

Enhancing access to 20th Century cultural heritage
through **Distributed Orphan Works** clearance



EnDOW

Funded by: Heritage Plus and EU Commission (JPI Cultural Heritage and Global Change)

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Research backs up the overly burdensome nature of the “Diligent Search” requirement for cultural institutions willing to make use of orphan works.

Legislation on orphan works require that a Diligent Search of potential rightholders is carried out in good faith by consulting appropriate sources. However, the conditions set forth by the law to comply with this requirement pose significant burden to would-be users of orphan works. The analysis conducted by EnDOW researchers in three countries (UK, Italy and Netherlands) reveals that carrying out a Diligent Search may require consultation of an overly high quantity of diverse sources of information. Most importantly, the analysis shows that a sizeable share of these sources is not easily accessible or, even, not accessible at all. In particular, the analysis shows that:

- A total of over 350 different sources have been identified in Italy; over 200 in the UK and almost 90 in the Netherlands.
- A Diligent Search on published books may require consulting up to 32 different databases in the Netherlands, up to 80 in the UK, and up to 131 in Italy.
- Of all the sources to be consulted to conduct a Diligent Search, 70% are freely accessible online in the UK, 56% in Italy and 54% in the Netherlands. This means that, depending on the country, from one third to almost a half of the required sources are not available for free (unrestricted) online access.
- The online availability of sources is the highest for published books (75% in the UK) and the lowest for audiovisual works (only 42% in the Netherlands).
- Guidelines on how to conduct a Diligent Search have been issued only in the UK (by the Intellectual Property Office); no guidance has been provided in Italy and in the Netherlands.

The study suggests a possible solution to this problem that involves soft-law intervention to establish hierarchies among sources for Diligent Search, with a diversification between compulsory and optional sources, depending on their relevance and accessibility. Moreover, the study suggests that a Diligent

Search should be considered to be carried out in good faith also when sources that are not freely accessible online are disregarded.

The Report on “Requirements for Diligent Search in the United Kingdom, the Netherlands, and Italy” is available from the project website: <http://diligentsearch.eu/resources/>

About EnDOW

EnDOW (“Enhancing access to 20th Century cultural heritage through Distributed Orphan Works clearance”) is a collaborative project funded under [Heritage Plus](#), a programme launched by national agencies and the European Commission as part of the Joint Programming Initiative in Cultural Heritage and Global Change. The project is a partnership of four leading European research centres:

- Centre for Intellectual Property Policy & Management (CIPPM), Bournemouth University (project leader)
- CREATE, University of Glasgow
- IViR, University of Amsterdam
- ASK, Bocconi University of Milan.

The main goal of EnDOW is to facilitate the process of right clearance for European cultural institutions engaged in digitization of material contained in their collections. Specifically, EnDOW aims at designing, implementing and testing an efficient and cost-effective online system for determining the “orphan work” status of library, archive and museum material, according to the requirements of the recently implemented [European Directive on orphan works](#). The system will be based on crowd-sourcing certain phases of the process of diligent search of the rightholders, which is key requirement set by the Directive to benefit from the orphan works exception.

More information about EnDOW can be found on the project website: <http://diligentsearch.eu>