EUROPEANA SOUNDS

Project Number: 620591

D3.2 Summary Report on barriers to online access to out-of-commerce works and domain constrained audio works

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Abstract

This document focuses on two specific barriers identified in the DoW concerning copyright related issues: out-of-commerce works and domain constrained works. The document also address the IPR related issues discovered by our Data Providers and explores the barriers presented by Moral and Ethical Rights attached to the materials we want to make accessible during the project.

Dissemination level		
P	Public	X
C	Confidential, only for the members of the Consortium and Commission Services	
I	Internal, only for the members of the Consortium	

I. COPYRIGHT NOTICE

II. REVISIONS

Version	Status	Author	Partner	Date	Changes
0.1	ToC	Lisette Kalshoven	KL	15/10/2014	
0.2	Draft	Lisette Kalshoven	KL	5/11/2014	First draft
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III. DELIVERY SLIP

	Name	Partner/WP	Date
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IV. DISTRIBUTION

No.	Date	Comment	Partner / WP
1	28/11/2014	Submitted to the European Commission	BL / WP7
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V. APPLICATION AREA

This document is a formal output for the European Commission, applicable to all members of the Europeana Sounds project and beneficiaries. This document reflects only the author's views and the European Union is not liable for any use that might be made of information contained therein.

VI. DOCUMENT AMENDMENT PROCEDURE

Amendments, comments and suggestions should be sent to the authors named in the Delivery Slip.

VII. TERMINOLOGY

A complete project glossary is provided at the following page:
http://pro.europeana.eu/web/guest/glossary

Further terms are defined below as required:

TERM	DEFINITION
AB	Advisory Board
APEX	Archives Portal Europe network of excellence
BL	British Library
CNRS	Centre National de la Recherche Scientifique
DNB	Deutsche Nationalbibliotheket
EC-GA	Grant Agreement (including Annex I, the Description of Work) signed with the European Commission
GA	General Assembly
PC	Project Coordinator
PI	Performance Indicator
PM	Project Manager
PMB	Project Management Board
PSO	Project Support Officer
SB	Statsbiblioteket
TEL	The European Library
TD	Technical Director
UAP	User Advisory Panel
WP	Work Package

VIII. PROJECT SUMMARY

Europeana Sounds is Europeana's 'missing' fifth domain aggregator, joining APEX (Archives), EUscreen (television), the Europeana film Gateway (film) and TEL (libraries). It will increase the opportunities for access to and creative re-use of Europeana's audio and audio-related content and will build a sustainable best practice network of stakeholders in the content value chain to aggregate, enrich and share a critical mass of audio that meets the needs of public audiences, the creative industries (notably publishers) and researchers. The consortium of 24 partners will:

- Double the number of audio items accessible through Europeana to over 1 million and improve geographical and thematic coverage by aggregating items with widespread popular appeal such as contemporary and classical music, traditional and folk music, the natural world, oral memory and languages and dialects.

- Add meaningful contextual knowledge and medium-specific metadata to 2 million items in Europeana's audio and audio-related collections, developing techniques for cross-media and cross-collection linking.

- Develop and validate audience specific sound channels and a distributed crowd-sourcing infrastructure for end-users that will improve Europeana's search facility, navigation and user experience. These can then be used for other communities and other media.

- Engage music publishers and rights holders in efforts to make more material accessible online through Europeana by resolving domain constraints and lack of access to commercially unviable (i.e. out-of-commerce) content.

These outcomes will be achieved through a network of leading sound archives working with specialists in audiovisual technology, rights issues, and software development. The network will expand to include other data-providers and mainstream distribution platforms (Historypin, Spotify, SoundCloud) to ensure the widest possible availability of their content.

For more information, visit http://pro.europeana.eu/web/europeana-sounds and http://www.europeanasounds.eu.

IX.   STATEMENT OF ORIGINALITY

This document contains original unpublished work except where clearly indicated otherwise. Acknowledgement of previously published material and of the work of others has been made through appropriate citation, quotation or both.

X. EXECUTIVE SUMMARY: D3.2 SUMMARY REPORT ON BARRIERS TO ONLINE ACCESS TO OUT OF COMMERCE WORKS AND DOMAIN CONSTRAINED AUDIO WORKS

Making objects available online has become part of the mission of Cultural Heritage Institutions in the 21st Century. However, there are several barriers to overcome before institutions can provide this online access. The focus of WP3 is intellectual property. In this document we focus on two specific barriers identified in the DoW concerning copyright related issues: out-of-commerce works and domain constrained works. The document also explores the barriers presented by moral and ethical rights, identified by Data Providers as an additional issue.

The data in this deliverable is based on a survey conducted in October 2014 and the document includes a summary of the results. The aim is to provide as clear an image as possible of the practices our Data Providers currently employ, as well as some quantifiable data on the size of the barriers within our project.

Many Data Providers have worked on rights clearance processes. We have zoomed in on when copyright barriers are detected and how our Data Providers have tried and sometimes succeeded in solving these in the past. Out-of-commerce works are works that are still protected by copyright but are no longer commercially available. We asked the Europeana Sounds partners how big the issue of out-of-commerce works is for them, and asked about their experiences of trying to, or succeeding in making them available. The term geo-locked refers to copyright protected material that has been made available for online access, but only for a specific territory. Europeana does not accept geo-locked material. The survey aimed to discover the size of the problem of geo-locked works and gathered experiences of making them available.

Another barrier experienced by Data Providers is moral and ethical rights. These usually stand apart from copyright issues, as they exist even after copyright protection has expired and the works become part of the Public Domain. Moral and ethical rights often refer to the rights and interests in cultural heritage which may, under national, customary and other laws, reside with the traditional custodians of such materials. Moral and ethical rights discussed here should not be confused with the moral rights also associated with copyright law. Several Europeana Sounds institutions have tackled the issue of moral and ethical rights in their material, and have provided guidelines on their websites. This document identifies several elements that transcend the individual approaches, and can be distilled as best practice.

This summary report will form the basis of the next part of our work, namely the rights holder consultation. Our subcontractor, nominated by GESAC, will delve into the issues and form guidelines for our Data Providers to make more objects available online. Other rights holder organisations will reflect on this research and it will be validated during a stakeholder workshop in Brussels in March 2015. The official report will be presented in April 2015 as *D3.3 Report from stakeholder workshop including the reactions from right holders*.

TABLE OF CONTENTS

1 INTRODUCTION

Making objects available online has become part of the mission of Cultural Heritage Institutions in the 21st Century. It expands the reach of these institutions beyond their physical buildings, and has the potential to reach many more citizens with our shared cultural heritage. However, there are several barriers to overcome before institutions can provide this online access. These have several aspects, including the organisational structure of Data Providers, funding, technical issues and the challenge of Intellectual Property Rights[1].

The focus of WP3 is intellectual property. Therefore in this document we focus on two specific barriers identified in the DoW [REF 1] concerning copyright related issues: out-of-commerce works and domain constrained works. We will also delve into the IPR related issues discovered by our Data Providers and explore the barriers presented by Moral and Ethical Rights attached to the materials we want to make accessible during the Europeana Sounds project.

The data in this deliverable is based on the results of a survey conducted in October 2014. This deliverable is a summary of the results of the survey, providing as clear an image as possible of the practices our Data Providers currently employ, as well as some quantifiable data on the size of the barriers within our project. The aim for our subcontractor (Victoriano Darias, The Napkin Idea[2]) is to help our Data Providers by researching guidelines that will make the process of making out-of-commerce and geo-locked materials available easier. This deliverable will be the basis of our data to our subcontractor, together with the data provided in *D3.1 Guidelines to contributing audio content to Europeana* [REF 2] and the information he gathered during his participation in our Copenhagen rights workshop in June 2014.

1.1 *Note on survey methodology*

The survey on barriers to online access [REF 3] was written by WP3 with the help of Europeana Sounds subcontractor Victoriano Darias. The questions were divided into three parts, and that structure is reflected in this document. The survey was distributed to all Europeana Sounds partners via Google Forms. Those partners who had trouble accessing the form received the form in a different format (for example a Google Doc or Word document). Of the 18 Europeana Sounds Data Providers, 17 returned the survey by the 28 October deadline.

The survey results were analysed by both the Google Form analysis tool, and by hand. Where relevant, the direct responses by Data Providers were quoted, although sometimes they were shortened or otherwise slightly modified to remove any typographical errors. The meaning or tone

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[1] The EUscreenXL project is currently undertaking research to delve more deeply into these barriers, specifically related to the audiovisual sector. Once these reports are available they will be shared with the Europeana Sounds project.
[2] See Section 6 *Next Steps* for more information.

of the quote was never altered. The responses by the Data Providers are a snapshot of their policies and experiences at the time of the survey, and are therefore subject to change over time.

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8 / 24

2 CURRENT APPROACHES TO PUBLISHING AUDIO-MATERIAL ONLINE

2.1 Detecting copyright barriers

Copyright barriers have existed since the laws, rules and regulations came into being, but the barriers have become more prominent in the Digital Age. While institutions have had the right to display their collections on their premises, as part of an exception to copyright law, this exception does not extend itself to the digital domain. When publishing materials on websites, the cultural heritage institutions need to have permission from the rights holders, given that the Digital Object is still in copyright. Since budgets are limited, and copyright clearance is time-intensive and licenses cost money, we see a trend that public domain heritage is favoured for digitisation over protected material. However, many of our Europeana Sounds Data Providers have worked on rights clearance processes, which we discussed in *D3.1 Guidelines for contributing audio content into Europeana* [REF 2]. For this current deliverable, we have zoomed in on when copyright barriers are detected, and how our Data Providers have tried and sometimes succeeded in solving these in the past.

Table 1: Encountering copyright-related issues

At which point of the process have you encountered (or do you foresee you will encounter) copyright related issues?	% of data providers
When making the digitised content available through your institution's online service, which is accessible from any territory in the world (streaming only).	59%
Before digitising the content.	53%
When making the digitised content available through your institution's online service, which is accessible only from the territory where your institution is located (streaming only).	53%
When making the digitised content available through your institution's online service, which is accessible only from the territory where your institution is located (streaming only).	53%
When allowing for a download of the digitised object through your institution's online service, which is accessible from any territory in the world.	47%
When providing a snippet/preview of the content to Europeana Sounds to be stored in its servers.	41%
When providing a snippet/preview of the content to Europeana Sounds to be stored in its servers.	41%

When digitising the content.	35%
When allowing for a download of the digitised object through your institution's online service, which is accessible only from the territory where your institution is located.	35%
When storing the digitised content in the servers of your institution's online service.	29%
When making the digitised content available through your institution's online service, which accessible from any European territory (streaming only).	29%
When allowing for a download of the digitised object through your institution's online service, which accessible from any European territory.	29%
Other.	24%

As you can see in the table above, 53% of our Data Providers detect copyright issues when making objects available through their online service (both internationally and within their territory) and before digitising the content. The second question we asked was about what types of barriers arise once these issues are detected.

Table 2: Types of copyright barriers

At which point of the process have you encountered (or do you foresee you will encounter) copyright related issues?	% of data providers
Assessment of whether any element of the digital object is subject to copyright protection (please specify, e.g.: public domain status, application of a copyright exception, application of orphan work status, etc.)	59%
Identification of the right holder(s)	47%
Location of the right holder(s)	41%
Clearing rights for domestic uses (within your nation's borders)	35%
Clearing rights for non-domestic uses	35%
Other	41%

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10 / 24

Identifying which type of protection applies (if any) is the most common issue that arises. The identification and location of rights holders are second and third by a significant margin.

2.2 Methods of dealing with copyright restrictions

For all possible barriers as identified *Table 2,* we asked the Europeana Sounds partners to discuss what steps they took to overcome these problems. Their responses are summarised and synthesised below.

2.2.1 Assessing rights status

As stated above, most Data Providers use this assessment solely to determine whether an object is in the public domain: "copyright protected works would be excluded from data supply." Other aspects taken into consideration are the privacy laws: "We have folklore records and information about the performer, recordist (name, date of birth, and place of residence). According to the local legislation this falls under category of "private data" and cannot be shared. On the other hand we cannot hide such information in order to provide information about performing rights." Also under assessment are the moral and ethical aspects in the recordings: "... ethical issues can interfere (confidential information, denunciations, witchcraft ...). In these cases, we can create an ethical committee of specialists which can help us to decide what we can do [with the recordings]."

> *"Regarding phonograms: SB makes an assessment of every digital file trying to identify the different kinds of right holders and checking the rights status of every file. The assessment includes composers and lyricist, performers and producers. We also try to find out the way and the date of publishing or making the material available to the public. When the different kinds of right holders are identified we classify the work as public domain or still within copyright. If the work is within copyright and we expect to get permission for use we contact the right holder. Finding the rights holder or the heirs can be very difficult."*

Eva Fønss-Jørgensen, Statsbiblioteket

2.2.2 Identification of rights holders

There are several methods of contacting rights holders: directly, through Collective Management Organisations (CMOs), by finding heirs or simply posting an advertisement in a newspaper. The type of approach used is very dependent on the type of material.

> *"In most cases the only information we can possibly obtain on composers, lyricists and performers of the work is the one printed on the sleeve on the recording, which in many cases isn't much as we mostly digitise records published before WWII. For cases where we cannot obtain any information on potential rights holders we expect to use provision of the orphan works directive when it is adapted in the national legislation."*

Uldis Zarins, National Library of Latvia

CNRS works with judicial services to gain information on indigenous knowledge:

> *"We work with the judicial services of the CNRS and we look at the WIPO [World Intellectual Property Organisation] and UNESCO [United Nations Educational, Scientific and Cultural Organisation] works on Indigenous Knowledge. We are working in a group about these questions who publish on:* http://ethiquedroit.hypotheses.org*"*

In the case of regional recordings, direct contact appears to be favoured: "When we try to contact the right holders or their heirs it is a direct contact. So far we have had positive response."

2.2.3 Location of rights holders

The method for locating rights holders is very similar to the method for identifying them, since the type of material involved provides the steer on how to locate the rights holders:

> *"We work with the researchers who did the recordings or with other specialists or representatives of the communities. Regularly (10 / year) witnesses who are on the database, recognize themselves or and request copies of records. In this case, we send them a broadcasting license and usually they send us all permissions contracts. We can organize a specific ethical committee if necessary."*

 CNRS team

> *"Finding the location of the rights holders was a problem for us when preparing material for entry on our own website, prior to our participation in Europeana. Our material is non-commercial and many of these rights holders are individuals about whom we had little information at the outset to aid in tracing. Most of the rights for material that appears on our website have been fully cleared because of extensive searching and tracing of contributors, advertising in local communities etc., but we have also developed a policy of including some tracks without full copyright clearance provided the material is non-contentious and we can show that searches have been made and have indicated either that tracing is impossible or that the rights holder is dead and has no close relatives living who can give permission. Although this has helped us place more tracks online than might otherwise have been the case, tracing contributors for rights clearance remains a problem that prevents us putting up as many tracks as we would like."*

Mairead MacDonald, Sabhal Mòr Ostaig

> *"When searching for right holders we use the internet including databases available by the right holders' organisations."*

Eva Fønss-Jørgensen, Statsbiblioteket

"In case composer/lyricist of the work is known, we first check the authority data base of the National Library to identify when has the author died to determine if the work is public domain, and try to identify the year of recording and publication of record to determine if the term of neighbouring rights has expired. In case we can determine that either author or performer(s) still owns the copyright/neighbouring right, we turn to the respective CMOs (there are two in Latvia, one for copyright owners and one for owners of neighbouring rights) and inquire is the given author/performer represented by it. In most cases (again, speaking about records made in before WWII, but often also for records made during the Soviet occupation) they do not. In these cases we make the digitised works available only on premises of the library."

Uldis Zarins, National Library of Latvia

2.2.4   Clearing rights for domestic use

The responses from our Data Providers suggest that they often do not specify whether the rights clearance is for domestic or non-domestic use: "... we don't make a difference between domestic and non-domestic uses. If someone (him/herself or beneficiaries) found themselves in the database, we make a copy that can only be listened to domestically. We send also an agreement so that they can explain what we can to with the archive. […] When contacting right holders directly we always ask for permission for domestic use as well as for non-domestic use, so far the response have been positive."

The British Library has specified that on some occasions the rights clearance they perform is for UK use only: "For domestic use only: taken on a case by case basis on our assessment in advance of the likelihood of a successful granting of licence, e.g. we negotiated UK access only for a number of collections digitised under a UK-funded project, where UK access was required."

2.2.5   Clearing rights for non-domestic use

Where clearance for non-domestic use is relevant, sometimes there is another geographical barrier to consider: EU access. The BL's Richard Ranft stated that: 'where there are less problematic rights (with public domain, or nature sounds, or recordings where the BL owns the rights), we have tried to enable global access. In some cases (especially classical music), we could only allow EU access, not global.' Some partners however feel that they should not even try for non-domestic rights clearance: 'So far we haven't tried to clear rights for non-domestic uses, as 1) CMOs often do not represent the rights holders of digitised works and 2) we have no budget for rights clearance.'

Note that we will delve into the issue of geo-locked works more closely in Section 4 *Domain Constrained works.*

2.2.6   Other

In the survey we also gave room for Data Providers to add anything we did not consider in our questions. Two interesting things arose from this. Firstly, several of our Data Providers state that

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EC-GA 620591

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13 / 24

they have no copyright issues. These Data Providers have mostly created their own collection by interviewing people with local dialects for example, and have catalogued rights information well. Another partner deals with still in-commerce material, in which case licensing through CMOs is convenient. Secondly, several of the Data Providers have issues with the Moral and Ethical Rights in their material, which we will discuss in more detail in Section 5 *Moral and Ethical rights.*

> *"We generally have no copyright issues. Our depositors are the copyright holders and remain so after deposit. They decide on the access conditions. Not all recordings are publicly accessible, but the ones that are not will not be made part of Europeana Sounds."*

Paul Trilsbeek, The Language Archive, Max Planck Institute for Psycholinguistics

3 OUT-OF-COMMERCE WORKS

3.1 What are out-of-commerce works?

Out-of-commerce works are works that are still protected by copyright but are no longer commercially available because the authors and publishers have decided neither to publish new editions nor to sell copies through the customary channels of commerce[3]. In the past, works such as books were referred to as being either 'in-print' or 'out-of-print'. Today, with the advent of electronic channels of commerce, the term 'out-of-commerce' is used (with electronic publishing a book will be considered 'in commerce', even if only available in electronic form).

Because the works are still protected by copyright, an institution cannot make out-of-commerce works available without permission from the rights holders, who are sometimes difficult to trace, and may not have an economic incentive for licensing. We asked the Europeana Sounds partners questions that pointed at finding out how big the issue of out-of-commerce works is within the Europeana Sounds project, and asked about their experiences of trying to, or succeeding in making them available.

3.2 The problem quantified

Of our data providing partners, the estimated number of out-of-commerce works in their collections varies greatly. Some, such as Sabhal Mòr Ostaig, do not carry any Digital Objects that can be classified as out-of-commerce, since their collection was never commercially available. Another partner noted that they have approximately one million recordings that can be classified as out-of-commerce, or about 30% of their collection of 6 million recordings. When explaining their reasoning, the Deutsche Nationalbibliothek (DNB) noted: "We cannot give an estimate, but we have about one million records of different ages (from CDs to vinyl). We have digitised less than one percent of them."

As we have seen in the previous chapter, potential copyright issues are a big factor in choosing which analogue recordings to digitise. Most partners have chosen to submit Public Domain works to Europeana Sounds, and their out-of-commerce works are therefore never taken into consideration. The DNB specified for their audio-visual collection: "We haven't really researched it, but we can estimate that approximately two-thirds of our audio-visual collection could be considered out-of-commerce works. Only some of those have been digitised, not more than one percent."

> "A very small part of our planned contribution to Europeana Sounds is Out-of-Commerce works. We have decided to try to focus as much as possible on works that are public domain in order to avoid the problems of getting permission from the right holders."

> Eva Fønss-Jørgensen, Statsbiblioteket

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[3] Definition based on out-of-commerce works memorandum of understanding:
http://ec.europa.eu/internal_market/copyright/out-of-commerce/index_en.htm

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EC-GA 620591

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15 / 24

The number of out-of commerce works that Data Providers will submit to Europeana Sounds will total 102,600 Digital Objects.

3.3 The importance of out-of-commerce works

However, how important are those out-of-commerce works to the collections of our Europeana Sounds partners? When asked, the reactions ranged from medium importance ('3 on a scale of 1-5') to concerns about preserving national heritage, where important composers and performers may be lost to history without the ability to make them available and regret that due to time and financial restraints these works cannot be made more available:

> *"Out-of-commerce works form a very important part of our collection, as they belong to our core collection of Latvian national heritage. Even those works that are not part of national heritage are still important for research and education, as well as leisure. We consider it very important to make those works available, as our function as a National Library is both to preserve national heritage and make sure they can be accessed and used. In case of the out-of-commerce works it is not possible, as it is often impossible to locate copyright owners to obtain their permission."*

Uldis Zarins, National Library of Latvia

> *"Those 400 objects that will be provided to the Europeana Sounds project belong in a collection of digitised vinyl discs, which are no longer available in customary channels of commerce, and have never been issued as CDs. They represent the artistic work of the most significant Greek composers and performers, which is definitely a major part of our country's musical heritage. Our Library, being the major music library of Greece (and actually one of the few music libraries Greece has) is committed to preserving our musical heritage and making it available to all Greeks and of course everyone interested in Greek music. The same applies to all our other out-of-commerce works."*

Valia Vraka, Music Library of Greece

> *"The majority of Digital Objects cannot be made accessible for global use at the moment, because the only rights statement that would allow us to do so is the Public Domain Mark. Rights clearance for Public Domain is time- and resource-consuming (same with the Orphan Work status), therefore we would require a solution to license out-of-commerce material in order to make more content available unrestrictedly. The Deutsche Nationalbibliothek is the legal deposit for Germany and consequently has a legal obligation to make all works available to the general public."*

Kathrin Jockel, Deutsche Nationalbibliothek

Out of all our Europeana Sounds Data Providers, 35% have already made some out-of-commerce works available online. When asked for which purpose they made them available, and how,

Statsbiblioteket, Denmark, stated that they have an Extended Collective Licensing Agreement covering their uses; however use is only permitted within Denmark. Also, they stated: "The material was demanded by users. It was possible to make an agreement within our financial limits."

Another method for making the out-of-commerce works available was to try to contact the rights holders directly - which was the method the British Library used for their Decca record label collection:

> *"We consulted via ethnomusicology and African music email lists (to include people who have in-depth knowledge of the music scene in the relevant countries and potentially contacts with artists and/or their families). And followed any leads by email."*

Richard Ranft, British Library

3.4   Registration of out-of-commerce works

In order to get licences for out-of-commerce works we need to be able to determine precisely what is an out-of-commerce work. While some Data Providers refer to their national legislation for a definition, others have defined in-house criteria. In total, 59% state that they have no criteria defined as an institution, 35% say that they do have criteria defined and 6% say that they do but these criteria are not always applied. However, only 12% of our Data Providers state that they register the out-of-commerce status within their Content Management System.

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17 / 24

4   DOMAIN CONSTRAINED WORKS
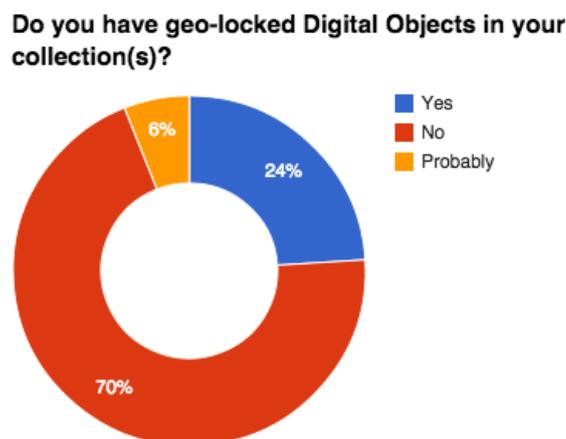
4.1   What are domain constrained works?

The term geo-locked refers to copyright protected material that has been made available for online access, but only for a specific territory. Since Europeana is intended for worldwide use, it is important that the collections are cleared for publication worldwide. Therefore Europeana does not accept geo-locked material. Possible solutions for this issue include having cross-territorial licences for the material organised by collective rights management organisations, or re-visiting individual rights holders for permission.

The questions below were aimed at finding out how large the problem of geo-locked works is within the Europeana Sounds project, and gathering experiences of making them available.

4.2   The problem quantified

Geo-locking seems to be a smaller problem for the Europeana Sounds Data Providers, as opposed to the out-of-commerce barrier. As you can see in the chart below, 70% state that they do not have geo-locked Digital Objects in their collection, either already published or not.

Figure 1: Geo-locked Digital Objects

When asked how many geo-locked Digital Objects they did have, we can add the number up to 600,600 for all Data Providers. So while fewer Data Providers have this issue than the out-of-commerce issue, the audio collection of the Statsbiblioteket in Denmark is considerable and locked due to the specific ECL-agreements they made.

This is not surprising since Denmark is one of the few member states that has the ability to use an Extended Collective Licensing scheme, as well as the UK, which implemented the legislation fairly

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EC-GA 620591

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18 / 24

recently. Please refer to this Wikipedia article [REF 4] for updates on Collective Licensing. So while not many of our Data Providers experience this barrier, it is a problem that is likely to grow over the next few years, and is best to be tackled now. While Extended Collective Licensing is a big step forward for cultural heritage institutions that were unable to provide online access to their collection before, it creates a big barrier when discussing access on an international scale.

4.3 The importance of domain constrained works

Since very few Data Providers experience the geo-locked issue, they do not rate the importance of domain-constraint very highly in relation to their collections: "In general, we do not experience many problems with geo-locked works" and "Not applicable, if the item is on our website it is available worldwide."
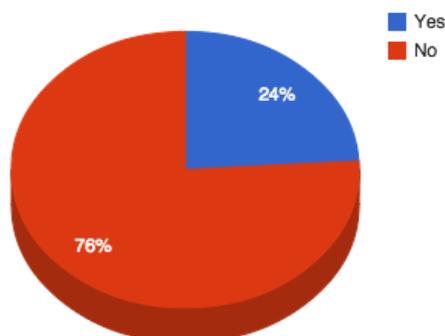
However, the act of geo-locking can open an institution up to criticism for blocking specific access. As the British Library noted: "They are important in the sense that we publicly (and not without criticism) block access to some cultural heritage, particularly to users in the USA, the largest internet community, yet one that has very long copyright duration."

4.4 Registration of domain constrained works

All our Data Providers who state that they have geo-locked works register this in their Content Management System. These are the countries of Austria, the UK, Ireland and Denmark. The information they manage in their Content Management System ranges from the specifics of the Extended Licensing Agreement to the region codes of the DVDs the institution makes. Another method used is naming all possible distribution territories in a 'positive-list' of all countries where distribution is allowed without limitation. A restricted country would be taken out of the positive list for the item that is concerned.

Figure 2: Digital Object registration

Do you register if a Digital Object is geo-locked in your management system?

- Yes
- No

24%

76%

5   MORAL AND ETHICAL RIGHTS

Another barrier experienced by Data Providers is moral and ethical rights. These usually stand apart from copyright issues, as they exist even after copyright protection has expired and the works become part of the Public Domain. Despite moral and ethical rights not being the focus of WP3, several Data Providers have expressed interest in and concern about this issue and it will therefore be addressed in this section.

5.1   What are moral and ethical rights?

Moral and ethical rights often refer to the rights and interests in cultural heritage, including traditional music and other creative materials, which may, under national, customary and other laws, reside with the traditional custodians of such materials. An example of situations where moral and ethical rights might be in play is in recordings of religious ceremonies or potentially damaging testimonies by living people. A definition of this type of issue has been written together with WIPO, and recommendations provided that prior consent is necessary before using (part of) such material for commercial purposes, regardless of copyright status. See for example the Legal and Ethical information section [REF 5] on the British Library website.

Moral and ethical rights discussed here should not be confused with the moral rights also associated with copyright law. These rights are confirmed in the Berne Convention [REF 6]:

> "Independent of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, modification of, or other derogatory action in relation to the said work, which would be prejudicial to the author's honour or reputation."

While similar, the level of protection of these moral rights is dependent on the territory in which you would like to assert them. Traditionally they are more easily asserted in civil law countries (e.g. France), as opposed to common law countries (e.g. UK). The WIPO guidelines are very much written with a global application in mind, and therefore should be seen as sitting next to any potential moral rights protection in national copyright law.

5.2   Review of Case Studies

Several institutions have already tackled the issue of moral and ethical rights in their material, and have provided clear guidelines on their websites. After reviewing several examples, we can identify several elements that transcend the individual approaches, and can be distilled as best practice.

5.2.1   Statement of purpose

Often the cultural heritage institutions give a clear reason why the material has been digitised. For example [REF 5] the British Library:

"The British Library has digitised these collections of recordings and made them available purely for the purposes of safeguarding them and for making them available for non-commercial research, study and private enjoyment."

5.2.2 Legal basis of claim

A second interesting point that several of these case studies made in their user guidelines, is that the copyright status of the work is not considered to be the primary motivation in deciding to make objects available for (re)use. For example, the Qatar Digital Library website [REF 7] includes this statement:

"While the contributors to Qatar Digital Library, may be the owner of intellectual property in the materials themselves or the works may be in the public domain, the Qatar Digital Library recognises that broader rights and interests […] reside with the traditional custodians of such materials."

5.2.3 Contact possibilities for communities

The third common denominator is the opportunities for contact. While the cultural heritage institutions do their best to preserve the material and try not to change the context of the material, it is always possible that mistakes were made or things were not taken into consideration. This is why an e-mail address or phone number is advised, to give local communities the opportunity to contact the institution. This way both parties can open the conversation on resolving the issue amicably through discussion.

5.3 *Preliminary recommendations*

Given the sensitivity of the material several of the Europeana Sounds partners are aiming to make available through our project, it is important to provide them with the tools to make moral and ethical rights known to the end-users of the Europeana Platform (and by extension their own portals). As the Europeana Rights Statements [REF 8] refer to the copyright status of a Digital Object, it would not be a solution to place a 'no-reuse' statement on all the material, if this is not the case under copyright law. This would also limit potentially interesting scholarly re-use of the objects, which is not the aim of the moral and ethical rights limitation for re-use. Therefore, we propose the three following recommendations:

1. Europeana starts a task force that aims to solve this specific issue, including the audio-domain but also including representatives from other cultural domains and projects related to making Digital Objects available. This could include Europeana Photography, European Film Gateway, EUscreenXL and several others.
   a. Aims for the task force could include:
      i. Re-evaluating the usage guidelines for re-use of public domain material [REF 9] to be in line with the UNESCO guidelines.

ii. Discussion on whether re-use guidelines for copyright-protected material should be displayed at an individual object level

2. Europeana Sounds Data Providers provide clear guidelines on their portals for end-users on how to use protected material that have moral and ethical rights associated with them. If this contradicts the rights statement provided to Europeana, clearly state that these rights are separate from copyright protection.

3. Europeana Sounds Data Providers carefully (re)consider the risks associated with making sensitive material available online, given that the control of the re-use of material is limited, despite the guidelines provided.

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22 / 24

6 NEXT STEPS

This summary report on barriers to online access to out-of-commerce works and domain constrained audio works will form the basis of the next part of our work, namely the rights holder consultation. Our subcontractor chosen by GESAC [REF 10] will delve into the issues discussed above and form clear guidelines for our Data Providers to make more objects available online. Other rights holder organisations such as IFPI [REF 11], IMPALA [REF 12], and ICMP [REF 13] will reflect on this research and it will be validated during a stakeholder workshop in Brussels in March of 2015. The official report will be presented in April as *D3.3 Report from stakeholder workshop including the reactions from right holders*.

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23 / 24

7 REFERENCES

REF 1	EC-GA including Annexe I ("Description of Work") http://pro.europeana.eu/documents/2011409/8d0e9833-4608-494e-af77-681e68f8a8c8
REF 2	*D3.1 Guidelines for contributing audio content to Europeana* http://pro.europeana.eu/documents/2011409/b4f9281a-b72b-400f-94c8-bedfeae2fbb6
REF 3	Survey on barriers to online access https://docs.google.com/forms/d/1pPgbhQTZy315H9Tz6fWSmvVPSB3uG5wK_nz4hDy-pm8/viewform?pli=1
REF 4	Extended collective licensing https://en.wikipedia.org/wiki/Extended_collective_licensing
REF 5	British Library Sounds – Legal and ethical usage http://sounds.bl.uk/Information/Legal-And-Ethical-Usage
REF 6	Berne Convention for the Protection of Literary and Artistic Works http://en.wikipedia.org/wiki/Berne_Convention
REF 7	Qatar Digital Library http://www.qdl.qa/en
REF 8	Europeana Available Rights Statements http://pro.europeana.eu/available-rights-statements
REF 9	Europeana Usage Guidelines for public domain works http://www.europeana.eu/portal/rights/pd-usage-guide.html
REF 10	GESAC http://www.authorsocieties.eu/
REF 11	International Federation of the Phonographic Industry (IFPI) http://www.ifpi.org/
REF 12	Independent Music Companies Association (IMPALA) http://www.impalamusic.org/
REF 13	International Confederation of Music Publishers (ICMP) http://www.icmp-ciem.org/