

Annex 7

i2010 DIGITAL LIBRARIES COPYRIGHT SUBGROUP'S RECOMMENDED KEY PRINCIPLES FOR RIGHTS CLEARANCE CENTRES AND DATABASES FOR OUT-OF-PRINT WORKS

PREFACE

The European Commission has made digital libraries a key aspect of i2010 as expressed *inter alia* in its Communication *i2010: Digital Libraries* of 30 September 2005. The Commission's Recommendation of 24 August, approved by the Council in November 2006 focuses on digital preservation, orphan works and out-of-print works. Text-based, visual, musical and audiovisual materials include works which the pertinent rightholder (author or publisher/producer) may no longer wish to commercialise. Digitisation and online accessibility to such works could be facilitated.

A High Level Expert Group (HLG) was appointed to advise the Commission on implementation issues regarding the European Digital Libraries initiative. To develop solutions on key copyright issues, the HLG established a Copyright Subgroup which worked out a set of High Level Principles¹ that were endorsed by the HLG at its meeting 17 October, 2006.

As a part of the solution on copyright issues, the Copyright Subgroup recommended rights clearance centres and dedicated databases concerning information on out-of-print works taking into account that any mechanism intended to facilitate the European Digital Libraries (EDL) should in principle be established or promoted on a voluntary basis. The High Level Principles are fundamental for the establishment of Rights Clearance Centres (RCC) and Databases (DB) in relation to the i2010 European Digital Libraries.

Moreover, co-ordination should take place among the various initiatives at national levels and across the European Union, to avoid unnecessary duplication among different initiatives. National RCCs could act as portals and centralised access points for the clearance of rights and be accessible across borders, supported by DBs and registries. Interlinking national databases would establish a European centralised access point and a European wide solution. It should take account of the variety of existing and future information resources available. Aiming to facilitate the digitisation and making available out-of-print works the Copyright Subgroup developed a Model Licence. It was endorsed by the HLG at its meeting 18 April, 2007 and is available on the European Commission's web page².

OUT-OF-PRINT WORKS - RIGHTS AND PROCEDURES

There are various reasons why a work is declared to be no longer commercially available/out of print³. Preamble G of the out-of-print works Model Licence² recognises that the rightholder may at his/her sole discretion decide whether a work is to be considered in or out of print. At the time of a request by a cultural institution to digitise a work in copyright it may already have been declared by the right holder as being no longer commercially available and "out-of-print", or it may be declared as such as a consequence of the request.

Rights in an out-of-print work depend on the legislation as well as contractual arrangements between the creator and publisher/producer. The legislation of some countries decides that the rights to works which are no longer commercialised or in print revert to the author of the work. Rights may also revert to the author by contract, sometimes depending on the number of copies available or other conditions. Often also publishers/producers hold rights in an out of print/commerce works.

¹ Report on Digital Preservation, Orphan works and Out-of-Print works. Selected Implementation Issues, page 2/3

² http://ec.europa.eu/information_society/newsroom/cf/itemlongdetail.cfm?item_id=3366

³ For audiovisual works « out of commerce », see e.g. Commission Recommendation of 24 August 2006 on the digitisation, and online accessibility of cultural material and digital preservation, Whereas 10 and Recommendation 6b

A work that is declared by the rightholder to be out of print/no longer commercially available may already exist in (an) electronic format(s)⁴. Where this is not the case, the rightholder may wish to digitise the work her/himself. Moreover, the rightholder may also wish to authorise directly her/himself the digitisation and/or making available of the out-of-print/commerce work and administer all or some rights in such works directly her/himself or through (an) agent(s). Rightholders or the agent(s) may also on a voluntary basis choose to co-operate in the establishing of a centralised clearance centre and/or make use of an already established one, e.g. a Reproduction Rights Organisation (RRO) for the licensing of the digitisation, making available or the accessing of a work that has been declared as being no longer commercially available/out-of-print.

HIGH LEVEL PURPOSE OF RIGHTS CLEARANCE CENTRES AND DATABASES

The main purpose of Rights Clearance Centres (RCCs) and the Databases (DBs) for out-of-print works is to create nationally convenient, albeit not compulsory centralised access points for the clearance of rights to digitise and make available works that the pertinent rightholders have declared to be no longer commercialised/out of print. These instruments would facilitate the realisation of the European Commission i2010 Digital Libraries initiative. They are therefore intended for use by rightholders and cultural institution for the clearance of rights in respect of such works and represent a part of the out-of-print work solution proposed by the Copyright Subgroup endorsed by the HLG as an alternative to individual licensing directly by rightholders,. When a mandate has been granted by the rightholder to the RCC, this may imply that it is authorised to license the digitisation and/or making available of the out-of-print work or to redirect the request to the rightholder.

The RCCs and DBs represent a combined solution that shall:

1. enable cultural institutions such as libraries, archives and museums to conduct an online search in order to discover whether
 - a. the work has been declared out-of-print and is already registered as available digitally, e.g. from another library which has already sought and obtained permission to digitise the work
 - b. the work has been declared out-of-print and no permission has been granted to make it available online
2. enable cultural institutions such as libraries, archives and museums to proceed from discovery of digitisation status to
 - a. seek permission to digitise the work, either directly from the rightholder(s) or through the procedures established by the centralised Rights Clearance Centre (RCC).
 - b. digitise the work subject to the relevant terms and conditions established, and, when applicable, subsequently make the digitisation accessible to its users on the conditions established in the licensing agreement; or
 - c. seek access to a work that has been digitised and made available digitally from another source, e.g. another national or foreign library, archive or museum, or another authorised user

DEFINITIONS

Database means a network of databases (libraries; publishers; industry sources; Reproduction Rights Organisations (RROs); other authorities (both national and international)) of metadata accessed via national portals.

Rights Clearance Centre (RCC) means a nationally established centralised access point to a network of clearance centres made up of that of the RCC and those of individual authors or publishers and their representatives such as RROs

⁴ In the case of an electronic version the rightholder may decide to offer it on demand or declare not to commercialise it.

Metadata is a relationship that someone claims to exist between two entities, one of which is the referent. (Definition used by Indecs)

GOVERNING PRINCIPLES OF THE DATABASES AND RIGHTS CLEARANCE CENTRES FOR OUT-OF-PRINT WORKS

For rightholders the governing principles are:

- Respect for copyright and related rights, including moral rights of creators and performers of copyrighted works;
- Digitisation and use within the premises of libraries should take place with rightholders' consent or be based on statutory exception;
- Online availability should take place with rightholders' consent;
- Rightholders' consent means in principle rights clearance, which should be based on individual or collective licensing or a combination thereof.

For libraries, archives and museums the governing principles are:

- Respect for copyright and related rights, including moral rights of creators and performers of copyrighted works;
- Legal certainty in their activities;
- Making works available to their users, which means access either within the premises of libraries, archives and museums or online availability;
 - Digitisation of copyright works requires getting permissions to digitise and access the work.

RIGHTS CLEARANCE CENTRE (RCC). KEY PRINCIPLES

1. Policy

- ✚ The RCC shall be based on voluntary participation by the rightholders
- ✚ The use of the RCC shall be voluntary by cultural institutions
- ✚ Rights clearance can be carried out directly from the RCC or as a redirection to the rightholder's own database or other sources authorised by the rightholder to license the digitisation and/or making available of the work, depending on the mandate from the rightholder to the RCC.

2. The Mandate

- ✚ Subject to the mandate from the rightholder, the RCC licenses the digitisation, making available and use of a work on the principle of a voluntary mandate
- ✚ The rightholder shall be at liberty to register metadata on the work with a RCC and, if so, with one or more RCCs

3. Licensing

- ✚ The RCC shall establish a request handling policy which shall include
 - i. Direct licensing including a register of works which the RCC has been authorised to licence
 - ii. Redirecting to individual rightholders
 - iii. Redirecting to rightholder representatives including Collective Management Organisations (CMOs)
 - iv. a list of works for which the RCC has been authorised to redirect
- ✚ The Licensing policies and criteria shall be worked out in co-operation with the pertinent rightholder associations and the collective management organisations in the relevant fields
- ✚ The RCC shall establish and publicise its licensing policy and criteria, including the policy for using the RCC outside its national territory
- ✚ The licensing policy must enable cultural institutions to apply for a licence to digitise and make available an out-of-print work.

4. Licensing Conditions

- ✚ Subject to national legislation, the RCC shall allow rightholders to establish licensing conditions individually
- ✚ The RCC shall establish a set of default conditions which shall apply in the absence of conditions set by the rightholder
- ✚ The default licences shall include stipulations on the moral rights to be observed
- ✚ The default licence shall include the terms on the monitoring and enforcement of the licence conditions
- ✚ The default conditions for out-of-print works shall be based on the Model Licence for out-of-print works developed by the Copyright Subgroup of the i2010 Digital Libraries initiative.

5. Remuneration

- ✚ The RCC pays out to the rightholder all such fees it collects on his/her behalf through such channels as are agreed
- ✚ The RCC will ensure shortest possible period from collection to distribution of remuneration to rightholders

6. Interoperability

- ✚ The RCC shall work out and publicise its policy on integration with individual rights clearance mechanisms
- ✚ The RCC shall establish and publicise a policy on interlinking with other RCCs outside its borders

7. Transparency

- ✚ The RCC will define and publicise “relevant information” to participating rightholders, cultural institutions and other potential licensees
- ✚ What is “relevant information” shall be worked out in co-operation with the pertinent national rightholder associations and the CMOs in the relevant sectors consulting also representatives from the cultural institutions, and include administrative costs
- ✚ The RCC shall ensure that “relevant information” is easy accessible to participating rightholders and cultural institutions
- ✚ The RCC shall keep and make publicly available a register of works on which metadata is available for out-of-print works

DATA BASES (DB). KEY PRINCIPLES

1. Policy

- ✚ The DB shall contain metadata on out-of-print works, not the content/work itself
- ✚ The DB owner may at its sole discretion establish its policy for collecting, storing and making available metadata in the DB
- ✚ The DB owner shall publicise its criteria for
 - linking to other national DBs on metadata
 - storing and/or linking to metadata DBs on out-of-print works outside its national territories
- ✚ Duplication of existing databases/catalogues shall be avoided as far as possible

2. Database

- ✚ The DB shall include metadata, and only metadata on works
- ✚ The DB shall enable the storage of metadata on works on the basis of different types of contractual arrangements
- ✚ Subject to the principles established in this document, especially at 5, the DB owner shall at its own discretion establish technical and other standards as well as the policy for the use of the DB, taking into account that it must facilitate interoperability with other databases
- ✚ The principles for building, including the structuring of the DB, shall start from existing DBs (both private and public)
- ✚ The DB must allow redirection to other relevant DBs both in- and outside its territory
- ✚ The DB shall include the registration of all data relevant to the Model licence on out-of-print works as devised by the i2010 Digital Libraries Copyright subgroup

3. Metadata

- ✚ The DB shall apply a definition of metadata and their values as devised by the Copyright Subgroup in the context of the i2010 Digital Libraries initiative
- ✚ As a minimum the DB shall include metadata describing:
 - works
 - rights
 - manifestation of works
 - meta-metadata (who is declaring what, and when)
- ✚ The DB owner shall establish and publicise
 - criteria for quality control
 - criteria for enriching and updating of metadata
 - criteria for accessing metadata

4. Standards

- ✚ The DB shall use existing standards.
- ✚ The DB shall contribute to the further development of existing international standards rather than looking for own proprietary solutions
- ✚ Standards are required for
 - Identification of works, manifestation of works, parties, and possibly rights, i.e. ISO TC-46, SC-9 for content (in text based: ISBN, ISSN, ISTC, ISAN, ISMN, DOI, ISNI are directly relevant)
 - Metadata and metadata interoperability models
 - Messaging and accessing metadata
- ✚ Standards are referred to:
 - Content (at work and at manifestation of work (publication) level)
 - Rights and right terms
 - Parties
- ✚ The metadata standards will likely be based on the ONIX family of standards

5. Interoperability

- ✚ The DB owner shall make such information available on the structure etc. that is necessary to ensure interoperability with other DBs for out-of-print works
- ✚ The DB must provide a register for out-of-prints for which permission has been granted

26 November, 2007

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