D5.5: Final report on IPR issues faced by Europeana

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REVISION HISTORY AND STATEMENT OF ORIGINALITY

Revision History

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Statement of originality:

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1. Introduction

This document provides an update on the status of the Europeana Licensing Framework roughly 2 years after its full implementation. It summarizes the IPR related work that has been undertaken by Europeana since January 2012 and identifies areas related to IPR where future work is recommended.

The document is structured in 4 parts. The first part consists of an overview of the IPR work undertaken so far and the elements of the Europeana Licensing Framework that are in place at the time of writing. The second part identifies the main IPR related issues faced by Europeana in September 2014. The third section identifies areas of future work that need to be carried out within Europeana. The final part identifies possible collaborations between Europeana and other organisations and stakeholders that will allow Europeana to better achieve its objectives.

This document focuses primarily on operational issues that relate to the Europeana Licensing Framework. It explicitly does not cover legal issues related to rights clearing and licensing that arise in the process of mass digitization projects and the making available of protected works in multiple jurisdictions. These issues are covered in a separate document (D5.4 Repost on the effectiveness of licensing systems in clearing content for use in Europeana) that is being published together with this document.

2. The Europeana Licensing Framework

> **A note on terminology:** There are two concepts that are extensively discussed in the remainder of this report: **rights clearance** and **rights labelling**. While these concepts will be clear to professionals actively working on copyright issues, they may not be clear to all readers. In the context of this report we use them to refer to the following distinct activities:
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> **Rights clearance:** Rights clearance (or clearing rights) is the process undertaken by the owner of collection to first identify if a work is covered by copyright, and if this is the case, to ascertain the identity of the rights holder(s) and to obtain permission to make the work available online from all relevant right holders. A work is understood to be rights cleared if this process has either concluded that the work is not covered by copyright, or if permission to make it available online has been obtained from all relevant rights holders.
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> Such permission to make a work available may be limited in scope, for instance limited to the website of the owner of the work in question, or may be more broad, for example allowing the owner of the collections to make the work available under a open licenses. The Europeana Licensing Framework assumes that all digital objects that are made available via Europeana have been rights cleared by the data providers.
>
> **Rights labelling:** Rights labelling is the act of applying a rights statement to a digital object. The Europeana Licensing framework requires that all digital objects available via Europeana carry a rights statement (in the edm:rights field). Rights statements need to be applied by the data provider and should reflect the copyright status of the digital object (which may be based on a rights clearance operation or existing information about the copyright status of the digital object).

Europeana needed to address IPR issues of sharing content online from its very start. As an international cultural heritage aggregation platform with a public mission Europeana were unique, there were no examples to follow. Aggregating digital objects from thousands of institutions that are subject the copyright laws of more than 30 countries required a new approach in communicating the rights status in a fashion that is useful for the end users of Europeana services. As a result Europeana developed it's own Licensing framework[1] to manage these issues. The "Europeana Licensing Framework" as it became has two clear objectives:

- It ensures that all metadata aggregated can be published by Europeana under the same terms and without any restrictions on reuse. Based on this Europeana makes available all metadata under the terms of the CC0 Public Domain Dedication.
- With regards to the content that data providers make available via Europeana, the licensing framework provides a list of standardized rights statements that must be used by data providers to describe the rights status of the digital objects that they make available via Europeana. Having as relatively small number of standardized rights statements allows users to filter search results based on the re-use conditions.

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[1] This work took place in the context of the Europeana Connect project that ran from 2009 - 2011.

Rights Labelling Campaign

Europeana started publishing its metadata under CC0 in September 2012. Since then the amount of digital objects that are made available via Europeana has increased from approximately 20 million to over 30 million. The second objective of the Licensing framework required that all of these digital objects carry a standardized rights statement (edm:rights). Given that more than half of the digital objects available via Europeana in September 2012 did not carry a edm:rights statement[2], Europeana[3] launched a rights clearance campaign in January 2013. This rights clearance campaign had two components: 1. Europeana worked with providers of collections with missing rights statements to retroactively add statements to these collections (backlog). 2. In addition the ingestion team at Europeana works with data providers of new data sets on ensuring that all new data meets the requirements of the Licensing Framework (i.e that each record contains a valid edm:rights statement) (new additions).

At the time of writing the first part of the rights labeling campaign has almost been completed. The percentage of digital objects with no rights statement has been reduced from 34% at the beginning of the rights labeling campaign to 3.9% at the end of July 2014[4].

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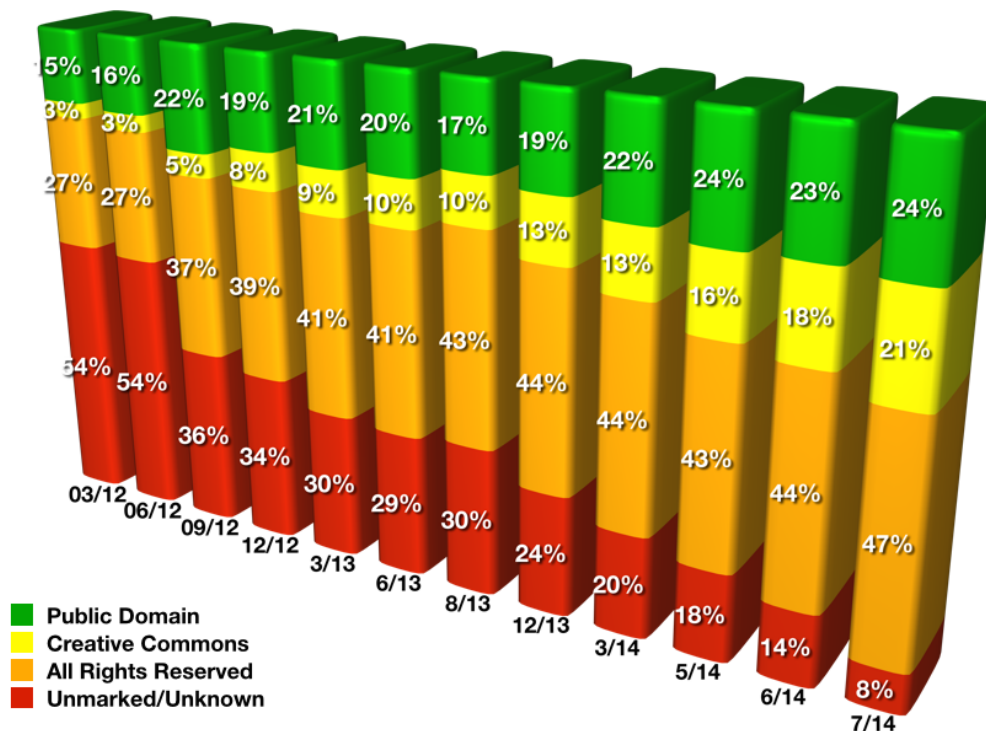
[2] Prior June 2011 the edm:rights property was not a required metadata field and data providers could contribute data to Europeana that did not carry a rights statement. As a result a large number of digital objects were missing rights statements when the Licensing Framework became operational.

[3] When we refer to activities undertaken by Europeana in this document this includes activities carried out by the other Partners in work package 5 of Europeana Awareness: Kennisland, the Institute for Information law and the Bibliothèque Nationale de Luxembourg.

[4] The chart below combines digital objects missing a rights statement (unmarked) and digital objects carrying the 'Unknown' rights statement into one category. At the end of July 2014 there were 1.297.691 digital objects in Europeana that are missing a rights statement. This represents 3.9% of all digital objects in Europeana.

Once the rights labeling campaign has been completed, the quality assurance for rights metadata will be the responsibility of the Europeana ingestion team. WP5 of Europeana Awareness has been developing a number of resources that support he ingestion team and Europeana's Data providers with supplying accurate rights statements about the digital objects that they make available via Europeana:

- Following the recommendations made by Europeana Awareness Deliverable D5.3, the list of available rights statements on the Europeana pro website has been updated. Data providers can now choose from a total of 13 rights statements to be used to describe the access and reuse terms associated with a digital object.
- Also on Europeana pro we have made available an updated version of the Europeana Rights Statement selection tool that has been adapted to reflect the changes to the rights statements available for use with edm:rights. The rights statement selection tool is intended to help data providers to identify suitable rights statements for digital objects that they contribute to Europeana.
- Finally WP5 of Europeana Awareness has contributed to the rights labeling part of the Europeana Publication policy that is currently being finalized by the ingestion team. The publication policy is intended to support the ingestion team and Europeana's data providers with ensuring that rights statements are applied to digital objects in Europeana in a uniform manner.

These resources are intended to enable the Ingestion team to carry out quality control and verification of rights statements, as part of their standard operating procedures, after the end of Europeana Awareness. Enabling the ingestion team to carry out these tasks is one of two key elements of the strategy which ensures the long term sustainability of the Europeana Licensing Framework during the transition to the Europeana Strategy 2020.

The a second pillar is a result of the work undertaken as part of WP5 which shows that there is a need for a stronger involvement of the Europeana Network. For example participating in the discussions which seek to ensure that the available rights statements meet the requirements of Europeana's data providers and are in line with the legislative environment these data providers operate in. The recommendations to update the list of available rights statements that had been issued as part of Deliverable D5.3 have sparked a discussion on how key stakeholders can be included in future reviews of the available rights statements.

As a result of this we have set up a IPR coordination group that convenes twice yearly and , among other activities (such as coordinating activities and deliverables across projects), will carry out an annual review of the existing rights statements. This group is composed of IPR work package leaders from active Europeana projects and selected individuals who are actively participating in discussions about IPR in relation to Europeana. Europeana Awareness WP5 convenes the meetings of the working group and is developing a procedure for the annual review of the rights statements

All of the above means that, with the end of the Europeana Awareness project in sight, we have managed to fully implement an ambitious open data policy embodied by the Europeana Licensing Framework. We have also undertaken steps towards sustainability of the Europeana Licensing Framework, beyond the duration of Europeana Awareness.

There are however a number of IPR related issues facing Europeana that require special attention after the conclusion of the Europeana Awareness project.

3. Main IPR related issues faced by Europeana

IPR, and copyright in particular, are one of the most important factors preventing cultural heritage institutions from making works in their collections available online. Clearing rights for the making available large collections is generally difficult and time consuming and in some cases even simply impossible. Many cultural heritage institutions (especially smaller institutions) have little or no experience in clearing rights and lack the in house expertise to effectively clear rights, or identify works that are in the public domain.

The Europeana Licensing framework, that relies on the data providers to clear the rights for digital objects, cannot support data providers when it comes to rights clearance or researching the rights status of an object. The requirement that all digital objects made available through Europeana carry a rights statement requires data providers to consider the rights status of their collections. While the Licensing Framework assumes that data providers contribute only those digital objects for which they are able to provide accurate rights information reality has shown that this is not always the case[5].

Currently we can identify three main IPR issues that appear primarily on the level of Europeana's data providers that affect both the quality and the quantity of rights statements delivered to Europeana:

- Right statement provided by some data providers are incorrect (on the item level). Data providers who make large collections available to Europeana will often use uniform rights statements across collections. For collections with objects from the period between the mid 19th and mid 20th century homogenous rights statements do not necessarily reflect the correct rights statements of each individual object. Depending on publication dates and death dates digital objects from this period can either be in copyright, or in the public domain. In the absence of fully automated tools that can help with bulk determinations of the rights status of digital objects, it is very difficult for Europeana to ensure that the rights information for each individual work is correct. Europeana currently has no automated tools to help with determining the rights status of digital objects provided by its data providers. Data providers have access to some tools (such as ARROW), but these tools only cover small subsets of the cultural heritage resources held by data providers across Europe. As a result the validity of the rights metadata for digital objects originating from the period between 1860 and 1944 is often problematic.
- With regards to digital objects of cultural heritage objects that are unquestionably in the Public Domain, we are currently lacking clear and widely accepted standards for preserving the Public Domain status of these works. Different member states have different rules when it comes to the question of the digitization of a Public Domain work creates new rights or not. As a result data providers from some member states can claim rights in digital objects representing cultural heritage objects that are in the Public Domain, while others cannot. In addition some member states award cultural heritage institutions additional layers of

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[5] It is currently unclear how widespread this is. As part of discussions about the validity of certain rights statements we have occasionally discovered that data providers had failed to clear rights before submitting metadata to Europeana.

protection for works that are in the Public Domain. Examples are the French public sector information law that encourages institutions to charge a (licensing) fee for commercial uses made of their works or the cultural heritage legislations, or cultural heritage laws in countries such as Italy, Greece or Slovenia that make commercial reuse of public domain works subject to payment of a fee[6].

- Finally, many data providers face structural difficulties when it comes to clearing rights for online uses, especially when it comes to out-of-commerce works and orphan works. While the issue of orphan works is being addressed by the 2012 Orphan works Directive (which is expected to come into effect in the last Quarter of 2014) the issue of out-of-commerce works remains. For many cultural heritage institutions preserving works that are not in commercial circulation anymore is an important element of their mission. Given that these works are not actively exploited or managed by their rights holders, cultural heritage institutions often find it difficult to clear the rights required for making such works available online. This means that in many cases cultural heritage institutions are severely limited when it comes to which parts of their collection they can make available online (and subsequently make available via Europeana).

All of these issues are out of scope for the Europeana Licensing Framework to address. The first and second one can be addressed by improved documentation and guidelines, as well as (better) automated tools for determining the rights status. But, in the light of the complexities of European copyright rules, both issues will remain challenging for the foreseeable future. Another approach to address these issues is the development of rights determinations tools that can help data providers and Europeana with making automated determinations. While there are a number of attempts to develop such tools the lack of reliable, machine-readable metadata that can be used for rights determination severely limits the usefulness of these tools[7].

With regards to the third issue identified above, documentation and automated rights determination tools provide little help. To fully integrate orphan works and out-of-commerce works into Europeana legislative interventions (or comparable soft law instruments) would be required. It remains to be seen if the Orphan Works directive will have a significant impact in this field[8], but even if this turns out to be the case the issue of out-of-commerce works will remain[9].

4. Future work to be carried out by Europeana

Over the next year Europeana will enter a new phase: the Europeana Digital Services Infrastructure that will be realized with support from the Connecting Europe Facility. While the projects Europeana Connect (2009-2011) and Europeana Awareness (2012-2014) have laid the foundations of the Europeana Licensing Framework, there continues to be a need for on-going efforts in the field of copyright licensing.

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[6] As part of WP5 the institute for information law is currently undertaking a comparative review of the minimum originality requirements present in member states of the European Union.

[7] See for example ARROW, www.outofcopyright.eu and FORWARD

[8] With its extensive diligent search requirements the Orphan Works directive seems to be better suited for incidental making available of high value works than for mass digitization projects that make up the bulk of the digital objects in Europeana.

[9] For a more extensive discussion of these issues and possible remedies please refer to the parallel deliverable D5.5

To ensure that the Europeana Licensing Framework can operate as intended Europeana will need to allocate resources for the following activities as part of its upcoming Digital Services Infrastructure:

1. There needs to be a dedicated team of IPR specialists to **provide second line support for the ingestion team with regards to quality control of rights statements**. Such second line support includes supporting the ingestion team with analysing the copyright status of collections, determining the adequate rights statements and refining application criteria for existing rights statement.

2. Specifically the ingestion team and data providers would benefit from **more detailed reference information with regards to the question of new layers of rights created as part of digitization and non-copyright legislative barriers to freely sharing works** that are otherwise in the public domain. As part of Europeana Awareness project the Institute for Information Law is currently undertaking research into this question. This research will be completed at the end of 2014 and is expected to provide a basis for improving the reference information in this area.

3. In addition, some level of **general coordination of IPR policies across the Europeana Network (including the Europeana DSI and other Europeana related projects) continues to be required.** These coordination efforts fall within the remit of the Europeana IPR coordination group that has been established by Europeana Awareness. Within the Europeana DSI resources need to be allocated for running the Europeana IPR coordination group and for carrying out 2 central tasks associated with the activities of the coordination group:

   1. Running an annual review of the list of available rights statements to ensure that the rights statements properly reflect the needs of both Europeana and it Data Providers as well as the legislative environment.
   2. Maintaining a central repository for communicating about the rights statements offered by Europeana and other aspects of the Europeana Licensing framework that enables all members of the Europeana Network (including the Europeana DSI and other Europeana related projects) to uniformly communicate about access and reuse conditions.

4. Finally Europeana should **focus on aggregators to disseminate information about and familiarity with the requirements of the Europeana Licensing Framework.** Aggregators are likely to play a key role in the future ingestion structure of the Europeana Digital Services Infrastructure. Europeana needs to ensure that aggregators are able to provide guidance and accurate information to their data providers. The most obvious way to do so it to hold regular Licensing Framework trainings with aggregators.

We believe that these four activities should be integrated as closely as possible into the Europeana Digital Services infrastructure. The Europeana Licensing Framework is an essential aspect of Europeana's transition from portal to platform, as it enables the dissemination of the content and

metadata in environments other than the Europeana platform and similar services that are fully controlled by the Europeana Foundation.

5. Collaborations with external stakeholders

Europeana is not the only stakeholder dealing with rights information about cultural heritage objects. Apart from individual cultural heritage institutions (many of which are providing data to Europeana), there are projects of similar scope and ambition in other parts of the world, the Digital Public Library of America (DPLA) for example. Also once a single European database for orphan works becomes operational, in the last quarter of 2014, the Office for the Harmonization of the Internal Market (OHIM) will become an important player in this field as well. Finally, the European Copyright rules, that determine the legal environment that the Europeana Licensing Framework rests on, are currently under review[10].

Given its ambitions to be a standards setting entity in the field of digital cultural heritage aggregation Europeana will need to coordinate its activities with the stakeholders involved in these processes. This should include the following activities:

1. **International standardization of rights statements.** Europeana should continue the collaboration with the Digital Public Library of America to develop a set of internationally interoperable rights statement that are hosted in an independent name space. This work has been started in April 2014 with a first joint workshop between the two platforms, which has confirmed the general desirability of such an arrangement. Work is currently on-going to determine the legal, organisational and technical feasibility of a joint namespace for rights statements. Depending on the outcome of these determinations, Europeana and the DPLA should move forward with this effort with the objective to initiate a transition to the new namespace by the end of 2015.

2. **Integration between Europeana and the OHIM orphan works database**. Once the single European database for orphan works becomes operational towards the end of 2014, there will be two European repositories for (rights) metadata about orphan works that are made available based on the exception created by the 2012 Orphan Works directive. Data providers who make Orphan works available online and via Europeana will be legally required to provide metadata about the rights status of these works to the OHIM database. Given this fact, and in order to minimize duplication of effort, it is desirable create some level of integration between the two repositories.

   Throughout 2013 and 2014 Europeana has provided incidental feedback and advice to OHIM. While the general idea of integration between the two repositories has been raised in this context, OHIM had indicated that this was out of scope during the initial phase of setting up the database. Once the OHIM database is running these discussions should be resumed to

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[10] While the review started by the Barroso commission has not produced any concrete outcomes, Commission president elect Junker has made it clear that he considers the completion of a digital single market, which includes a review of the copyright rules) one of his top priorities. In his mission letters to the Vice President designate and commissioner designate in charge of the Digital Agenda he has instructed them to start working on this dossier in the first 6 months or their mandate.

investigate the technical and organizational feasibility of integration between the two projects. Scenarios for integration include the exchange of relevant metadata and the possibility of cross-referencing metadata records relating to objects that are recorded in both databases.

3. **Copyright advocacy directed at the institutions of the European Union on behalf of the Europeana network and in coordination with representatives of cultural Heritage institutions.** As mentioned above, the main IPR issues facing Europeana and its data providers cannot be resolved within the Europeana Licensing Framework. They originate from the fact that the European copyright policy framework does not take into account many of the copyright issues that have arisen once cultural heritage institutions started digitizing their collections on a large scale[11].

As part of the Licenses for Europe stakeholder dialogue and the subsequent public consultation on a review of the European copyright rules Europeana together with its network partners has started formulating requirements for a copyright framework that does take the shift to online accessibility of cultural heritage collections into account[12].

In addition, as part of Europeana Awareness WP5, the Institute for information Law has undertaken research into the effectiveness of licensing systems for clearing content for use in Europeana[13]. These activities provide a solid basis for copyright policy advocacy on behalf of Europeana and its network partners. Europeana should continue these efforts and intensify them in the light of the ambition of the Junker Commission to modernize the European copyright rules at the beginning of its mandate. Such advocacy efforts need to be carried out in line with the rules established by the [Europeana Advocacy Framework](#).

6. Conclusions and outlook

Three years after the introduction of the Europeana Licensing Framework it is fully implemented. All metadata that is published by Europeana is available under the terms of the CC0 public domain dedication that allows reuse without restrictions. Nearly all 32+ million digital objects that are available via Europeana carry a standardized rights statement and incoming digital objects are checked for valid rights statements. Almost half of the objects available via Europeana carry a rights statement that allows some form of reuse. This means that Europeana is making a key contribution to the emerging open data ecosystem and this is reflected by the fact that other cultural heritage aggregation platforms, such as the DPLA, follow the approach introduced by Europeana.

This comprehensive open data strategy provides the basis for the future development of Europeana. It enables the transition from portal to platform and it provides the basis for new offerings like the Content Re-use Framework that is being developed in the context of the Europeana Creative project.

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[11] As argued in more detail in [Europeana's response to the public consultation on a review of the EU copyright rules](#), and specifically the answers to question 28 to 41.

[12] See for a detailed summary [the response to the public consultation submitted by Europeana on behalf of the Europeana network](#).

[13] This research is documented in the sister deliverable D5.4 'Report on the effectiveness of licensing systems for clearing content for use in Europeana'.

In section 4 above we have made three recommendations aimed at ensuring the Europeana Licensing Framework can properly function after the end of the Europeana Awareness project In section 5 we have made two recommendations aimed at ensuring that the Europeana Licensing framework becomes fully interoperable with other rights related registration efforts. These 5 recommendations need to be addressed as part of the plans for the upcoming Europeana Digital Services Infrastructure.

However, the main IPR related challenge for Europeana and its partners to realize the full potential of making Europe's cultural heritage available comes from a copyright system that aims to take into account the needs of public cultural heritage institutions in the digital age. If we want to fully leverage the possibilities of online access to the collections of Europe's cultural heritage institutions we need a copyright system that is more accommodating to the needs of cultural heritage institutions and more in line with the policy objectives of the European Commission such as access to culture, better education and reuse of publicly funded resources.

As part of Europeana Awareness we have contributed to the development of a position[14] on how a modern European copyright system can take into account the legitimate interests of cultural heritage institutions that is broadly shared among cultural heritage institutions. Europeana should work on strengthening this position and leverage it's unique position within the European cultural heritage sector and it's extensive network to advocate for these positions in the upcoming policy discussions.

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[14] The response to the public consultation submitted by Europeana on behalf of the Europeana network.