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A15a Preparatory workshops to build up a knowledge pool for the hands-on-workshops

Report on best practice workshop

Online, 27 October 2020, 9-13 (CET)

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ODOPEN PROJECT SUMMARY

Libraries all over Europe face the difficult challenge of managing tremendous amounts of 20th and 21st century textual materials which have not yet been digitised because of the complex copyright situation. These works cannot be accessed by the general public and are slumbering deep in library stacks, as they are often out-of-print or have never even been in-print at all and reprints or facsimiles are out of sight.

The **ODOPEN** project focuses on making 20th and 21st century library collections digitally visible by **directly engaging with communities** in the selection, digitisation and dissemination processes. As leading partner, the University Library of Innsbruck, joined by 14 European libraries from 11 nations, has set itself the goal to make 15 000 textual materials digitally available and to reach more than 1 million people in Europe by 2024.

Among other goals such as building a common portal to display the project outcomes, ODOPEN aims to stimulate interest in and improve access to 20th and 21st century textual material, including grey and scientific literature. ODOPEN continuously carries out social media campaigns in order to attract new audiences. Furthermore, libraries establish contacts with commemorative institutions all over Europe as well as with researchers and doctoral study boards, history associations and local publishing houses to ask broad audiences for their suggestions.

In collaboration with local institutions all project partners select hidden library treasures, **deal with rights clearance questions** and put new content online. Dissemination activities display the digital content via international channels.

In addition, ODOPEN aims to provide alternative delivery formats, especially adequate **for blind or visually impaired users**. An international survey asks a broad European public about the use of e-books. Evaluating the survey's outcome, the project broadens the scope to alternative delivery formats in order to fulfil the needs of **blind or visually impaired users**.

To promote best practice in rights clearance among the library community, ODOPEN provides handouts and tools to make 20th and 21st century books available beyond the project's lifetime. In this sense, project partners closely cooperate to develop an online tool for the documentation of rights clearance, especially suited for out-of-print and orphan works. Interactive workshops enquire about the needs when **dealing with rights clearance** questions in order to set up the tool by implementing the requirements of an international community.

ABSTRACT

In this report the outcome of the preparatory workshop held online on 27 October 2020 is accounted for. The purpose of the preparatory workshop was to reach an understanding of best practice solutions for practical rights clearance including relations to Copyright Management Organisations (CMOs). The modality of the workshop was one half day involving EODOPEN-project members and eBooks-on-Demand-consortium (EOD) members. Furthermore, the outcome of the workshop was assessed at the 3rd EODOPEN-project meeting on 5 November 2020, also held online. During the EODOPEN-project meeting a small follow up workshop was carried out which is also recounted for in this report.

The preparatory workshop on 27 October 2020 follows up the outcome of the preparatory technical requirements workshop held on 15 May 2020 at the 2nd EODOPEN-project meeting. The May workshop resulted in a number of suggestions for further assessment in *WG6 Rights clearance documentation tool* (see internal report on requirements workshop submitted on 3 July 2020).

The group discussions on 27 October 2020 circulated often around existing issues. The common existing denominators were within these six areas:

- Best practice when engaging with rights holder(s)
- Best practice workflows
- Best practice for accessing information
- Best practice for different user groups
- Best practice when handling risks
- Best practice with technical restrictions

Future improvement for these were harder to articulate. One reason for this was connected to the difficulties associated with clearing rights on a pan-European level. There was great uncertainty regarding the impact of the upcoming implementation of the DSM directive. Judging from the responses to the current situation, with its national focus, mitigation of risks leads to even more careful assessment when clearing rights for access on a pan-European level. A tool and support system, as envisaged by the EODOPEN project, is clearly needed.

The results of the workshops will be a suitable starting point when developing the generic framework for *D15b National hands-on-workshop-series for construction of best practices on how to deal with rights clearance, min. 1 per participating country* to be executed third quarter 2021 – fourth quarter 2023.

Statement of originality:

This report contains original unpublished work except where clearly indicated otherwise. Acknowledgement of previously published material and of the work of others has been made through appropriate citation, quotation or both.

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1. Introduction and purpose

This report focuses on the outcome of the preparatory workshop held online on 27 October 2020. The purpose of the workshop was to reach an initial understanding of best practice solutions for practical rights clearance including relations to Copyright Management Organisations (CMOs). The modality of the workshop was one half day involving EODOPEN-project members and EOD-consortium members. The outcome of the workshop was assessed at the 3rd EODOPEN-project meeting on 5 November 2020. During the EODOPEN-project meeting a small follow up workshop was carried out which is also recounted for in this report.

The preparatory workshop on 27 October 2020 was a continuation of the technical requirements workshop held on 15 May 2020 at the 2nd EODOPEN-project meeting. The May workshop resulted in a number of suggestions for further assessment in *WG6 Rights clearance documentation tool* (see internal report submitted on 3 July 2020).

37 persons registered and participated at the 27 October 2020 workshop. At registration for the workshop participants were asked to share documents on existing workflows. Evidently there were differences but there were also strong similarities. Broadly speaking all participants, to various degrees, touched on the following steps in their workflows:

- Check if a work is copyrighted or not.
- Check if a work is covered by a pre-existing license that is held.
- Check if there is a specific provision in national legislation that supports a proposed usage without seeking permission from a copyright holder.
- Check if permission is needed from a copyright holder for the intended usage.
- Check contact information to a copyright holder.

The EODOPEN project aims stipulates that:

The EODOPEN project, as carried out by 15 libraries from 11 European countries between 2019 – 2024, focuses on bringing European 20th and 21st century digitally-hidden works to the public forefront by digitising and making them available on a pan-European level whilst fully respecting current copyright regimes. The EODOPEN project builds upon the partnership and infrastructure of the eBooks on Demand (EOD) Network, established in July 2008 and by now a self-sustained network.

The overarching question for the workshop thus became how could a best practice model look like for the steps mentioned above to work on a pan-European level? For *WG5 Rights clearance assessment and support* that means to:

WG5 aims at capacity building of library staff in terms of rights clearance. The WG will assess IPR and rights issues, especially focusing on the complex circumstances of digital access across borders. It will explore, in the context of the rapidly changing digital landscape, new developments, opportunities, challenges and solutions to existing rights issues.

As essential as these aims are for the EODOPEN-project an overall goal is to link this development to the existing EOD-consortium platform (<https://books2ebooks.eu/en>). That way the EODOPEN-project would be for the benefit for existing and any future EOD-consortium members, and thus guarantee the sustainability of EODOPEN-project.

Work carried out for best practice solutions for rights clearance within WG5 need furthermore to be aligned with developments of the rights clearance documentation tool done in WG6. A draft version of a “workflow aligned according to workflow drafts provided by project partners regarding their copyright clearance processes” have been developed by WG6. This work will be of crucial importance for WG5’s national workshops. The two preparatory workshops on 15 May and 27 October, respectively, and the follow up workshop on 5 November were thus preparing and gathering information in anticipation for the national workshops that will be executed in 11 EODOPEN-partner countries between 1 April 2021 – 31 December 2023.

1.1. General outline of the workshops

The workshop of 27 October 2020 was divided in two parts. To give context to the external participants WG5 gave a brief introduction to the working group’s tasks as well as a presentation of the outcomes of the 15 May 2020 workshop. For further context Božena Bednarek-Michalska (NCU) gave a presentation about a best practice workflow workshop carried out at Nicolaus Copernicus University in Toruń on copyright clearance.

For the second part, and reminder of the workshop, the participants were divided into four smaller discussion groups. Each group was moderated by an EODOPEN member who also took notes:

- Group 1 – Barbara Laner (University of Innsbruck, UIBK)
- Group 2 – Tomáš Mirga (Slovak Centre of Scientific and Technical Information, CVTI SR)
- Group 3 – Martin Lhoták (Czech Academy of Sciences Library, KNAV), Markéta Tůmová (KNAV), notes
- Group 4 – Silvia Gstrein (University of Innsbruck, UIBK)

A number of prepared questions during the group session were provided in order to facilitate discussions. These questions asked during the workshop on 27 October 2020 were divided into four larger areas. Each group could take the questions in any order they

wanted. Participants were also informed to include other topics within the larger areas that might occur during discussions. The four areas were as follow:

- Existing practices
- Engaging with stakeholders
- Giving access (the EODOPENportal)
- Risk assessment

At the follow up workshop on 5 November 2020 a small exercise was carried out. For this session a web-based service called Miro was used (www.miro.com). The online collaborative whiteboard platform allows for unlimited participants working simultaneously in a controlled environment.

The aim was to look on steps to take in a best practice workflow for rights clearance on a pan-European level:

- Steps to determine if permission is needed
- Steps to identify the rights holder(s)
- Steps to identify the rights needed
- Need to be included in written permission agreement

The assessment on 5 November 2020 included also the results from the preparatory workshop 15 May 2020. The resulting suggestions of the requirements workshop that was reported 3 July 2020 echoes the results from the best practice workshop on 27 October 2020. The suggestions at the former workshop formed itself into five general areas:

- User friendly tool
- Guidelines, templates, scenarios
- API
- External sources
- Document repository

1.1.1. Workshop agenda on 27 October 2020

Tuesday, 27 th of October: WG5 Best Practice Workshop, 9-13 (CET)		
Objective:	To identify best practice guidelines, templates and scenarios for rights clearance (EODOPEN project activity A15).	
Modality:	One half day workshop involving EOD-consortium and EODOPEN project members.	
Expected outcomes:	Understanding of best practice solutions for practical rights clearance including relations to CMOs.	
Start time	Topic and method	

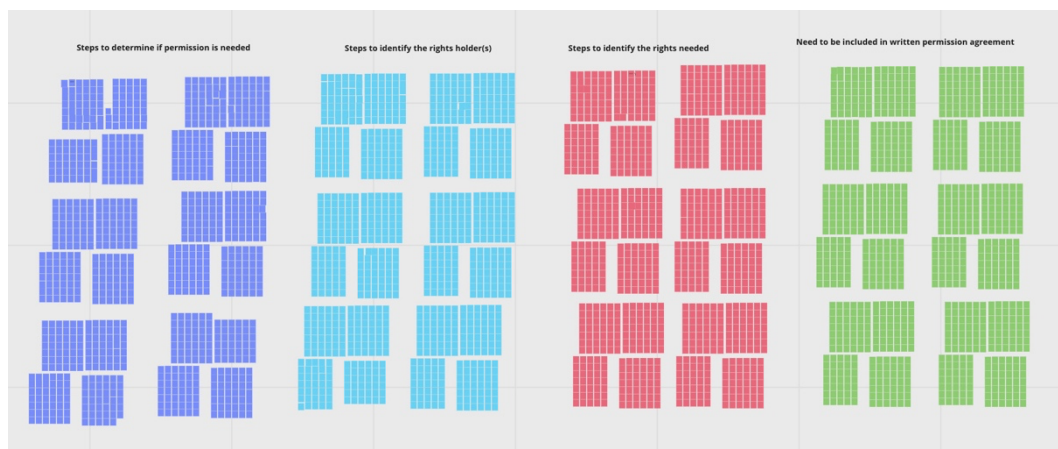
9:00	Introduction	
9:10	Context: Requirement workshop 15 May 2020	Christopher Natzén, NLS
9:30	Presentation: Best practice scenarios at Nicolaus Copernicus University, Toruń	Bożena Bednarek-Michalska, NCU
10:00	Introduction to group session	
10:30	Break	
10:40	Group session, including breaks	Moderated by WG5 members
12:40	Wrap-up, next steps	
13:00	Ending	

1.1.2. Tools for exercise session on 5 November 2020

For the exercise session on 5 November a web-based service called Miro was used (www.miro.com). The online collaborative whiteboard platform allows for unlimited participants working simultaneously in a controlled environment.

The small exercise was to start to look on generic steps to be included in best practice solutions for rights clearance. That is:

- Steps to determine if permission is needed
- Steps to identify the rights holder(s)
- Steps to identify the rights needed
- Need to be included in written permission agreement



2. Workshop 27 October 2020

2.1. Existing practices

This area, which every group started with, was in place partly for the group participants to get to know each other. Another reason was to create a common understanding before the more in-depth questions. The questions asked during this part were:

- How does your internal copyright clearance workflow look like?
- Who is typically responsible for copyright clearance activities within your organisation?
- What common tools or approaches are used in your copyright clearance workflow?
- How are you recording and sharing the copyright clearance policies that you collect through the course of your copyright clearance workflow?

The resulting discussions came to circulate around these two broader topics:

- Organisation
- Documentation practices

2.1.1. Organisation

In general, the organization for clearing rights consisted of small groups. At times with years of experience. Some participants did not have a comprehensive and official procedure in place. It was more based on experience where the workflow followed a few general steps: request from user, check in catalogues about copyright holder, check the public domain status, evaluation on possible options. Although several participants did not have clear official procedures the fact that few people were involved made this into a minor problem.

The participants workflows were mainly geared towards making available copyright free books for online access. As a few participants indicated there was a difference between assessing if a work was protected or not versus “real” copyright clearance. Most workflows were focused on internal digitisation and then mostly on out of copyright works. For this reason, a few participants checked if a work was an orphan work or not.

One factor that complicated workflows was related to what type of work and material that were being cleared. It was more complicated when dealing with works including drawings or photographs which required different workflows depending on type of material and users.

Several participants also noted the different moving walls between countries dependent on existing practices. For example, in Germany, there was the option of out-of-print works

for books up to publication year or 1965. The cost for the license was between 5 and 20 EUR.

Some participants had constant contact and cooperated with lawyers from non-governmental organizations in order to advice on copyright questions. Others had an employed specialist on copyright law. Although a great support, this could also create bottlenecks due to the in-house legal advisors many other commitments. Thus, this support was mainly saved for difficult cases.

For clearing of rights, the most common way was by direct contact with right holders. Overall participants contacted publishers and other rights holders by e-mail in order to get permission for online access. A few reached agreements with CMO's, and if, it was most often only for on-site-access. The few exceptions among participants that had agreements with CMO's, and that also permitted online access, was confined to the national territory and aimed at a limited user group, generally access was not allowed for the general public.

It became also clear during discussions that there exists a great uncertainty regarding the DSM directive and how it will be implemented into national legislation.

2.1.2. Documentation practices

When clearing rights, the most common way was to check the internet, bibliographical records databases and library catalogues. There was also a tendency to use freely available tools like google docs, online spreadsheets etcetera in order to collect data and have an overview of the process.

Participants called for a need of some technical support; few had tools in order to manage documents for copyrights. There was hope for a solution within the EODOPEN project. All participants were looking forward to the tool being developed in WG6. One worry expressed was that the future tool could become too big for smaller libraries. For many, a small-scale/easy solution would be preferable. Here copyright information could be put together with the digitised object, for example build a PDF containing all information (i.e., e-mails, letters, etc.) and reference this PDF to the digitised object.

Some participants recorded the process in internal digitisation databases. Especially this was important when storing the licence agreements. A few had formal agreement templates, among them agreements with CMO's. Otherwise, storing the resulting documentations was fairly diverging between participants. Several participants had been collecting and archiving documents related to copyright in order for later support. For many, a practice had developed where everything was assembled during the copyright clearance procedure, and later saved. These repositories could include years of traditional collecting documents for rights clearance and had become a pool of several documents.

2.2. Engaging with stakeholders

Engaging with stakeholders is aimed at the task of obtaining licenses for making a work available. Evidently diverse licensing practices exist between the participants. Often a license agreement is based on a case by case clearing of rights. That is, object of the license related usually to individual works (more rarely to multiple works). Workflows tend therefore to be geared towards this.

Furthermore, scope of a license related usually to non-commercial purposes with a broad scope (for example covering research and educational purposes). Briefly, negotiating licenses were somewhere on a scale between being directly negotiated, on one end, to being negotiated with a Collective Management Organization (CMO), on the other end.

Questions asked during this part were:

- For uses that require permission from copyright owners who cannot be identified or located, what do you think constitutes due diligence standard in a library's efforts to identify or locate the copyright owner?
- What is needed of a best practice workflow in order to achieve more than an object-by-object approach?
- What best practice guidelines would be ideal for acquiring licenses? That is, what does such guidelines need to include (for example usage, user groups, time limit, territories, other)?
- How could a best practice solution to engage with stakeholders/CMOs look like in order to achieve pan-European access?
- Have you experienced copyright issues when digitizing protected works? If so, what kind? What kind of best practice guidelines would help redeem those issues? How could such a redemption work on a pan-European level?
- Is there, to your knowledge, any degree of international consensus on the copyright status of literary works that a best practice solution could benefit from?

The resulting discussions around future needs circulated around these two broader topics:

- Best practice when engaging with copyright holder(s)
- Best practice workflows

2.2.1. Best practice when engaging with copyright holder(s)

If a copyright holder(s) was/were known the first step would be to check if copyright was needed. When clearing was required contact should be established with copyright holders, be them individual authors and/or institutions. Out of experience among the participants the most frequent way up to now have been to contact authors one by one.

This procedure becomes more complicated if several authors were involved in a work as well as if a work contained for example photographs. Here, the workshop participants

showed great uncertainties on how to proceed. In these instances, a contact “author by author” approach might take a long time. At the same time, it was not even certain if every copyright holder had been reached. For this kind of multiple authors works the best approached was deemed to be to contact institutions and publishers rather than individual authors. The biggest problem was with publications when there was only a right to publish parts of them.

In cases with unknown copyright holders, the pertinent question was when to say a diligent search had reached its conclusion? Even if a copyright holder was not located a risk was taken when a work was made available.

Few participants had any close experiences with CMOs. However, it was seen as important for the EODOPEN project in order to achieve pan-European access. Several participants expressed that it was too time consuming to contact CMOs. There was also an uncertainty whether they were representative enough to clear some rights. Future templates and guidelines for negotiating licenses was seen to be helpful.

The topic of stakeholders’ profit from the digitization was also discussed. In general, there was also an uncertainty among the CMOs what a correct prize for a license would be when it comes to works from culture heritage institutions. Perhaps the situation with covid-19 would open some roads forward as the extreme situation had made it easier for several participants to obtain licenses in order to make material available.

2.2.2. Best practice workflows

For workflows, future guidelines would be very helpful although in many cases internal digitization projects were aimed at different user groups including a broad spectrum of content, and material. It was felt that it would be difficult to find a workflow that fitted all scenarios. The aim should be flexible model workflows for different scenarios.

One obstacle for future workflows was lack of insight in the negotiations concerning the implementation of the DSM directive. There was a worry that other aspects of the new directive were in the foreground, it felt that less attention was paid to libraries where less money might be involved.

Several existing workflows for national access were aimed at negotiating licenses without time limit. Some works were only made available via a static reading room in a specific library.

2.3. Giving access (the EODOPEN portal)

When a license has been achieved, difficulties may arise in relation to the scope of the license. Often it is limited to a specific national territory. Further difficulties might be for libraries holding extensive archival materials to obtain copyright clearance (identify the copyright status and then acquire all required copyrights with authors or CMOs).

Questions asked during this part were:

- What best practice guidelines and templates are essential in order to give digital access to copyrighted works?
- What copyright and licensing terms, if any, must be considered in a best practice solution for access through the EODOPEN portal itself of copyrighted works?
- What essentials are recurring and overlapping in best practice solutions for different user groups? In what way, if any, does the EODOPEN portal need to adjust for different user groups in order for a best practice solution to achieve access of copyrighted works?
- What do you think is the biggest challenge a best practice solution needs to address in order to give access to copyrighted works on a pan-European level?
- Are there any existing best practice solutions that you are aware of, and that EODOPEN need to take into account in order to facilitate pan-European access?

The resulting discussions circulated around these two broader topics:

- Best practice for accessing information
- Best practice for different user groups

2.3.1. Best practice for accessing information

There was a considerable discussion around the topic of what information about access was needed from a user perspective. It was emphasised that machine-readable metadata was very important in terms of licence information. The hosting library has to provide this information so that the EODOPEN portal can harvest (similar to Europeana).

Other information that was seen as crucial by some participants was information about re-use, if the licences allowed for this kind of usage. Similar access restrictions depending on the hosting library's country was also vital. Suggestions put forward were for example information like for "internal use only" at the institution or a note stating the access / re-use terms saying, "for personal use only".

Information about open licences was seen as the best option. Whenever possible, the public domain mark should be used for copyright free books. Part from that, CC Licences were currently not used that much by the participants, as this had to be assigned by the actual copyright holder.

Participants were hopeful that this process might be clearer as the implementation of the DSM directive nationally would formalize the practice.

2.3.2. Best practice for different user groups

The most distinct group were seen as was the one defined by the Marrakesh Treaty¹. Some institutions have a dedicated portal for these user groups although most often users

¹ <https://www.wipo.int/treaties/en/ip/marrakesh/>

had to register. It was seen as the entire portal need to be barrier free for everyone included in the Marrakesh Treaty. This would also be in line with the Web Accessibility Directive. Information on EODOPEN portal must be clear to all users (what they can expect), best would be in several languages.

A potential future problem would be with print-on-demand options allowed for nationally but not across borders. This is linked to scenarios that only allow for harvesting of metadata, but no further usages. It was put forward that the EODOPEN portal could work similar to Europeana as aggregator. That is, only metadata description plus link back to digital object is given.

2.4. Risk assessment

Rarely do risks occur. Rather than giving access under uncertainty the chosen path was to forego use of the work entirely rather than risk the prospect of litigation. Although risks tended to be low, relations could be hurt severely if something happened.

Questions asked during this part were:

- How might a best practice solution support identification and mitigation of risks?
- Would technological measures to protect digitized works, for example by encryption, access restrictions, attaching information in digital files such as identifiers etcetera constitute a good best practice solution to mitigate risk?
- What other best practice safeguards could be used to protect the rights of copyright owners?

The resulting discussions circulated around these two broader topics:

- Best practice when handling risks
- Best practice with technical restrictions

2.4.1. Best practice when handling risks

It was a general agreement that no institution wanted to take risks deliberately. This has led to a rather conservative approach. For example, when in doubt the approach was to give internal use only, without an explicit agreement saying otherwise a work was not digitized. The approach has been more experience-based risk assessment than really any formal approach.

As an example of an existing workflow for risk assessment in one institution shows the entire process might lead to frustration. In this institution the workflow for evaluating a work follows four general steps: 1) document searches for copyright owners for several books, journals etcetera; 2) analyse the situation and evaluate the risk; 3) send it to lawyers to make a further evaluation based on the documentation; 4) they make a recommendation for the head of the library, who ultimately decides. However, the more difficult or sensitive the clearing of rights become the final decision has more often than

not been against digitization. As a result, negative decisions have become frustrating as the workflow in itself before a decision is made is very time-consuming. Therefore, this institution is thinking about suspending the process altogether.

To redeem such a situation a similar approach as the one taken by the National Libraries of Scotland and Wales could work. Their process has been used to make an accurate risk assessment which then has been submitted to a board for decision. Based on that decision, the work is put online or not. It could perhaps be of interest for the EODOPEN project to look on this approach, how such a risk assessment approach might formally work on a pan-European level.

Another suggestion put forward was to contact the institutions where the journals, books series were last published and make a representative there sign an agreement if possible. However, a risk may nevertheless lie in the fact that with journals and works with multiple authors the copyright situation is too unclear.

2.4.2. Best practice with technical restrictions

To mitigate risk some institutions currently use technical restrictions. For example, a work is not downloadable, access restricted to IP range etcetera. A risk assessment with access restrictions could weight if offering a PDF download of whole book or only as page turning version online would be most feasible. Although access restrictions make things easier it simultaneously put obstacles for access. Everyone's goal, as a digital library, is to be able to provide as much works as possible for your user groups.

2.5. Summary of workshop 27 October 2020

To summarize the workshop of 27 October 2020, the group discussions circulated often around existing issues. Redemption for these issues were harder to articulate. One reason for this was connected to the difficulties associated with clearing rights on a pan-European level. The uncertainty around the upcoming implementation of the DSM directive made it even more difficult to articulate generic best practice solutions that works across borders.

Regardless of this outcome the workshop resulted in a good overview of similar issues that the participating EODOPEN project partners has to address. This will be a suitable starting point when developing the generic framework for *D15b National hands-on-workshop-series for construction of best practices on how to deal with rights clearance, min. 1 per participating country* to be executed second quarter 2021 – fourth quarter 2023.

The common existing denominators that discussions evolved around were within these six areas:

- Best practice when engaging with rights holder(s)

- Best practice workflows
- Best practice for accessing information
- Best practice for different user groups
- Best practice when handling risks
- Best practice with technical restrictions

A central aspect for the EODOPEN best practice models to address is how existing national legislative exceptions has led to institutional practices. This has evidently impact on workflows as different legislations also lead to diverging license's schemes between countries. The uncertainty with the implementation of the DSM-directive was also recurring throughout.

The most common way was direct contact with authors, publishers, institutions etcetera although there were issues with works containing several authors. CMOs were rarely included in the process (one notable exception was NLS work).

Several participants had some kind of document repository where communication and documentation were stored (example NCU). But many did also lack this. The latter might be adhered to the fact that formal agreements/contracts existed to a certain degree.

Every participant had either an in-house or outside legal advisor. Some also had direct support from non-governmental organizations.

For establishing right holders different national and international catalogues (like the OAHIM database) were used. Tools for storing documents and keeping track of the workflow (for example spreadsheets, wiki) were also used by several participants. However, there was a lack of any integrated tool for the workflows.

Overwhelmingly the workflows were aimed at assessing if a work was protected/or not protected. The focus was on risk minimization with no "real" copyright clearance.

In general, small teams did the clearing which was aimed at a work-by-work assessment. Diverging workflows existed depending on which department that was responsible, material type and intended user group. There were a varying complicity depending on a works content (for example, drawings, photographs, periodicals).

Access was given mainly to copyright free books. Furthermore, access of digital versions was often confined to national borders. When it came to works under copyright, access was most often confined to premises. Technical restrictions were present to mitigate risk.

Compensations to copyright holders varied.

3. Assessment 5 November 2020

The assessment on 5 November 2020 took place during the WG5 joint gathering at the 3rd EODOPEN project meeting. It comprised of a general discussion and a small exercise session. All EODOPEN project participants were invited to take part.

The evaluation also included the results from the preparatory workshop 15 May 2020. The resulting suggestions of the requirements workshop that was reported on 3 July 2020 echoes the results from the best practice workshop on 27 October 2020. The suggestions on 15 May formed itself into five general areas:

- User friendly tool
- Guidelines, templates, scenarios
- API
- External sources
- Document repository

User friendly tool emphasised “a step-by-step tool which is easy to use within all EU countries”. The guidelines, templates, scenarios aim was for a “space/.../for tutorials next to the database/.../set of distinguished and different scenarios”. In its turn, the API should allow for “certain degree of flexibility if laws/directives change or new ones are established/.../to adjust for changes within different organizations need for open-source CRM/.../ document the measures taken in each step, in order to record the rights clearance for individual objects or collections”. External sources highlighted the importance “that the tool in the longer perspective can handle outside changes in an effortless manner/.../supportive if each organization developed contacts at the national level with institutions that will help in solving copyright problems”. Lastly the document repository would be “a place to store the communication (e-mails, etcetera) during the process of clearing rights/.../documentation should be stored in the library not on the server where the tool is running”.

All these recommendations were touched upon in the six general areas mentioned in chapter 2, that is:

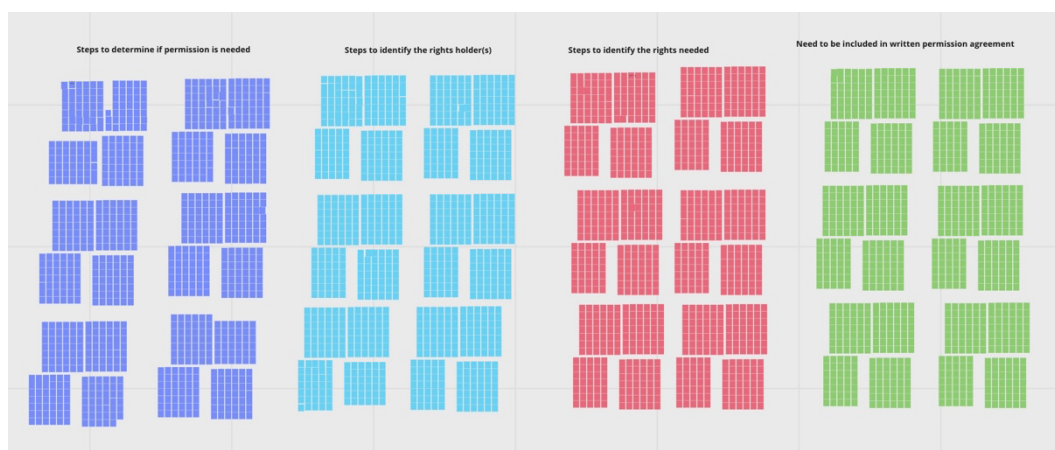
- Best practice when engaging with rights holder(s)
- Best practice workflows
- Best practice for accessing information
- Best practice for different user groups
- Best practice when handling risks
- Best practice with technical restrictions

3.1. Specific outline of the exercise session

For the exercise session a web-based service called Miro was used (www.miro.com). The online collaborative whiteboard platform allows for unlimited participants working simultaneously in a controlled environment.

The small exercise was to start to look on generic steps to be included in best practice solutions for rights clearance. That is:

- Steps to determine if permission is needed
- Steps to identify the rights holder(s)
- Steps to identify the rights needed
- Need to be included in written permission agreement



3.1.1. Steps to determine if permission is needed

A starting point was to have a clear definition of when permission was not needed. The general steps included to determine publication year, determine authors and determine publisher copyright. The most important was to check if the publication year since if a work was printed before a certain year no need of checking the rights.

If the work needs permission, the owners must be sought. Non-exclusive contract might be an option or a simple declaration of will as a “substitute” of license. When checking bibliographical records, it was also important to check the actual volume (book) to get a grip of the copyright situation. Perhaps one could digitize for an internal “reading-room” in your library and set a marker in your workflow system, when copyrights are to be changed (moving wall).

Another suggestion followed this rather detailed workflow: 1) check the date of publishing the document; 2) check if the date of publishing of the document is older than 50 years

(1970 currently), than continue checking, if not just leave it for later; 3) identify authors and their roles; 4) if there are no authors, consider the document as anonymous; 5) check the dates of the death of the authors (national authorities, viaf, wiki etc); 6) if the dates are unknown, mark it down to the table, check it later for future updates; make it public only if the document is more than 100 (or even more cautious 120) years old; 7) write the latest date of death of the author to the table of documents; 8) make it public/private in administration system; 9) keep the table updated and check it every year for changes.

Follow up questions during such a workflow could be: Does it fall under copyright law exceptions? Has the author passed away? Has the copyright term expired? If author has passed away, does some other person has the rights? Is it an orphan work (is it possible locate or identify the rightsholders)? Does your CMO maybe still have permission? Is it work out of commerce?

3.1.2. Steps to identify the rights holder(s)

A regional author was seen as easier to find if you use private contacts. Authors were generally easy to identify, but all the contributors (photographs etc) might be very difficult. For the latter, contacting CMOs or publishers might be the only way.

Several suggestions on how to proceed with identifying rights holders were put forward. A few examples: Wikipedia check. Author databases check. Not only authors him/herself but more rightsholders involved. Contacting publishers. Using search engines. National bibliographic record. Out of print registry check. National authority's registry check. Check the organizations in which the author could be a member of. Try to get address (specially, if the author is/was member of our university), eg. theses. Database or catalogue where we can check authors, their different names they use, or other internet sources. Check orphan work database. Books in print database validation. Name variations to determine in the person/author namespace.

The most appropriate way would be to do searches in local and national databases, that is, to consult appropriate sources set by regulators. Research contact details of author or relatives online. Contacting relatives or online ancestry managers.

3.1.3. Steps to identify the rights needed

For these steps much came down to identifying usage and user groups. That is, what are we going to do with the work? Digitize, right to copy; host online, right to display; allow downloading, right to distribute; anything else? But also what are we not going to do? Sell/allow others to sell the work, non-commercial use; anything else?

We need knowledge on how to prepare a license, what the license should contain. Knowledge of national and European copyright law is needed. We need knowledge about the base of orphan works.

User status identification. Place of service. Document ownership clarification. Purpose of requested service. Identify user group (blind and visually impaired). Clarify whether exception applies.

Identify user group (blind and visually impaired). Clarify whether exception applies. Print on demand. Permission for digitising. Permission to adjust/change publication for the special needs group. Right of reproduction. Right to make publicity available. Not just reproduction, but files that we want to publish online. Files accessible to all users or a certain group of users. Downloadable files or streaming.

Map out the possible uses. A right to meet the relative/s for licensing purposes.

3.1.4. Need to be included in written permission agreement

The contract must specify the period for which the work is handed over, license type, name of the owner, fields of use, payment. This included form of usage, a clear definition of the rights, for one work, or all the works published. Furthermore, a clear definition of what legal entity (multiple entities) get the rights. Usage “contract”. How it will be available in the library. The given copyright for a digitized copy must be permanent, even if the author gives the digital right to a publisher later.

Specify usages that copyright holder can give permission to (e.g., print on demand, use in social media for marketing purposes, license).

Define the group with access to a digitized document (student or employee of a university/institution, registered user etc). Conditions of use for a digitized document (making copies is possible only if.../document is only for reading etc.).

Masaryk University in Brno is now testing “online borrowing” of a digitized copy, number users can read a digitized copy equals number of real copies in library deposit (it is accessible for a user just for a limited amount of time), this kind of access needs to be specified too in an agreement.

Expiration date (i.g. timeframe of usage). Form of usage. Possible digital archives the work will be made available through. Agreement if license fees are paid. Amount of license fees, if paid. Territory of the use?

3.2. Summary of assessment 5 November 2020

In essence the assessment did not come up with something revolutionary new. For a generic best practice model to work it need to include the usual steps. That is:

- Determine if permission is needed
- Identify the rights holder(s)
- Identify the rights needed
- Contact the rights holder(s) and negotiate permission

- Get permission agreement in writing

However, although these steps are common, used by most organizations, the situation becomes more complicated when the scope of the steps are on a pan-European level.

Judging from the responses to the current situation, with its national focus, mitigation of risks leads to even more careful assessment when clearing rights for access across borders. If it is difficult when one only need to have a national perspective when evaluating if it is worth the risk to put a work online, how might the assessment be when access is supposed to happen across borders? It clearly shows that a tool and support system, as envisaged by the EODOPEN project, is needed for organizations to dare put a work online.

4. Summary

In this report the outcome of the preparatory workshop held online on 27 October 2020 is accounted for. The purpose of the preparatory workshop was to reach an understanding of best practice solutions for practical rights clearance including relations to Copyright Management Organisations (CMOs). The modality of the workshop was one half day involving EODOPEN-project members and eBooks-on-Demand-consortium (EOD) members. Furthermore, the outcome of the workshop was assessed at the 3rd EODOPEN-project meeting on 5 November 2020, also held online. During the EODOPEN-project meeting a small follow up workshop was carried out which is also recounted for in this report.

The preparatory workshop on 27 October 2020 follows up the outcome of the preparatory technical requirements workshop held on 15 May 2020 at the 2nd EODOPEN-project meeting. The May workshop resulted in a number of suggestions for further assessment in *WG6 Rights clearance documentation tool* (see internal report on requirements workshop submitted on 3 July 2020).

The group discussions on 27 October 2020 circulated often around existing issues. The common existing denominators that discussions evolved around were within these six areas:

- Best practice when engaging with rights holder(s)
- Best practice workflows
- Best practice for accessing information
- Best practice for different user groups
- Best practice when handling risks
- Best practice with technical restrictions

Future improvement for these were harder to articulate. One reason for this was connected to the difficulties associated with clearing rights on a pan-European level. The uncertainty around the upcoming implementation of the DSM directive made it even more difficult to articulate generic best practice solutions that can work between participants countries. Regardless of this outcome the workshop resulted in a good overview of similar issues that the participating EODOPEN project partners has to address.

Judging from the responses to the current situation, with its national focus, mitigation of risks leads to even more careful assessment when clearing rights for access on a pan-European level. It clearly shows that a tool and support system, as envisaged by the EODOPEN project, is needed for organizations to dare put copyrighted works online for access across borders.

The results of the workshops will be suitable starting points when developing the generic framework for *D15b National hands-on-workshop-series for construction of best practices on how to deal with rights clearance, min. 1 per participating country* to be executed second quarter 2021 – fourth quarter 2023.