge the museum for Wenman's legal expenses, and to assess a financial penalty for any subsequent delay.

It will be up to the museum to explain to the court how CADA—the government's own lawyers—misunderstand the law.

Wenman's complete Court filing is available at:
<https://cosmowenman.com/bmamuseerodinthinker3dscan/>

February 8, 2021

More than a year having passed with the museum failing to respond to Wenman's lawsuit, the Administrative Tribunal of Paris directs Musée Rodin to present a defense.

This communication from the court to the museum was not made publicly, but it is recorded in the court's records as having occurred on this day.

TRIBUNAL ADMINISTRATIF DE PARIS

Dossier n° 1926348/5-1

Mémoire en défense

March 5, 2021

Musée Rodin files its *Mémoire en défense* with the Court.

The museum makes several significant concessions, including declaring to the Court its intention to make its scans available online. The museum explicitly acknowledges that its concessions are in response to Wenman's suit and to the CADA opinion initiated by him.

The museum produces some of its correspondence with representatives of the Ministry of Culture, including the Ministry's response to the Museum's April 26, 2019 letter of alarm; the Ministry tells the museum that Wenman's suit raises important questions and will be a good opportunity for the Court to clarify the law.

In an obvious attempt to avoid having the Court decide the questions of law, with each of its concessions the museum explains to the Court that Wenman's demands are thereby rendered moot, and that the Court no longer needs to rule on them. The museum refuses to produce any list of its scans, and claims several of its scans are incomplete and therefore not subject to disclosure. In an indirect way, it implies to the Court that it has no 3D scan of *The Thinker*.

In its statement of facts and its exhibits, the museum attempts to impugn Wenman's motives by showing evidence of his sculpture and jewelry adaptations of public domain works. It includes an interview he gave to NPR about digitization, and Auguste Rodin's century-old handwritten bequest of his oeuvre to the French state. The museum also includes a court decision in the criminal prosecution of an alleged multi-million dollar forgery operation that has nothing to do with Wenman or 3D scans.

Despite the museum's explicit acknowledgement that its concessions are the result of Wenman's successful suit, it asks the Court to make him pay for the museum's legal expenses in the amount of € 9,000. Wenman views this as an obvious, vindictive attempt to intimidate him and anyone else who may cross the museum, and to thwart both the public's use of public domain works, and its rights under French freedom of information laws.

Musée Rodin's complete *Mémoire en défense* is available at:
<https://cosmowenman.com/bmamuseerodinthinker3dscan/>

RESOURCES

PROJECT HOME

cosmowenman.com/BMAMuseeRodinThinker3DScan/
(Check this page for the latest version of this document)

CONTACTS

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Wenman's open access projects	cosmowenman.com
Wenman's professional services	conceptrealizations.com

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Attorney at the Paris Bar	

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Senior Curator,	
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Directeur de l'Institut national du patrimoine	
(Directeur Général des Patrimoines, November 2018- February 2021)	

Olivier Japiot	olivier.japiot@conseil-etat.fr
Conseiller d'Etat, Conseil d'Etat	

FRENCH LAWS, CADA OPINIONS, AND COURT FILINGS

Law relating to the establishment of Musée Rodin as a national public administrative agency under the supervision of the Ministry of Culture:

Décret n°93-163 du 2 février 1993 relatif au musée Rodin:

legifrance.gouv.fr/loda/id/JORFTEXT000000725762/

Decree n° 93-163 of February 2, 1993 relating to the Rodin museum ([English](#))

Law on public access to administrative records:

Code des relations entre le public et l'administration, Livre III : L'accès aux documents administratifs et la réutilisation des informations publiques (Articles L300-1 à L351-1)

legifrance.gouv.fr/codes/section_lc/LEGITEXT000031366350/LEGISCTA000031367685/

Code of relations between the public and the administration, Book III: Access to administrative documents and the reuse of public information (Articles L300-1 to L351-1) ([English](#))

Law on reproductions of artwork and fraud (the irrelevant law Musée Rodin referred Wenman to in its initial refusal to him):

Décret n°81-255 du 3 mars 1981 sur la répression des fraudes en matière de transactions d'oeuvres d'art et d'objets de collection legifrance.gouv.fr/loda/id/JORFTEXT000000684875/

Decree no. 81-255 of March 3, 1981 on the suppression of fraud in transactions in works of art and collectibles, ([English](#))

CADA's February 7, 2019 advisory opinion to Musée Rodin:

<https://cada.data.gouv.fr/20190026/> ([English](#))

CADA's June 6, 2019 public opinion affirming Wenman's documents request:

<https://cada.data.gouv.fr/20192300/> ([English](#))

Wenman's court filing in the Administrative Tribunal of Paris:

cosmowenman.files.wordpress.com/2019/12/cosmo-wenman-reg-projet.pdf

BACKGROUND ON MUSÉE RODIN, BMA, AND THEIR 3D SCANS

Musée Rodin's use of public funds from the Ministry of Culture to produce 3D scans of *Sleep*, *The Kiss*, and *The Gates of Hell*: Musée Rodin Annual Report 2010, page 40:

musee-rodin.fr/sites/musee/files/resourceSpace/3390_235995248d176a6.pdf

Musée Rodin's use of public funds from the Ministry of Culture to produce 3D scans of twenty plaster casts, including *The Thinker*: Musée Rodin Annual Report 2013, page 24:

musee-rodin.fr/sites/musee/files/editeur/PDF/musee-rodin-rapport-d-activite-2013.pdf

All Musée Rodin Annual Reports: musee-rodin.fr/fr/etablissement-public/rapports-dactivite

Musée Rodin's statement on their moral rights, to which BMA referred Wenman:

Musée Rodin, *Respecting Rodin's moral right; A warning to collectors about the notion of authenticity*,

musee-rodin.fr/en/musee-rodin/respecting-moral-right

Musée Rodin's gift shop *Thinker* replica, made via 3D scan and low-quality 3D print,

boutique.musee-rodin.fr/en/sculpture-reproductions/380-the-thinker-miniature.html

BMA's announcement about their *Thinker* scan and plans to make it freely available to the public:

Suse Cairns, *3D scanning Auguste Rodin's The Thinker*, Baltimore Museum of Art, July 7, 2017

blog.artbma.org/2014/07/3d-scanning-auguste-rodins-the-thinker

BMA's gift shop *Thinker* replica, made via 3D scan and 3D print (deleted since Wenman's inquiries),

shop.artbma.org/browse.cfm/sculpture:-rodins-the-thinker-6-in.html

RELATED RESEARCH PAPERS, BOOKS, AND PRESENTATIONS

Samuel Bonnaud-Le Roux, *Les enjeux juridiques liés à la numérisation tridimensionnelle du patrimoine*, In Situ, 42 | 2020, <http://journals.openedition.org/insitu/27773>

Charles Cronin, *Possession is 99% of the Law: 3D Printing, Public Domain Cultural Artifacts & Copyright* (March 8, 2016). USC Law Legal Studies Paper No. 16-13. Available at SSRN: <https://ssrn.com/abstract=2731935> or <http://dx.doi.org/10.2139/ssrn.2731935>

Sonia K. Katyal, *Technoheritage*, 105 California Law Review, (August 2017) Volume 105, No. 4, <https://www.californialawreview.org/print/3-technoheritage/>

Adam Lowe, Elizabeth Mitchell (editors), [*The Aura In The Age Of Digital Materiality Rethinking Preservation In The Shadow Of An Uncertain Future*](#), Factum Foundation, 2020

Yseult Marique, Emmanuel Slautsky, *Freedom of Information in France - Law and Practice*, September 7, 2017, EGPA 2017 CONFERENCE Milan, Italy, 28th August-1st September 2017
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3033917

Linnea Dale Pittman, *Combating Copyright Overreach: Keeping 3D Representations of Cultural Heritage in the Public Domain*, (October 2020) New York University Law Review, Volume 95, No. 4
nyulawreview.org/wp-content/uploads/2020/10/NYULawReview-Volume-95-Issue-4-Pittman.pdf

Merete Sanderhoff, *Exit Control. Enter Creative Chaos*.

<https://youtube.com/watch?v=YPkZOKzkwb0>

Keynote address at the European Library Automation Group's 2016 conference

Andrea Wallace, Ellen Euler, *Revisiting Access to Cultural Heritage in the Public Domain: EU and International Developments*. IIC 51, 823–855 (2020). <https://doi.org/10.1007/s40319-020-00961-8>



Cosmo Wenman, *3D Printing, 3D Capture, and Opportunities for Design Custodians*, June 2, 2014
<https://medium.com/@CosmoWenman/3d-printing-3d-capture-and-opportunities-for-design-custodians-7985097d2ac4> See section on modern bronzes, with images of Picasso heads.

RODIN FOIA-RELATED MEDIA COVERAGE TO DATE

Anna Sansom, *Musée Rodin could be forced to release 3D scans of bronze sculptures—including The Thinker—to the public*, The Art Newspaper, March 5, 2021 theartnewspaper.com/news/rodin-3d
"If the French court rules that the Musée Rodin cannot withhold its own 3D scans from the public, the museum's perceived authority to prevent other museums from publishing their own scans will be shown to be lawless and imaginary."

Glyn Moody, *Imminent Win For The Public Domain: Court Likely To Compel Musée Rodin To Release Its 3D Scans Of Sculptor's Works For Free*, Techdirt, Mar 18, 2021
techdirt.com/articles/20210317/04015746433/imminent-win-public-domain-court-likely-to-compel-muse-rodin-to-release-3d-scans-sculptors-works-free.shtml *"The knock-on effects of one person's dogged pursuit of a few computer files could have a major impact on the wider availability of 3D scans of sculptures and ancient artifacts -- a real win for the public domain."*

Musée Rodin In Paris May Be Ordered To Release 3D Scans Of Sculptures, ArtsJOURNAL, March 5, 2021 artsjournal.com/2021/03/musee-rodin-in-paris-may-be-ordered-to-release-3d-scans-of-sculptures.html *"The museum has 3D scans of its holdings but is extremely reluctant to release them to the public, since the institution supports itself by selling its own reproductions of Rodin's works. Those works, however, are legally the property of the French state, and thus should be subject to freedom of information laws."*

Marc Rees, *Le scan 3D du Penseur de Rodin est un document administratif communicable*, NextINpact, June 24, 2019
nextinpact.com/news/107996-le-scan-3d-penseur-rodin-est-document-administratif-communicable.htm
 (English translation [here](#)) *"This is the first time that CADA has found that 3D data generated from a scan of a three-dimensional work are administrative data communicable to citizens."*

Charles Cronin, *Sculpture in the Age of the 3D Scan*, The New Criterion, March, 2019,
cosmowenman.files.wordpress.com/2019/06/sculpture-in-the-age-of-the-3d-scan-by-charles-cronin-published-in-the-new-criterion-march-2019.pdf
"[Wenman's] inquiry resulted in a year-long game of hide the ball, documented in a series of dilatory and impertinent responses to Wenman's requests for information. Ultimately, and oddly, the BMA deflected the request to the Musée Rodin in Paris, telling Wenman that it would provide him a copy of the Thinker scan only if he first obtained the Musée's permission to access it."

Laura Sydel, *3-D Printing A Masterwork For Your Living Room*, All Tech Considerd, October 11, 2013,
npr.org/sections/alltechconsidered/2013/10/11/231450884/3-d-printing-a-masterwork-for-your-living-room
 MP3: <https://goo.gl/Q25VsF>

Naomi Rea, *An Artist Has Won a Three-Year Legal Battle to Force a German Museum to Publicly Release Its 3-D Scan of a Bust of Nefertiti*, Artnet News, November 17, 2019
news.artnet.com/art-world/3d-scans-museums-nefertiti-1706181
"[Wenman] plans to take the [Rodin] museum to court, and a victory could have wider consequences for the 3-D scans of works in all the French national collections."

WENMAN'S *BUST OF NEFERTITI* 3D SCAN FOIA PROJECT



Nefertiti 3D Scan Access Campaign: cosmowenman.com/nefertiti-3d-scan-foia-project/

Cosmo Wenman, [A German Museum Tried To Hide This Stunning 3D Scan of an Iconic Egyptian Artifact. Today You Can See It for the First Time](#), Reason, November 13, 2019

Select media coverage of Nefertiti project:

[Slate](#): The Nefertiti Bust Meets the 21st Century

[Creative Commons](#): Reproductions of Public Domain Works Should Remain in the Public Domain

[Smithsonian Magazine](#): 3-D Scans of the Bust of Nefertiti Are Now Available Online

[Artnet News](#): An Artist Has Won a Three-Year Legal Battle to Force a German Museum to Publicly Release Its 3-D Scan of a Bust of Nefertiti

[Techdirt](#): The Curious Case Of The Bogus CC License On A 3D Scan Of A 3000-Year-Old Bust Of Nefertiti

[Electronic Frontier Foundation](#): The Queen of all FOIA Denials; The Foibles 2020, Recognizing the Year's Worst in Government Transparency

[Hyperallergic](#): Official 3D Scans of Nefertiti Bust Are Released After Three-Year Battle

[Club Innovation & Culture France](#): Neues Museum de Berlin: les scans 3D du buste de Nefertiti sont maintenant disponibles en ligne, après 3 années de bataille juridique

[Islamic Republic News Agency](#): شود می مذ تشر مصر ملکه ت ندیس ب عدی سه اندکن

IMAGES



Miniature resin reproduction of *The Thinker*, manufactured and sold in Musée Rodin's gift shop. Note details on following pages indicating use of 3D scan.

Photo © Musée Rodin, source: boutique.musee-rodin.fr/en/miniature-reproductions/124-le-penseur-miniature

Image is archived at: <https://web.archive.org/web/20181018011603/https://boutique.musee-rodin.fr/en/miniature-reproductions/380-the-thinker-miniature.html>



Note the layer lines throughout, and defects in hands, which indicate low-quality 3D printing. Use of 3D printer indicates use of a 3D scan.

Photo © Musée Rodin, source: boutique.musee-rodin.fr/en/miniature-reproductions/124-le-penseur-miniature

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3D printed replica of Rodin's *The Walking Man*, next to bronze original at the Norton Simon Museum, Pasadena, California. Photo by Cosmo Wenman

For high-resolution images to accompany any articles, contact cosmo.wenman@gmail.com



Illustration of a simulated 3D digitization of Rodin's *The Thinker*. Illustration by Cosmo Wenman

For high-resolution images to accompany any articles, contact cosmo.wenman@gmail.com