ATHENA
Access to cultural heritage
networks across Europe

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ATHENA

Step-by-step guide on IPR issues: methodology

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*e**Content**plus*

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1 OJ L 79, 24.3.2005, p. 1.

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1. Executive summary

This document presents the methodology that will form the basis of the creation of an online Step-by-step guide to assist cultural heritage institutions in dealing with their IPR-issues and to provide accurate solutions. This deliverable is dealing only with the methodology of the Step-by-step guide. The complete guide itself will be made online available for the public in September 2010.

The reason for the delay of the deliverable deadline is due to the initial planning of the deliverables in the ATHENA Description of Work. The order of the deliverables would have been more optimal if the Step-by-step guide would have been named D.6.4.

In the original planning it was foreseen that the Step-by-step guide would be completed only three months after the first deliverable (D.6.1.). This timeframe is too short in order to create a workable and complete online guide. Since elements of the D.6.3. and D.6.4 also need to be included in the report that will accompany the Step-by-step guide, a delay of the D.6.2. was discussed with the project management. Upon their approval of a delay of the original deadline to September 2010, the initial deadline date of October 2009 served as deadline for the presentation of the methodology of the Step-by-step guide (D.6.2.).

This delay will neither affect the rest of the research within WP6, nor will it affect the general outcome of the project. The deliverables D.6.3. and D.6.4. remain scheduled as defined in the Description of Work (see time schedule on p. 6).

2.   Objectives

The deliverable D.6.2. entitled "Step-by-step guide on IPR Issues" (SBS guide) of the Working Package 6 (WP6) "Analysis of IPR issues and definition of possible solutions" will support the ATHENA content providers, network members and other cultural heritage organisations on clearing the copyright on the material they would like to disseminate online.

It will provide a tool to verify if any legal constraints hinder the digital display of their cultural content and clear copyright on digital content prior to its dissemination through web portals, in particular through Europeana. Such actions will be facilitated by the proposal of solutions for copyright clearance that are rapidly applicable.

The SBS guide will provide specific solutions and workarounds for institutions wishing to expose their collections via ATHENA on the Europeana portal and other www portals such as museum websites or a national aggregator portal. It will be based mainly on inputs and cases focusing on specific content providers and projects from the European cultural heritage sector dealing with IPR issues on a daily basis.

The Step-by-step guide will also be based on the other deliverables of the WP6. These deliverables are:
- Overview of IPR legislation in relation to the objectives of Europeana (D.6.1.);
- Overview of collective licensing models and of DRM systems and technologies used for IPR protection and management (D.6.3.);
- Database containing IPR information per member state (indicating who is who on IPR in the ATHENA partner countries: e.g. clearing houses, collective rights management organisations, copyright contact points, etc.) (D.6.4.).

3.   Methodology

The Step-by-step guide on IPR Issues will be implemented as an 'educational toolkit' which will include tools for quick answers on common simple and/or complicated problems encountered during the identification and clearing of Intellectual Property Rights. The SBS guide will be available as an online tool, and will be accompanied by a written report containing background information on the relationship between IPR and the digital display of cultural heritage material.

The structure of the online SBS guide will be discussed further on in this document. Some of the tools that will be used throughout the guide are:
- Decision trees for the identification and clearing of IPR prior to the exposure of digital content online: the tree structure will assist organisations on how to define the copyright status of the work.
- Fact sheets with brief guidelines per situation: based on problems already experienced by cultural organisations in Europe, this section will present possible solutions for a number of exemplary situations.
- Examples and practices: relevant examples of good practices by organisations and projects which have dealt with IPR issues in the past will be presented.

The online guide will be part of the ATHENA website.

In addition to the SBS guide, a written report will be produced. It will include relevant parts from the other WP6 deliverables, including elements on:
- Relevant legislation in partner countries concerning IPR and other legal issues involving digital access to cultural content present in European museums;
- Information on emerging standards, collective licensing and open access models;
- Rights management metadata, specific terminologies and the language of rights expression;
- Technological solutions for IPR protection and Digital Rights Management.

Methodology and actions for developing the online Step-by-step guide include:
1. the starting point for the SBS guide is the information already gathered by other European projects and initiatives such as the *"Minerva IPR Guidelines"*[2]*, Collections Link's "Get to grips with copyright"*[3]*,* the Dutch "*Juridische wegwijzer Musea en Archieven Online"*[4], etc. This step is already under development; the useful conclusions have been included in the initial structure of the Step-by-step guide.
2. Generating the initial structure: this structure has been developed and is presented in the next section.
3. Communicating the structure and the overall logic for approval by the target group (ATHENA museums)[5] and external lawyers: the need to have a wide approval of the structure and idea behind it is important. For this reason museums from the ATHENA

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[2] MinervaEC Working Group (ed.), Minerva IPR guide, 2008.

[3] Online available from http://www.collectionslink.org.uk/get_to_grips_with_copyright, accessed October 2009.

[4] A. Beunen & T. Schiphof, Juridische Wegwijzer Archieven en Musea Online, 2006.

[5] On October 6 2009, an e-mail was sent to the general ATHENA mailinglist, containing this very document. All ATHENA network members were asked to communicate their feedback and thoughts on the methodology for the Step-by-step guide and on what the WP6 aimed to achieve with the online tool. A small number of reactions was received. During the ATHENA plenary meeting in Lund on October 14 2009, the request for feedback was repeated. No further comments were received after this call.

network have been selected as testbed organisations6 and a steering committee7 specialized in IPR issues has been created to give extra guidance and approval. The goal is to ensure the usefulness and completions of the SBS guide before initiating its implementation.

4. User Interface Design: the user interface will be designed and implemented based on widely accepted quality and usability standards. The aim is that the online SBS guide can easily be used by anyone working in the cultural heritage field. Testing the interface will take place at the University of Patras and in cooperation with external experts.

5. Implementation: actual implementation using web based and multimedia technologies. The aim is to have an SBS guide that will function autonomously and on-line.

6. Evaluation and testing: this phase is of great importance as it will optimize functionality and the overall output/usability of the SBS guide.

During the creation of the SBS guide, a close link to the Europeana and EuropeanaConnect community will be maintained. The advice that will be given as a result of using the guide will be harmonised with the accepted licensing models as they are under development within the Europeana Licensing Framework. Open re-use of digital cultural heritage content will be actively encouraged.

The timing schedule is being presented below. The deliverable *"Step-by-step guide on IPR issues"* of the WP6 is presented in comparison with the rest of the deliverables.

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6 Amongst others S.M.A.K. (Belgium) and M HKA (Belgium), and Lst Archaeological Ephorate, Press Museum, Greek Film Archive (Greece).

7 Herman Croux (lawyer at Marx Van Ranst Vermeersch & Partners (Brussels). He mainly deals with international contracts and disputes, broad experience in the field of intellectual property and information technology) // Annemarie Beunen (lecturer at the Law Faculty of Leiden University, eLaw@Leiden, Centre for Law in the Information Society. Promoted on the European Database Directive and works as copyright expert at the Royal Libray, The Hague). The steering committee is only comprised out of two persons because we aimed at keeping it a workable instrument and preferred multiple face-to-face meetings. The presence of Ms. Beunen, who is also aware of the legal matters surrounding the Europeana v1.0 project because of her work at the Royal Library, will help us to align the steps Europeana will undertake in the field of IPR with the work done within ATHENA. There was no practical need to consult representatives from different European countries because this document only deals with the development of a general methodology, not an overview of the different legislations in the partner countries. Multiple national legal representatives have been contacted in the past in order to create the D.6.1.

Nr. of activity	Name of activity	Partners involved	deadlines
VP6: IPR issues			
D.6.1	**Overview of national IPR legislation**		
	Overview of national IPR legislation	Packed	
	First draft of D6.1	Packed	15/07/2009
	Issue of D6.1	Packed	31/07/2009
D.6.2	**Step-by-step guide**		
	Creation of ICT-infrastructure	Upatras	
	Content for step-by-step guide	all	
	First draft of D6.2: methodology	all	31/10/2009
	Final online Step-by-step guide	all	30/09/2010
	Issue of D6.2: report	all	30/04/2011
D.6.3	**Overview of open content licensing and DRM**		
	Research on open content licensing	Packed	
	Research on DRM techniques	Upatras	
	First draft of D6.3	all	15/04/2010
	Issue of D6.3	all	30/04/2010
D.6.4	**Who-is-who database**		
	Construction of database	Upatras	
	Collecting and input data	Upatras	
	First draft of D6.4	all	15/04/2011
	Issue of D6.4	all	30/04/2011

Legend:
- Red: Official deliverable deadline date
- Blue: Working time on deliverable
- Orange: Official report deadline date
- Green: Actual completion date of deliverable D.6.2.

Extra information: D.6.2. will be completed in three stages:
- a) 10/09: draft report on methodology
- b) 09/10: online Step-by-step guide
- c) 04/11: final report

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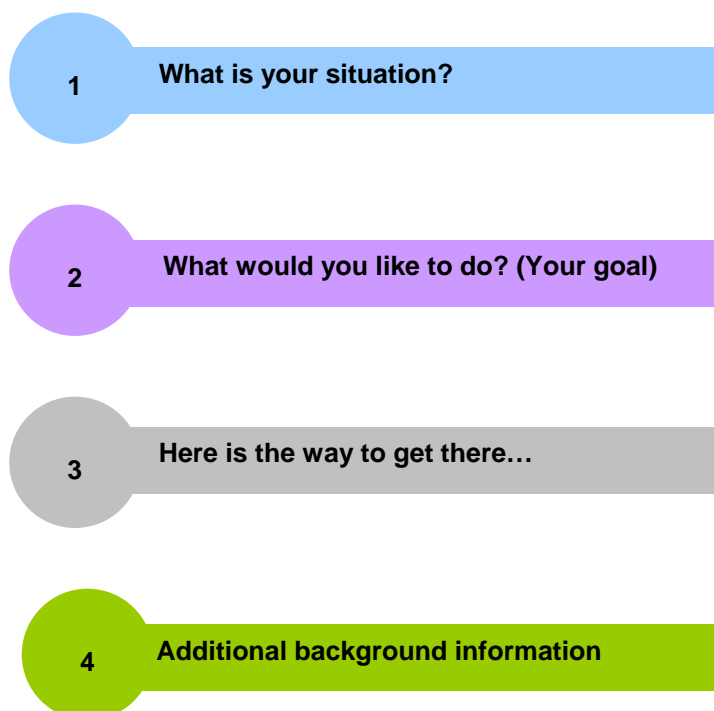Access to cultural heritage
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4.   Structure of the Step-by-step guide

In this section a draft structure of the SBS guide is presented. It has been communicated within the ATHENA project and the feedback regarding the proposition has been processed.

In addition the structure has been sent to the testbed organisations (museums in member states) and the steering committee for evaluation and feedback. The goal is to ensure the usability, accuracy and completion of the SBS guide before initiating its implementation.

The structure is preliminary since experience from the selected testbed organisations may suggest possible amendments. The structure as outlined below was created to provide an indication of the initial ideas underlined in the guide and an overview of the overall logic and the workflow of the structure. Upon final implementation this structure will be finalized and developed in full detail.

To get a clear view of the IPR-situation concerning a particular work / collection, we would first of all ask you to sketch out the basic characteristics of the work(s) (e.g. legal situation, is there a license agreement or not, type of institution, …). After this we will ask you what you wish to do with the work. As an outcome of this step-by-step process, we shall propose a set of elements that, depending on what you have already covered and what it is you are aiming to achieve, should be included in a license agreement with the rights holder in order to obtain your exploitation goal legally. What follows is an outline of the structural process required to achieve this.

1   **What is your situation?**

2   **What would you like to do? (Your goal)**

3   **Here is the way to get there…**

4   **Additional background information**

At present, the key to successful online exploitation of digital cultural heritage is still accurate licensing. The importance of licensing also caught Europeana's attention: the organisation has set up its own 'Europeana Licensing Framework'.[8]

When attempting to bring your collection to the www, some problems may occur. Are you as a museum allowed to display images of the work on your website? Is it ok if you allow users to remix content on your museum website for whatever purpose they may like? We would like to propose the most straightforward way of clearing rights in order to achieve the legal basis for the exploitation you have in mind.

At first sight, the structure of the online Step-by-step tool may seem generic. There is a good reason for this simple way of structuring and operating the online tool. IPR issues manifest themselves in various ways (different kinds of copyrighted material, different exceptions for different institutions, differences in the different national copyright laws, …). It is the aim of the WP6 to create a solution for a very broad spectrum of many different problems. Within the institutions there are also different kinds of people dealing with the IPR issues: from registrators, conservators, and curators to lawyers specialised in IPR. After consulting the institutions, it quickly became clear that each institution has its own staff to handle IPR, and they all do it in a different way through different backgrounds. The WP6 believes that it is best to create a tool which can be used by as many people as possible, to solve as many problems as possible. The proposed Step-by-step guide has a very low use barrier and can therefore be consulted by any staff member of any cultural heritage institution. We hereby do not mean that guides with a more complicated structure would not be useful; they are just not suited for the heterogeneous ATHENA target group. A different approach could be the creation of a large number of different standard licenses. This might increase the ease of use in very particular IPR-situations, but a project with a broad scope as ATHENA will never be able to create suitable licenses for all different cases. The structure as outlined below will therefore be an easy-to-use valid alternative that can be used in a very broad range of situations.

NOTE: The questions below are not exhaustive. At this stage they are just exemplary and subject to additions/corrections received from the steering committee. Further specifications on type of work (film, 3D statue, text) can be given, as well as use specifications, etc. At this stage we would like to focus on structure and idea over content.

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8 We would like to point out that (re-)negotiating license agreements is in theory still the best way to proceed with the digital disclosure of heritage materials, given the current regulatory framework. Licensing provides heritage institutions with the best legal basis available at the moment. The disadvantage of licensing is that it takes up a lot of labour and time; therefore also a lot of money. This is making digitisation and the disclosure of material expensive. In practice, concluding licensing agreements is not always a feasible solution for small as well as large cultural heritage institutions. The solution to this is not in the hands of a research project such as ATHENA but depends on political decision making: if an accurate, clear and up-to-date regulatory framework came into force that was not solely dependent on license agreements, (re-)negotiating these agreements could become a thing of the past.

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1   What is your situation?

Starting from an individual work

A) Is there a license agreement present on the work within the institution?

YES ◯   NO ◯   No Clue ◯

B) You acquired the work via:

◯ Purchase

◯ Loan

◯ Donation

◯ Owned as In-House Museum Production

C) Age Creator / Work:

Work was created in ⬭   Date / Year

Creator is Alive ◯   Deceased ◯ in ⬭   Date / Year

No Clue ◯

Your work is:

1. ©

2. Public Domain

3. Orphan Work

D) You are in:

EU   ◯ (Choose from list)

OTHER   ◯ (USA, other: choose from list)

E) At the moment the work is…

◯   Analog

◯

	OFFLINE	ONLINE
Digital		
Digitised		
Born digital		

➡ **SUMMARY-1** of Current Situation: is rendered from the responses

2 **What would you like to do? (Your goal)**

A) You want your work to be…

(?) Give example / Combination

Digital	OFFLINE	ONLINE
Digitised		
Born digital		

B) (The choices above are matrixed up again e.g. if you choose "Digitised" + "Online")

Define "Online":

	OWN WEBSITE (?)	OTHER WWW PLATFORM (?)
(?) RE-USE (yes)		
(?) RE-USE (nO)		

E.g. You can add these symbols (?) after used terms, and hide an explanation of the term behind it.

C) Define: "Re-Use" (In case that reuse is chosen "Re-use (yes) " = Re-use is allowed)

Determine the Re-use options ◯ Loan

◯ Remixing of content (CC Alike)

◯ …

➡ **SUMMARY-2** of what you would like to do with the object (Rendered from Responses)
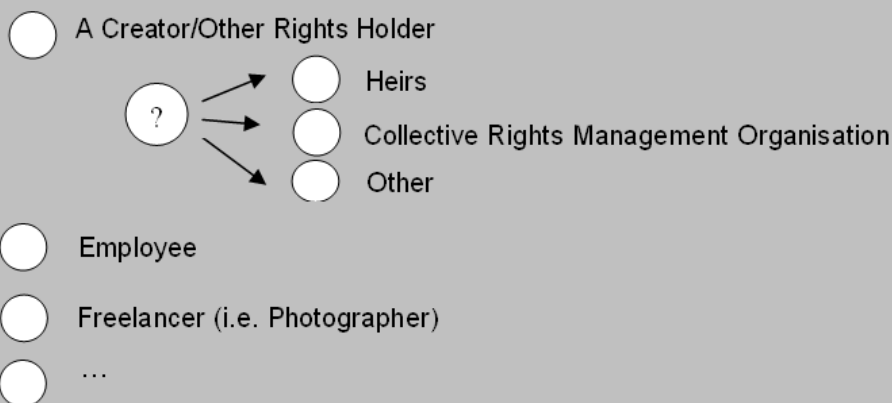
3   **Here is the way to get there…**

The combination of SUMMARY-1 and SUMMARY-2, should provide enough information for us to provide you with proper advice. E.g. if "No Clue" is indicated on AGE ARTIST / WORK, a path to more information will be given regarding orphan works.

In 'normal' situations, all the elements that should be present in an accurate license agreement covering the indicated future uses will be included and explained. A preliminary idea of the elements is as follows:

- Definition of the Work.
- Transfer of Rights (specific rights).
- Term of duration.
- Geographic scope.
- Remuneration (i.e. in case of commercial use, it will be stated in one of the articles of the license agreement).
- Crediting the Creator.
- Changes to the Work.
- Appropriate Courts.
- …
- The rights holder:

2 Parties – You and the Rights Holder:

The rights holder can be

- A Creator/Other Rights Holder
  - ? → Heirs
  - → Collective Rights Management Organisation
  - → Other
- Employee
- Freelancer (i.e. Photographer)
- …

All of the above bullet points indicate elements that should be included in a license agreement on the work / collection one wishes to exploit digitally (be it for placing a digital image on your website, or letting others remix it on a closed www platform, …).

If you indicated that you already have a proper license agreement in place on the particular work, we will not suggest you create a whole new agreement from scratch. In this case we will just highlight what elements should be added or re-formulated (and renegotiated) in your existing license agreement. According to the uses you wish to allow, different elements will or will not be included in the list we propose to include in a license agreement that you can then agree on with the particular rights holder for such a situation.

4   Additional background information

The organization (museum, other cultural heritage institution) has the elements which are relevant (and in line with the Europeana specifications) to be included in a license agreement that will be completely new, or just some key license agreement elements that should be included in the existing one, so that future uses may be covered.

Any user going over this guide will receive a basic understanding of particular topics in cultural heritage rights management (e.g. how to undertake a diligent search on orphan works, what amount of rights transfer is needed in order to be able to apply a CC-License, …). This information will become apparent when 'clicking through' on certain words, phrases, etc. that have a character like this behind them:

?

By clicking these question marks you will receive extra information on the specific concept to which the question mark relates.

More information on the broader picture of rights management in digital cultural heritage can be found in the written report that will accompany the online SBS guide.

5. Comments

In every step the user will be able to navigate to important information/databases about law, legal aspects, organisations and people involved in rights definition and rights clearance. The information will be supportive and will include contact points and links to specific governmental or private organisations per country, e.g. clearing houses etc. This will be extracted from the D.6.4.: Who-is-who on IPR database.

The exact contents of the Step-by-Step guide will be finalized in cooperation with other projects supporting Europeana, e.g. EuropeanaConnect. This issue is critical because there are many overlaps between the projects and coordination is necessary. Especially the issue of the license agreement for content use and reuse which is under consideration by many projects. For this reason Europeana has formed a Cluster of IPR Projects in which all the members from individual projects share and communicate project deliverables and advancements. Results should be widely accepted and therefore all the necessary steps for coordination have been taken.

The user interfaces will follow all the quality principles and usability guidelines as set out by e.g. Minerva (Quality principles for Cultural web-sites: a handbook). The results will be evaluated and tested within the ATHENA consortium as well as by peer reviewers. There is no need for 90 clicks if the result can be achieved in just 10 clicks. It will be investigated as to whether it is technically possible to render a printable document giving an overview of your starting situation, your goal and the license elements proposed to achieve such a goal.

The interface will allow for as much information as you desire. Do you wish to get in-depth information on orphan works? This will be provided by 'clicking through' on the content offered. Do you already have an understanding of this problem, then we will not bother you with all the information regarding the topic right away.

6. Conclusions

This document illustrated the methodology for the creation of an online Step-by-step guide that will provide specific solutions and workarounds for institutions wishing to expose their collections via ATHENA on the Europeana portal and other www portals such as museum websites or a national aggregator portal. The complete Step-by-step guide will be online in September 2010 and will be accompanied by a report on the broader picture of rights management in digital cultural heritage.