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•Authors: Alfredo Caldeira
Ana Lobato

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Contributors

Institution	Name
EDLF	Lizzy Komen
FMS	Hugo Guerreiro
KEE – OSA	Gabriella Ivacs

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Executive Summary

The aim of this Deliverable is addressing the “How To” of dealing with IPR in a European project, which the main purpose is to open and share Social History specific documents provided by cultural institutions in a number of countries and to develop Best Practices along the way.

First some general questions regarding Intellectual Property Rights are presented, with an emphasis on copyright and neighboring rights, and with a brief review of the European and other International practices.

Following this general overview, the Deliverable proceeds by exposing the main issues related to copyright, especially the ones related to the collections to be provided by the project, that may fall in different conditions: Public Domain, Open Licenses, Orphan Works, Unpublished Works and Fair Use.

Next is the need for the HOPE Project, which specific domain is that of Social History, to argue IPR relevance in cultural heritage institutions by explaining the realities of this domain and presenting the major issues related to the key stakeholders. Dealing with this context, the Deliverable also starts providing copyright clearance guidelines.

Examples concerning rights assessment are also presented, in order to illustrate general rights clearance rules. The importance of obtaining permissions and license negotiations is also highlighted, pointing out existing procedures with special emphasis on care on Social History community practices.

The Deliverable then devotes particular attention to the specificities of the HOPE community, starting with an overview of the IPR issues present in the HOPE collections and proceeding with an explanation of the Rights Statements that should be used in documents dissemination through Europeana (making reference not only to the digital objects but also to the metadata and previews), through the Labour History Portal and through Social Sites.

References are given to consequences for the HOPE data model.

The last sections include reference documents, as well as an Appendix with the Rights Statements related to Europeana submission.

Introduction

Archives, Libraries and Museums are repositories of cultural heritage and, increasingly, have an important role in its dissemination – to which the use of new information technologies and, in particular, the Internet have contributed.

This growing access by the public to Archives, Libraries and Museums collections, and the diversity of media introduced in the twentieth century, has brought issues of great relevance in the management of rights of those materials.

The aimed globalization of access (and the technical means to facilitate it, such as digital reproduction) justifies, in a project of Social History such as HOPE, special attention to copyright and neighboring rights. It is important to balance the desired promotion of access to culture and, in particular, the common heritage of the peoples' Europe, with the due protection of the authors' rights over their documents disseminated via the web.

This balance is complex and varies from country to country, it is not without issues even within the European Union and it has numerous areas of conflict.

This Deliverable intends to illustrate the main Intellectual Property Rights (IPR) issues, with particular emphasis on the reality of the collections part of the HOPE Project.

We assume that there are doubts and divergent interpretations on various problems. In most cases, only careful consideration by each Content Provider may, together with some common sense, establish methodologies capable of resolving questions concerning their fonds, establishing the rights clearing issues and the access and rights management requirements.

In this regard, particular attention was paid to the issues related to the use of the documental fonds disseminated by cultural projects and the conditions of operability of fair use regarding cultural and educational contents. It was also considered the inclusion of opt-out solutions that allow the correction of any discrepancies relating to applicable copyright.

Another matter refers to the rights about the metadata and other accompanying data (previews/thumbnails).

According to the Description of Work of the HOPE Project, this Deliverable should also approach "licensing issues (eg. commercial re-use of data by third-parties, right to make derivatives)" as a tool for regulating the interaction of the HOPE system with different discovery services.

Since we think this Deliverable must provide another important instrument for the Best Practice Network of the HOPE Project, it will be incorporated also in the BPN wiki.

1. Intellectual Property Rights landscape

World Intellectual Property Organisation (WIPO) proposes an IPR definition:

“Intellectual property (IP) refers to creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce. IP is divided into two categories: **Industrial** property, which includes inventions (patents), trademarks, industrial designs, and geographic indications of source; and **Copyright**, which includes literary and artistic works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and those of broadcasters in their radio and television programs.”¹

The purpose of these guidelines focuses especially on issues of copyright, not considering the industrial property topics that, in principle, shouldn't be part of the documentation available through the HOPE Project.

1.1. Copyright

Copyright (*the right to copy*) refers to the exclusive rights granted to the author or creator of an original work, including the right to copy, distribute and adapt the work. It is an intellectual property right – the author has both economic and moral rights over his/her creations.

The author/creator can decide on the use of his work, which is protected by copyright (the work and not mere ideas in themselves) – “there is no formality to be complied with, such as registration or deposit, as a condition of that protection”.²

The author has both economic and moral rights over his/her creations:

- The **economic rights** include the rights of reproduction, broadcasting, public performance, adaptation, translation, public recitation, public display, distribution, etc.
- The **moral rights** refer the right of the author against distortions and mutilations of his works, offending his honor or reputation.

¹ Definition of IPR by World Intellectual Property Organisation (WIPO) – available at: <http://www.wipo.int/about-ip/en/>

² Definition of Copyright by World Intellectual Property Organisation (WIPO) – Available at: http://www.wipo.int/about-ip/en/about_collective_mngt.html#P17_536

These rights can be granted or denied to third parties by the author. Although they are limited in duration by national laws (in general, 50-75 years after his death, depending of the kind or type of the work).

Copyright protected works cannot be used (copied) without the authorization of their author (or the owner of those rights).

1.1.1. International conventions

The Berne Convention for the Protection of Literary and Artistic Works was adopted in 1886 and continues, with several revisions, as the founding document on IPR – inspiring most of national laws. The World Intellectual Property Organization (WIPO), one of the specialized international agencies of the United Nations system, administrates its enforcement.

1.1.2. Copyright in the EU

The Copyright in the European Union is expressed in the Copyright Directive from the European Parliament (Directive 2001/29/EC)³. The definition of the property rights associated with copyright and related rights distinguishes:

- a. the "reproduction right" (in the digital environment: if you can download work from the internet legally, it is because the author has given his agreement and authorizes its reproduction)
- b. the right of "communication to the public" (in the digital environment: if you can listen to a song on a website, it is because its communication has been authorized)
- c. The right of "making available to the public" (including interactive transmission on the internet).

The Copyright Directive only covers civil measures, but in most EU countries there are also criminal measures to punish copyright infringement and piracy.

In this scenario, each HOPE Content Provider must ensure compliance with the applicable national laws, regarding copyright.

More information about EU and specific national laws on copyright was already compiled in many cultural projects and by specialized agencies and organizations. Some examples are:

³ Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0029:EN:HTML>

- http://ec.europa.eu/internal_market/copyright/index_en.htm
- <http://www.wipo.int/wipolex/en>
- <http://www.athenaeurope.org/index.php?en/149/athena-deliverables-and-documents>

1.2. Neighboring Rights

Neighboring Rights (or Related Rights) are similar to the rights protected by copyright and are applied to protect the rights of producers of phonograms, performers and broadcasters, being mostly protected as copyright rights.

Neighboring Rights belong to intermediaries in the production, recording or diffusion of works, taken as auxiliaries in the intellectual creation process.

1.2.1. International level

The Rome Convention (1962) secures protection in performances of performers, phonograms of producers of phonograms and broadcasts of broadcasting organizations. It is jointly administrated by the United Nations Educational, Scientific and Cultural Organization (UNESCO), the International Labour Organization (ILO/OIT) and World Intellectual Property Organisation (WIPO).

This protection includes:

- (1) Performers (actors, singers, musicians, dancers and other persons who perform literary or artistic works);
- (2) Producers of phonograms who enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms;
- (3) Broadcasting organizations, which enjoy the right to authorize or prohibit certain usages of their work.

The Rome Convention allows exceptions in national laws to the rights as:

- private use;
- use of short excerpts in connection with the reporting of current events;
- ephemeral fixation by a broadcasting organization;
- use solely for the purpose of teaching or scientific research.

Protection is generally until the end of a period of 20 years after the production of the phonogram, performance or broadcasting, with exceptions in legal contracts or national laws.

There are still other international treaties that concern copyright and related rights protection, as the 1994 Agreement on Trade-Related Aspects of Intellectual Property Rights (or TRIPS Agreement).⁴

⁴ Collective Management of Copyright and Related Right, by World Intellectual Property Organisation (WIPO) – available at: http://www.wipo.int/about-ip/en/about_collective_mngt.html#P17_536

2. Copyright exceptions

There are situations in which, due to the course of time, author's decision or lack of the identity of the author, there may be no exercise of copyright.

2.1. Public domain

Cultural material in public domain is a kind of material that can be used without restriction, absent of copyright protection. In the European Union a work falls into Public Domain 70 years after the author's death for authors' rights and (at least) 50 years from the date of recording for related rights (performers, producers of phonograms and broadcasting organizations). When the copyright expires, the intellectual works enter the public domain. Security classification of the documentation and prior provision, in accordance to law, are the most common exceptions to this rule. The Europeana Connect project developed a "public domain calculator"⁵, an interface usable to determine the term of protection of a given work.

Structural Public Domain

Copyright expires or is voluntarily shared or doesn't cover the work

Functional Public Domain

Works voluntarily shared by their rights holders or user prerogatives created by fair use, fair dealing and limitations and exceptions to copyright

Taken together, the structural and the functional Public Domain improve the access to our shared culture and facilitate innovation and cultural participation – which is relevant in an era of rapid social and technological changes.

2.2. Open licenses

Authors can renounce totally or partially to their copyrights by producing work with open licenses. There are several types of this sort of license schemes ([Creative Commons](#), [Copyleft](#), [General Public Licenses](#), etc). These licenses do not exclude copyright but in most cases provide a non-commercial clause allowing users to share the protected work for non-commercial purposes.

⁵ Available at <http://www.outofcopyright.eu/>

2.2.1. Creative commons and other licensing schemes

The Creative Commons licenses provide options for copyright holders to allow others to re-use digitized objects, but they can only be applied when the digital object has been so licensed by the rights holder or if the Content Provider has obtained permission from the rights holder to do so. These licensing agreements make it possible to formalize circulation of content, enabling more creative uses while giving the creator or copyright holder a wide range of options of permissions he wishes to grant to others, namely control over attribution, share conditions and potential commercial uses of content. These terms can be mixed into 8 different licenses (detailed below on "6.4. The HOPE data model and IPR").

Other licensing schemes, such as the GNU General Public License, use already existing copyright legislation to assert some rights – the license itself is protected to avoid changing its meaning, it must be distributed along with copies and modifications of the original work, and it explicitly allows four so-called "freedoms":

- 0 - the right to run the software;
- 1 - the right to inspect the source code;
- 2 - the right to change it;
- 3 - the right to redistribute the resulting changes (including the unchanged license).

Copyleft, on the other hand, only refers to the cases where the developer wants to redistribute modifications, and asserts that this is only possible by keeping the original license, applying the copyright mechanisms to make the derived software also fall under the same licensing scheme. This way, one who wishes to develop and distribute a GPL-based product can do so only under the same license as the original work in which it is based (that usually just means making the source code available for any modifications that are to be distributed).

2.3. Orphan works

An orphan work is a work under copyright protection whose copyright owner is difficult or impossible to contact. The creator may be unknown, or where the creator is known it is unknown who represents him.

Orphan works are frequently held by Libraries and Archives, who should be prepared to make diligences in order to find and identify the copyright owners, keeping all the records of the search.

2.4. Unpublished works

Unpublished works (e.g. manuscripts, archives, oral histories, photographs) are protected by copyright law for a specific period of time, which can be longer than protection for published works.

Unpublished Works available in Libraries and Archives make necessary to have special measures concerning the reproduction and publication of those materials from their collections

Reproduction of unpublished works often has special restrictions established by their author, records creator, or donor.

Many Libraries and Archives allow the reproduction of unpublished materials but transfer to the user/researcher the responsibility in obtaining the copyright permissions – *selling the copy but not the copyright*.

2.5. Fair Use

Originated in the United States of America, fair use (or fair dealing) is a doctrine that allows limited use of copyrighted content without requiring permission from the rights holders.

Examples: commentary, criticism, news reporting, research, teaching, library archiving and scholarship.

As stated by the Copyright & IPR – Manual of eYouGuide from the European Commission:⁶

“To establish a balance between private and public interests, and respect the rights of the different actors (the author, the public and investors), EU countries may allow specific exceptions to the author's exclusive rights.

There is only one exception common to all EU countries – the exception allowing transient copying.

Other optional exceptions may allow copying for educational and scientific purposes, for the benefit of public institutions such as libraries and archives, for news reporting, for quotations, for use by people with disabilities, for public security and for administrative and judicial proceedings.

International agreements on intellectual property require all exceptions and limitations to satisfy the so called ‘three-steps test’ which requires that any such exception must not go beyond ‘normal exploitation of the work’ nor ‘unreasonably prejudice the legitimate interests of the rights holder’.”⁷

⁶ Copyright & IPR – Manual, available at:

http://ec.europa.eu/information_society/youguide/fiches/glossary_ipr/index_en.htm

⁷ **Three-steps test:** “Under its well-known terms, exceptions are only permitted (1) in certain special cases; (2) which do not result in a conflict with the normal exploitation of a work and (3)

3. IPR relevance in the Social History Domain

3.1. Domain characteristics

The rapid technological changes and the push to provide broad access to cultural and historical holdings are changing the landscape of archives, libraries, museums and other cultural heritage institutions.

The incentives for developing and implementing policies with appropriate levels of control and information management practices at Social History institutions must be examined in the light of this scientific area attributes. Access, both short-term and long-term, poses challenges to the intellectual property regime in which Social History institutes are familiarized to work.

Access to cultural heritage collections has been hampered by the complexity of copyright licensing, a lack of legal certainty about educational and other non-commercial use, complex procedures regarding orphan works, and the prevalence of deep-rooted cultural and linguistic barriers. It is a rather common problem that many Social History institutions do not own the rights to the material in their possession, but merely hold such records as a function of their role as depositories/holders.

Donor agreements, contractual provisions, statutory frameworks, and ethical concerns can overshadow research interests even in case of public domain materials.

Social History collections, by nature, are often constituted by heterogeneous materials – clustered together either because of provenance or theme – comprising records of various origins, among them “orphan works” for which the copyright holder cannot be traced. Under such circumstances, most of the cultural heritage institutions are more likely to assume that a work is protected simply to avoid possible claims from rights holders, and the negative consequences that such claims could bring.⁸

On the other hand, Social History institutions traditionally have seen themselves as guardians of their collections, not owners, and their mandate is not to exert monopoly-like control over their holdings, but to serve public needs. Although, as we already mentioned, access – both short-term and long-term poses challenges to the way these organizations are accustomed to work, rights issues could bring these matters to the surface by threatening to dismantle the formal and operational methods used so far by Social History institutions to regulate access and use of their collections.

which do not unreasonably prejudice the legitimate interests of the author (or other right-holder).”
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1476968

⁸ I. Hargreaves, “Digital Opportunity: A review of Intellectual Property and Growth”, 2011, available at www.ipo.gov.uk/ipreview-finalreport.pdf

The HOPE project may prove to be one of the many forces compelling them to regulate access and use in a manner that is at the same time more granular and less “material”, less based on the physical control of analog originals and more in tune with new scenarios where content must be managed in several formats, migrated, and made available over the long term.

The HOPE document on access⁹ summarizes the possible solutions and best practices related to the short-term goal of HOPE, even though IPR issues should be treated in a comprehensive manner to establish best practices for the whole Social History domain on the long-run.

There are at least four possible scenarios regarding the ownership of the physical and intellectual property of the material found in Social History institutions.

First, it could be that the institution owns neither the physical item nor the intellectual property of the item (document, photo, artifact, sound recording, film footage etc.), even if the item is placed on deposit or is getting digitized. In such case, what the institution itself can do with an object is dependent on the terms of the deposit agreement and it is likely to be severely limited. Depositors are likely to regulate the access and reproduction on the basis of materials physical disposal, and the deposit agreement often forgets to mention digitization for online access or preservation purpose, even though copying/scanning for individual non-commercial use is usually allowed unless the material is not entirely restricted.

The second scenario take place when a cultural institution with Social History collections has the physical copy of an item and it also owns the intellectual property of the item, though it is less common for Social History institutions to obtain rights over their materials. This could be explained by a simple reason: Social History institutions are small and medium size organizations with limited resources, to administer rights and licenses, and communicating with commercial users requires expertise and personnel.

Thirdly, the Social History institution does own the item as a property but a third party is the owner of the intellectual property rights. In this case, any request related to commercial reuse, or a mass digitization – done by the institution itself or by a vendor, it needs to be distinguished – should be directed to the copyright owner. Orphan works put online could mean copyright infringement and could lead to severe legal implications. Table 1 shows the average percentage of orphan works among HOPE partners – the situation seems in line with other cultural heritage institutions, which face similar problems.

It is, however, important to say that works of unknown origin or/and unknown authors are more likely to be found in archival collections where materials are treated as a set and best practices on rights management data are less spread.

⁹ MS3_WP1.Milestone.1.3

The fourth scenario implies that the Social History document or work is in the public domain, so access can be granted to everyone.

AMSAB-ISG	45%
CGIL	0%
FES (Archive)	Leaflets: 70%; Posters: 30%; Photographs: 10%; Banners: 10%; Postcards: 70%; ADAV: 0%; Stickers: 70%
FES (Library)	No estimation available
FMS	25%
Génériques	No estimation available
KEE-OSA	No estimation available
IISG	High (numbers impossible to give)
SSA	75%
TA	Very high. Impossible to estimate
UPIP (BDIC)	No estimation available
VGA	No estimation available

Table 1 – Percentage of Orphan Works among the collections provided by HOPE Partners¹⁰

Moreover, we could identify several other obstacles that still remain in the Social History domain:

- **Number of stakeholders:** In contrast with research libraries, which participate in fairly routine publishing, licensing, and distribution chains, in Social History institutions the sheer number and varied types of stakeholders for a given collection represents an added burden for them, as they attempt to assess and express rights over their content. Many institutions are hesitant to deal with these situations where might be difficult to negotiate with the stakeholders. The donors/depositors themselves are often unaware of the full range of stakeholders and fail to provide adequate legal provisions in donation/deposit agreements. This issue is further complicated by concerns, both legal and ethical, for the privacy of individuals mentioned in non-published works.
- **Viability and liability?** Clearing rights on copyrighted and orphan works puts an extra burden on Social History institutions due to their limited resources. Exception based copyright legislation cannot be effectively applied on collection-based access methods, because they can consist of different types of materials from different copyright holders.

¹⁰ From the document "Survey of Content Providers: Analysis of results – Work Package 1", carried out between July and September 2010.

- **Lack of legal provisions:** Many Social History institutes do not update their legal documents, they function under outdated donation/deposit agreements, which lack the provisions needed to support the collection management practices needed to preserve and provide access over the long term. They struggle to update older agreements and develop new ones, they feel the lack of standard legal clauses, empowering them to curate data under the new technological norms – migrating formats, creating derivatives tailored to use, and actively disseminating, rather than passively “giving access to” content.
- **Collection management workflow:** With collections covering a wide range of material of various type, quality, arrangement and description in cataloging, the institutions must strike a delicate balance between the whole and the parts. Donation/deposit agreements at Social History institutions generally apply to a whole set of materials and can be difficult to apply in a granular manner, on documents, items, objects. This is exacerbated by the cumulative nature of accession practices; agreements may cover large sets of ill-defined and heterogeneous material that will not be in possession of the repository for many years. By shifting the focus to individual documents, digitization is beginning to change the established practice.
- **Domain standards:** The widespread adoption of domain-specific descriptive standards on metadata has been one of the success stories of recent years in the cultural heritage sector. Social History institutions were quite late to adopt these standards, having idiosyncratic databases that survived longer compared to national archives and libraries. For example, archival descriptive practice is still based in access conditions descriptions and general copyright status. Machine readable rights metadata does not exist in most of these repositories. While in the past physical and financial barriers to accessing original analog content *in situ* made the level of the use management frequently low, online access and digitization projects have forced Social History institutions to adopt structured metadata that describe access and use rights. Current practices have created a false dichotomy between digital and non-digital formats of the same work. This situation complicates the establishment of rights and access management.
- **Licensing options:** The current options for licensing content for sharing and re-use are primarily designed to serve publishing and scholarly communication networks. As more material is presented online, the need for such licenses will surely increase. Table 2 indicates the emerging interest in alternative licensing models, such as Creative Commons, among HOPE partners. On the other hand their implementation and use is still delayed by the complexity of the HOPE collections (see Table 3).

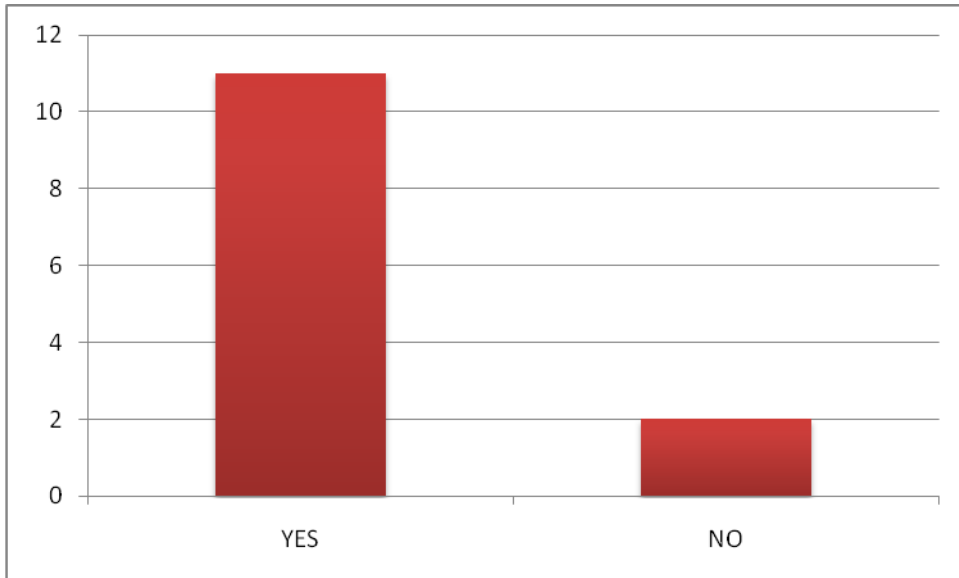


Table 2 – Awareness of Creative Commons licenses among HOPE Partners¹¹

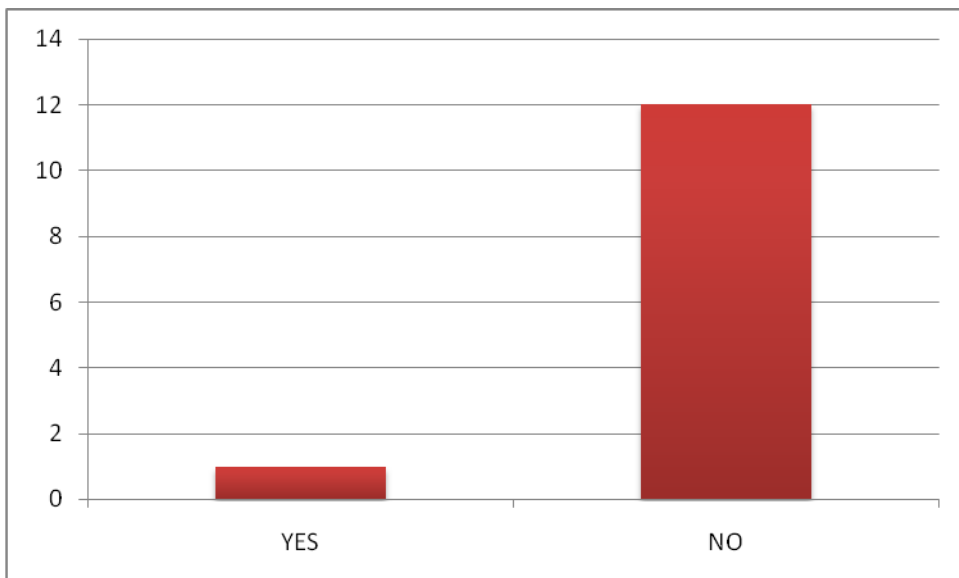


Table 3 – Usage of Creative Commons licenses among HOPE Partners¹²

¹¹ From the document "Survey of Content Providers: Analysis of results – Work Package 1", carried out between July and September 2010.

¹² From the document "Survey of Content Providers: Analysis of results – Work Package 1", carried out between July and September 2010.

3.2. Key stakeholders

We have identified an array of key stakeholders besides the institutions playing an important role in the entire life cycle of the digital collections management.

- **Depositors/donors:** They exercise their rights through agreements, deed of gifts with the Social History curators on the collection itself regardless of its format: analog, scanned or born-digital. Legal clauses, licenses, usually try to cover ownership and access issues, ensuring that Social History institutions can actively curate and disseminate the collections hold. Donor requirements usually focus on function rather than form of the materials, while local legislative provisions (copyright, privacy, freedom of information laws, archival legislation, etc.) are used to set the framework for donor restrictions. Donor requirements on access could also include articles on confidentiality, obscenity, embargo time definition, credentials, etc. The contract is the guiding document between the donor and donee, and harmonization with national legislation is a crucial criteria.
- **Rights holders:** Owners of intellectual property rights are difficult to pin down in case of unpublished works. It is common to acquire materials from family members who could be helpful with tracking rights holders, and in case of published works, each country keeps a database by rights collecting societies. Privacy legislation requires Social History institutions to pay attention to data protection, third parties' data in the content must also be protected, and the curating institutions are responsible for sanitizing the content before disclosing it to the public.
- **Discovery services, Europeana, Labour History Portal, Flickr, etc.:** They have their own standard licenses and rights statements with attribution clauses, such as the Europeana Rights values (although Europeana uses also CC0 for metadata and standard licenses for the previews). Each of these services offer different possibilities on licensing – Social History institutions must clarify if they are allowed to disseminate their digital content on these services. Discovery services often use only metadata and thumbnails, and regarding the first one, database protection measures are to be applied, and Social History institutions usually own the rights over their catalog data. Providing thumbnails can be problematic (without informing the rights owners) but are a frequent way to illustrate the existence of the collection/document, whose access can be limited by copyright protection.
- **Commercial Players:** Business partners providing services, namely in the ICT projects, should gain only limited rights to reuse the content curated by the institution. Data processing services are especially problematic when

they deal with sensitive information, which they can only exploit with limited scope according to the contractual agreement.

4. Rights clearance – How to clear copyrights

This chapter aims to supply the HOPE Content Providers with some guidelines on rights clearance in order to ensure a safe release of their digitized content over the Internet.

4.1. Social History Community practices: copyright clearance

Depending on their nature and characteristics, many Social History Collections present specific copyright clearance problems.

Basically, it's necessary to establish a balance between access and custodianship. At the same time, the introduction of new information technologies in Archives and Libraries has brought new issues, such as aggregating data in databases, and in general, the digital reproduction, publication and distribution – as well as issues arising from globalization of information and new possibilities for access to digital platforms.

Also the exponential development of "content industries" has brought new problems to the holders of information, increasing the commercial interest in their content – and frequently that commercial use wasn't mentioned in the agreements with the owners of rights.

Museums, Archives and Libraries tend to form networks for the exchange of originals or copies – not always accompanied by appropriate consideration of the applicable rights. In this context of consensual sharing, it is also important to mention the relevance of the collective rights management, namely through specialized organizations. Most of collective management organizations, act on behalf of their members, negotiating rates and terms of use with end-users, issue licenses authorizing uses, collecting and distributing royalties. The individual owner of rights does not become directly involved in any of these steps.¹³

Conflict situations (wars, colonial situations, etc.) and natural disasters can jeopardize the normal application of author's copyright protections, creating difficult situations, especially in what regards to the succession of the owners or possessors of those artistic or documental fonds. This situation requires an accurate research about their successive ownership and about the legality of the transfer to correctly identify the applicable rights.

In any case, the general principle of research and educational use should be a relevant instrument in promoting the cultural values of Archives and Libraries.

¹³ Based on WIPO information on collective rights management available at:
http://www.wipo.int/about-ip/en/about_collective_mngt.html#P67_8306

4.2. Obtaining Permissions and license negotiation

Archives and Libraries are specially positioned, because of their cultural role and support in research, to negotiate the transfer of copyright of cultural works – since the relevance of these works (and authors) tend to be expanded when made available by Archives and Libraries.

Moreover, these negotiations can encompass different levels of use, according to the preferences of the authors and specialization of the Archives and Libraries.

The digitization and the internet have raised new and broader issues in this area – and often protocols, agreements and negotiations nowadays should also focus on these new ways of dissemination and the limits of their use (for example, size and resolution of copies available on the web).

The donation or storage (temporary or indefinite) of documental funds in Archives and Libraries raises the possible interest of the author or copyright holder to achieve a wider dissemination of his work by making it available to researchers and general public, underlying their cultural interest.

It is crucial that before making content available online, cultural institutions assess the copyright status of the content they wish to make available and when necessary contract with the rights holders.

The formalization of protocols with donors or depositors, must establish rules for the use of the documental funds they have delivered, including dissemination in the web and use in exhibitions. It's important to emphasize the need to obtain such permissions before starting the reproduction and the dissemination of these materials.

4.3. How to clear copyrights

Independently of the copyrights status of the content, HOPE Content Providers must maintain records (diligence files) on all copyright issues raised by the documentation they wish to make available online. That includes agreements with copyright holders and records concerning the efforts made to reach authors of orphan works. Below we report some of the possible scenarios we could find in the Social history domain, together with some indication on how to deal with them.

4.3.1. Rights Holder Known

The Content Provider must establish an agreement with the rights holder allowing the use or public availability of the documents, namely for non-commercial use and online publication.

Concerning the production of thumbnails (previews) of the documents and making them available to the public this is possible as long as the responsibility to “contract” with the copyright holder for access and/or re-use the original work or a higher resolution copy is transferred to the end-user.

4.3.2. Unpublished works

Unpublished works (e.g. manuscripts, oral histories, photographs) are protected by copyright law for a specific period of time, which can be longer than protection for published works.

The same rules that apply to the works where the rights holders are known must be followed here.

4.3.3. Copyright exceptions

There are situations in which, due to the course of time, author’s decision or lack of the identity of the author, there may be no exercise of copyright.

4.3.4. Public Domain

When a work reaches the status of public domain it can be used without restrictions. Content Providers should ensure that a specific work falls under the public domain umbrella, usually this can be done by confirming the date of death of the original author. See also the “Public Domain Calculator” mentioned in 2.1.

4.3.5. Orphan Works

In order to use a copyrighted work whose owner is unknown or impossible to find, it is mandatory to previously have undertaken the necessary efforts to identify or contact the owner of the copyright and keep all the records concerning the “due diligence”. The European Commission published, on 4 June 2008, guidelines to assist those diligences and searches.¹⁴

¹⁴ Available at:

http://ec.europa.eu/information_society/activities/digital_libraries/doc/hleg/orphan/guidelines.pdf

Besides all the efforts by cultural institutions to find copyright owners, they should implement "Opt-out solutions" by which individuals or institutions can claim themselves as the owner of those rights and prevent (or not) the future use of the documents.

4.4. Rights assessment

Some examples can illustrate general rights clearance rules, in spite of the relevance of different national laws.

- **Photographs**

In general, photograph's copyright belongs to the photographer. He can, however, contract with anyone (newspaper, publicity agency, etc.) to transfer his rights.

- **Photographs of Artwork**

When taking a photograph of an artwork, the photographer doesn't become the owner of the copyright of the artwork – it remains with its creator, the artist.

- **Photographs of Persons**

Person's photographs copyright belongs to the photographer, but privacy legislation protects in many countries photographed persons from the reproduction of those photographs without their permission (personality rights), that must be secured by the institutions that intend to publish them.

- **Databases and Metadata**

The usage of databases and metadata produced by the institutions needs special attention with regard to privacy rights, to avoid abusive utilization by third parties, independently of the rights of their authors.

- **Personal Letters and Diaries**

These materials (most of them unpublished) are protected under copyright laws. Researchers, however, can access and eventually use extracts or quotations with attention to the rules previously defined by owner's institutions.

- **Musical Works and Sound Recordings**

Musical works include several copyrights (the composer, the performers, the producer, etc.), being subject to copyright and related rights. Each stakeholder must allow the copy or publication of the work.

- **Moving Images**

Moving images (films, movies and videos) have several rights holders, with copyright and/or related rights. The situation is similar to Musical Works and Sound Recordings, making the allowance of different stakeholders necessary.

Depending on EU and national laws, the copyright protection may differ on its duration.

- **Software**

Original software is also covered in EU by copyright laws and the author's authorization is necessary to use, modify or distribute it.

5. HOPE Community Practice

The documents (digital objects) and metadata records that will be made available in the HOPE project through the different discovery services, share different levels of copyright. Efforts should be made by each Content Provider to identify and have the copyright status of their collections clarified.

The next step must be the attribution of a rights statement concerning each digital object.

5.1. IPR in HOPE collections

A multi-task survey was conducted at the beginning of the project involving all HOPE Content Providers, addressing issues from Work Package 2 (Agreed standards and best practices), WP 7 (Performance measurement), and also questions about Intellectual Property Rights (WP 1)¹⁵. This survey allowed a general characterization of the main issues that the institutions have to deal with, concerning IPR.

General – dealing with IPR issues

When asked if IPR issues affect institution's contribution to Europeana in a negative way, only four institutions said YES. The reasons mentioned were:

- Pictures for newspaper archive: major part of IPR belongs to press agencies. Visual collection contains a minor part of recent material that is not IPR free (AMSAB)
- IPR affects the selection of sub-collections chosen by FES-Archive (or even digitise for that matter)
- For some sets, BDIC is allowed to display the documents on its own website, but it's necessary to check if it will be possible on other websites (UPIP-BDIC)

To the question "Have you had IPR issues when trying to digitize and or display (a part of) your collections online?" four institutions said YES. The details provided were:

- Problem with disappeared organisms (Génériques)
- No copyrights from donors but rights for online display (KEE-OSA)

¹⁵ "Survey of Content Providers: Analysis of results – Work Package 1", carried out between July and September 2010.

- Copyright holders (or people claiming to be copyright holders) complained, some asking for money, some asking for removal (Image collection) (IISG)
- A part of sub-collections 1 and 2 are concerned by the issue of copyright policy. Indeed periodicals published after 1940 are still under copyright. Some articles have been written by unknown writers, or with a pseudonym. (UPIP-MSH)

The solutions adopted to resolve the mentioned IPR issues, were different from institution to institution. Here is a list of the adopted solutions:

- Inserted a disclaimer on the website: "We tried to locate all IPR. Please contact us if you hold the right on displayed materials". (AMSAB-ISG)
- Written letters to the organisms to ask for permission of on-line use (Génériques)
- The online display means only low-resolution images or watermarked images. If any complication appears due to the online display: we direct the enquiries to the donors or successor organizations. To lower risk we allow/offer opt-out options on the web site. (KEE-OSA)
- Cleared the use with the copyright holder, content was removed from online. A link was provided to another website, out of our domain, where the content was displayed. (IISG)
- Chosen to directly contract with publishers and not authors. Consequently authors may ask us to remove their articles from our website. (UPIP-MSH)

5.2. Rights Statements

5.2.1. Rights on Europeana

5.2.1.1. Metadata and Previews

The agreement between the HOPE project and Europeana includes the possibility of making derivatives of the previews and re-use metadata.

Europeana shall publish all Metadata under the terms of the **CC0 1.0** Universal Public Domain Dedication.

Data Providers and Aggregators deliver to Europeana metadata and previews, following the terms of the Data Exchange Agreement.

The re-use by third parties of the derivatives provided by Europeana takes place under the same or compatible licensing conditions as the original licensing scheme chosen by the Content Providers and passed on to Europeana.

Metadata provided by the Content Providers "is licensed non-exclusively, unconditionally, free-of-charge for all types of use and for all territories to the public."

The Content Providers are obliged to deliver to Europeana the information related to the Intellectual Property Rights status of the materials shared.¹⁶

5.2.1.2. Digital Objects

Concerning the dissemination of HOPE collections in Europeana, it is necessary to take the recently adopted rules into consideration, expressed in the documents "The Europeana Licensing Framework"¹⁷ and "Guidelines for the Rights in objects submitted to Europeana"¹⁸:

"Four different types of rights statements that can be applied to digital objects:

1. Objects not protected by copyright should be marked as being public domain by applying the Public Domain Mark;
2. When the data provider is also the rights holder and wants to make the digital object available for re-use (or has been authorized by the rights holder to do so) the data provider can apply a Creative Commons license;
3. When the data provider is also the rights holder and wants to make the digital objects available without authorizing re-use by third parties, the data provider can apply one of the three available Rights Reserved statements;
4. Digital objects whose copyright status is unclear (for example because no rights holders could be identified) can be marked with an "unknown" copyright status statement. This should be used only if absolutely necessary."¹⁹

In Appendix A there is a comprehensive table expressing the Rights in the Objects submitted to Europeana, based on the referred "Guidelines for the Rights in objects submitted to Europeana".

¹⁶ Europeana Data Exchange Agreement, available at:
<http://pro.europeana.eu/documents/900548/8a403108-7050-407e-bd00-141c20082afd>

¹⁷ Available at:
<http://pro.europeana.eu/documents/858566/7f14c82a-f76c-4f4f-b8a7-600d2168a73d>

¹⁸ Available at:
http://pro.europeana.eu/documents/900548/1037382/Europeana_rights_201202.pdf

¹⁹ The Europeana Licensing Framework

5.2.2. Rights on Labour History Portal

Following Europeana rules concerning rights statements, Labour History Portal should apply the same standard, which depends on each Content Provider policies and practices about IPR.

5.2.3. Social Sites Default Dissemination Profiles

HOPE Project has contemplated the possibility of dissemination of its content by means of Social Sites, depending on the specific decision of each Content Partner. Taking into consideration the specificities of the Social Sites, by default, only documentation under Public Domain will be shared in those platforms.

5.3. Publication guidelines on Labour History Portal

The update of the Labour History Portal, foreseen in the HOPE Project, must be completed with publication guidelines, such as:

- **Copyright notice**
To prevent the abusive use of the materials available, the Portal should have a clear copyright notice, making clear what is allowed and what is not allowed to be done with the contents of the site.
It's important to make the copyright clear (the related rights and the moral rights of any material displayed on the site), and it's also important to indicate that all the measures had been taken to find or identify copyright concerned Orphan Works and indicate that "Opt-Out" solutions are available.
- **Disclaimer**
The Portal may have a disclaimer, preventing future doubts or disputes on the materials shared online, namely because those documents were collected during a wide period of time and from very different origins.
- **Terms and conditions**
Labour History Portal should publish the terms and conditions of use, namely concerning the documents provided, making the end users responsible for its usage.
- **Credits**
The credits published in the Labour History Portal should indicate individuals and organizations involved in the project, with their contacts.

- **Ownership**

The original ownership of the documents shared by the Portal must be evident to the end users, especially in a collective project such as Labour History Portal.

Similar guidelines should be followed by the Content Providers on their institutional sites.

5.4. The HOPE data model and IPR

The HOPE data model includes a "rights" element that normalizes metadata about Copyrights and allows Content Providers to restrict uses on the digital resources they make available. Special care has been put into making that information compatible with the Europeana's Copyright policy, as anticipated by the document "Guidelines for the europeana: rights metadata element" (v4.0, 30/11/2010)²⁰. This element will map Content Provider's own copyrights statements into 12 normalized values:

- **CC License statements:**

- Public Domain Mark (<http://creativecommons.org/publicdomain/mark/1.0/>)
- CC – Zero (<http://creativecommons.org/publicdomain/zero/1.0/>)
- CC BY (<http://creativecommons.org/licenses/by/3.0/>)
- CC BY-SA (<http://creativecommons.org/licenses/by-sa/3.0/nl/>)
- CC BY-NC (<http://creativecommons.org/licenses/by-nc/3.0/de/>)
- CC BY-NC-SA (<http://creativecommons.org/licenses/by-nc-sa/2.0/fr/>)
- CC BY-ND (<http://creativecommons.org/licenses/by-nd/2.0/es/>)
- CC BY-NC-ND (<http://creativecommons.org/licenses/by-nc-nd/1.0/fi/>)

- **Europeana rights statements:**

- Rights Reserved - Free Access (<http://www.europeana.eu/rights/rr-f/>)
- Rights Reserved - Paid Access (<http://www.europeana.eu/rights/rr-p/>)
- Rights Reserved - Restricted Access (<http://www.europeana.eu/rights/rr-r/>)
- Unknown (<http://www.europeana.eu/rights/unknown/>)

²⁰ http://pro.europeana.eu/c/document_library/get_file?uuid=06e63d96-0358-4be8-9422-d63df3218510&groupId=10602

Conclusions

With the present Deliverable, the HOPE Project aims to design a proper framework for the impact of IPR on the collections provided.

In this context, we intend to start establishing best practice procedures for all the institutions involved in the HOPE project. This goal will be achieved, on one hand, by supplying the Content Providers with a comprehensive understanding of the issues regarding IPR and, on the other hand, by contributing to the standardization of procedures and harmonization of the information provided to the end users, concerning document's copyright.

This becomes even more important in the HOPE Project, since it provides Social History documental fonds through Europeana (whose rules are already set) and Labour History Portal (of which the update is in progress).

We paid special care in the balance within the Archives and Libraries and its relationship with the public and, in particular, with research communities. This balance should be carefully drawn between the cultural promotion and protection of copyright.

Finally, we point out that this Deliverable is intended to be, simultaneously, a conceptual view of IPR in the Social History documentation and a practical guide to solve cases arisen from the different Content Providers.

Thus, we aim to contribute to the establishment of a Best Practice Network with regard to IPR in the documentation available to the public through the HOPE Project.

Reference Documents

ATHENA Project, *Overview of IPR legislation in relation to the objectives of Europeana*, Barbara Dierickx (PACKED) in collaboration with Rony Vissers (PACKED), 31 July 2009, available at:

<http://www.athenaeurope.org/index.php?en/149/athena-deliverables-and-documents> => ATHENA Deliverables and documents (WP6 – Analysis of IPR issues and definition of possible solutions)

Biodiversity Heritage Library for Europe (BHL-Europe), *IPR Working documents (best practice guide, due diligence guide, pro forma licence agreement and cover letter, rights metadata agreements with BHL and Europeana)*, Nancy Chillingworth, 02 March 2010, available at:

http://www.bhl-europe.eu/en/webfm_send/55

European Commission Copyright & IPR Manual, available at:

[http://ec.europa.eu/information_society/eyouguide/fiches/glossary_ipr/index_en.htm#What is not covered by copyright](http://ec.europa.eu/information_society/eyouguide/fiches/glossary_ipr/index_en.htm#What_is_not_covered_by_copyright)

Europeana documents – *Guidelines for the europeana: rights metadata element*, v4.0, 30 November 2010, available at:

http://pro.europeana.eu/c/document_library/get_file?uuid=06e63d96-0358-4be8-9422-d63df3218510&groupId=10602

Europeana documents – *Guidelines for the Rights in objects submitted to Europeana – Selecting a value for the europeana: rights and edm: rights metadata element*, 9 February 2012, available at:

http://pro.europeana.eu/documents/900548/1037382/Europeana_rights_201202.pdf

Europeana documents – *The Europeana Licensing Framework*, available at:

<http://pro.europeana.eu/documents/858566/7f14c82a-f76c-4f4f-b8a7-600d2168a73d>

GRIFFITHS, Jonathan, *The 'Three-Step Test' in European Copyright Law - Problems and Solutions*, Queen Mary School of Law Legal Studies Research Paper No. 31/2009, available at:

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1476968

HARGREAVES, Ian, *Digital Opportunity: A review of Intellectual Property and Growth*, 2011, available at www.ipo.gov.uk/ipreview-finalreport.pdf

MinervaEC Working Group – *Intellectual Property Guidelines*, version 1.0, September 2008, available at:

http://www.minervaeurope.org/publications/MINERVAeC%20IPR%20Guide_final1.pdf

Web2.0 Rights Project, available at:

<http://www.web2rights.org.uk/documents.html>

Appendix A

- Rights in the Objects submitted to Europeana – from the document *Guidelines for the Rights in objects submitted to Europeana*, 9 February 2012, available at:
http://pro.europeana.eu/documents/900548/1037382/Europeana_rights_201202.pdf

4 types of rights statement	12 separate statements	
<p>Public Domain Mark Objects that are not protected by copyright should be marked as being in the public domain by applying the Public Domain Mark</p>	<p>Public Domain Mark (PDM) All content that is in the public domain should be labelled accordingly. Europeana has worked with Creative Commons to develop a simple mark that indicates that a work is in the public domain – the Public Domain Mark. Works that are labelled as being in the public domain can be used by anyone without any restrictions. When indicating that a work is in the public domain Europeana will also link to guidelines for end-users of such objects.</p>	
<p>Creative Commons License or the CC Zero Public Domain Dedication When the data provider is also the rights holder and wants to make the digital object available for re-use (or has been authorised by the rights holder to do so) the data provider can apply a Creative Commons License or the CC Zero Public Domain Dedication.</p>	<p>Creative Commons Zero Public Domain Dedication (CC0) If a data provider wants to waive all its rights in a digital object they can apply a CC0 waiver to the works in question. By applying this waiver all rights in the content are waived and it can be used by anyone without any restrictions. CC0 can only be applied with the authority of the rights holder.</p>	
	<p>Creative Commons Licenses The Creative Commons (CC) licenses provide options for copyright holders to allow others to re-use digitised objects exposed through Europeana under certain conditions. These conditions range from relatively open (only requiring attribution in case of re-use or</p>	<p>Creative Commons - Attribution (BY)</p>
		<p>Creative Commons - Attribution, Share Alike (BY-SA)</p>
		<p>Creative Commons - Attribution, No derivatives (BY-ND)</p> <p>Creative Commons - Attribution, Non-commercial (BY-NC)</p>

	<p>redistribution) to relatively restrictive (only allowing the non-commercial redistribution of verbatim copies). Creative Commons licenses can only be applied with the authority of the rights holder.</p>	<p>Creative Commons - Attribution, Non-commercial, Share Alike (BY-NC-SA)</p>
<p>Rights Reserved statements When the data provider is also the rights holder and wants to make the digital object available without authorising re-use by third parties (or has been authorised by the rights holder to do so), the data provider can apply one of the three available Rights Reserved statements.</p>	<p>Europeana rights statements Europeana has developed three standardised rights statements that can be applied to indicate that digital objects can be accessed on the data provider's website but may not be re-used by third parties. By applying one of these statements the data provider is indicating that rights in the digital object are reserved due to being in copyright and that it may not be used without additional permissions from the data provider or rights holder. A badge is displayed in the portal to indicate the rights status to users.</p>	<p>Creative Commons - Attribution, Non-commercial, No derivatives (BY-NC-ND).</p> <hr/> <p>Rights Reserved – free access, is applicable when users have free (as in gratis), direct and full access to the digitized object.</p> <hr/> <p>Rights Reserved – paid access, is applicable when users need to pay data providers to gain access to the digitized work. This can be the case when only a preview is accessible through the portal of a data provider and when registration and payment is required to gain access to the digitized object itself. In this case the link from the Europeana portal should give access to the metadata and (ideally) a low resolution preview. Europeana does not accept direct linking to a payment page.</p>

		<p>Rights Reserved – restricted access, is applicable when users are limited in accessing a digitized object other than needing payment, for example when registration is required or only snippets or previews are available to users. In this case, the link from the Europeana portal should give access to the metadata and (ideally) a low resolution preview. Europeana does not accept direct linking to a registration page.</p>
<p>Unknown copyright statement Digital objects whose copyright status is unclear (for example because no rights holder could be identified) can be marked with an “unknown” copyright statement. This should only be used if absolutely necessary.</p>	<p>Unknown The unknown rights statement can be applied to objects where the data provider does not have conclusive information pertaining to the rights status of the digital object. This value is only to be used when the copyright status of the work described is unknown. This may be used by Europeana to exclude items from display.</p>	

