

Crowdsourcing diligent search: a solution for the orphan works problem?

Maurizio Borghi

*Centre for Intellectual Property Policy & Management
Bournemouth University*

4th Europeana Licensing Workshop – Luxembourg 26-27 November 2015

The EnDOW project



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

- 3-years collaborative project funded under Heritage Plus, a programme launched by agencies of 18 European countries and the European Commission as part of the Joint Programming Initiative in Cultural Heritage and Global Change (July 2015-June 2018)
- A partnership of four research centres of 3 European Countries

www.cippm.org.uk/endow

CIPPM



ASK
Bocconi

The EnDOW project – Associate Partners (11.2015)



MUSEO NAZIONALE
DELLE ARTI
DEL XXI SECOLO



The orphan works problem: regulatory options

- Limited liability (limitations on monetary and injunctive relief against good faith infringers)
- Permitted / licensed use with 'opt-outs'
- Permitted / licensed use upon unsuccessful 'diligent search' of the rightholder

Alternative (self-regulatory) ways to mass digitization: the Google Books model

- ❑ Reproduction for indexing and search: priority over making available
- ❑ Books may or may not be made available for viewing, but it doesn't really matter...
- ❑ 'Big data' potential

The Google Books model is only marginally affected by the orphan works problem.

The EU orphan works regime – Dir. 2012/28/EU

Subject to review by 29.10.2015 (art. 10) (any news??)

1. Permitted use



Cultural Heritage Institutions (CHI)



related to public-interest missions



no stand-alone photographs

- Limitations as to the user (art. 1), the use (art. 6) and the subject matter
- 'Diligent search' of the rightholder required (art. 3) (mutual recognition, art. 4)
- 'Reappearing authors' entitled to fair compensation (art. 6.5)

2. Specific national solutions – (Rec. 4 / MoU 20.09.2011) – e.g.

- ✓ Hungarian compulsory licence system (Act CXII of 2008)
- ✓ UK IPO licensing scheme (CDPA, s. 116A – ERR Act 2013)
- ✓ ECL (Sweden, DK, Finland, UK) and ECL-type systems for out-of-commerce works (France, Germany, Slovakia)
- ✓ ...

Premised upon diligent search

!! Pending CJEU referral, Case C-301/15 (Soulier and Doke)

Diligent search

- Expensive and time-consuming (est. € 50 to € 150 per item for books; 3.¼ to 6.5 hours per hour of TV/radio broadcasting material*; *6.5M days to clear the rights of all UK orphans*** – other costs? Fair compensation, Art. 6(5)?)
- It can be outsourced (Rec. 13: “MS should be permitted to provide that such diligent search may be carried out by organisations referred to in this Directive or by other organisations.”)
- CHIs are ultimately responsible for DS on items in their collections (Art. 3(1): “...the organization ... shall ensure that a diligent search is carried out in good faith ... by consulting the appropriate sources...etc.”)

* UKIPO, Orphan Works Impact Assessment, 2012

** JISC, Assessment of the scope of OW, 2009

Diligent search – estimated costs

Item	Min	Max	unit
Books ¹	€ 75	€ 190	Per item
TV & Radio Broadcasts ²	3.25 hours	6.5 hours	Per hour of broadcast
Photos (posters) ³	3.5 hours		Per item
Newspapers ⁴	3.5 hours	4 hours	Per issue
Miscellaneous material ⁴	1.0 hour	3.5 hours	Per item

1. US Orphan works report 2006, based on independent submissions
2. UK IPO estimates on the basis of submissions of the BBC and The Federation of Commercial Audio Visual Libraries, FOCAL (Orphan Works Impact Assessment, 2012)
3. UK IPO estimates on the basis of submissions of Welcome Library and War Museum
4. UK IPO estimates based on BBC and British Library submissions

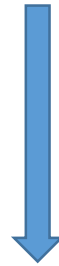
Crowdsourcing

“Online, distributed problem-solving and production model that leverages the collective intelligence of online communities to serve specific organizational goals” (Brabham, 2013)

- Successfully experimented for ‘information gathering’ tasks (e.g. [‘Peer-to-patent’ project](#)) (Noveck 2006)
- CHIs are well positioned to encourage public participation in projects related to their mission – e.g. New York Public Library’s [Emigrant City](#) (Crowdsourcing in the 21st Century Library, Museum and Archive); [Europeana 1914-1918](#) (untold stories & official stories of WWI); British Lybrary’s [Mechanical Curator](#) (sharing PD digitized images)
- *Problem*: information coming from the crowd might be inaccurate, incomplete or mistaken

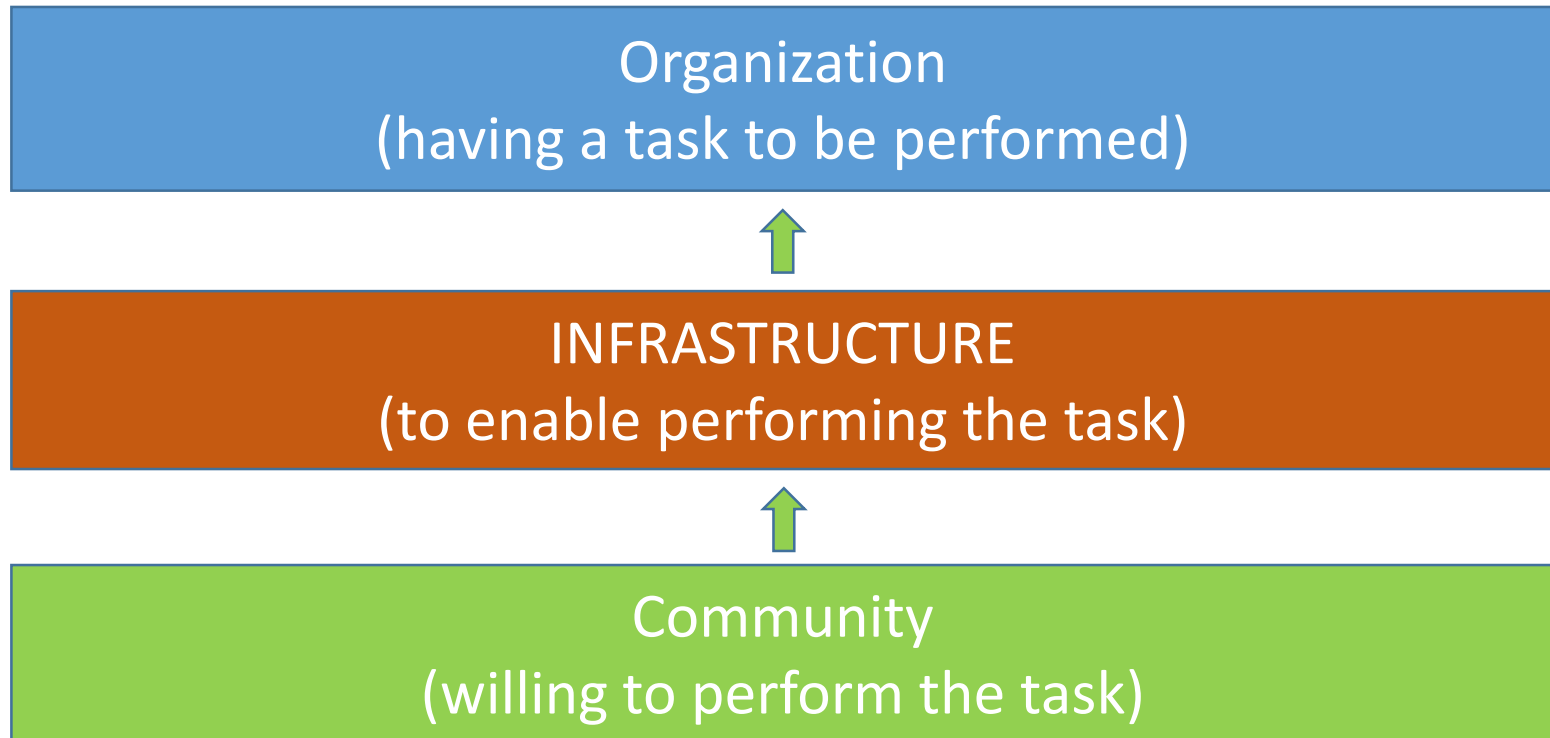
Crowdsourcing

Organization
(having a task to be performed)

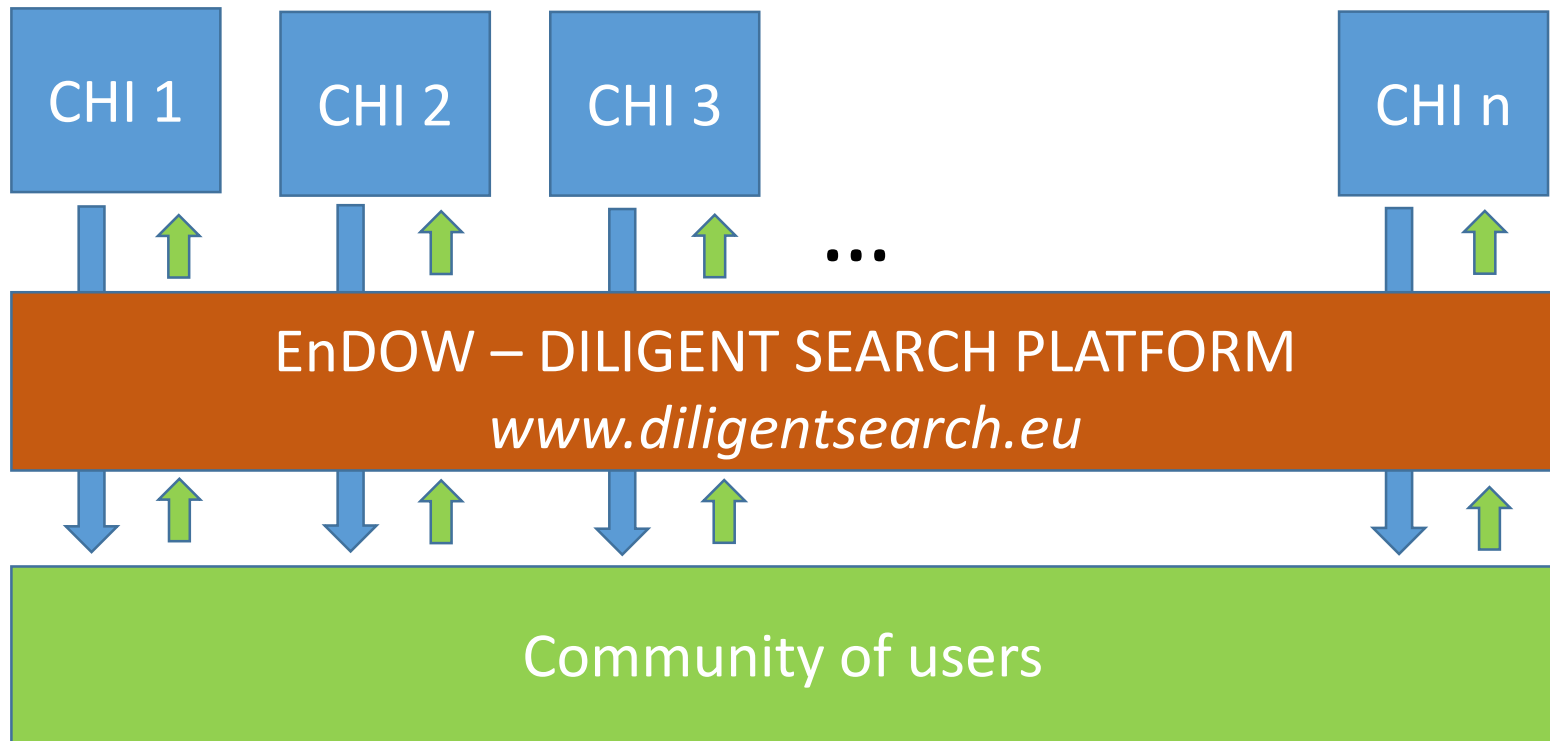


Community
(willing to perform the task)

Crowdsourcing



Crowdsourcing Diligent Searches





DILIGENT SEARCH

Helping cultural institutions digitise collections

Online publicly accessible platform that enables end users to perform “guided diligent searches” on items contained in CHI collections

- CHI to issue a list of works to be cleared and solicit contribution by communities of users
- Registered users to submit results of their searches to the CHI for validation
- Small- and medium-size CHI (w/out expertise on copyright management): use of the platform to perform diligent searches on items in their own collections

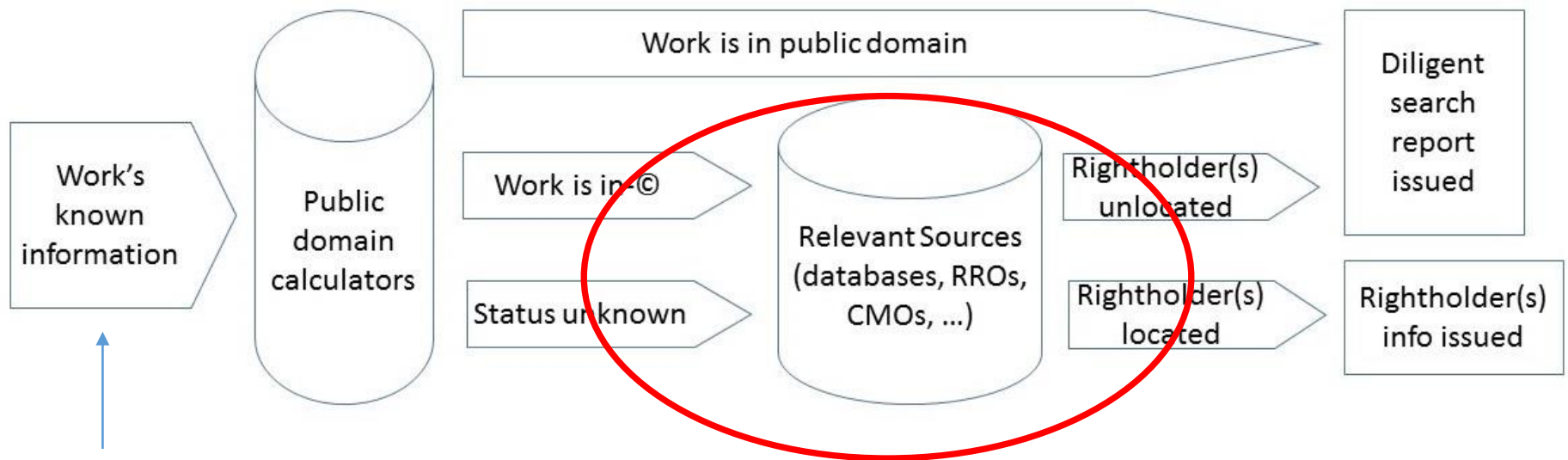
diligentsearch.eu



DILIGENT SEARCH

Helping cultural institutions digitise collections

Summary flowchart of the operations



Work is not included in [OW Database](#)

diligentsearch.eu