

Annex 6

i2010 DIGITAL LIBRARIES COPYRIGHT SUBGROUP'S RECOMMENDED KEY PRINCIPLES FOR RIGHTS CLEARANCE CENTRES AND DATABASES FOR ORPHAN WORKS¹

PREFACE

The European Commission has made digital libraries a key aspect of i2010 as expressed *inter alia* in its Communication *i2010: Digital Libraries' of 30 September 2005*. The Commission's Recommendation of 24 August, approved by the Council in November 2006 focuses on digital preservation, orphan works and out-of-print works. Text-based and audiovisual materials include substantial amounts of works with unclear copyright status. Comprehensive, large scale digitisation and online accessibility, as well as other uses could be facilitated.

A High Level Expert Group (HLG) was appointed to advise the Commission on implementation issues regarding the European Digital Libraries initiative. To develop solutions on key copyright issues, the HLG established a Copyright Subgroup which worked out a set of High Level Principles² that were endorsed by the HLG at its meeting 17 October 2006.

As a part of the solution on copyright issues, the Copyright Subgroup recommended rights clearance centres and dedicated databases concerning information on orphan works taking into account that any mechanism intended to facilitate the EDL should in principle be established or promoted on a voluntary basis. It further noted that the European Commission could recommend that the Member States support or complete contractual arrangements by "an extension effect to a collective licence contracts by some legal presumption and by other measures to the same effect." The High Level Principles are fundamental for the establishment of Rights Clearance Centres (RCC) and Databases (DB) in relation to the i2010 European Digital Libraries (EDL).

Moreover, co-ordination should take place among the various initiatives at national level and across the European Union, to avoid unnecessary duplication among different initiatives. Also, mutual recognition is important with a view to the cross border effect of the use. National RCCs could act as portals and centralised access points for clearance of rights and be accessible across borders, supported by DBs and registries. In building these RCCs will also involve and co-operate, when appropriate, the cultural institutions with the view to draw on their expertise to enable a best possible result to the benefit of right holders as well as institutions and other users of copyright works. Interlinking national databases would establish a European centralised access point and a European wide solution. It should take account of the variety of existing and future information resources available.

HIGH LEVEL PRINCIPLES GOVERNING THE CLEARANCE OF RIGHTS FOR WORKS PRESUMED TO BE ORPHAN

Key elements in respect of the clearance of rights to digitise and make available works presumed to be orphan by institutional or other users:

- Works and materials from all relevant categories of works protected by copyright may be orphan. The Databases and Rights Clearance Centres for orphan works must take account of this
- Prior to requesting a licence to digitise and/or make available an orphan work, the user or, when agreed, the Rights Clearance Center on the user's behalf shall carry out a diligent search for the rightholders to the work observing sector specific criteria for such rightholder search
- Subsequently, the Rights Clearance Centre needs to establish a licence for the digitisation and making available of a presumed orphan work with a set of default conditions (default licence)
- Legal certainty for the right clearer as well as for the user in the licence presupposes a solution for so-called orphan works: the identity and/or the location of a right holder to a given work is/are not known by the user

¹ Whenever the term "orphan work" is used, the work is considered to be orphan until the contrary has been proven.

² Report on Digital Preservation, Orphan works and Out-of-Print works. Selected Implementation Issues, page 2/3

HIGH LEVEL PURPOSE OF RIGHTS CLEARANCE CENTRES AND DATABASES

A national Rights Clearance Center (RCC) and a national Database (DB) for orphan works are established to implement the European Digital Libraries initiative. Diligent search for rightholders to work to be digitised and/or made available using established sector-specific criteria is carried out using resources from the country of origin/publication/production of the work provided this information is available. The main purpose of these instruments is to create convenient though not compulsory centralised national access points based on the legal solutions chosen by the individual countries for the clearance of rights, when applicable, to digitise and make available orphan works. The combined solution shall *inter alia* through authoritative registers:

1. enable users, institutional as well as commercial ones, to conduct an online search, in order to discover whether
 - a. the identity and/or the location of a rightholder to a given work required by the user is/are known
 - b. whether information is available on previous diligent search on the right holder to the work to enable further search or engage in a diligent search for the rightholder(s) to the work
 - c. the work is already registered as available digitally, e.g. from another library/archive/museum or other user who has already sought and obtained clearance through a default licence or, when applicable, on some mechanism based on legislation
2. enable users, institutional as well as commercial ones, to proceed from discovery of digitisation status to
 - a. digitising the work, subject to the relevant terms and conditions established, and, when applicable, subsequently making the digitisation accessible to users on the conditions established in the licensing agreement; or
 - b. enabling access to a work that has been digitised and made available digitally from another source, e.g. another national or foreign library, archive or museum, or other authorised user

DEFINITIONS

Database means a network of databases (cultural institutions including libraries, archives, museums; creators/authors; publishers; industry sources; Reproduction Rights Organisations (RROs); other authorities (both national and international)) of metadata accessed via national portals. The national databases are foreseen to be interoperable to allow a European-wide solution.

Rights Clearance Centre (RCC) means a national centralised access point to a network of clearance centres made up of that of the RCC and those of individual authors or publishers and their representatives such as RROs. The national rights clearance centres are foreseen to be interoperable to allow a European-wide solution.

Metadata is a relationship that someone claims to exist between two entities, one of which is the referent. (Definition used by Indecs)

GOVERNING PRINCIPLES OF THE DATABASES AND RIGHTS CLEARANCE CENTRES FOR ORPHAN WORKS

For rightholders³ the governing principles are:

- Respect for copyright and related rights, including moral rights of creators and performers of copyrighted works;
- Digitisation and use within the premises of libraries/archives/museums should take place with rightholders' consent or be based on statutory exception;
- Online availability should take place with the consent of the rightholders or their representatives;
- In the absence of the rightholder when not known or located, online availability should take place either with the consent of an authoritative body established by and governed by rightholders or by some other process established on the basis of law recognised by rightholders.
- Rightholders' consent in this context means in principle rights clearance.
- An authoritative source established by rightholders on the basis of the country's legislation to grant the right to digitise and/or make available copyright works when the rightholder is presumed unknown or not possible to locate.

For libraries, archives and museums the governing principles are:

- Respect for copyright and related rights, including moral rights of creators and performers of copyrighted works;
- For these institutions it is important to have legal certainty in their activities;
- Access means either within the premises of libraries, archives and museums or online availability;
- Digitisation of copyright works requires getting permission through rights clearance or some other mechanisms based on legislation recognised by the rightholders;

³ By right holders is meant any person or institution legally holding rights or having been authorized to act on the right holders behalf

DATA BASES (DB). KEY PRINCIPLES

1. Policy

- ✚ The DB shall contain metadata on digitised presumed orphan works and other orphan works in respect of which a diligent search has been undertaken or for which a lawful licence for use has been granted
- ✚ The DB owner may at its sole discretion establish and publicise its policy for collecting, storing and making available metadata in the DB
- ✚ The DB owner shall publicise its criteria for linking to other national DBs on metadata
- ✚ The DB owner shall publicise its criteria for storing and/or linking to metadata DB outside its national territories
- ✚ Duplication of existing databases/catalogues shall be avoided as far as possible

2. Database

- ✚ The DB shall include metadata on works (See, however, also 3 below)
- ✚ The DB shall enable the storage of metadata on works on the basis of different types of contractual arrangements
- ✚ Subject to the principles established in this document the DB owner shall at its own discretion establish technical and other standards as well as the policy for the use of the DB, taking into account that it must facilitate interoperability with other databases
- ✚ The principles for building, including the structuring of the DB, shall start from existing DBs (both private and public)
- ✚ The DB must allow redirection to other relevant DBs both in and outside its territory
- ✚ The DB shall enable the registration of sector specific criteria for diligent search for rightholders to orphan works and whether they have been complied with, per work
- ✚ The DB shall enable the announcement of the undertaking of a due diligent search by a user
- ✚ The DB shall enable the registration of users' compliance with the diligent search criteria to identify the right holder to an orphan work
- ✚ The DB shall enable the publicising of the licence granted to use a specific orphan work and the conditions to be applied for the use of it
- ✚ The DB shall publicise the change of status (from orphan to known rightholder, or from orphan work/known right holder to located rightholder)
- ✚ The database shall allow integration with existing databases on orphan works

3. Metadata

- ✚ The DB shall apply a definition of metadata and their values as devised by the Copyright Subgroup in the context of the i2010 Digital Libraries initiative
- ✚ As a minimum the DB shall include
 - rights
 - manifestation of works
 - meta-metadata (who is declaring what, and when)
- ✚ In the absence of or in addition to traditional metadata (such as name of the author, name of the publisher, title of the work, etc.), the database may contain expressions that may help to identify the rightholder(s) to the work, e.g. a facsimile, a snapshot, a short extract of a piece of music, a copy in low resolution of the cover page, photo, video clip, i.e. part of a video, etc.
- ✚ The DB owner shall establish and publicise
 - criteria for quality control
 - criteria for enriching and updating of metadata
 - criteria for accessing metadata

4. Standards

- ✚ The DB shall use existing standards.
- ✚ The DB shall contribute to the further development of existing international standards rather than looking for own proprietary solutions
- ✚ Standards are required for
 - Identification of works, manifestation of works, parties, and possibly rights, i.e. ISO TC-46, SC-9 for content (in text and image based and audiovisual works: ISBN, ISSN, ISTC, ISAN, CEN, ISMN, DOI, ISNI are directly relevant)
 - Metadata and metadata interoperability models
 - Messaging and accessing metadata
- ✚ Standards are referred to:
 - Content (at work and at manifestation of work (publication) level)
 - Rights and right terms
 - Parties
- ✚ The metadata standards will likely be based on the ONIX family of standards

5. Interoperability

- ✚ The DB owner shall make such information available on the structure etc. as is necessary to ensure interoperability with other DBs for orphan works
- ✚ The DB must enable a register of orphan works which have been digitised and/or made available during their orphan works status

RIGHTS CLEARANCE CENTRE (RCC). KEY PRINCIPLES

1. Policy

- ✚ The RCC is foreseen to be an authoritative source for the clearance of rights to digitise and/or make available orphan works in accordance with the national legal regime. The rights clearance can be carried out directly or in combination with other authoritative clearance mechanisms depending on the legislation of the country concerned.
- ✚ The RCC may operate on the basis that it shall establish that a search for a right holder to an orphan work has been duly carried out according to criteria developed for such searches; or be engaged in the diligent search for the right holder itself; or carry out both tasks. The RCC shall clarify which of these tasks it performs.
- ✚ A diligent search should normally be carried out using resources relating to the country of origin, where known, of the creation/publication/production of the work
- ✚ The orphan works licence offered by the RCC must provide for its replacement by a licence with the pertinent rightholder or his/her representative and include a take down procedure when the rightholder has been identified and/or located and normal rights clearance mechanisms may be used. Such replacement procedure must take due account of the needs of the library/archive/museum or other user, institutional or commercial, that has been allowed to digitise and/or make available under the RCC orphan works licence.

2. Licensing

- ✚ The Licensing policies and criteria shall be worked out in co-operation with the pertinent right holder associations and the Collective Management Organisations (CMOs) in the relevant fields
- ✚ The fee including, when applicable, remuneration handling policy shall be worked out in co-operation with the pertinent rightholder associations and the Collective Management Organisations (CMOs) in the relevant fields
- ✚ The RCC shall establish a request handling policy which shall include
 - i. Direct licensing including a register of works in respect of which the RCC has been granted an authorisation e.g. by law or otherwise to licence
 - ii. Redirecting to other sources including CMOs
 - iii. A list of works for which the RCC has been authorised to redirect (when applicable)
- ✚ The RCC shall establish and publicise its licensing policy and criteria, including the policy for using the RCC outside its national territory, and criteria, remuneration handling policy,
- ✚ The licensing policy must enable both libraries, archives, museums, etc. as well as commercial users to apply for a licence of orphan works

3. Licensing Conditions

- ✚ The RCC shall establish a set of default⁴ conditions
- ✚ The default licences shall ensure that moral rights are respected to the extent possible
- ✚ The default licence shall provide terms that allow monitoring and enforcement of the licence terms
- ✚ The default conditions shall be established in co-operation with authors and publishers/producers associations as well as the pertinent CMOs in the relevant sector and be based on the conditions for the use of similar categories of works
- ✚ The licence must take account of specific stipulations in national legislation in support of contractual and/or other arrangements for such works
- ✚ The Licence must include stipulations that regulate the relationship with the user and the rightholder when the rightholder has been identified and/or located, including what shall happen to the digitised work and the making available and the further use of it.

⁴ Conditions established by the RCC in the absence of right holder set ones which the right holder may choose to replace when (s)he reappears

4. Remuneration

- ✚ The RCC pays out to the rightholder all such fees it collects on his/her behalf through such channels as follows from the licence or as agreed with the rightholder when (s)he has been located
- ✚ The RCC will ensure shortest possible period from collection to distribution of remuneration to right holders and pay out any collected fees on the right holder's behalf as soon as possible after the right holder to a work that has been registered as an orphan work has been identified and/or located
- ✚ The RCC shall work out and publicise a policy for handling of any money held in trust (for non identified rightholders). This policy shall be worked out in co-operation with the pertinent rightholder associations, the CMO in the relevant sectors and the cultural institutions, and may include the possibility for cultural institutions to share in the undistributed funds.

5. Interoperability

- ✚ The RCC shall work out and publicise its policy on integration with individual rights clearance mechanisms
- ✚ The RCC shall ensure and publicise a policy on interlinking with other RCCs outside its borders

6. Transparency

- ✚ The RCC shall define and publicise "relevant information" to pertinent rightholder representatives including CMOs, cultural institutions and potential licensees.
- ✚ What is "relevant information" shall be worked out in co-operation with the pertinent national rightholder associations, the CMO in the relevant sectors and the cultural institutions, and include administrative costs
- ✚ The RCC shall ensure that "relevant information" is easy accessible to rightholder associations, CMOs and cultural institutions
- ✚ The RCC shall keep and make publicly available a register of orphan works on which metadata is available

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- END of Documents -