IFRRO Side event 1 May 2014, at the 27th WIPO SCCR meeting (28 April – 2 May 2014)

Digitisation and making available cultural heritage
Orphan Works and Out-of-Commerce Works
Digitisation and making available cultural heritage, focus on solutions for Orphan Works and Out-of-Commerce Works

Digitising and making available cultural heritage is an important part of providing access to cumulative knowledge. It is therefore increasingly on government and library agendas. Works, which are offered through commercial channels, are readily available in electronic formats. The main focus has therefore been on the development of solutions for the so-called orphan works and out-of-commerce works.

An orphan work is one where the author or other rightholder to the work is not known, or, if known, not locatable. As the author or publisher is not contactable, authorisation to digitise and make available the work cannot be obtained from the copyright holder. Alternative mechanisms are required if the work is to be legally included in a project to digitise and make cultural heritage available. Several countries have introduced solutions. We have opted to show the examples of the Republic of Korea, which has since long enabled certain uses of orphan works, and the recently adopted European Union (EU) Orphan Works Directive, which entered into force on 28 October 2012, and which has to be adopted into the legislation of the EU Member States by 29 October 2014.

IFRRO\(^1\) has also been an active partner in dialogues with other stakeholders to develop solutions for the mass digitisation and making available by libraries and other publicly available cultural institutions of works which are no longer in commerce. This includes a European Commission (EC) facilitated Memorandum of Understanding (MoU) on Out-of-Commerce books, signed on 20 September 2011 by 10 organisations representing the stakeholders: IFRRO; the authors’ associations EVA, EWC and IFJ\(^2\); the publishers associations EPC, FEP, and STM\(^3\); and the library organisations CENL, EBLIDA and LIBER\(^4\). The MoU concerns libraries and other cultural institutions which are not for direct or indirect commercial advantage. Authorisation to digitise and make available works is offered through voluntary collective licensing by representative Collective Management Organisations (CMO), which can document that they are supported by both authors and publishers. The French project ReLire and the German digitisation and making available of out-of-commerce are offered as contemporary examples of initiatives, which implement solutions for orphan and out-of-commerce works.

The digitisation and making available of cultural heritage requires rights management. ARROW\(^5\) is a tool that the stakeholders – libraries, authors, publishers and their organisations, and IFRRO – has developed jointly to assist in search for rights status and authors and publishers of text-based works in an automated, streamlined, and standardised way. It has a proven track record of reducing substantially the time and cost involved in the information search process.

Geneva 1 May 2014

Rainer Just
President IFRRO

Olav Stokkmo
CEO and Secretary General

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1 Relevant documents are available on IFRRO’s Digital libraries web page: [http://www.ifrro.org/content/i2010-digital-libraries](http://www.ifrro.org/content/i2010-digital-libraries)
2 European Visual Artists; European Writers Council; International Federation of Journalists
3 European Publishers Council; Federation of European Publishers; International Federation of Scientific, Technical and Medical Publishers
4 Conference of European National Libraries; European Bureau of Library, Information and Documentation Association; Ligue des Bibliothèques Européennes de Recherche (Association of European Research Libraries)
5 [http://www.arrow-net.eu/](http://www.arrow-net.eu/)
In conjunction with the 27th session of the WIPO SCCR in Geneva

IFRRO (the International Federation of Reproduction Rights Organisations) is pleased to invite you to a side event on

**Making available cultural heritage – orphan works and out-of-commerce works**

**Thursday, 1 May 2014, 13:00-14:45 in Room B**

The session will share information on ways of addressing the orphan works issue, as well as on solutions that libraries, authors, publishers and RROs, the Collective Management Organisations in the print and publishing sector, have agreed, in order to enable publicly available libraries to include out of commerce books in programmes to digitise and make available cultural heritage:

| 1. WELCOME - Rainer Just, IFRRO President |
| 2. ORPHAN WORKS |
| a. Administering Orphan Works in Korea |
| Dr. Hong Taek Chung, President KORRA (Korea Reproduction and Transmission Rights Association) |
| b. EU Orphan Works Directive |
| Damian Schai, Lawyer STM (International Association of Scientific, Technical & Medical Publishers) |
| 3. MAKING AVAILABLE OUT-OF-COMMERCE WORKS BY PUBLICLY AVAILABLE LIBRARIES |
| a. EC facilitated Stakeholer MoU on Out-of-Commerce books |
| Carola Streul, Secretary General EVA (European Visual Artists) |
| b. Project ReLire, France; making available out-of-commerce books published in France before 2001 |
| Juliette Dutour, Chef du Projet ReLire at BNF (Bibliothèque Nationale de France); Christian Roblin, CEO SOFIA (Société Française des Intérêts des Auteurs de l’Ecrit); |
| c. Germany; making available out-of-commerce books published in Germany before 1966 |
| Dr. Elisabeth Niggemann, Director General, German National Library; Rainer Just, CEO VG Wort (Verwertungsgesellschaft WORT) |
| 4. ARROW, STAKEHOLDER DEVELOPED ELECTRONIC RIGHTS INFORMATION TOOL |
| Paola Mazzucchi, ARROW |
| 5. CONCLUSION |

The event will be moderated by Olav Stokkmo, CEO of IFRRO. Presentations will start at 13:20.

A light sandwich lunch will be offered before the start of the presentations.
I. Orphan works

The Korean Copyright Act (Law No. 9625, April 22, 2009, amendment):


Administering Orphan Works in Korea

WIPO 27th SCCR, IFRRO Side Event

Prof. Hong Taek Chung
President & CEO of KORRA
Korea Reproduction and Transmission Rights Association

May 1, 2014
Contents

• What is an Orphan Work?
• What is the Problem?
• How about Korea?
• Discussions in Korea
What is Orphan Work?

“Books, newspaper and magazine articles and films that are still protected by copyright but whose authors or other rightholders are not known or cannot be located or contacted”
What is Problem?

Demand in digitization of copyright works is increasing worldwide; problems related to uses of orphan works should be solved quickly

*Easy use of orphan works*

→ *Increase in creativity and innovation*
What is Problem?

<Problems When We Use Orphan Works>

1. Expensive transaction cost is expected
2. Orphan works' proportion among all copyright protected works is too high
3. Lack of regulations or standards for copyright
4. Claims of rights infringements from rightholders who appear after use
5. Difficulties from considerable effort or diligent search
   → users want to use works diligently, but they cannot
**How about Korea?**

<Previous Legal Approval System>  

1. No. of orphan works used through Legal Approval System: 37 works (2001~2011)  
2. How long does it take? : Over 2 months  
3. Conditions for Legal Approval  
   ① Considerable effort to find rightholders: uncertain standard of considerable effort  
   ② Checks from copyright management organizations  
   ③ Notices in newspapers or websites  

※ **Considerable effort** in Copyright Act  
① search copyright registration list  
② search copyright management organization's trust list  
③ put notices to find rightholders on newspapers or website of the Ministry of Culture, Sports, and Tourism
<Previous Legal Approval System>

How much used?: Rarely

<table>
<thead>
<tr>
<th>Year</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>Total</th>
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<tbody>
<tr>
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<td>26</td>
<td>7</td>
<td>4</td>
<td>2</td>
<td>39</td>
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</tbody>
</table>

Process of legal approval was complicated!

→ Demand in simplified process
How about Korea?

<Simplifying Legal Permission-Process>
How about Korea?

<Simplifying Legal Permission-Process>

1. Considerable effort

2. Submit application for an approval
   (⇒ application available on/offline)

3. Review and announcement on official gazette

4. Approval notification

5. Deposit remuneration fees and notification
Discussions in Korea

<Extended Collective Licensing>

Why ECL at this moment?

1. Countries in Northern Europe have introduced ECL many years ago. CMOs comprehensively license copyright works, and rightholders can opt-out of it.
2. It is considered to efficiently solve orphan work-related problems.
3. ECL in Korea: Since 2009, government, rightholders, and users have started to discuss ECL. Though rightholders want ECL to be introduced, many priority problems should be solved.
Thank You!

howard5@naver.com
EU Orphan Works Directive

Definition of an orphan work

Art. 2 of the Directive

«A work or a phonogram shall be considered an orphan work if none of the rightholders in that work or phonogram is identified or, even if one or more of them is identified, none is located despite a diligent search for the rightholders having been carried out and recorded in accordance with Article 3» (Art. 2 para. 1)
The problem of orphan works

- Works that are protected by copyright, but the owners are **unknown**, and / or **impossible to locate**
- Effort of the search and risk of being sued → disincentive
- Consequence:
  - The work may not be used – even though the rightholder either does not appear, or would not object to the use
  - “Lose-lose” situation: for the owner, the user, and society at large
Elimination of «false positive»

- **True orphan works** → can be used
- **However**, many works considered to be orphan works are in fact incorrectly determined as such
  - **Example**: Author’s Guild found all rightsholders of the first 167 works that were determined as orphans by HathiTrust
- **Solution**: User to carry out a reasonably diligent search in good faith
- **Return of the rightsholder** despite a diligent search → fair compensation
Content of the EU Orphan Works Directive (1)

Art. 1 Subject-matter and scope

• Applicable for «certain uses» by institutions with a «public-interest mission», such as libraries, educational establishments, museums and archives (Art. 1 para. 1)

• Applicable for (almost) all categories of works, including text and audiovisual works as well as phonograms (Art. 1 para. 2 to 4)
Content of the EU Orphan Works Directive (2)

Art. 3 Diligent Search

• Carried out in good faith (Art. 3 para. 1)
• The sources of the search have to be appropriate for each category of works (Art. 3 para. 2)
• Place of search is the Member State of first publication or broadcast (Art. 3 para. 3)
Content of the EU Orphan Works Directive (3)

Art. 6 Permitted uses

• Making orphan works available to the public (para. 1a)
• Acts of reproduction for digitisation, making available, indexing, etc. (para. 1b)
• Fair compensation to rightholders who appear and put an end to the orphan work status (para. 5)
Further important provisions

• Mutual recognition of orphan work status (Art. 4)
• Possible end of orphan work status (Art. 5)
• Continued application of other intellectual property provisions (Art. 7)
• Transposition into national law due by 29 October 2014 (Art. 9)
Thank you for your attention

Questions?

damian.schai@lclaw.ch
II. Out-of commerce works

Memorandum of Understanding. Key Principles on the Digitisation and Making Available Out-of-Commerce Works:

http://ec.europa.eu/internal_market/copyright/docs/copyright-infs0/20110920-mou_en.pdf

i2010 Digital Libraries:

http://www.ifrro.org/content/i2010-digital-libraries
Making Out-of-Commerce Works Available in EU Member States

Introduction
In September 2011, Michel Barnier, European Commissioner for the Internal Market and Services, presided over the signing of a Memorandum of Understanding (MoU) setting out key principles on the digitisation and making available of Out-of-Commerce Works (OOC) by publicly accessible libraries and similar institutions in the European Union. The MoU was agreed among 10 organisations representing national, research and public libraries and documentation centres, authors of literary works, and embedded visual works (e.g., illustrations, photographs etc), publishers of books and journals and relevant collective management organisations (CMOs)¹. It envisages a process at the Member State level whereby out-of-commerce works first published in that Member State may be made available, including through digital means and across borders.

Scope of the MoU
The MoU covers large scale digitisation and making available of out-of-commerce books and journals, including embedded images, by publicly accessible libraries, educational establishments, museums and archives in the EU Member States. Visual works have a life separately and apart from any literary work, which may embody, include or incorporate one or several visual works. They may themselves be “out-of-commerce” but need not be. The MoU recommends that the parties to a licensing agreement on out-of-commerce works reach out to specialised CMOs representing visual artists when granting licences. When translated works are included in the licensing agreement the MoU requires special arrangements to ensure that not only the rights subsisting in the original language version but also the distinct rights in any translation of the original are respected and accounted for.

What is an out-of-commerce work?
The MoU defines an “out-of-commerce work” as being “when the whole work, in all its versions and manifestations is no longer commercially available in customary channels of commerce, regardless of the existence of tangible copies of the work in libraries and among the public (including through second hand bookshops or antiquarian bookshops).” The method for the determination of commercial availability of a work is to be agreed between stakeholders in the country of first publication of the work.

Steps towards an Agreement at national level
A library or other cultural institution with digitisation projects that incorporates in-copyright but out-of-commerce books and/or journals should seek to create an open stakeholder dialogue with rightsholders and the relevant CMO before a project is embarked on, and subsequently observe the following steps where national arrangement allow:

¹ Conference of European National Libraries (CENL); European Bureau of Library, Information and Documentation Association (EBLIDA); Ligue des Bibliothèques Européennes de Recherche (Association of European Research Libraries, LIBER); European Writers Council (EWC); European Visual Artists (EVA); European Federation of Journalists (EFJ); European Publishers Council (EPC); Federation of European Publishers (FEP); International Association of Scientific, Technical and Medical publishers (STM); International Federation of Reproduction Rights Organisations (IFRRO)
a. Ensure that relevant organisations of rightholders have been consulted
b. Agree on the criteria for the selection of works to be included in the project, preferably also the number of works (or at least an estimate) of the works involved
c. Sign an agreement with the representative CMO, normally the national Reproduction Rights Organisation (RRO), including uses allowed and the corresponding conditions;
d. Observe the mechanisms that the CMO has agreed with the authors’ and publishers’ associations concerned to allow rightholders to withdraw or withdraw works from the licensing agreement;
e. Agree the best suited mechanisms to determine commercial availability/out-of-commerce status of a work;
f. Observe the concrete individual steps that participants agree to take to ascertain a work’s status according to a locally agreed mechanism and to allow for the revival of a work;
g. Agree the way in which remuneration is to be paid;
h. Ensure that the moral rights of authors are respected.

Implementation: Collective Licensing Schemes, Procedures and Presumptions
The MoU envisages that the licensing agreement is signed by a CMO situated in the country of first publication of the works in question and that it represents a substantial number of authors and publishers of the relevant category of works. In addition, authors and publishers should be duly represented in its key decision-making bodies. The Member States are encouraged to ensure legal certainty for publicly accessible cultural institutions and CMOs, where the CMO, which has the right to sign such licensing agreements, benefit from a presumption under the MoU to represent non-member rightholders. This requires that the CMO has the lawful right to represent unrepresented rightholders, and accepts to embark on information campaigns making “best efforts” to reach such rightholders and comply with criteria defined in the MoU, including a number of minimum activities it has to undertake.

Rightholders shall retain the ability to opt out from the project or to withdraw some or all of their works that might fall under it. The CMO must therefore widely publicise the project with the aim to arrive at a situation where rightholders that the CMO acts for are empowered to evaluate the project and give what is known as “informed consent”. The method and extent of the information campaign will be agreed with organisations representing authors, publishers and visual artists.

Where out-of-commerce works are used at a rate and at intensities not foreseen by either parties or the rightholders at the start of a project, especially in respect of cross-border or specifically agreed commercial uses, the CMO will make extra efforts to locate individual unrepresented rightholders of those works. Precise thresholds or triggers for such extra efforts will be decided by the relevant stakeholders. The located rightholders will then express their desire to continue participating in the project or to opt for another way of re-commercialising or reviving the works in question.

Access beyond borders
The signatories to the MoU agreed that, if the scope of the licensing agreement included cross-border and/or commercial uses, the CMO may limit it to the works of represented rightholders. They also called upon the Commission to consider legislation protecting publicly accessible cultural institutions and CMOs applying the MoU.

Further information
The signatories to the MoU have set up the Out-Of-Commerce Implementation Task Force (OMIT) to assist with its implementation. Although the stakeholder agreement will be negotiated at a national level, the OMIT is able to offer advice and support during and after devising a project.

You can contact OMIT on:
Telephone: +32-2-2346260 (IFRRO) email: Secretariat@ifrro.org
+31-7031-40136 (EBLIDA)
eblida@eblida.org

September 2012
3. Making available out-of-commerce works by publicly available Libraries

   a. **EC facilitated Stakeholder MoU on Out-of-Commerce books and journals**

The European Commission dealt with the issue of out-of-commerce books and journals in a different manner than with orphan works; instead of obliging all EU member countries to introduce harmonized legislation it opened a platform for the stakeholders to agree on ways to facilitate the reuse of printed works which are otherwise out of reach of readers because their exploitation is not any longer commercially promising. In the first instance this might surprise as large scale digitization projects of whole library collections may contain all kinds of materials: in public domain or still protected, and if so, by untraceable rights holders or being out-of-commerce. Even more, one work alone may contain materials of all these categories - think alone of illustrated books, with text of different authors, photography, graphic and art works. A single community tool might have its advantages. However, the Commission prefers to achieve the agreement by the stakeholders which is possible with out-of-commerce works, because the stake holders can be reached, whereas when it comes to orphan works the rights holders cannot be traced and not included in any dialogue.

The Dialogue was launched in November 2010 and included authors, publishers, libraries and Collective Management Organisations. The intensive work of all parties has led to a Memorandum of Understanding that facilitates the setting up of agreements, thus supporting the work of publicly accessible libraries providing access to cultural heritage while ensuring the protection of the rights of authors and publishers.

It covers books and learned journals and it is applicable to digitization projects of publicly accessible libraries.

It defines out-of-commerce works as no longer commercially available in customary channels of commerce.

The principles concern the way and extend of voluntary agreements between parties concerned including authors and publishers and that the scope of usage is defined as well as the remuneration due.
The agreements may be extended to rights holders which are not represented by the parties of the agreement. Also rights holders shall be allowed to opt-out of an agreement. Authors have the right to claim authorship and to demand full protection of their moral rights.

The memorandum also includes principles allowing the cross boarder use of out-of-commerce works.

It was signed on 20 September 2011 by LIBER, CENL, EBLIDA, IFJ, EWC, EPC, EVA, FEP, STM, IFRRO and witnessed by the Commissioner for the Internal Market, Michel Barnier.

The signatories have set up a working party chaired by IFRRO which regularly meets to follow up the implementation of the MoU. From the recent digitization projects the French Relire and the German project of books published before 1966 which are next on the agenda show balanced solutions in practise.

Specifically for images embedded in books and on covers the French and German collective management solutions are welcomed and our members in both countries are taking part in the process. Because the legal status of images are mostly independent of the book itself and because no library or any other party disposes of registries identifying all works inside of books and journals collective management is so far the only efficient solution.

For more details on this issue I recommend our study prepared together with CEPIC, (representing picture agencies) for ARROW-PLUS.
In France, respect of copyright is first and foremost a contractual matter.

By formulating a system dependent on the legal framework for the management of out-of-commerce twentieth-century books, the intention of the French legislature was to offer the greatest possible freedom to rights holders.

Recourse to an exception clause in this context would have presaged the end of copyright, by rendering its duration entirely arbitrary.

The exception in favour of libraries would have implied that authors whose books were out-of-commerce would thereby lose their rights to benefit from trade in their works. Having already been penalized by the lack of availability of their books, through no fault of their own, they would now lose any future rights, which would clearly be iniquitous.

**Bearing this in mind, what are the objectives sought by the legislation dated 1 March 2012 relating to the re-issue of out-of-commerce twentieth-century books in digital format?**

This law has three main aims:

- **Firstly**, to offer digital access to twentieth-century books still under copyright but which are out of commerce:
  - within a legal framework under the control of the rights holders themselves
  - and not under a system devised for its own benefit by a dominant multinational
    - that pays virtually no tax in France,
    - that is administered in a fairly obscure manner (inscrutability of their algorithms, the categorization of their results and their multiple use of personal data, etc.)

- **Secondly**, to enable authors to withdraw at any time from the collective management system, which is however the sole structure capable of addressing the scale of the task (a total of hundreds of thousands of titles); this is important as it involves, for example:
  - preservation of the right to privacy
  - or the resumption of contractual exploitation;
    - as such publishing renaissance is also provided for if requested by publishers, the latter must confirm the validity of existing agreements or of the shared desire of the authors;

- **Finally**, to enable the original publishers, who invested in these works, to offer a second digital life to those books
  - whose economic viability remains uncertain,
  - and hence to retain French control over the conditions for their exploitation.
How does this legislation ensure freedom for rights holders?

The “catalogue of out-of-print books re-published digitally” has been cunningly entitled RELIRE which translates as ‘read again’ but is actually an acronym – Registre des Livres en Réédition Électronique. It is administered by the BNF (French National Library) which will publish annually on 21 March a list of many tens of thousands of out-of-commerce books (63,073 books in 2013; 35,200 in 2014).

- Authors and publishers have six months to challenge the retention of affected books in the system; no reason need be given. Note that 5,254 challenges relating to the first list were recorded prior to 21 September 2013.
- They can also notify the continued availability of a title if such information escaped the systematic search undertaken when the catalogue was being prepared, as no database is as yet comprehensive. To date 1,254 such titles have been withdrawn.
- Of course, many options for withdrawal remain available at later dates, especially to the advantage of authors (prejudice to honour or reputation, that they alone can judge, recuperation of rights, retention of digital rights), but also for the benefit of publishers (only when there is the prospect of a re-issue within two years, in agreement with the author).

The aim of the legislation was to devise a self-contained, effective and original system, which at national level would be under the control of the rights holders themselves and would respect copyright.

The aims were:

- To impose a minimum of restrictions if challenges or reservations were raised (one can for example oppose the publication of a particular edition, but leave certain others on the list),
- To allow additions (an author, publisher or even reader, may suggest the inclusion in the catalogue of any given title),
- To allow withdrawal from the arrangement where this seems appropriate,
- To establish fair rules for remuneration,
- To ensure payment to identified rights holders.

This comprehensive bill was adopted almost unanimously by Parliament and received official endorsement on 28 February 2014 from the Constitutional Council to whom it had been submitted (decision n° 2013-370 QPC).

How exactly will the licensing and apportionment systems operate?

Licences are of two types:

- Original publishers, if they still exist, are contacted by SOFIA and are offered an exclusive 10-year licence, renewable by mutual agreement; for two months they can then exercise their priority rights, retaining all or some of the titles attributed to them, be the books that they have published themselves or works that belong to businesses that they have taken over and that have become assigned to them (clearly, errors can be corrected and additions made). They have three years to show that they are commercially exploiting the works in digital format.
After this time, once books that are the subject of an exclusive licence have been removed from the list, the remaining works are offered, in versions that have not been contested, to distributors willing to accept non-exclusive 5-year licences, also renewable by mutual agreement, but with no time limit relating to exploitation. All parties are to comply with the technical conditions (file types, interoperability, etc.). Royalty payments are only due on receipts. A minimum guaranteed sum will be paid per copy sold singly, so that authors and rights holders in general receive fair remuneration for their books. In addition, a supplementary fixed fee of one euro per year and per book catalogued is payable in respect of non-exclusive licences, to avoid inappropriate use of these licences that have no requirement for exploitation within a given time. A subsidiary of the Cercle de la Librairie will offer original publishers a digitisation and distribution service, with no requirement for the latter to get physically involved in these operations, and subject to equitable financial conditions. Once details of sales/loans and fees paid have been notified to SOFIA, payments will be made to identified rights holders, with any remainder lapsing after ten years and used in support of cultural activities. The first books to be re-issued in digital format should appear at the beginning of 2015. Libraries, bookshops and readers will then be able to begin to take advantage of these rediscoveries.

More informations:
- www.la-sofia.org
- www.la-sofialivresindisponibles.org (French only)
- www.relire.bnf.fr

About SOFIA:
SOFIA, Société Française des Intérêts des Auteurs de l’écrit, is the French approved collective management organization, administered equally by authors and publishers and exclusively concerned with the field of books. SOFIA manages the public lending right, the private copy levy and the digital rights in respect of out-of-commerce twentieth-century books.
ReLIRE Project, France

Making available out-of-commerce books published in France before 2001

Building the Registry

27th session of the WIPO SCCR
IFRRO side event on Making available cultural heritage
Geneva, May 1st
The BnF, one of the main stakeholders of ReLIRE...

- Creates and maintains the Registry
- Receives opt-out requests and sends them to the Sofia

- Defines and validates the content of the list
- Processes the opt-out requests
- Gives licences for digital publishing
- Creates the annual information campaign
- Informs right-holders of the publication of the list

- 3 authors, 3 publishers and 1 member of the BnF
- Defines and validates the content of the list

- Ministry of Culture
- SOFIA (RRO)

{BnF}
ReLIRE refers to...

**A LIST OF BOOKS**
- An online bibliographic catalog
- A legal database

**SERVICES FOR RIGHT-HOLDERS**
- Opt-out requests (right-holders)
- Opt-in requests (everyone)

accessible at relire.bnf.fr
To be registered in ReLIRE, books must be...

- **COPYRIGHTED**
  Less than 70 years after the author’s death

- **OF THE 20TH C.**
  Published before December 31 2000

- **FRENCH**
  Published in France

- **OUT-OF-COMMERCE**
  In any format or edition

- **SCIENTIFIC COMMITTEE**
  Responsible for the documentary content of the list
108 900 books in ReLIRE since March 21st 2013...

- Mar. 21st
- Sep. 21st
- 63 000 ReLIRE 2013
  - +
  - 5 254
- 55 000
- 45 900 ReLIRE 2014
  - +
  - 2 387
- ?
Next steps

**Second half of 2014**
First books digitized (ReLIRE 2013)

**Early 2015**
First ebooks commercially available (ReLIRE 2013)

**September 21st 2014**
Books enter collective management (ReLIRE 2014)

**March 23rd 2015**
Third book list on ReLIRE (ReLIRE 2015)
Thank you

Juliette Dutour
National Library of France
Juliette.dutour@bnf.fr
Germany: Making available Out-of-Commerce Works (texts) published in Germany before 1966
A side effect of the Digital Revolution:
„If it’s not on the Web, it doesn’t exist at all“
Digitization and the „Born Digital“

- In the future most if not all public domain works published in Germany will be digitized and available online via cultural portals like Europeana or the German Digital Library.

- In the future most if not all new works will be published online as „born digital“ works, some of them additionally in print.

- The majority of the vast amount of printed in-copyright works will not be digitized because of copyright issues.
# Books printed in Germany

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The Challenge: Giving Digital Access to Works Under Copyright

- Of all printed works published in Germany, more than 80% are published after 1900 – the percentage is growing daily

- The vast majority of these works are under copyright
Publication date and copyright
Digital access to 20\textsuperscript{th} century works: the "black hole" of the 20\textsuperscript{th} century
New German legislation on Orphan Works and Out-of-Commerce Works

1. Orphan Works

- Digitization and making available to the public
- Publicly accessible libraries, educational institutions, museums and archives
- Certain conditions
- Noncommercial purposes
- Diligent search
New German legislation on Orphan Works and Out-of-Commerce Works

2. Out-of-Commerce Works (1)

- Publicly accessible libraries, educational institutions, museums and archives

- Works (text with embedded visual parts), part of the collections, published in Germany before 1966

- Noncommercial purposes

- Public register of Out-of-Commerce works, maintained by the German Patent Office (DPMA)
New German legislation on Orphan Works and Out-of-Commerce Works

2. Out-of-Commerce Works (2)

- Right holders have right to object
- Remuneration
- Legal assumption in favor of national reprographic rights organisations (text and illustrations) leads to one-stop-shop
  - Translation (unofficial) of the provisions for the out-of-commerce law under:
Out-of-commerce books

- The VLB, the German Books-in-Print database, holds bibliographic information on about 1.7 Mio active (= in commerce) titles

- Some E-Book titles are only available on certain E-Book platforms → add 10% to the 1.7 Mio

- → All in all there are less than 2 Mio book titles available in commerce in Germany

- → More than 80% of all books printed in Germany are out-of-commerce
Where are we now?

- Implementation of technical process and data workflow for books
- Setting the scene for periodicals
- Fee structure
- Digitization strategy
- Fund raising
The reasons for success

- EU Directive on Orphan Works
- EC Memorandum of Understanding on Out-of-Commerce Works as a result of a Stakeholder Dialogue
- Joint proposal coming from the „Deutsche Literaturkonferenz“, a working group of representatives of authors, publishers, reprographic rights organisations and librarians

=> Win-Win-Situation
Thank you for your attention

If you have further questions:

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III. ARROW

http://www.arrow-net.eu/
**What is the ARROW system?**

ARROW is a tool to assist ‘diligent search’ for the rights status and rightsholders of text-based works in an automated, streamlined and standardised way, thus reducing time and costs of the search process.

**How the ARROW system works?**

1. The user submits a request to digitise and exploit a publication or copyright material
2. ARROW queries a network of databases connected to the system
3. ARROW collects the best available rights information on the work and delivers them immediately
4. The user receives the answer to the request
5. In case of unavailable rights information on the work at the end of the process, the results feed the Registry of Orphan Works

**How to submit a request to the ARROW system?**

ARROW offers multiple interfaces that users can choose according to the needs and dimension of their digitisation programme:

- Manual input of bibliographic information via web form (suitable for single title requests)
- Batch upload of marc 21 xml records (suitable for small-medium digitisation projects)
- B2B interface to integrate ARROW query function into current workflow of library’s management system (suitable for mass-digitisation projects)

**What is the ARROW network of databases?**

The ARROW system exchanges information with the following network of databases using ONIX-RS message suite developed for ARROW and now released as an EDItEUR open standard:

- The European Library, to identify the book and to cluster it with all other books containing the same work
- Virtual International Authority File, to better identify the authors and support the identification of in copyright works
- Books-in-Print database in the country of publication, to know if any of the books concerned is actively commercialised by any publisher
- Reproduction Rights Organisation (RRO) or other Collective Management Organisation repertoires, to see if they know or can trace the rightholders

**What is Rights Information?**

Rights information is made up of all pieces of information that ARROW collects and that are relevant for rights clearance:

- The work, of which the book that the library wants to digitise is a “Manifestation”
- Other manifestations of the same work
- Whether the work is copyright or in the public domain
- Whether the work is commercially available or out of commerce
- Whether the work can be considered a potential orphan work or if rightsholders are known and traceable
- Who is the author, publisher or other rightholder or their representative to be contacted to obtain the permission to digitise and use a work
- How to get the licence to digitise and exploit the work, when appropriate

**Piloting the ARROW system**

The ARROW system can, as at September 2011, be used to search for works published in France, Germany, Spain and the United Kingdom.
The ARROW pilot in **France** connects:
- Bibliothèque nationale de France (BNF) catalogue in The European Library
- Virtual International Authority File database
- Electre Books in Print database
- The French RRO Centre Français d'Exploitation du Droit de Copie (CFC) repertoire

The ARROW pilot in **Germany** connects:
- Deutsche Nationalbibliothek (DNB) catalogue in The European Library
- Virtual International Authority File database
- Verzeichnis Lieferbarer Bücher (VLB) Books in Print database
- The German RRO Verwertungsgesellschaft Wort (VG Wort) repertoire

The ARROW pilot in **Spain** connects:
- Biblioteca Nacional de España (BNE) catalogue in The European Library
- Virtual International Authority File database
- DILVE Books in Print database lookup via CEDRO
- The Spanish RRO Centro Español de Derechos Reprográficos (CEDRO) repertoire

The ARROW pilot in the **United Kingdom** connects:
- British Library catalogue in The European Library (TEL)
- Nielsen Books in Print database lookup via RRO UK
- The UK RRO Copyright Licensing Agency (CLA), the Publishers Licensing Society (PLS) and the Authors’ Licensing & Collecting Society (ALCS) repertoires and databases

Developments to connect new countries to the ARROW system are in progress. Please check [www.arrow-net.eu](http://www.arrow-net.eu) for updates.

**ARROW Components**

ARROW is a comprehensive system made up of the following components:

- The ARROW Web Portal Services: represents the interface between the user and the system
- The Rights Information Infrastructure (RII): is the backbone of the ARROW system and the engine that enables ARROW to query and retrieve information of a network of databases, to process this information and take decisions on the successive elaboration and finally to exchange information according to a planned workflow
- The ARROW Work Registry (AWR): stores all the relevant pieces of information collected by the RII workflow in a structured way that allows the retrieval and use of that information in the framework of ARROW services
- The Registry of Orphan Works (ROW): is the subset of the AWR referring to works that have been declared as “probably orphan”

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ARROW

Stakeholder developed electronic rights information tool

WIPO 27th SCCR, IFRRO Side Event, Geneva, 1st May 2014
Making available cultural heritage – orphan works and out-of-commerce works
ARROW is a reliable and time efficient system to streamline “rights information discovery” in a book or collection of books to lawfully digitise and make available the European cultural heritage.
How does ARROW work

ARROW retrieves up-to-date information combines it in a single access point

Over 35 data sources feeding the system:
- national bibliographies
- authors authority files
- book supply chain data (BIP)
- rights management data (RRO and CMO)

ARROW is an up-and-running service of the Arrow Association
ARROW services/1

- ARROW is an effective tool to support:
  - large scale digitisation programmes, including digitisations projects in the framework of collective licensing agreements on Out of Commerce works
    - as demonstrated by the use of ARROW system in France for the ReLIRE use case
  - smaller scale digitisation programmes by any library or other organisations wishing to digitise a collection of books
    - as demonstrated by the use of the ARROW system in the UK, for a digitisation project of the Wellcome Trust library and by British Library in the framework of Europeana Collection 1914-1918 initiative
  - a diligent search, according to the principles of the Orphan Works directive
    - as it has been listed among the appropriate sources to be consulted in conjunction with a diligent search process for rightholders of published works
ARROW services/2

ARROW can be exploited to support:

- decision making in digitisation and republication initiatives
  - as it provides a snapshot of the rights status of set of books and helps classify them in categories that can be managed differently, according to time and resource planning

- organisation of collections and catalogues based on the aggregation of clusters of similar books
  - as it provides relations between manifestations of the same intellectual work and relations between similar works, thus supporting applications for better search and discovery
  - as it provides necessary information to trigger ISTC registration

- public domain calculation
  - as it provides a mechanism to infer whether a work is protected by copyright or in public domain according to the harmonised EC Copyright Directive
LIVE DEMO
ARROW “adds-on”

- ARROW has delivered added value to the book supply chain in Europe:
  - An open source software application to create Books in Print registries ready to be connected to the ARROW system has been made available and deployed in 6 countries
  - A module for being connected to ARROW has become a built-in feature of WISE, the IFRRO standard software for RRO
  - A standard message suite for Rights Information Services, ONIX-RS, has been released as an EDItEUR open standard
  - ISTC and ISNI registration triggered by the ARROW system have been piloted
ARROW “followers”

- ARROW has become a landmark in the debate around “copyright in the digital age”
  - ARROW has been referenced in the framework of Licensing for Europe, the UK Copyright Hub, Linked Content Coalition and its demonstrator Rights Data Integration, the international database of Orphan Works initiative coordinated by the OHIM, etc.
  - An ARROW-inspired project for audiovisuals, FORWARD, has been funded and is currently ongoing
  - A feasibility study for an ARROW-inspired project for still images has been prepared
FURTHER INFORMATION

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THANK YOU