

Minutes

ENDOW PROGRESS MEETING

Milan,

19-20 January 2016.

Participants:

CIPPM: Maurizio Borghi, Marcella Favale.

ASK: Aura Bertoni, Margherita Bordignon, Maria Lillà Montagnani, Giacomo Tagiuri, Laura Zoboli.

IVIR: Lucy Guibault, Simone Schroff, Maarten Zeinstra.

CREATe: Kris Erickson.

DAY 1

• **WPO (CIPPM):**

– **Financial aspects:**

- CIPPM needs a financial statement by the end of January from each group. Maurizio will circulate a draft so as to check that nothing is missing. Lillà proposes to put in touch directly the administrative offices of the various centers.

- An issue has emerged with regard to the contract that IVIR has to sign. Maarten Zeinstra is not employed by the Center and needs to retain rights on the software that will be developed (at least through a CC license).

- Maurizio explains that we are in line with the agenda and that the Milan meeting will be essential to start discussing the main features of the online platform.

• **WP1 (ASK and CIPPM)**

– **Presentation of Preliminary Report on Diligent Search in Three Countries:**

- After summarizing the key objectives of ENdOW in general, and of the preliminary report in particular, Marcella presents her results for the British framework.

- The discussion expands to analyse the parallel regime established in the UK for the commercial licensing of orphan works. The licensing scheme provides for an insurance fund to be established at the IPO as a guarantee against reappearing right-holders. The scheme also expands the list of possible uses for Orphan Works in the UK, which constitutes a major difference with the situation in the other 2 countries. The diligent search requirements of the directive and of the licensing scheme seem to coincide. Different views were expressed by meeting participants on whether the licensing scheme constitutes an exception to copyright or not.

- The Italian and Dutch team present their finding. The implementing legislations of Italy and the Netherlands present less specificity as they simply reproduce the directive without significant innovations.

- The group discusses a few technical/methodological issues having to do with the matrixes on accessibility of sources produced for the three countries. Italy needs to amend its matrix by source in order to rule out repetitions. Marcella explains that she has assigned the value “Not Available” to sources that are too general to be relevant for the purposes of the project (such as general internet search or phonebooks) and hence ruled out those sources from the matrixes. Margherita, instead, for the Italian team, had interpreted the N/A value as meaning that the link to the source could not be accessed for some technical reason. The consensus reached was to adopt Marcella’s interpretation. Sources that are for some reasons not accessible will be labelled as “Non Functioning” possibly explaining why under “further information”. The group agrees with Maurizio and Marcella to drop sources that are too general (such as search engines) from the matrixes (and the statistics) as they won’t be used in the development of the platform. It is further noted that there is an asymmetry between the types of works identified in the various countries (Britain distinguishes many sources and has a long list while Italy and the Netherlands don’t). Maurizio explains that this is not a problem, as the platform will use different flowcharts for different countries. However, he suggests that, for the sake of clarity, it would be better to simplify the British version in the final report.

- Maarten notes that in the graphs it does not make sense to present data in percentage; they should be presented in absolute terms. At any rate, graphs should be made readable and uniform. The participants agree that the graphs as elaborated by the Dutch team were easier to read and would serve as the standard for the other groups.

- The group discusses the academic relevance that the report could have and possible outlets for publication. Maurizio suggests that some

conclusions can already be drawn particularly with regard to the limited accessibility of the sources. The report could easily be turned into a blog post, translated and published on IPKAT, Mediablog, etc. For this purpose it would be good to find a more catchy title.

- The deadline decided to have the report ready is the end of January.
- After the break, plans are discussed on the extension of diligent search requirements and sources to 15 other countries, members of the Heritage Plus network (Cyprus, Belgium, France, Lithuania, Norway, Czech Republic, Denmark, Slovakia, Ireland, Lithuania, Holland, Poland, Portugal, Romania, Spain, Sweden). The plan is to proceed through questionnaires to be answered by one person (or team) in each country. Funds are available for this so that each respondent can be remunerated.
- Maurizio explains that the questionnaires will focus on the specificity of the implementing legislation in each country. The legal part should be as simple as possible, but respondents will be asked to provide an unofficial translation of the legislation. Furthermore, respondents will be asked to compile a matrix with the major sources that can be used for diligent search on the model of those produced for UK, Italy and the Netherlands.
- Discussion deepens into possible questions to be included in the questionnaire: these could touch upon the presence of alternative schemes in place in each country; the presence of a public domain register; presence of a list of mandatory sources in the law; presence of a legal deposit; etc.
- The group discusses who should be asked to answer these questionnaires. Possibilities are national intellectual property offices, collecting societies, etc. But final consensus is that the best option is to ask scholars to be identified by using the academic networks of the various participants.
- The following division of labor is decided: Marcella will be in charge of France, Belgium and Portugal; Maurizio of Slovakia, Ireland, Denmark, Cyprus, Greece, Lithuania, Luxemburg and Spain; Lucy of the Czech Republic, Norway, Poland, Estonia, Austria and Germany (Simone); the Bocconi team will contact scholars for Romania and Sweden.
- Lillà proposes a timeline for this phase of the research: a draft questionnaire will be produced by the end of February and circulated among the various groups for feedback; a final version will be set up by the end of March and sent to the identified respondents. The first

deadline to answer will be July 1st; this would give us the time to send back further questions to be answered by the end of September.

DAY 2

WP2 (Ivir)

– Flowcharts

- Simone guides the group through a sample flowchart for phonograms (picked as an example of medium complexity in terms of rights clearance).
- A few issues are raised with regard to language used and the wording of questions.
- Maurizio clarifies that each question will need to have extended guidelines that explain to users what to do and where to search.
- The group agrees that the flowchart will need to be available in English for all countries, with the option of switching to national languages for a few countries where translation would not be too onerous: France, Italy and the Netherlands.
- Maarten commits to prepare a budget of how much it would cost to provide flowcharts and translate them in the various jurisdictions. He anticipates that the cost of translating a flowchart in a jurisdiction is around 600 euros.
- One methodological issue is raised: users need to be able to save their search up to a point and access it at a later stage or to save partial searches for other users to be picked up at a later stage. Maurizio suggests it would be useful to divide each search into phases and to provide an entrance point and an exit point in every phase. We need flexibility on where to start and where to exit.
- Maurizio raises a few more general issues on the structure of the flowchart: the purpose of an orphan work diligent search is different than that of an out-of-copyright search. We want to discover if a work is available for digitization and not find the right-holder at all costs. This has implications on how some questions are worded. For example, Maurizio suggests we might not need to have a separate question on the existence of heirs, but we might simply ask: “can the author or his/her heirs be identified?”

WP3 (CREATE)

– Gathering Data from Cultural Institutions to Inform and Evaluate EnDOW.

- Kris guides the group through the research that will be conducted in Glasgow (see slides on Basecamp).
- The research plans to gather data through interviews to find out where the costs occur; proportion of orphan works; times needed for a diligent search and cases where crowdsourcing is appropriate and useful. It appears clear that institutions face different costs according to personnel, expertise, etc.

WP4 (all)

– Website

- The group discusses how to structure the website of the project. The website needs to be intended as an access point to the various diligent search sources and not only as a promotional outlet. Simone suggests that CREATE has a very good design. There is a debate on the best name for the website: “diligent search” or “EnDOW”.
- During the meeting Maarten slightly amends the website format to meet the requests of the groups. Two new sections have been added: “news” and “forum”. On the right there will be a section called “EnDOW” with a short presentation of the project.
- In the section “partners” the advisory board is added.
- A new section “Getting Involved” is added.
- The group agrees to use the word “resources” instead of “publications”.

– Networking

- The group agrees to set up an excel file where the various teams will share their contacts for networking purposes.

– Amsterdam Meeting

- The group agrees that the Amsterdam meeting will be divided in three parts: a workshop with experts, a progress meeting on the Milan model and the advisory board.

- It will be a two full days meeting and the dates identified are June 30 (workshop) and July 1 (progress meeting + advisory board).
- Various options are discussed for the content of the workshop. The idea of having a more “policy level” focus is discarded, in favour of a workshop more closely related to the functioning of diligent search.
- Participants will ideally be people who are able to help the work of EnDOW: librarians, archivists, etc. Ideally we need 5 to 7 people. After a roundtable of experts, EnDOW participants will present the state of the art.
- Tentative title of the workshop is: **“orphan works: making sense of diligent search”**

Giacomo Tagiuri
Laura Zoboli