



# EUROPEANA SOUNDS

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## MS2 Rights Labelling Guidelines

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### Abstract

This document provides a general overview of Intellectual Property Rights in audio-material, as well as discussing the available rights statements in the Europeana Licensing Framework. It also considers the issue of quality of the digital objects made available through europeana.eu.

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	

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## II. REVISIONS

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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
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
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 content-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>.

## 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: RIGHTS LABELLING GUIDELINES

- All metadata will be licensed under CC0.
- All digital objects must have a rights label, one of thirteen, from the perspective of the end user.
- Intellectual property can be stacked, so ensure all levels of protection are covered in your choice of rights statement.
- All digital objects that are in the public domain must be labelled as such.
- You can only license material for which you are the rights holder or have explicit permission from the rights holder to license the material.
- We strive towards reuse of our culture, which is why we aim to use the rights statements of Public Domain, CC0, CC-BY and CC-BY-SA as much as we can.
- For optimal reuse please use the recommended rights statement and digital quality applicable to re-use.

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## 1 INTRODUCTION

In this document we provide rights labelling guidelines for integrating audio content into Europeana. This document is based on the current status of the Europeana Licensing Framework and will be revised and updated following the work of WP3, including the results of the rights survey and the content providers workshop in M5 (June 2014).

This document is meant to give an overview of rights guidelines surrounding audio material. It is in no way intended as a complete set of IPR related issues. When in doubt about making decisions concerning rights, please contact your institutions' legal department and/or consult with the IPR workpackage (for Europeana Sounds WP3, mail Lisette Kalshoven [lk@kl.nl](mailto:lk@kl.nl)).

## 2 BACKGROUND

Correct rights labelling is essential for the use and reuse of our shared cultural heritage. This is why Europeana has developed the [Data Exchange Agreement<sup>1</sup>](#) which all partners of the Europeana Sounds project sign. It establishes two main rules relating to the intellectual property rights (IPR) in the metadata and content delivered to Europeana:

- All metadata provided to Europeana will be published by Europeana as open data under the terms of the Creative Commons Zero Public Domain Dedication (CC0).
- Each digital object (and the associated preview) that is available via Europeana needs to carry a rights label that describes its copyright status (see 'Rights Labelling' below). If an object is in the public domain, it must be labelled as being in the public domain.

This practice ensures that the end users of Europeana know where they legally stand when they want to access and/or reuse the collections discoverable through Europeana. Please refer to the [pro.europeana.eu](http://pro.europeana.eu) page for more detailed information on the DEA.

In Europeana Sounds the main part of the collections ingested will consist of audio material, supported by documents, sheet music, photographs of performers and musical instruments. These types of objects are covered by different types of intellectual property rights (IPR), the most important one being copyright. In Section 3 we will discuss the types of IPR that may apply to the collections at hand and explain broadly when what type of IPR applies.

In Section 4 we will briefly run through the available rights statements in the Europeana Licensing Framework, in context with audio material. These are the options you as a content provider are able to choose from when labelling your individual items in preparation for ingestion into Europeana. Lastly we will explain the content-reuse framework, a set of quality guidelines that enables possible reuse of your material.

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<sup>1</sup> <http://pro.europeana.eu/documents/900548/380f8794-6db3-45de-acf4-3d5721138d26>



## 3 INTELLECTUAL PROPERTY

“Public domain is the rule, copyright is the exception”. This statement from the Public Domain Manifesto might seem surprising, but all cultural works are in the public domain, except for the limited time period when they are protected by Intellectual Property Rights. Works that are in the public domain can be used and re-used as seen fit by the end user. This is the basis upon which we allow our culture to grow and evolve.

Intellectual property rights (IPR) are intended to give the creator of a work an exclusive right to exploit (copy, spread, publish, use, re-use) his or her work for a limited period of time. The IPR that we will mostly likely come across in our work in Europeana Sounds include copyright, related rights and database rights. These rights can be stacked. That is to say that one digital object you want to show on Europeana can be protected by multiple types of IPR, held by multiple creators.

Although the European Union has been harmonising national copyright laws in the past decades, it is still important to check your national laws to see whether the same guidelines in this document apply to your situation.

### 3.1 Copyright

Copyright is an exclusive and assignable right that exists in creative works that have enough originality (individual character) to warrant such a right. Copyright exists in literary and artistic works in the literary, scientific and artistic domains. The type of expression makes no difference in the protection, and the right is given automatically to the creator at the creation of the work. Therefore a quick sketch on a napkin can have the same amount of protection as a work made by a renowned author, if they both have originality.

Copyright protection has a time limit: in general this is 70 years after the death of the creator.<sup>2</sup> Also, when the author is not a natural person (e.g. an institution) the term of protection is 70 years after first publication. This is also the case for anonymous works.<sup>3</sup> When copyright protection has ended a work enters the Public Domain.

As stated, not everything warrants copyright protection. The most notable exceptions are facts and ideas. The idea of a novel is not protected unless you have written it down in an original enough manner. Even then, the way it is written down is protected, not the idea itself. Also, a phrase like ‘grass is green’ is not protected, as it is a fact. Things that are based in nature are also not copyright

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<sup>2</sup> In Spain the term of protection is death plus eighty years

<sup>3</sup> Clarification: an anonymous work is not the same as an Orphan Work, it is anonymous when it is published as ‘Anonymous’ or an equivalent.

protected. For example a flower is not copyright protected, because it was created by nature. However, an original recording or photograph of an object found in nature is protected for a period of time. This protection is guaranteed by the Related Rights, which will be discussed below.

### **3.2 Related Rights**

Related rights refers to a group of rights that seem very similar to copyright, but warrant a different term of protection. Related Rights are given to performers, phonogram producers, sound recordists, film producers and broadcasters of works. They regulate the right of fixation, reproduction, distribution and broadcasting and communication to the public.

Related rights are very relevant to audio-material. When determining the rights status of audio-material there is a difference between the composition, performance and recording (phonogram) of a work. If the composition is in the Public Domain, it does not necessarily mean that the digital object is as well, as it may be protected by related rights (performance rights and phonogram rights).

The current period of protection is not clear within the European Union. Directive 2011/77/EU, should have been implemented into national laws in 2013, and states that if the phonogram is made available to the public within 50 years of creation, the protection period is 70 years. The producer of the phonogram would in that case also get 70 years of protection. When the phonogram has not been made available within the time period, the term of protection is 50 years. However, there are several cases of national laws in to which related rights have not yet been implemented. Before this directive related rights meant 50 years of protection after the initial performance, broadcast or fixation.

For example, given the current situation of protection: the sheet music Bach produced is in the Public Domain as Bach has been dead for more than 70 years. A digital reproduction of the music sheets therefore should be labelled Public Domain. However, a performance of the same sheet music recorded and published in 1980 is still protected by related rights. The musicians performing the music have rights and the recording itself is also protected as it is a fixation of that performance. If the recording had been made in 1930 for instance, it would have been in the Public Domain.

So combining copyright and related rights, an audio Compact Disc can have the following forms of IPR (not including any artwork that may be on the CD-casing):

- Authors' rights of the composer of the music
- Authors' rights of the lyricist (text writer)
- Performers' rights of the musicians
- Producers' rights of the person or corporation that made the recording

### **3.3 Database Rights**

The last rights we will discuss here are database rights, a strictly European phenomenon. These rights are not given to individual objects, but only to a certain type of collection of objects. As such they are not relevant when discussing the rights statements of digital objects.

A database is defined as "a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means." The protection for database rights is 15 years after creation, though another 15 years can be added after every substantial investment in time, effort and/or money. Database rights are something to keep in mind when you receive digital sound archives from another institution, either by purchasing or being endowed the material, as the way the archive is structured could be protected by Database rights. Ensure that you get both the material and the rights.

### **3.4 Digitisation and Publication**

When one or more of the rights discussed above applies to a work you have in your collection, take heed before publishing, reproducing or otherwise using the materials. Though your institution may have the physical object in its possession, this does not necessarily mean that you also hold the intellectual property rights. Hopefully your institution has records of the types of rights you obtained on receiving the objects, either through purchase, endowment, or through it being created by employees of your institution.

If you do not have the rights to use an object as you want, you need to get permission from the rights holder(s). In order to get this permission, your institution can use your own Rights Clearance Policy.

Finally, a note about the creation of new rights in digitisation. As a general rule digitisation of objects (e.g. scanning in pages of books, making reproductions of paintings) does not warrant new protection. For example, if you want to digitise sheet music of Bach you can do this without permission because it is in the Public Domain. The scanned, digital object you made is still in the public domain, because it is a reproduction of the same object. For more information on the Public Domain, please refer to the [Europeana Public Domain Charter<sup>4</sup>](#).

You can use the Public Domain Calculator to examine the Public Domain status of examined material in the selected jurisdiction. You can re-do the calculator for the different types of IPR-protection.

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<sup>4</sup> [http://pro.europeana.eu/c/document\\_library/get\\_file?uuid=d542819d-d169-4240-9247-f96749113eaa&groupId=10602](http://pro.europeana.eu/c/document_library/get_file?uuid=d542819d-d169-4240-9247-f96749113eaa&groupId=10602)

## 4 AVAILABLE RIGHTS STATEMENTS

At the moment there are 13 available rights statements. Please refer to the available rights statements page of the [Europeana pro website](#)<sup>5</sup> for the most up-to-date and detailed information.

Within the Europeana Sounds project, whenever possible, we want to promote reuse of the material we are sharing through Europeana, because we want to create new ways for people to engage with their cultural history, whether it's for work, learning or pleasure. We have a project target of 90,000 items available for reuse, as a minimum. Please therefore apply the most open rights statement, within with your licensing policies. Please note that only the statements Public Domain, CC0, CC-BY and CC-BY-SA are in agreement with the open standard for reuse as defined in the [Europeana Glossary](#)<sup>6</sup>.

### 4.1.1 The Public Domain Mark (PDM)

All content that is in the public domain must 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](#)<sup>7</sup>. Works that are labelled as being in the public domain can be used by anyone without any restrictions. When showing the Public Domain Mark, Europeana will also link to [Europeana Usage Guidelines](#)<sup>8</sup> for public domain works.

### 4.1.2 Out of copyright - non-commercial reuse (OOC-NC)

This rights statement is intended for use with digital representations of public domain objects that have been digitised in a public-private partnership wherein the partners have agreed to contractual limitations to take reasonable steps to limit or discourage commercial reuses.

### 4.1.3 CC0 1.0 Universal Public Domain Dedication (CC0)

If a rights holder wants to waive all the rights in a digital object, they can apply a [CC0](#)<sup>9</sup> waiver to the works in question. By applying this waiver, all rights in the content are waived and the objects can be used by anyone without any restrictions. CC0 can only be applied with the authority of the rights holder.

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<sup>5</sup> <http://pro.europeana.eu/available-rights-statements>

<sup>6</sup> <http://pro.europeana.eu/glossary>

<sup>7</sup> <http://creativecommons.org/publicdomain/mark/1.0/>

<sup>8</sup> <http://pro.europeana.eu/usage-guidelines>

<sup>9</sup> <http://creativecommons.org/publicdomain/zero/1.0/>

## 4.2 Creative Commons Licenses

The Creative Commons (CC) licences provide options for copyright holders to allow others to reuse digitised objects under certain conditions. The CC licences can only be applied with permission from the rights holder.

The licenses are created out of four building blocks which give users certain permissions to reuse the work. These consists out of BY (user must provide attribution), SA (the user must re-share under the same conditions), NC (the work may not be reused for commercial purposes) and ND (the user is not allowed to create derivative works).

The following six CC licenses can be used as rights statements for digital objects in Europeana. They are represented in a scale from most open to closed. Please refer to the [Creative Commons website<sup>10</sup>](#) for more information on the licenses and the full legal codes.

### 4.2.1 Creative Commons – Attribution (BY)

This licence lets others distribute, remix, tweak, and build upon your work, even commercially, as long as they credit you for the original creation. This is the most accommodating of the licenses offered and is recommended to allow for maximum dissemination and use of licensed materials.

### 4.2.2 Creative Commons – Attribution, ShareAlike (BY-SA)

This licence lets others remix, tweak, and build upon your work even for commercial purposes, as long as they credit you and licence their new creations under the identical terms. This licence is often compared to 'copyleft', free and open source software licences. All new works based on yours will carry the same licence, so any derivatives will also allow commercial use. This is the licence used by Wikipedia, and is recommended for materials that would benefit from incorporating content from Wikipedia and similarly licensed projects.

### 4.2.3 Creative Commons – Attribution, No Derivatives (BY-ND)

This licence allows for redistribution, commercial and non-commercial, as long as it is passed along unchanged and in whole form, with credit to you.

### 4.2.4 Creative Commons – Attribution, Non-Commercial (BY-NC)

This licence lets others remix, tweak, and build upon your work non-commercially, and although their new works must also acknowledge you and be non-commercial, they don't have to licence their derivative works on the same terms.

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<sup>10</sup> <http://www.creativecommons.org/>

#### **4.2.5 Creative Commons - Attribution, Non-Commercial, ShareAlike (BY-NC-SA)**

This licence lets others remix, tweak, and build upon your work non-commercially, as long as they credit you and licence their new creations under the identical terms.

#### **4.2.6 Creative Commons - Attribution, Non-Commercial, No Derivatives (BY-NC-ND)**

This licence is the most restrictive of the six main licences, only allowing others to download your works and share them with others as long as they credit you, but the works must not be changed in any way or used commercially.

### **4.3 *Europeana Rights Reserved Statements (Access only - no reuse)***

For data providers who do not want to or are unable to allow object reuse, Europeana has developed four standard rights statements. These statements express the conditions under which objects can be accessed on the data provider's website. Use of these statements means the data provider is reserving the rights in the digital object and that the object may not be used without additional permissions.

#### **4.3.1 Free access - no reuse**

This rights statement is applicable when users have free (as in gratis), direct and full access to the digitised object on the data provider's website.

#### **4.3.2 Paid access - no reuse**

This rights statement is applicable when users need to pay data providers to gain access to the digitised work on the data provider's website. This may be the case if only a preview is accessible through the data provider's portal, and registration and payment is required to gain access to the digitised object itself. In this case, the link from Europeana should give access to the metadata and (ideally) a low-resolution preview. Europeana will not link directly to a payment page.

#### **4.3.3 Orphan work**

The Orphan works statement can be applied to objects that have been identified as orphan works in the country of first publication and in line with the requirements of the national law implementing Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works.

#### **4.3.4 Unknown**

The Unknown rights statement can be applied to objects for which the Data Provider does not have conclusive information pertaining to the rights status of the digital object. This is intended for

objects where a diligent search has not taken place (and which as a result cannot be labelled as orphan works) but which have nevertheless been submitted to Europeana. This statement should not be used without prior consultation with the Europeana ingestion team.

## 5 REUSE OF DIGITAL OBJECTS

Part of the mission of Europeana Sounds is to significantly increase the amount of digital audio and digital audio-related objects that are available for reuse. Though there might be IPR or other restrictions that make this difficult, we strive to meet the criteria being developed by Europeana on this topic. The objects that meet these criteria can be easily reused by the creative industry, researchers and other end-users of our shared cultural history. Though not implemented yet, the framework below will allow Europeana users to filter out digital objects that do not meet the requirements established by the framework. The content reuse framework establishes the following criteria on the basis of rights and quality:

1. The metadata for the Cultural Heritage Object contains at least one **direct link** to a Digital Object itself (as opposed to a page where the object is available).
2. The Digital Object is provided with a **rights statement that allows reuse** of the object (as opposed to rights statements that only allow access).
3. The Digital Object meets the following minimum technical quality requirements:
  - **Audio:** sample rate of 44.1 kHz, 16 bits; file types: MP3 and all lossless file formats like FLAC, WAV and APE.
  - **Video:** resolution of 704 × 576 (576p); file types: MP4, mov or WEBM.
  - **Images:** image resolution of 2,048 × 1,536 pixels; file types: jpg, png and tiff; no visible watermarks.
  - **Texts:** full-text searchable; file types: pdf, txt, epub, xml or rtf.

Digital objects that meet all three criteria of the content reuse framework will be available via the framework in addition to Europeana and the Europeana API. All other objects will only be available via Europeana and the Europeana API.