

Framing Openness: The Digital Circulation of Israel's National Photographic Memory

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Abstract: Since 1948, the Government Press Office of Israel has been collecting documents to producing an extensive archive of photographs representing the birth and development of the Israeli nation state. Digitalized and published online, this archive is as a visual memorial of Israel, an example of what Jan Assmann calls “bonding memory,” a form of memory that connects individuals to a political body, and which acts to frame a collective national identity. In 2011, the copyright terms of this archive were changed to encourage the circulation and reuse of images. This decision echoes a broader trend towards the “opening” of large data sets on the Web (“open data,” “open archives,” “open government”). At the same time, the ongoing Arab-Israeli conflict and the existence of contesting narratives of the creation of Israel threaten the integrity of the official national memory. In this context, what are the conditions and limits of “opening” the national photographic archive? Examining contemporary ideology of the “open” in new media discourses and the free culture movement, this paper investigates the conditions of circulation and appropriation of memory and the role of copyright as a potential tool to control freedom of expression.

Keywords: Free Culture, Copyright, Photography, Memory, Israel, Open Archives, Internet, Digital Commons.

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On March 10th, 1949, the Israeli army reached the shores of the Red Sea at Umm Al-Rashrash (the biblical site of Elath). To mark their victory, the soldiers erected a makeshift flag drawn in ink on a white sheet. Immortalised in the photograph shown in Figure 1, this scene became a symbol of the end of the First Arab-Israeli War, known in Hebrew as the “War of Independence” (Milkhemet Ha’atzma’ut), and in Arabic as “The Catastrophe” (*al-Nakba*).

The Ink Flag photograph is part of Israel’s national photography collection. Digitized and made available on the Internet, the collection is a repository and showcase of Israel’s national memory. In 2011, the copyright licence on the collection was modified to promote the pictures’ circulation and reuse. This change allowed the GPO to publish a set of pictures on Flickr, a popular image hosting website widely used by photo researchers and bloggers. This decision came at a time when the idea of opening digital data and contents was becoming increasingly popular in cultural and information policies worldwide.

This paper investigates the legal and political debate raised by the online distribution of this visual repository. Its conditions are framed by “open access” policies, but they are also influenced by the tensions around the contested political meanings of the Arab-Israeli Wars. To address the underlying question of what the opening of the national photographic archive might mean politically, it is first important to understand how the collection is organised and what the conditions of public access are. This includes the mechanisms implemented to manage its publication online, as well as debates on collective memory, state propaganda and censorship.

1. National Photographic Memory

The National Photography Collection of Israel is managed by the photography department of the Government Press Office (GPO). It was created in 1948 simultaneously with the birth of the Israeli state. Its mission is to represent all the facets of Israeli society: the highlights of political, social, economic and cultural life, as well as the landscape, people, lifestyles, industry, transportation systems, military activities and immigration. This historical repository is complemented with contemporary pictures produced by GPO's official photographers, who document daily government activities and events in the country. Rather than a curated collection, this repository is an archive of all the pictures produced by the administration for the last 60 years.



Figure 1: The Ink Flag erected at Umm Al-Rashrash (Eilat) by Israeli soldiers, March 10th, 1949 (Micha Perry, Government Press Office of Israel. CC BY-NC-SA 2.0).¹

The archive holds more than 500,000 photographs. In 1998, on the occasion of the commemoration of the state's 50th anniversary, part of the archive was publicised on the Internet.² At the time it was an innovative project since the general public was just discovering the World Wide Web. The director of the photography department was excited to announce that the archive was made "available to all," an initiative that he presented as a step towards an

¹ http://www.flickr.com/photos/government_press_office/7621028734/ (accessed January 7, 2014). This and some other photographic documents presented here may convey the impression of being distorted, but they are presented here in the same way as they are accessible in the official archives.

² Israel's national photography collection website <http://147.237.72.31/topsrch/defaulte.htm> (accessed September 1, 2013).

“accessible government”.³ Today, the portion of the archive available online comprises more than 150,000 images.

1.1. Memory as Nation Building

The description on the archive’s website at times presents this repository as a “national photographic album,” and at others, as the “personal photo album” of each Israeli. It suggests an array of citizens’ individual memories merging within the national, official and institutional memory of the state. This merging process is characteristic of what Jan Assmann (2006) calls *bonding memory*,⁴ a form of memory that aims to connect individuals to a political entity and creates collective awareness and identity. The launch of this website in honour of the state’s jubilee emphasised the act of national consolidation of memory transmission.

Like the *Ink Flag* picture, many photographs in the national collection are invested with strong emotional value and bear references to biblical scenes, ancient myths and modern narratives of Israel’s rebirth in the Holy Land. The building of the first house by settlers in a kibbutz (Figure 2), a group of Israeli women performing a traditional dance in the desert (Figure 3), the ritual of cleaning cutlery for Passover (Figure 4) – all these photographs are receptacles for national and religious feelings. They act as visual props for practices of remembrance and celebration of national unity.



Figure 2: Settlers start building the first concrete block house at Kibbutz Dovrat, 1946 (Kluger Zoltan, Government Press Office. CC BY-NC-SA 2.0).⁵

Maurice Halbwachs describes collective memory as an instrument of social integration into nations (Halbwachs 1997), a tool for organising social cohesion and maintaining the unity of a shared narrative. In the same vein, Jean-Pierre Rioux notes that “collectively and tirelessly

³ Excerpt from Israel’s national photography collection website.

⁴ From the German *Bindungsgedächtnis*.

⁵ http://www.flickr.com/photos/government_press_office/6459412681/ (accessed January 7, 2014).

stating that we remain the same manifests a desire for autosuggestion indispensable to all powers" (Rioux 1997, 345).⁶ Crystallised in the form of photographic objects, fragments of the country's territory and history are gathered to create a visual monument⁷ in the archive as a whole: a collection of stories linking the present to the past, linking the social body to the state, and projecting the gaze towards the horizon of a collective continuity.

1.2. Making Visible and Invisible

Sixty-one Flickr albums were created to showcase the state's collection to an international audience, including albums on Jewish and Christian holidays (Yom Kippur, Christmas in the Holy Land), regions and cities (Tel Aviv, the Gaza Strip), everyday life and leisure (Snow, Having fun), sports (Olympic Games), culture (the National Theatre), historical events and wars (Independence Day, The Gulf War, The Holocaust), political figures (David Ben Gurion, Shimon Perez), institutions and organisations (the Supreme Court, Kibbutz) as well as ethnic and minority communities (the Samaritan Community, the Russian community, the Ethiopian community, the Bedouin community, the Druze community, the gay community).



Figure 3: The Water Dance performed by members of Kibbutz Urim, 1947 (Kluger Zoltan, Government Press Office. CC BY-NC-SA 2.0).⁸

A few months before the GPO's Flickr account was created, the director of the national photographic collection described this new project as a positive showcase for Israel. He wished to avoid reference to controversial and security matters⁹ and the photo selection carefully avoids a number of major political events and issues that epitomize core divisions in Israel's society, such as the consequences of wars and colonisation on non-Jewish populations. The

⁶ Translated by the author.

⁷ On the notion of visual monument, see Lavoie, Vincent. 2004. *Images Premières. Mutations d'une icône nationale*. Paris: Centre Culturel Canadien.

⁸ http://www.flickr.com/photos/government_press_office/7731103414/in/set-72157630949137462 (accessed January 7, 2014).

⁹ The interview was conducted on August 7, 2011, in Jerusalem.

collection of albums published on Flickr displays the idealised portrait of a pacified and united country.

The fact that no specific album was devoted to Muslim Arabs, the most populous minority in the country,¹⁰ contrary to smaller minorities like the Druze or the Bedouins, reflects the tensions and ambiguous feelings of many Israeli Jews regarding the status of this group. Overall, the specificity of Muslim Arabs' community, cultural, religious and political life is under-represented in this selection of pictures.¹¹ Arab Druze and Bedouin populations, considered historically loyal to Israel, are depicted in several albums as disciplined subjects, such as soldiers fighting with the Israeli army, or women and children holding Israeli flags and welcome posters in favour of the Prime Minister. As to the Bedouins' nomad traditions, they are documented in detail, the archive capturing with one hand a lifestyle that policies of forced sedentarisation erased with the other. This effort of documentation, as Georges Didi-Huberman notes, manifests a broader tendency of the archive to expose populations whose very existence is threatened: "peoples are always *exposed to disappear*" (Didi-Huberman 2012, 11).¹²



Figure 4: Preparing for Passover in Tel Aviv, 1950 (Hans Pinn, Government Press Office. CC BY-NC-SA 2.0).¹³

¹⁰ According to Israel Ministry of Foreign Affairs, there are over 1.2 million Muslim Arabs, approximately 250,000 Bedouin Arabs, some 123,000 Christian Arabs and some 122,000 Druze in the country. Israel Ministry of Foreign Affairs, "People: Minority Communities" (accessed January 7, 2014)

http://www.flickr.com/photos/government_press_office/6888153468/in/set-72157629713486585 .

¹¹ Conversely, the Ministry of Foreign Affairs' website dedicates a whole section to Muslim Arabs. "People: Minority Communities," *op. cit.*

¹² Translated by the author.

¹³ http://www.flickr.com/photos/government_press_office/6888153468/in/set-72157629713486585 (accessed January 7, 2014).

Emphasis is systematically put on scenes of harmonious dialogue between Jewish and non-Jewish groups forming Israel's mosaic. A picture from the Kibbutz album (Figure 5) shows a young smiling female settler in conversation with a male Arab neighbour in a field. Another picture of a convivial scene hides a tragic story. During the War of Independence, an Israeli officer and a correspondent are enjoying lunch in the house of the village Mukhtar (mayor) in the Palestinian Christian village of Iqrit (Figure 6). The three of them are sitting closely side by side, looking in the same direction to another interlocutor, from behind a table covered with left-overs of the meal that they just shared. A few days later, the villagers who welcomed the soldiers as "liberators," were expelled by the Israeli Army with the promise that they would be allowed to return soon. The families were transferred to the village of Rama, filing up its "empty Muslim-owned houses [to] serve the additional purpose of obstructing the return of Muslims" (Morris 2004, 506). Despite a ruling by the High Court in favour of the return of the refugees to their village, the Army razed the remaining buildings of Iqrit with explosives. Surviving villagers claim that the Mukhtar and the elders were forced to watch the destruction from a nearby hill. It was Christmas Eve, 1951.



Figure 5: Member of a kibbutz in conversation with an Arab neighbour, 1947 (Pinn Hans, Government Press Office. CC BY-NC-SA 2.0).¹⁴

Emblems of national history, testimonies of war brutality or simple documents of the everyday life, the national photography collection provides the raw material of historical knowledge. Depending on the context of their publication, and the caption that orientates their interpretation, these pictures cast light on some facets of the country while keeping oth-

¹⁴ http://www.flickr.com/photos/government_press_office/7535008424/in/set-72157630494833820 (accessed January 7, 2014).

ers obscured. In line with contemporary debates surrounding media rights, the capacity to access, use and discuss this material and its potentially contested meanings is a condition of possibility for knowledge production, democratic life and political debate.



Figure 6: An Israeli officer and Anne Liepah, American Haganah correspondent, in the house of the Mukhtar (village elder) in Iqrit, 1948 (photographer unknown, Government Press Office. CC BY-NC-SA 2.0).¹⁵

2. Digital Dissemination

In 2011, the GPO changed the copyright license on its collection. Flexibility was introduced for the reuse of high-resolution images, provided the user complies with a set of rules that include a ban on the use of photographs for advertisement, “harmful” positions in relation to the state, and “political activity”.¹⁶ About the same period, the GPO created its official account on Flickr, in order to increase the visibility and circulation of these images on digital networks. Some 1,300 images have been published on Flickr so far. This change of policy came a few months after a preliminary vote at the Knesset’s Economic Affairs Committee to accept a draft amendment to the Copyright Act, the main objective of which was to relax the rules on the reuse of photographs produced by the state. In what context was this vote taken? What are the benefits sought by this flexibility introduced in the law? What were the arguments that influenced this decision, and the objections to this change in the rules? Positioning this debate within an ideological context allows to understand that the seemingly neutral concept of “openness” works as an ideological pivot in the contemporary discourses of the digital mediascape and that it must therefore be scrutinized and critically discussed. The relation of the concept of digital “openness” with what anthropologist Gabriella Coleman calls “productive freedom” is particularly problematic. In other words, how does this concept of “openness” relate to a set of “institutions, legal devices and moral codes” that aim not only at

¹⁵ http://www.flickr.com/photos/government_press_office/6344629454/in/set-72157628126927652 (accessed January 7, 2014).

¹⁶ <http://147.237.72.31/topsrch/rightse.htm> State of Israel national photo collection website, “License to Use Photographs” (accessed September 6, 2013).

the “practical benefits” of information circulation (Coleman 2012, 3), but also at an ethics of free speech and democratic life?

2.1. Opening up Ideologies

The notion of “openness” is widely used in theoretical models, public policies and social movements that seek to orientate the development and social integration of digital technologies. The “information” and “knowledge society” models refer extensively to the idea of “opening up.” This notion is even more central to the movement known as “access to knowledge” (A2K), where the terms open source, open standards, open data, open content, open access, open knowledge, open archives, open society and open government, are frequently used. The A2K movement consists of a network of actors and organizations¹⁷ that share a political commitment and a conceptual repertoire (Kapczynski 2010).

The philosophical pillars of this movement include a utopic technology driven conception of social emancipation and a critique of the dominant intellectual property discourse. Organizing their interactions according to the logic of contribution and cooperation, the members of this movement claim to defend the values of freedom of expression and self-determination. They share a “copy/left ethos”¹⁸, an alternative system to current “copyright” legislation. The free access to intellectual property has been formalized by American lawyer Laurence Lessig in the Creative Commons licenses. The Israeli Wikimedia chapter lobbied the government and Members of Parliament to vote for the free reuse and access to state photographs (including images produced by the GPO and the army, the IDF). According to Israeli lawyer Jonathan Klinger,¹⁹ the decisive argument in favour of this opening up of the rules was its positive impact on the state propaganda (*hasbara*). “Imagine the IDF spokesman allowing websites to use photos it took of a terrorist using children as a human shield” suggested Member of Parliament Meir Sheetrit, “that would be an extraordinary service to Israel [and its] PR campaign”.²⁰

Wikimedia Israel supported this argument, adding that the worldwide dissemination of such an important archive (through Wikipedia and other Wikimedia projects) would be useful to offset the images disseminated by Holocaust deniers, as well as pictures freely shared by Al Jazeera and supporters of the Palestinian cause.

2.2. Free and/or Open

In a general sense, the state of “openness” expresses public accessibility, a possibility of communication and use, and a lack of devices or mechanisms that create barriers, exclusion, or retention. From the point of view of memory practices and archive politics, “military secret” or what the French government calls the “incommunicable archive,”²¹ could be considered the opposite of the state of “openness.”

In the context of digital communication, the term “opening” is generally used to describe a comprehensive, global and potentially universal access to content within a specific archive. In the context of government archives and institutional repositories, this dynamic of “opening” is most often presented in terms of its positive effects: an increase of the production and democratisation of knowledge and culture; an improvement of transparency in governance; the stimulation of innovation and creation of new services; and economic growth. Critical perspectives point out the potential infringements on individual privacy (Mayer-Schönberger

¹⁷ See for example the following organisations and publications: the Open Knowledge Foundation, the Communia network and its “Public Domain Manifesto” (2010) and the “Free Culture Manifesto” (2004).

¹⁸ “The Libre Culture Manifesto” (2004), <http://fsmsh.com/1121> (accessed September 1, 2013).

¹⁹ Klinger, Jonathan. 2011. Cultural Fair Use, Political Narrative and Copyright (Wikimania 2011). *Jonathan Klinger’ Blog*. <http://2jk.org/english/?tag=meir-sheetrit> (accessed September 1, 2013).

²⁰ Lis, Jonathan. Head to head / MK Meir Sheetrit, would you join the Netanyahu government to fight the ultra-Orthodox? *Haaretz*. May 10, 2010.

²¹ The “Archives Act” passed by the French government on July 15, 2008 created the new category of “incommunicable archives,” which applies to information on the fabrication of weapons of mass destruction, including the records relating to French nuclear testing since the 1960s. The law states that these documents can never be declassified.

2009), aboriginal rights to restrict access to sacred artefacts held in public archives (Christen 2011; 2012), as well as the illusion of transparency and comprehensiveness driven by digital archiving tools (Cotterrell 1999).

In the context of the A2K movement, the terms *open* and *free* (as in “free culture”) are sometimes used interchangeably. In French, this ambiguity is reinforced by the occasional translation of the English term *open* into *libre*, which means ‘free.’²² Yet within software programming communities, there is a clear distinction between *open* and *free*.²³ *Open access* can suggest multiple meanings: it may simply refer to the fact that accessing the resource is possible, or that access does not require payment, or that the resource is accessible via the Internet, or that the modalities of access respect certain standards like non-exclusive licenses and non-proprietary formats. However, in a general sense, non-exclusivity is not a determining factor for the *open* category,²⁴ and the use of “open content” may be restricted by in a number of ways. For example, an online resource open to public access and use may be subject to a license that prohibits any modification of the content or commercial use (Battisti et al. 2011).

The definition of the term *free* in the sense of *free culture* is more precise. It includes all dimensions of the *open* category while strongly retaining the principles of non-exclusivity and free speech. In its definition of *free knowledge*, the Open Knowledge Foundation characterises a form of access to a resource in its entirety (for images, this would mean access to high-resolution files), preferably achieved online, without a cost (or for a reasonable reproduction fee), and under non-proprietary format and licensing agreement that allows for modification, fabrication of derivative works, and commercial redistribution. According to this definition, the license “shall not discriminate between persons or groups of persons,” or discriminate between types of use and “fields of endeavour.”²⁵

3. The Politics of Openness

3.1. Protection and Retention

Before the GPO changed its license in 2011, access to high-resolution photographs was only available for a fee. Limited to a few dollars, the price for reuse stood well below normal market prices. Low-resolution versions of the photographs were directly accessible online and without a cost. It was, however, forbidden to republish these images without the consent of the GPO.²⁶ Sharing the national collection’s photographs by posting them on a blog or a social network was then considered illegal. The new license introduced by the GPO changed this situation. First, it abolished the fee for the use of high-resolution images. About 1,300 high-resolution files are now directly downloadable from GPO’s Flickr account. To access the other high-resolution files, one must contact the GPO, who may verify if the context of use is consistent with the terms of the license. Regarding requests, “the Ministry of Public Diplomacy and Diaspora reserves the right to perform all necessary examinations as it sees fitting,

²² For example, in the French pages of the Open Knowledge Foundation, the term “open knowledge” is translated into French as “*savoir libre*.” Moreover, the term *libre* is sometimes preferred by English speakers to “free” because it puts the emphasis on the politics of freedom, rather than price. The expression “*libre* knowledge” is therefore used instead of “free knowledge.”

²³ Stallman, Richard. *Why “Open Source” misses the point of Free Software*. <http://www.gnu.org/philosophy/open-source-misses-the-point.html> (accessed September 1, 2013).

²⁴ In some specific domains, such as “open data portals,” the definition is more precise and non-exclusivity is a key criterion. See: “Defining the Open in Open Data, Open Content and Open Services.” Open Knowledge Foundation. <http://opendefinition.org/> (accessed September 1, 2013).

²⁵ Open knowledge Foundation. «Définition du savoir libre». <http://opendefinition.org/okd/francais/> (accessed September 1, 2013). See also, in a similar perspective, Erik Möller’s “Definition of Free Cultural Works” (2006). www.freedomdefined.org (accessed September 1, 2013).

²⁶ This clause cannot apply to images whose copyright has expired. In the case of images on which the state does not own the copyright, the author’s authorisation is required to allow reuse. These provisions are maintained in the new license.

including legal examinations [...].²⁷ The applicant may therefore be required to justify her intentions to get permission to access the high-resolution images. These verifications are not automatic, however, and considering the time-consuming process of examining the legality of each request, one can assume that these examinations are rarely implemented. The warning acts more as a dissuasive device, a symbolic and discursive barrier, than as an actual retention tool.

Second, the new license extends the possible uses of the state's photographs. It became legal to copy, publicly present and redistribute for free any low resolution photograph visible on the GPO's website (but it is still forbidden to copy the entire collection, or modify the pictures),²⁸ as long as the user complies with the terms of the license. Any user is currently allowed to share these photographs by email, or to republish them elsewhere on the Web. Yet the license maintains the ban on the use for "commercial advertising" (defined as the promotion of goods or commercial services) and "political activity," without specifying this vague term.²⁹ The White House's Flickr account also mentions political activity in the license attached to its photographs, but this reference is somewhat more precise, stipulating that the use of such material does not mean its endorsement or approval by the U.S. government. It states: "The photograph may not [...] be used in commercial or political materials [...] that in any way suggests approval or endorsement of the President, the First Family, or the White House".³⁰ These restrictions may be especially pertinent in the case of images of the President, his family and staff.

3.2. Opening Meanings

"A practice of memory," writes Marita Sturken, "is an activity that engages with, produces, reproduces and invests meaning in memories, whether personal, cultural or collective" (2008, 6). From the point of view of semiotics, the production of meaning is an activity that proceeds by *opening up* signification. Studying the poetics of the "open work," Umberto Eco thoroughly analysed the mechanisms of "consumption" (or reception) of cultural objects. His thesis is based on the "fundamental 'opening' of all perceptual and intellectual process," and the subsequent potential of uncertainty that shapes any process of meaning transmission (Eco 1965, 95). And yet, the viewer's freedom to interpret is not unconditional: a set of surrounding signs and texts (for example, a photography's caption, its materiality or legal frame) mediate, contextualize, stage, and even, in the case of licenses, frame not only the public circulation of an image, but also its conditions of reuse and the modalities of public expression around it. While fundamentally ambiguous, the process of meaning construction is therefore also shaped by individual and collective repertoires of references and skills, and organized by material devices and legal dispositions. Eco's analysis of the relationship between "form and openness" within the aesthetic experience of "open works" also invites us to think about the intrinsic "appropriability" of digital materiality in contrast with the capacity of licenses and proprietary formats to lock contents up. Indeed, the plasticity of digital formats, the networked structure of the World Wide Web and the broad opportunities for self-publication and promotion particularly favour the recontextualisation of contents on multiple platforms and speech arenas. To prevent use contrary to the author's or copyright owner's convictions, legislation, like the GPO's license, is written to prevent the recontextualisation of images in fields of activity judged problematic. This may be due to the desire to control associating an image with

²⁷ "Directions for ordering photographs," GPO's website. <http://147.237.72.31/topsrch/order.htm> (accessed September 1, 2013).

²⁸ The Israeli chapter of Wikipedia opposed the clause prohibiting the modification of images, especially because they prevent users from digitally restoring old photographs in poor condition.

²⁹ Although I e-mailed the GPO on Sept. 6, 2012 and Sept. 6, 2013, I never received a response clarifying what the definition of "political activities" might be. It is surprising to observe that these conditions are not the same as those governing the GPO's Flickr account. The photographs posted on Flickr are distributed under a Creative Commons license (CC-BY-NC-SA 2.0). Therefore, the same pictures posted on Flickr and on the GPO's website are subject to two different licences: the alteration (remix) of pictures is permitted by the Creative Commons licence on Flickr whereas it is prohibited by the licence on the GPO's website. There is also no mention on Flickr of the prohibition of use for a political purpose.

³⁰ The White House Flickr account. <http://www.flickr.com/people/whitehouse> (accessed September 1, 2013).

commercial products or political ideologies that are contrary to the convictions of the author or copyright owner. Intellectual property legislation is not only a means of asserting one's commercial right to the exclusive exploitation of an artwork, but it is also a tool for protecting and controlling symbolic and political regimes of interpretation.

3.3. The State's Moral Right?

According to Israel's Copyright Act, the copyright of photographs produced by GPO employees belongs to the state.³¹ As the copyright owner, the state of Israel - through the GPO - prohibits the reproduction of photographs for "political activity" to ensure that the user does not "in any way [harm] the name or the reputation of the State, the Government Press Office or the photographer" (quoted from the GPO license).³² What remains to be determined is the nature of the harm caused to the author of the image or owner of the copyright, and whether this harmful effect refers to the "right to the integrity" of the work.

The author's "moral rights" stand as a widely recognized principle, enshrined in the Berne Convention and the Universal Declaration of Human Rights. The rights guaranteed by this principle include a "right to respect for the work" or "right to the integrity of the work." It prevents the modification of someone's work in a way that "would be prejudicial to [the author's] honour or reputation," or in a way that would be contrary to the author's "intellectual interests, personal style, or literary, artistic or scientific conceptions" (Cotter 1997, online). However, the possibility for a state agency to claim a moral right on a work as the owner of copyright and use it in order to protect its reputation is not the same as that of an individual and is often contested.

In an article commenting on the 2007 *Copyright Act*, Israeli law professor Orit Fischman Afori explains that "the main justification for moral rights stems from personhood theory" (2008, 521), which states that a work expresses the personality of its author. Thus, according to O. Afori Fischman, "as a matter of principle, the employer *qua* employer is not entitled to moral rights" (2008, 522). Only an individual (not an organisation or a state) is entitled to the protection of a personal link that binds her to her work as an author. From this point of view, the GPO, as the copyright holder and editor of images, cannot claim a moral right on the works of its employees.

3.4. Free Speech and the State's Narrative

Beyond the aim of preserving the integrity of the photographers' moral rights, can copyright licenses be instrumentalised to protect the integrity of an official account of national history? The invocation of a moral right of the state to protect its honour and reputation is to be understood in regard to the ongoing Arab-Israeli conflict and the activities of organisations hostile to Israel. The discussions of the draft amendment to the *Copyright Act* voted by the Economic Affairs Committee of the Knesset reflected these political and military concerns. In its own version of the proposed amendment, Wikimedia Israel suggested to include a clause prohibiting the use of the state's photographs in publication to deny "the existence of Israel as a Jewish and democratic state," "inciting to racism," "supporting the armed struggle of an enemy state or a terrorist organization against the state of Israel" or "contrary to the national security and foreign affairs." This proposal, which was ultimately not adopted by the Committee, sought to inscribe within the intellectual property law provisions belonging to another legislative field: that of free speech, suppression of hate speech and reprobation of Holocaust denial.

However, the offence of "harming the name or the reputation of the State" on the grounds of defamation laws and protection of public order or national security is not a standard maintained in democratic countries. According to the nongovernmental organisation Article 19 in a publication supported by UNESCO, "the practice in many parts of the world is to abuse def-

³¹ This does not imply that the photographers are necessarily deprived of all moral rights on their works (Afori Fischman 2008).

³² <http://147.237.72.31/topsrch/rightse.htm>, GPO's website, section "Terms of Site Use and License to Use State Photographs" (accessed September 1, 2013).

amation laws to prevent open public debate and legitimate criticism of wrongdoing by officials. Many countries have laws designed to safeguard the honour of certain objects, including national or religious symbols. Inasmuch as an object, as such, cannot have a reputation, these laws do not serve a legitimate aim" (Article 19 [2000], 6). In authoritarian states such as Jordan or Saudi Arabia, accusations of harming the reputation and dignity of the state are used for the prosecution, detention and intimidation of journalists and political opponents. Jonathan Klinger criticized the terms of the discussion that took place at the Economic Affairs Committee.³³ He argued that banning all uses that are not positive or neutral *vis-à-vis* the state and its policies amounts to establishing an "Israel Friendly License". "Israel wishes to enforce its political narrative through copyright by granting a license to use its works solely for those who adhere to its standards," he stated on his blog. For J. Klinger, the principle of copyright was instrumentalised towards a political censorship apparatus. Currently, the GPO does not monitor all requests and does not ask to know the context of publication before sending out high-resolution files. However, in the absence of a precise delimitation of the scope of "political activity" targeted by its license, could any political debate making use of the national photo collection to criticize the official narrative become a copyright infringement? The possibility for the GPO to strictly enforce this ban, even if not implemented to date, is a severe threat to political criticism and democratic debate.³⁴ This clause guarantees indirectly the protection of an official narrative of the founding and development of Israel favouring national mythology at the expense of freedom of expression. Such control on the political uses of memory also reflects a desire to enshrine the photographic archive as a visual memorial of the state.

4. Conclusions

"Pictures do not freeze memory," writes Beatrice Fleury-Vilatte, "they engage the process of memory into a dialectic of tensions" (1997, 23). While the manufacture of meaning opens up multiple interpretations, in the case of Israel's national photography collection, copyright legislation drastically restricts the public association of an image with heterodox regimes of signification, belief and ideology. This case shows how military, political and religious conflicts can frame the openness of an "open" digital archive. The new license implemented by the GPO may offer access to high-resolution images at no cost, but because it aims at organising this archive's conditions of circulation, it also maintains a restrictive disposition regarding freedom of expression and critical discussion of the national historical narrative. However, it could be debated how easily this restriction can be enforced in the context of a digital environment characterized by porosity, plasticity, virality and seemingly unlimited expansion. If the Israeli state decided to sue a website, group or individual for infringement to the political orthodoxy clause of the license, it is highly probable that this legal case would be widely exposed to media attention and debated on the ground of censorship and free speech. Such media exposure would be far more damaging to the state's reputation than the outrage to political heterodoxy it would intend to fight. Historian Michael Rothberg has highlighted the multidirectional nature of memory. He argues that the model of memory "competition" is less useful than an analysis of "interference, superposition and mutual constitution of seemingly distinct collective memories" (Rothberg 2006, 162). "Memories are mobile," he writes, and albeit we may be tempted to "establish a *cordon sanitaire*" (Rothberg 2009, 313) between two readings of history, the conflict nature of memories involves their necessary intertwining in the public space.

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³³ Klinger, Jonathan, *op. cit.*

³⁴ Paradoxically, the license also prevents the use of the collection in publications that support Israeli policies, since this would also constitute "political activity."

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