

2.2: IPR and Licensing Blueprint for Funding Bodies and Funding Recipient

A draft discussion paper

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Introduction

1. Background and Context

Set within the backdrop of the i2010 Digital Libraries¹ initiative, which seeks to optimise the contribution of creativity and creative industries to economic growth in Europe and JISC's Libraries of the Future,² there has been a series of local, national and international initiatives that have supported the preservation, access and reuse of digital content across the public sector.

Amongst SCA Sponsors and their constituent members, over the last decade these initiatives have been supported by various funding streams and include:

- The establishment of a repository programme across the NHS supported by central Government funding
- Digitisation of cultural heritage works, supported by Government funding such as Culture Online;³ New Opportunities Fund(NOF);⁴ Heritage Lottery Fund(HLF);⁵ People's Network Service⁶
- JISC's Digitisation programme⁷ and Repositories and Preservation programme⁸
- Mass scanning of works across the cultural heritage sector supported by commercial interests such as by Microsoft⁹ and Google¹⁰
- BBC MemoryShare¹¹
- Venture capital investment such as ArtStor¹² and The Bridgeman Art Library¹³
- A range of locally funded, international and collaborative projects

Inherent with many of these funding agreements are a variety of clauses relating to Intellectual Property Rights and licensing. These are often encapsulated by various responsibilities imposed on the funded parties and third parties with whom they work in partnership.

1 www.jisc.ac.uk/whatwedo/campaigns/librariesofthefuture.aspx

2 www.jisc.ac.uk/whatwedo/campaigns/librariesofthefuture.aspx

3 www.cultureonline.gov.uk

4 www.nof.org.uk

5 www.hlf.org.uk/english

6 www.mla.gov.uk/programmes/peoples_network/peoples_network_service/services

7 www.jisc.ac.uk/whatwedo/programmes/programme_digitisation.aspx

8 www.jisc.ac.uk/whatwedo/programmes/programme_rep_pres.aspx

9 <http://research.microsoft.com/ERO/biosciences/herbarium.aspx>

10 www.bodley.ox.ac.uk/google/oxfordfaqs.html

11 www.bbc.co.uk/memoryshare

12 www.artstor.org/index.shtml

13 www.bridgemanart.com

Unsurprisingly, in light of the range of funding sources, these terms include varying obligations regarding Intellectual Property Rights and licensing. Sometimes, these are incompatible with each other, especially in cases where collections or projects receive funds from more than one source. In other cases, these requirements can also be unrealistic and thereby present difficulties for public-sector bodies. Specific instances have included:

- Obligations for funding recipients to warrant that rights have been cleared and indemnify the funding body if they have not, although large numbers of works may be those for which the rights holders cannot be traced or are unknown
- Responsibilities to provide the funding body (and other named organisations with whom it has an affiliation) with a non-exclusive licence to use the works, which may be perpetual or time limited
- Instructions not to use funding to pay for rights clearance
- Necessity to request that moral rights are waived by all third-party rights holders, although artists and rights holders maybe unwilling to do this or cannot by law in their territory

2. Aim of this Paper

The aim of this paper is to create a blueprint for the development of collaborative working practices across the public sector for both providers of funding and funding recipients. A number of benefits can potentially be realised from this, which include:

- Greater consistency, which would raise levels of awareness about expectations and obligations regarding IPR and licensing in the creation of e-content before projects are funded, thus ensuring better planning, more rights clearance upon the acquisition/creation of content and other implementations of good copyright practices
- More clarity about roles and responsibilities and the necessary resources regarding rights clearance and licensing activities, and in particular the identification of the need to resolve third-party rights issues from the onset. This is of specific importance with joint or collaborative projects
- Enhanced compatibility between IPR-related clauses if projects and/or organisations are in receipt of funding from more than one source
- Better management of copyright and rights issues through the establishment of shared practices and standards

In the future, such collaboration and engagement with funding bodies could lead to the reduction of related risks and obstacles that the lack of such clauses has provoked in the past, by ensuring that infringements of third-party rights are minimised and access options can be fully explored. This level of cooperation would also take into account the two-way nature of such funding agreements, and in particular the necessity to ensure that funding agreements encapsulate both the role of the funding bodies, as well as the roles and responsibilities of the funding recipients.

These issues have been captured below and form proposed minimum standards that might be adopted by funding bodies as well as the types of commitments that funding bodies may expect from recipients of their funding.

3. Suggested Roles and Responsibilities

3.1 Funding parties

- Ensure that clear internal policies are put in place and communicated indicating the funding party's position on IP, including ownership of rights in funded outputs and associated access and use policies, such as the requirement that all outputs need to be made available under Open Access principles etc

- Ensure that funding initiatives and subsequent agreements should take into consideration the costs and time management implications of clearance procedures and the need for training of staff on IPR management and other rights (eg personal data) issues
- Ensure that funding recipients are provided with clear and consistent messages regarding any expectations from them relating to IP and access to outputs resulting from any funding
- Permit use of funds for the clearance of third-party rights
- Request only such rights (including the waiver of moral rights) that are realistic in light of the overall objective of the funding stream
- Establish clear procedures for recipients of funding for dealing with the rights in works for which the rights holders cannot be found or are unknown (so called 'orphan works'), such as due diligence efforts
- Provide details, wherever possible, of any affiliates or other bodies etc, with whom the funding party has an existing relationship, for whom the recipient of funding may also need to seek permissions for the use of any third-party rights
- Ensure that recipients of funding must first outline anticipated IPR and licensing issues arising in their projects, within their funding proposals and within associated risk assessments
- Ensure wherever possible that IP and licensing lessons arising from funded outputs are recorded in an appropriate 'lessons learnt' section in the project report issued on completion of the project, and that this text is made available for access by newly funded projects
- Ensure that IP and licensing support can be provided for funding recipients, in the form of factsheets, training and other resources
- Explore sustainability opportunities arising from funded projects, including verification of the standards (eg file types and interoperability) that they propose

3.2 Recipients of funding:

- Grant the funding body (or assigned party thereof) a licence to freely reuse the deliverables (to be agreed by funding party)
- Ensure that the funded outputs are available to certain communities under certain conditions (as required by the funding party)
- Ensure best endeavours are carried out to clear third-party rights and permissions are documented and stored in accordance with recommended standards
- Ensure that funding initiatives should take into consideration the costs and time management implications of clearance procedures and the need for training of staff on IPR management and other rights (eg personal data) issues
- Notify the funding party at the earliest possible stage regarding situations where rights have not been cleared – including those in works for which rights holders cannot be traced or are unknown
- Carry out any 'Due Diligence' efforts in accordance with any funding requirements and be prepared to supply these to the funding party where necessary
- Deliver funded outputs in formats that are compatible with access, storage, preservation, reuse etc, requirements
- Ensure that all contractual obligations towards the funding party are fulfilled, including logging IPR and licensing lessons learnt, where stipulated

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