

Diligent search across the EU

A survey of 20 Member States for the EnDOW project

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The EnDOW project

EnDOW (“Enhancing access to 20th Century cultural heritage through Distributed Orphan Works clearance”) is a 3-years project funded under **Heritage Plus**, a programme launched by 18 European 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 European research centres:

- CIPPM, Bournemouth University (project leader)
- CREATE, University of Glasgow
- IViR, University of Amsterdam
- ASK, Bocconi University, Milan



The EnDOW project

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.

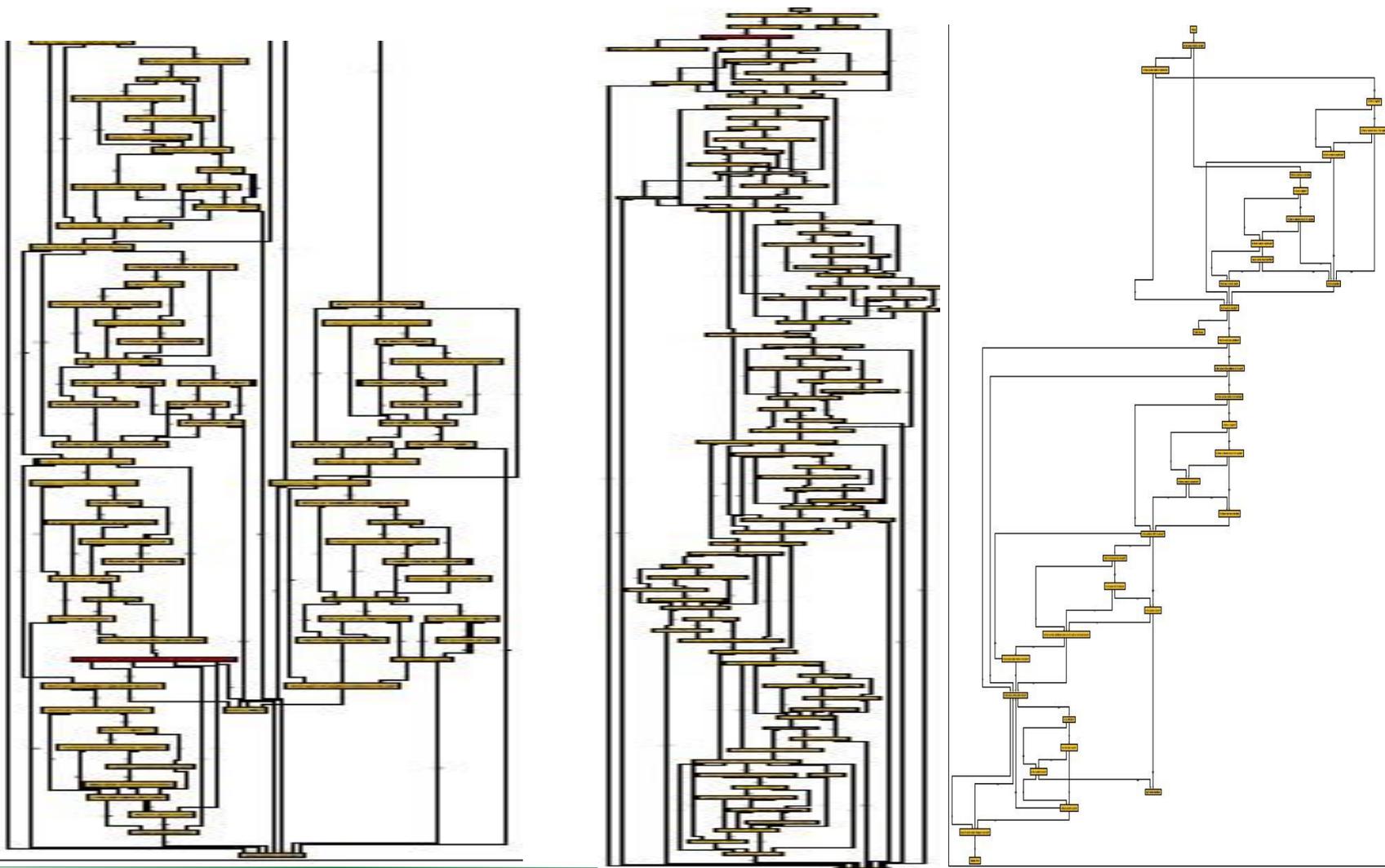
Specifically, EnDOW aims at...

- ❑ designing, implementing and testing an **online platform** to carry out diligent searches according to the requirements of Directive 2012/28/EU.

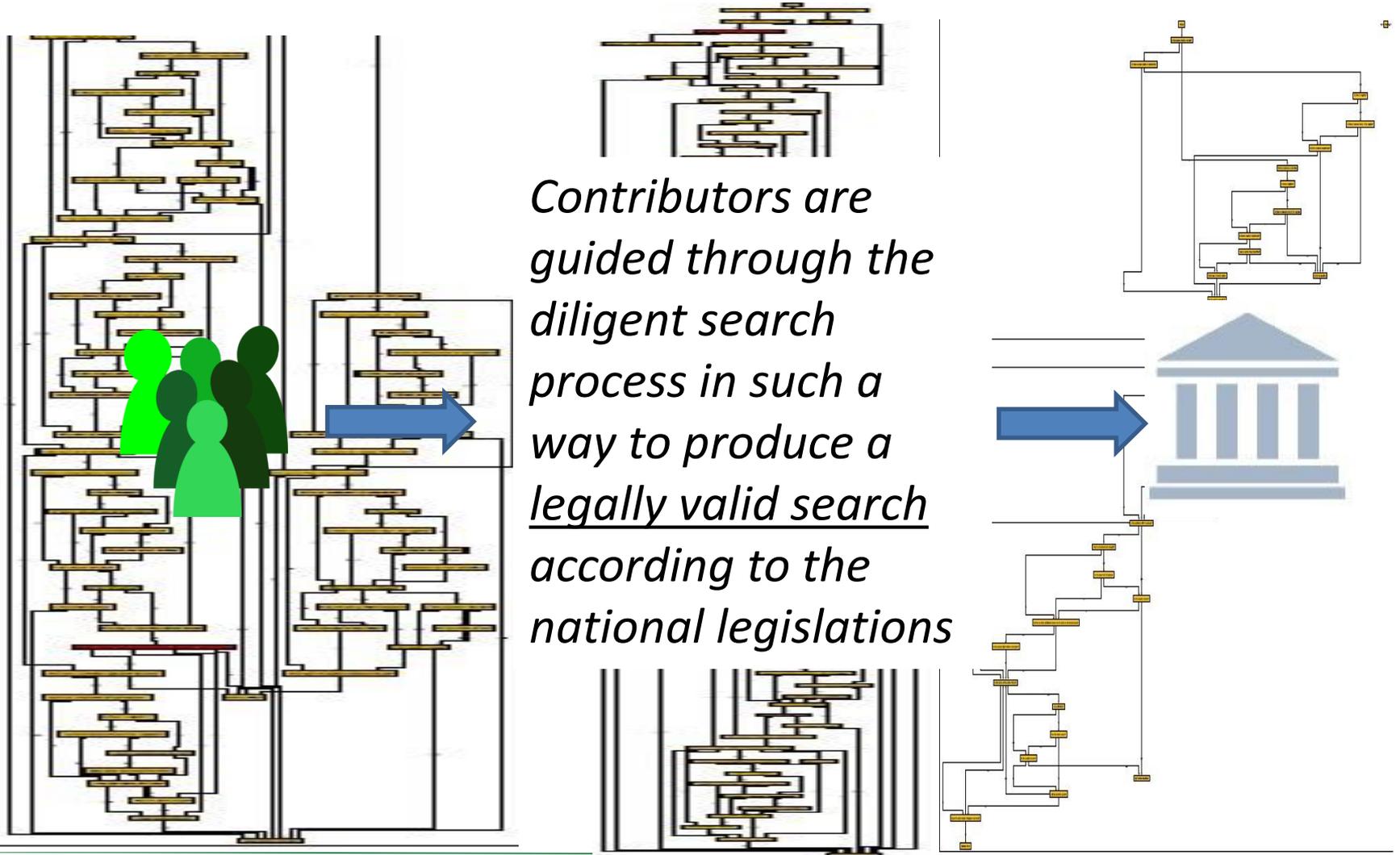
Crowdsourcing diligent search



Diligent search as flowchart of operations

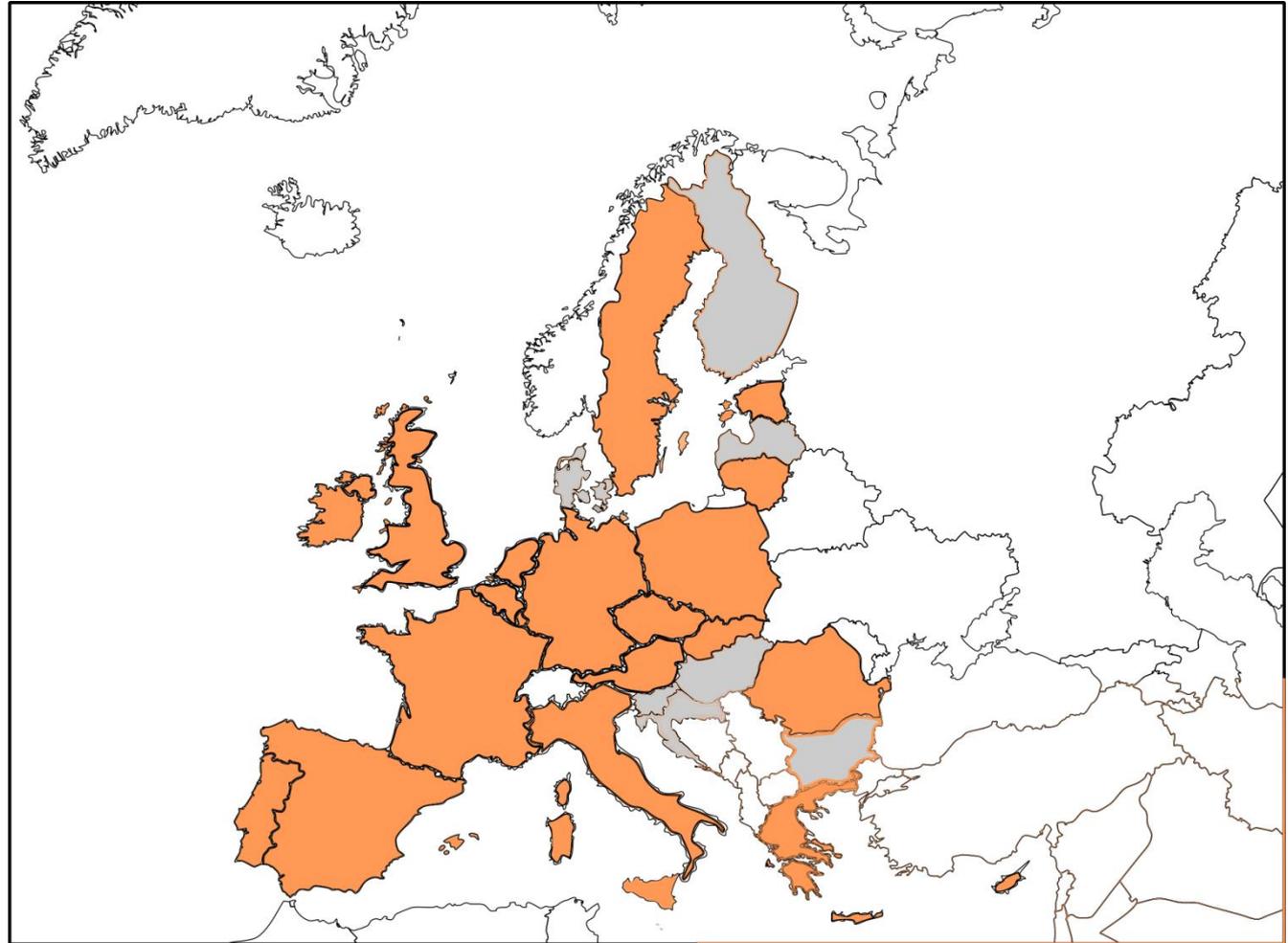


Diligent search as flowchart of operations



Austria
Belgium
Cyprus
Czech Republic
Estonia
France
Germany
Greece
Ireland
Italy
Lithuania
Luxembourg
Netherlands
Poland
Portugal
Romania
Slovakia
Spain
Sweden
United Kingdom

20 Countries covered by EnDOW



The questionnaire – overview

Sec I – Implementation of the OW Directive

Sec II - General and Specific Requirements for Diligent Search

1. List of sources
2. Presumptions
3. Audio-visual works
4. Music
5. Phonograms

Sec III - Additional Information Useful for the Diligent Search

The questionnaire – Sec. I

Sec I – Implementation of the OW Directive

- Subjective scope of application (eligible organizations – art.1.1)
- Objective scope of application (categories of works – art. 1.2)
- Permitted uses (art. 6)
- Diligent search reporting requirements (art. 3.5)
- Rule(s) on cross-border search (art. 3.4)
- Soft-law instruments
- Additional steps required beyond diligent search
- Other regulatory scheme in place dealing with orphan works

The questionnaire – Inventory of sources

Sec II - General and Specific Requirements for Diligent Search

1. List of sources

- Category of work
- Category of rightholder
- Source typology
- Source name
- Source URL
- Accessibility

The questionnaire – Inventory of sources

Sec II - General and Specific Requirements for Diligent Search

1. List of sources

- Category of work
 - Category of rightholder
 - Source typology
 - Source name
 - Source URL
 - Accessibility
- Freely accessible online
 - Registration required
 - Registration and payment required
 - Accessible only on site
 - URL is not functioning
 - Source is not locatable online
 - Other

Key findings – I. National implementation

- Directive mostly transposed literally in national legislations
- **Subjective scope** (art. 1.1): more generally defined in AT; more specifically defined in PT and PL. Slightly broader scope in some MS (LT: + “research institutions”; FR: museums and archives not “publicly accessible); slightly narrower in others (CZ: no “films or audio heritage institutions”; SK: limited to one Film Institute)
- **Objective scope** (art. 1.2): changes in the definition of “cinematographic works”, to make it consistent with national law (AT, CZ). The list is non-exhaustive in PT. Inclusion of other subject matter (PT: “flyers”; SK: “musical works in written form”)
- **Permitted uses** (art. 6): “non-commercial use” limitation only for 7 years (FR). Exemplary list of permitted uses (PT)

Key findings – I. National implementation

- **Soft-law instruments:** detailed guidelines on diligent search available only in the UK. Sample list of sources in LT and EE. Guidelines “in preparation” in BE and CZ. Reference to UK guidelines in CZ and NL.
- **Other regulatory schemes:** alternative licensing scheme for Orphan Works (UK), Extended Collective Licensing schemes (UK, IE, SK and SE). Out-of-commerce legislation in FR, PL and DE.

Key findings – II. Sources for diligent search

- Legislation of **9 countries** has identified the **list of sources** to be searched during a diligent search (UK, EE, FR, GR, IE, LT, PL, PT, DE)
- In 11 countries the legislation merely reflects the general provision of Annex to the Directive.

Key findings – II. Registration of diligent search

- Legislation of **6 countries** provides for the establishment of a **national database** for Orphan Works (BE, LT, RO, IT, SE and UK).
- National databases currently operational only in SE (Swedish Patent, Trademarks and Copyright authority) and UK (IP Office)
- In SP: diligent search validated by Ministry of Culture
- In DE: information has to be reported to the Patent and Trademark Office

Inventory of sources:

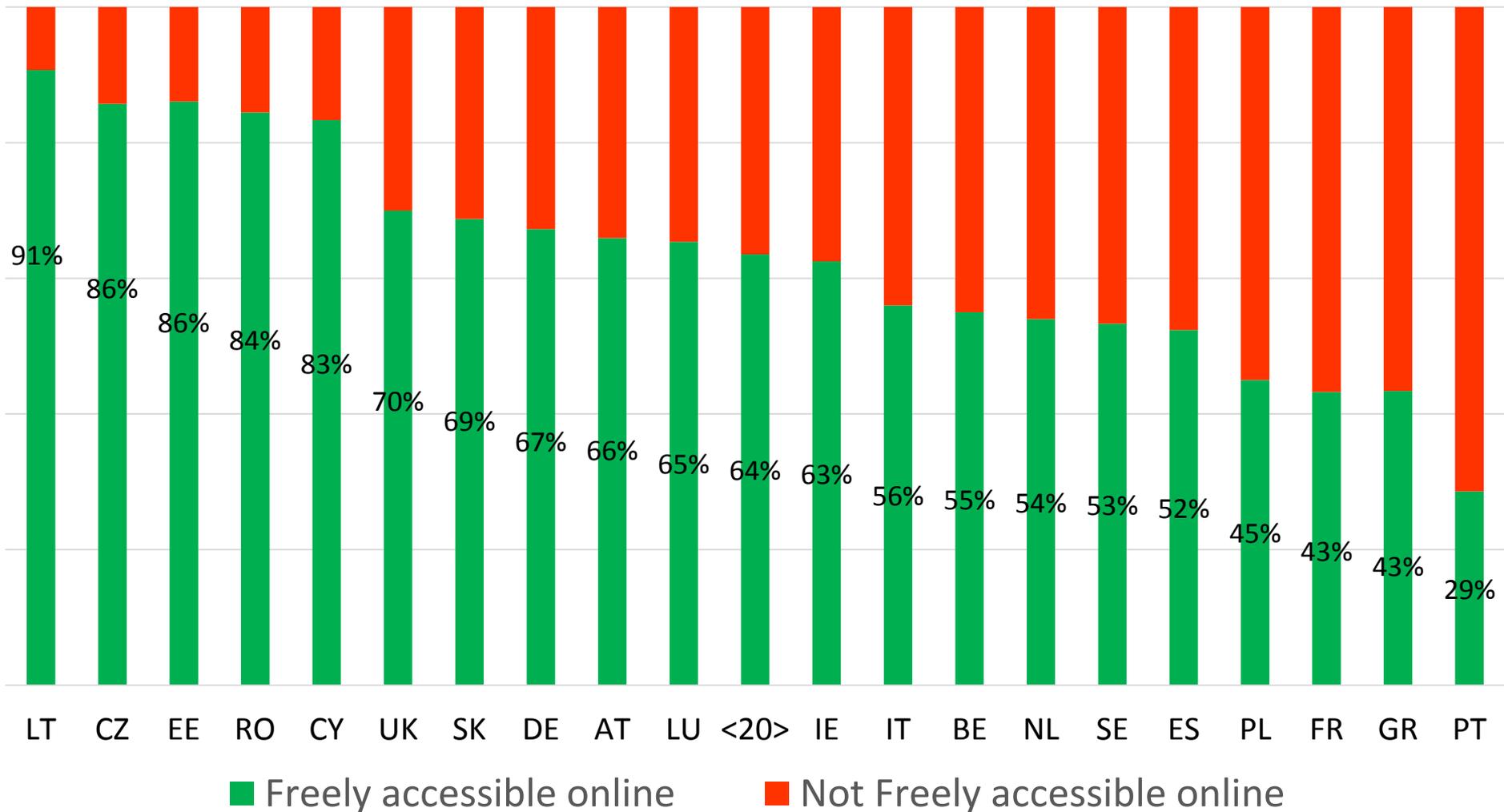
*Overall number of sources
in the 20 countries*

Country	No. of Sources
Austria	47
Belgium	40
Cyprus	6
Czech Republic	21
Estonia	43
France	111
Germany	168
Greece	53
Ireland	16
Italy	357
Lithuania	86
Luxembourg	26
Netherlands	57
Poland	40
Portugal	21
Romania	45
Slovakia	16
Spain	21
Sweden	30
United Kingdom	210
Total	1414

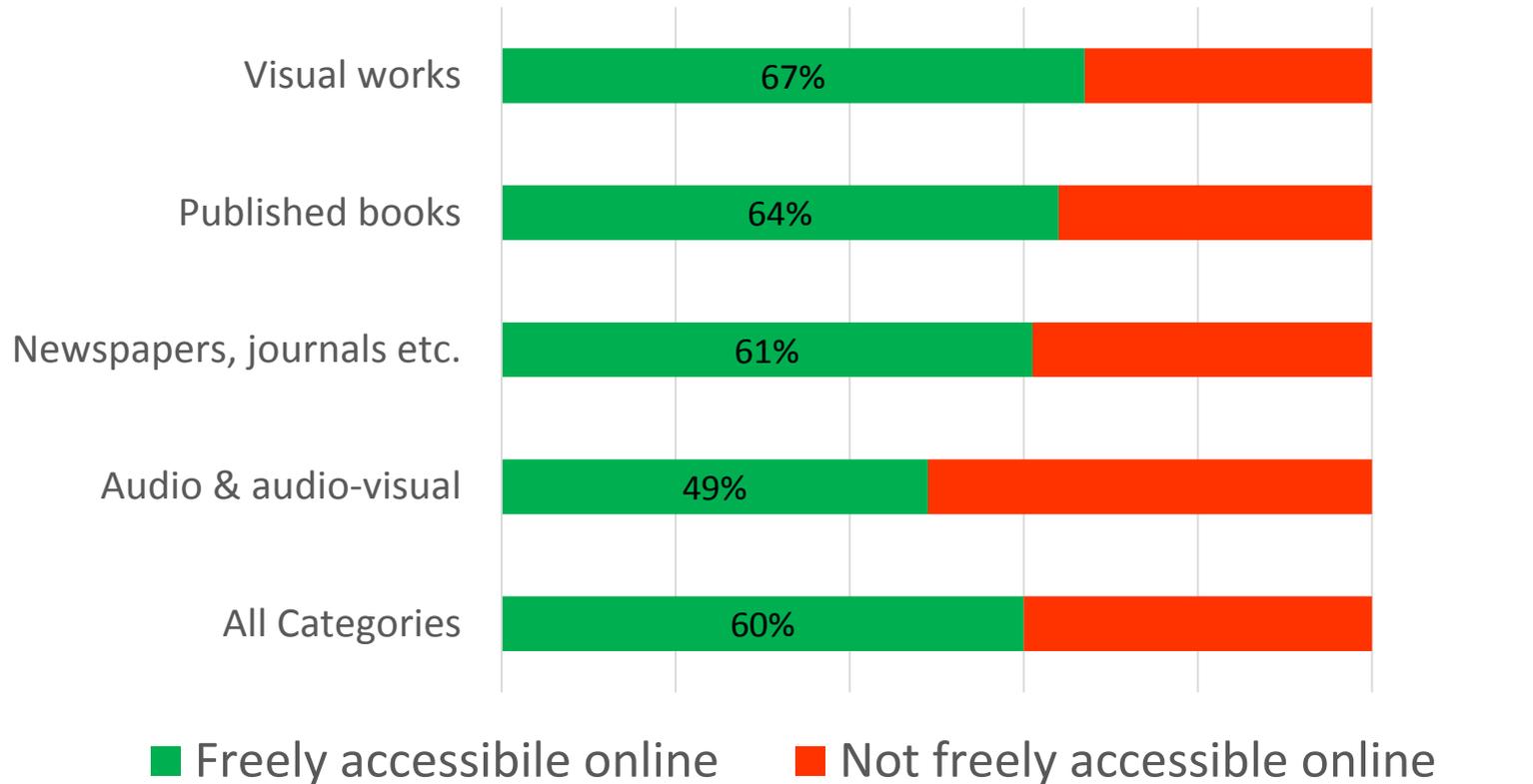
Typology of sources

Audio & audio-visual works	670
Newspapers, journals, magazines and periodicals	273
Published books	341
Visual works	700

Accessibility of the sources (per country)



Accessibility of the sources (per category of works)



More on the EnDOW concept on: M. Borghi, M. Favale & K. Erickson “With Enough Eyeballs All Searches are Diligent: Mobilizing the Crowd in Copyright Clearance for Mass Digitization”, 16 *Chicago-Kent Journal of Intellectual Property*, 135 (2016)
(available from <http://studentorgs.kentlaw.iit.edu/ckjip/volume-16-issue-1/>)

Report on Diligent Search in 20 EU Member States, soon available on the EnDOW website: <http://diligentsearch.eu>