INTERNATIONAL ASSOCIATION OF SCIENTIFIC, TECHNICAL & MEDICAL PUBLISHERS
www.stm-assoc.org

Oxford, May 15, 2014

The Copyright Office
Library of Congress
101 Independence Avenue S.E.
Washington D.C. 20559-6000
UNITED STATES OF AMERICA

On-line submission at http://www.copyright.gov/orphan/comment-submission/.

Notice of Inquiry "*Orphan Works and Mass Digitization: Request for Additional Comments*"
Submission by the International Association of Scientific Technical and Medical Publishers, STM

Dear Sirs

Introduction

The International Association of Scientific, Technical and Medical Publishers ("STM") is the leading global trade association for academic and professional publishers. It has over 120 members in 21 countries, including in the United States of America, who each year collectively publish nearly 66% of all journal articles and hundreds of thousands of monographs and reference works. STM members include learned societies, university presses, private companies, new starts and established players.

We welcome the opportunity to make a further contribution to the inquiry on "*Orphan Works and Mass Digitization*" following our submission of February 1st, 2013.

The copyright works produced by STM members are to the largest extent literary works, with pictorial and graphic works embedded in them, which are produced in print form and in electronic form. Increasingly STM publications also contain embedded video or animated images, as well as links to underlying research data and data sets.

STM publishers have actively embraced the opportunities of the digital online environment in making their content available electronically.[1] In doing so, STM publishers not only make their scholarly journals available on-line, but, as appears more fully below, have actively participated in other ways under which their content can be made available, such as licensing institutional libraries to deliver documents electronically and supporting the initiative in Europe facilitating the mass digitization of out-of commerce works by institutional libraries.

[1] A useful catalogue of the digital changes in scholarly publishing can be found in the STM report (2012) "An Overview of Scientific and Scholarly Publishing" at http://www.stm-assoc.org/2012_12_11_STM_Report_2012.pdf.

We propose to limit this submission to, firstly, how STM views the problem related to the use of orphan works, secondly, the tools used by STM members in finding rightsholders and, thirdly, the voluntary measures that a significant number of STM members have taken in responding to the use of their works which were mistakenly considered to be orphan by their users. In this submission, all references to orphan works are limited to published literary works, which may have pictorial or graphic works embedded, and we do not propose to deal with other kinds of copyright works.

STM publishers are potentially both owners and users of orphan works and works that at some point may have been considered to be orphan.

STM's submission will be limited to these pertinent experiences and not address each and every question on which this consultation seeks input. In this regard, STM refers to the submission filed or to be filed by AAP. STM also welcomes the opportunity to continue contributing to future deliberations after making this submission.

1. The problem statement relating to orphan works

The point of departure taken by STM in its voluntary measures relating to orphan works referred to below, is that where a work is truly an orphan work, namely where the rightsholder is not identified or found, then there is no person who can claim based on the exclusive rights of copyright granted in respect of the work – simply put, if there is no plaintiff, there is no claim.

The problems that STM have responded to are the problem of "false positives", namely works incorrectly assessed by intended users to be orphan works, and the problem of "the return of the rightsholder", the situation of a rightsholder who does appear and claim the rights in the works against a user who had carried out a good faith and diligent search in order to obtain the necessary consent to use the work.

1.1. Elimination of "false positives"

In STM's experience, many works considered to be orphan works are in fact incorrectly determined to be such,[2] and that a proper search would have found the rightsholder. The requirement for an intended user of a work thought to be orphan to carry out a reasonably diligent search in good faith for the rightsholder is therefore a *sine qua non* for any relief accorded to the user against the rightsholder if the rightsholder should come forward at a stage when the user has already used the work in a way that would otherwise have needed permission.

We deal with two aspects of the reasonably diligent good faith search to be carried out by an intended user in greater detail below: firstly, the standards and procedures for the search and, secondly, the technology and resources which are available today.

It follows from what is set out below that STM considers that there is no justification for a mass produced solution, and that each work intended to be used must be searched individually on a case-by-case basis.

Standards and procedures for the reasonably diligent good faith search

[2] Compare, for instance, the success of the Authors Guild in getting strong leads to finding all the rightsholders of the first 167 works determined by HathiTrust to be candidates for orphan works in its mass digitization project - http://www.authorsguild.org/advocacy/authors-groups-from-u-k-canada-norway-and-sweden-join-authors-guild-australian-society-of-authors-and-quebec-writers-union-in-suit-against-hathitrust/.

STM's position on the standard and procedures for a reasonably diligent good faith search are the following:

- The potential user of orphan works should be required to conduct a thorough search in good faith, with a view to identifying, locating and/or contacting the copyright owner, prior to using the orphan work.
- The reasonably diligent search should necessitate a high level of care. However worded, the search standard prescribed should require the potential user not only to research the identity/location of the current copyright owner, but also to inform her-/himself about the possible sources where such information could be found.
- Any regulative initiative should refrain from prescribing minimum search steps or information sources to be consulted. Only a flexible approach will ensure an adequate solution dealing with the individual circumstances of each orphan work, as well as rapidly changing information sources and search techniques.
- Stakeholders should be encouraged to develop standards and guidance on what they consider a reasonably diligent search. These must be flexible as resources available change and improve.
- The user of an orphan work should bear the burden of proving that her/his search was reasonably diligent, and must maintain records of his/her efforts to meet that burden.

STM accepts that it is not possible to provide an exhaustive list of resources for each scientific, technical or medical discipline that would be useful for a reasonably diligent good faith search. In virtually all cases, searches and reviews must be conducted of these kinds of resources identified generically as:

- Published indexes of published material relevant for the publication type and subject matter.
- Indexes and catalogs from library holdings and collections.
- Sources that identify changes in ownership of publishing houses and publications (see below comment on imprints) including from local reprographic rights organizations.
- Biographical resources for authors.
- Searches of recent relevant literature to determine if the citation to the underlying work has been updated by other users or authors.
- Relevant business or personal directories or search engine searches of businesses or persons.
- Sources on the history of relevant publishing houses or scientific, technical or medical disciplines.

For the event that a user can identify a publisher that appears to be out of business, STM has made available a list of imprints owned by its members which can be consulted.[3]

1.2. Situation of the "return of the rightsholder"

The possibility that a rightsholder of a work being used as an orphan work could appear at any time to assert his or her rights is one that has to be catered for in a way which recognizes the rightsholder's rights under copyright, yet recognizes the legitimate interests of the user who has undertaken the reasonably diligent good faith search and can show a record of it.

STM believes that if a user, after carrying out a reasonable diligent and good faith search, uses what he or she as a result considers to be an orphan work with proper attribution, where possible, and the rightsholder were thereafter to appear and to claim infringement, the legitimate interests of that user in his or her continued exploitation of the work should be

[3] http://www.stm-assoc.org/2007_10_08_Science_and_Medical_Publisher_Imprints_List.pdf

taken into account, and the rightsholder should be entitled to a reasonable remuneration for the use of that work, and not entitled to statutory, punitive, exemplary or other special or general damages.

Specifically:

- If there is sufficient information to do so, the user of orphan works should provide attribution to the copyright owner(s) throughout her/his use of the orphan work as clearly and adequately as possible in the circumstances. For example, if a copyright notice is present in the orphan work, credit should be given in a manner which reflects the notice.

- A returning rightsholder must have full remedies , but those remedies must be limited in an appropriate and reasonable manner to take into account also the legitimate interests of the user in her/his continued exploitation of the previously orphaned work.

    - The appropriate reinstatement of the exclusive rights of the copyright owner should include an entitlement to adequate remuneration for the user's use of the previously orphaned work. Adequate remuneration should generally be defined as the equivalent of a licence fee for the entire use term as it would have been negotiated between copyright owner and user prior to the commencement of the use.

    - It is our view that remuneration should be negotiated between the parties, with recourse to the courts where such negotiations fail. Where consistent with local rules, court costs and fee shifting should be available to the prevailing party. For example, if the user offers a fee which the proprietor deems unreasonable, the proprietor should pay legal fees where the Court awards a fee equal to or less than the user's offer, and the user should pay a fee if the Court awards a greater sum.

    - Any possibility of injunctive relief against the continued and future use of a previously orphaned work should be sufficiently flexible to take into account the efforts and investment made by a good faith user.

- STM's position does not affect the right of copyright owners to ignore or refuse requests for licenses for subsequent uses of the orphan works, including derivatives thereof.

2. <u>Mass digitization of works which include orphan works and out-of-commerce works</u>

Out-of-commerce works are works that are still protected by copyright but are no longer commercially available because the authors and publishers have decided neither to publish new editions nor to sell copies through the customary channels of commerce. As such, they pose a challenge to mass digitization projects which is similar to those posed by orphan works.

Encouraged by the success in finding common ground on orphan works, in September 2011, STM, together with other stakeholders representing public libraries, other publishers and copyright management organizations in the European Union, signed a Memorandum of Understanding on making out of commerce works available for digitization projects in European Union member states.[4] These stakeholders have together formed a task team which is setting about the implementation of mass digitization projects by beneficiary public libraries.

[4] http://www.stm-assoc.org/2011_09_20_STM_Out_of_Commerce_MoU.pdf and http://www.stm-assoc.org/2012_10_18_MoU_OOCW_OMIT_in_EU.pdf. For a summary of the MoU *see* Press Release, Conference of European National Libraries (CENL), *et al.*, *Making Out-of-Commerce Works Available in EU Member States* (Sept. 2012)

Whereas licensing by collective licensing bodies forms an integral part of the solution under the Memorandum of Understanding, we point out that the scope of the licensing on behalf of rightsholders, although broad, do not amount to "extended collective licensing", as authorized by legislation in the Scandinavian countries. We believe that the broad scope was justified by the narrow purpose of the Memorandum of Understanding, namely to facilitate the digitization of Europe's literary heritage by public libraries.

Subsequent to the Memorandum of Understanding, European Union member states France and Germany have also allowed certain types of mass digitization pursuant to specific terms, which include processes by which copyright owners may proactively withdraw their works.[5]

STM posits that mass digitization is not capable of being resolved by fair use. A solution based on fair use will lack (1) acknowledgement that copyright owners control the exclusive right to digitize their works, including the ability to opt-out of future uses; (2) an element of negotiation between users and copyright owners; (3) the prospect of payment to copyright owners; and (4) different treatment for different categories of works and users – for instance, whether the books were in print or out of print; whether they were first published in the territory of the jurisdiction in question; or their age.

STM supports the ability of libraries and archives to being able to make preservation and archival copies and to shift the format of items forming part of the library's or archive's permanent collection for these purposes where it is not reasonably practical to buy a replacement copy. However, preservation copies should not be used as "master copies" to serve beneficiaries of fair dealing exceptions or under any other exception, or to permit access on an insecure online platform, which could well distort the market.

3. Available technology and resources

There are technologies available which facilitate the carrying out of a diligent search through many of the sources suggested above, the most notable one used in Europe being ARROW (acronym for *Accessible Registries of Rights Information and Orphan Works towards Europeana*), which came about as a result of co-operation between national libraries of a number of European Union Member States, rightsholders of the book sector and copyright management organizations.[6]

ARROW is a tool to facilitate rights information management in any digitization project involving text and image based works. ARROW infrastructure allows streamlining the process of identification of authors, publishers and other rightholders of a work, including whether it is orphan, in or out of copyright or if it is still commercially available.

[5] For information on the French system, *see* Law No. 2012-287 of March 1, 2012 on the Digital Exploitation of Unavailable Books of the Twentieth Century, *available at* http://www.wipo.int/wipolex/en/details.jsp?id=12007. For information on the German system, *see* Press Release, VG Wort, *New German Legislation on Orphan and Out-of-Commerce Works, available at* http://www.vgwort.de/fileadmin/pdf/allgemeine_pdf/German_legislation_on_orphan_and_out-of-commerce_works.pdf.

[6] http://www.arrow-net.eu/

The ARROW tool for books consists of the following components:

ARROW system components

- ARROW facilitates the process of carrying out a diligent search by means of a comprehensive system:
  - **Arrow Web Portal Services**: it represents the interface between the user and the system
  - **The Rights Information Infrastructure (RII)**: it is the backbone of the ARROW system and the engine that enables ARROW to query and retrieve information, to process this information and take decisions on the successive elaboration and finally to exchange information according to a planned workflow
  - **The ARROW Work Registry (AWR)**: it stores all the relevant pieces of information collected by the RII workflow in a structured way that allows the retrieval and use of those information in the framework of ARROW services
  - **The Registry of Orphan Works (ROW)**: it is the subset of the AWR referring to works that have been declared as "probably orphan"

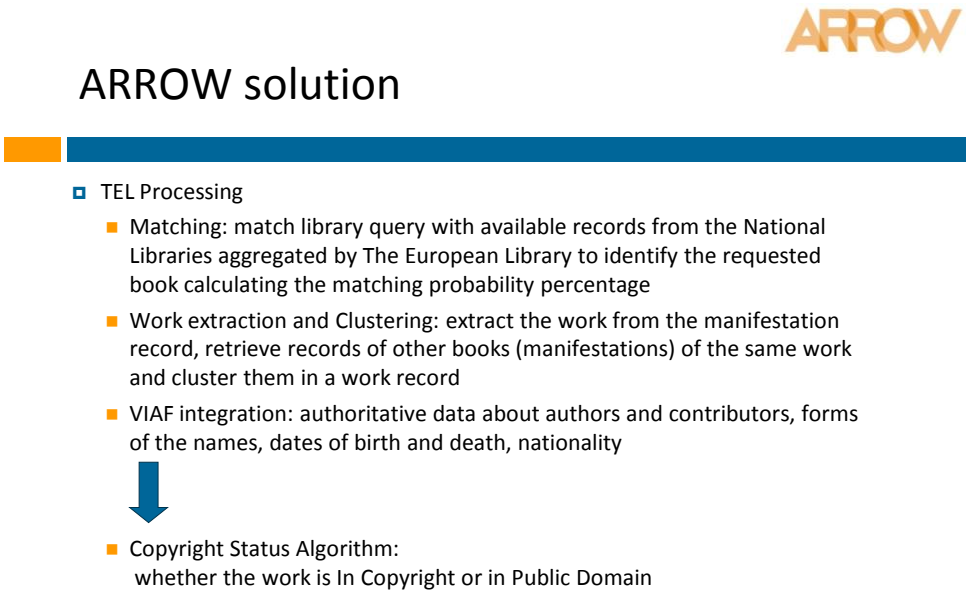
Workflow is executed on country-basis, starting from the country of publication of the book requested by the library. This also complies with the agreed HLG guidelines on diligent search

(Source: ARROW, ARROW Basic presentation, attached).

The ARROW workflow for books, which starts with an on-line enquiry by a user, is described as follows:

ARROW complexity: Manifestation<=>Work

- A request for permission to digitize and use a book refers to the manifestation level
  - a book in a specific edition and format (paperback, hardcover, large print)
  - a book published by a specific publisher
  - a book that may be still in print or out of print
  - a book that may be still copyrighted or not
- Rights clearance depends on information at work level
  - The in print/out of print status of the work depends from the in print/out of print status of all its manifestations published
  - If the manifestation requested for digitisation is out of print but another manifestation of the work is in print, then the work has to be considered in print
  - As the chain of rights might be very complex and all rightholders must be identified (authors, contributors, publishers)



(Source: ARROW, ARROW Basic presentation, attached).

As a consequence of its function of finding rightsholders, ARROW is also used to allocate orphan status to works where rightsholders are not found, and also to determine whether works are out of commerce or not. ARROW also contains a module which assists in determining whether the copyright period of a work has expired and, where this is the case, it classifies the work as having entered the public domain. (Source: ARROW, ARROW Basic presentation, attached.)

The effectiveness of the integration has been validated, resulting in decrease of the time for diligent search more than 95% (source: ARROW, ARROWPlus Publishable Summary, attached). The British Library published a report in September 2011, demonstrating that ARROW enables librarians to make a diligent search per book in five minutes instead of four hours, and which strongly recommends using that tool as a technical solution for the diligent search.[7]

In the ARROWPlus phase of the ARROW project, a feasibility study was done on the concept of a diligent search for image rights. The study set out to determine whether the ARROW search process can in principle be extended to image works contained in books, which raised the question of whether a system designed around libraries and book publishing can be made to work for image works. The feasibility study report sets out proposed workflows for the identification of images,[8] and work in this field is continuing.

ARROW is included in the European Directive on orphan works among the sources to be consulted when carrying out a diligent search.[9] ARROW reports that leading digitization

[7] http://pressandpolicy.bl.uk/ImageLibrary/detail.aspx?MediaDetailsID=1197

[8] http://www.arrow-net.eu/sites/default/files/D6.2_Feasibility_study_images_0.pdf, http://www.arrow-net.eu/sites/default/files/D6.2_Annex_I_rights_images_0.pdf and http://www.arrow-net.eu/sites/default/files/D6.2_Annex_II_images_identifiers_0.pdf. The procedures surrounding the classification of images not found in the search as orphan works are described on pp74 and 75 and the sections referred to there, and Annex II to the feasibility study contains the project's first report on image identification.

[9] The Annex to Directive 2012/28/EU of 25 October 2012 on certain permitted uses of orphan works http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:299:0005:0012:EN:PDF.

programs in Europe are asking ARROW to serve them as far as management of rights information is concerned, one of its use cases being a large scale digitization program to support the French Government's decision on the framework of the law on collective licensing agreements for out of commerce works published in France in the 20th century (source: ARROWPlus Publishable Summary, attached). A module for being connected to ARROW has become a built-in feature of WISE, the standard software for copyright management organizations promoted by the International Federation of Reproduction Rights Organizations, IFRRO.[10]

If this concept were to be applied to the USA, one level of complexity that is a feature of ARROW, namely the need to search for content over a number of countries, would be absent.

In the light of the positive experiences with ARROW in Europe, STM suggests that the US Government should consider funding similar technology, even if only for a pilot project for published works, and approach publishers, libraries, technology companies and copyright management organizations for their buy-in and participation.

4. Voluntary solutions adopted by STM members

In order to avoid an outcome where orphan works are excluded from the cycle of creation and exploitation, because copyright compliant users may prefer non-use over the risk of liability for infringement, STM developed a Position on Orphan Works in December 2006[11], followed by a Position Paper in November 2007 on a "Safe Harbor" for the conditions of use of orphan works under which signatory STM members would not take action for infringement. The Safe Harbor has now been signed by a total of 24 STM members[12] and is a joint effort with ALPSP and AAP's PSP, also both industry associations in the field of scholarly publishing.

In terms of the Safe Harbor, its signatory publishers agree that the royalty rate or similar fee to be charged will be identical to the publishers' normal permissions request rates. If the use goes beyond the relevant publisher's normal policy for granting permissions, such publisher-signatory commits to making a good faith effort to determine a reasonable royalty rate, taking all circumstances into consideration.

It bears noting that the Safe Harbor is neutral as to the commercial or non-commercial nature of the use of the work – it applies to both, and the only condition put on the actual use is a clear and adequate attribution of the author, the publisher and the rightsholder, if possible and appropriate under the circumstances.

In 2013, after the adoption of the Memorandum of Understanding on making out of commerce works available for digitization projects in EU member states, STM adopted a "Safe Harbor" statement on the use of out-of-commerce works, which has since been signed by 14 of its members.[13]

Under the Safe Harbor, every user which subscribes to the key principles of the Memorandum of Understanding and successfully collaborate with local rightsholder

[10] IFRRO announcement to members on July 4, 2013, "IFRRO Standard Software (under development) now ARROW compliant and linked to the ARROW system."
[11] http://www.stm-assoc.org/documents-statements-public-co/2006-documents-statements-public-correspondence/
[12] http://www.stm-assoc.org/2014_03_04_Safe_Harbor_Provisions_for_the_Use_of_Orphan_Works.pdf
[13] http://www.stm-assoc.org/2014_03_04_Safe_Harbor_Provisions_for_the_Use_of_Out_of_Commerce_Works.pdf

organizations in developing a digitization project as envisaged under the Memorandum of Understanding, benefits from a Safe Harbor in the sense that in the event that any of the signatory publishers identify works so used as “out-of-commerce” and inform the user as to the ownership status of the work, they waive any claim or entitlement to all fees or damages including statutory, punitive, exemplary or other special or general damages, other than a reasonable royalty, if the above requirements have been met by the user. Moreover, to the extent required under the criminal provisions of any copyright law, the signatories approve of an implied license removing criminal liability of a bona fide user for cases of innocent infringement.

It is expected that in many cases, both Safe Harbors could apply to a given situation. Whilst the Orphan Works Safe Harbor is concerned primarily with a reasonably diligent search in a “vertical” sense, ie along the chain of title, the identification of a work as being out-of-commerce requires a “horizontal” search, ie across varying customary trade channels. Publisher signatories to the two Safe Harbor statements (all 14 signatories to the Out-of-Commerce Safe Harbor are also signatories to the Orphan Works Safe Harbor) recognize that a user would only have to meet one type of search to benefit. The signatories to the Out-of-Commerce Safe Harbor agree that where a work is found to be both out-of-commerce and later also found in fact to have been an orphan work as well, the Safe Harbor which will apply is the one which is more favorable from the user’s perspective applying to the uses regarding the work in question.

STM stands ready to supplement this submission or contribute in whatever way is appropriate as the Copyright Office’s consultations progress.

Yours faithfully,

Michael Mabe
Chief Executive Officer
STM, International Association of Scientific, Technical and Medical Publishers

Attachments:

- ARROWPlus Publishable Summary
- ARROW Basic presentation

ARROW Plus Project Public Summary

From ARROW to ARROW Plus

ARROW Plus built on and further implemented the ARROW system as resulted at the end of a precedent project (ARROW) also co-funded by the European Commission. At the beginning of the new project, the ARROW system consisted of an infrastructure to *facilitate libraries and other users in their diligent search for rightholders in works that are to be included in a mass digitisation programme of books, through querying a network of European data sources*.

It was set up and validated in a limited number of European countries: France, Germany, Spain and UK. In these countries, the system proved its value in dramatically reducing the time needed for rights information management, and in particular for diligent search. A comprehensive study carried out by the British Library showed that the use of ARROW reduces such time from 2 hours to 5 minutes per title, thus reducing the cost for libraries.

Objectives

Starting from the good results of the ARROW project, ARROW Plus had the following objectives:

1. **Extending the number of countries covered**, targeting additional 12 countries and demonstrating the scalability of the system to be a genuinely pan-European infrastructure.
2. **Enhancing the pre-existing system,** on the basis of the recommendation resulting from the validation conducted during the ARROW project and of new concrete use-cases emerging.
3. **Developing new book data infrastructure**, so to contribute in closing the gap in book data quality between European countries.
4. **Analysing the extension of ARROW services to the image domain**, defining a pathway to create an "ARROW-like" infrastructure to deal with rights information in this field.

All those objectives converge towards the goal of having a set of tools to query a network of data sources – library catalogues, books in print database (BIP), and collective management organisations (CMO) repertoires – made interoperable through the use of standards, and to extract the best information available for the purpose of rights management in large scale digitisation programmes of books.

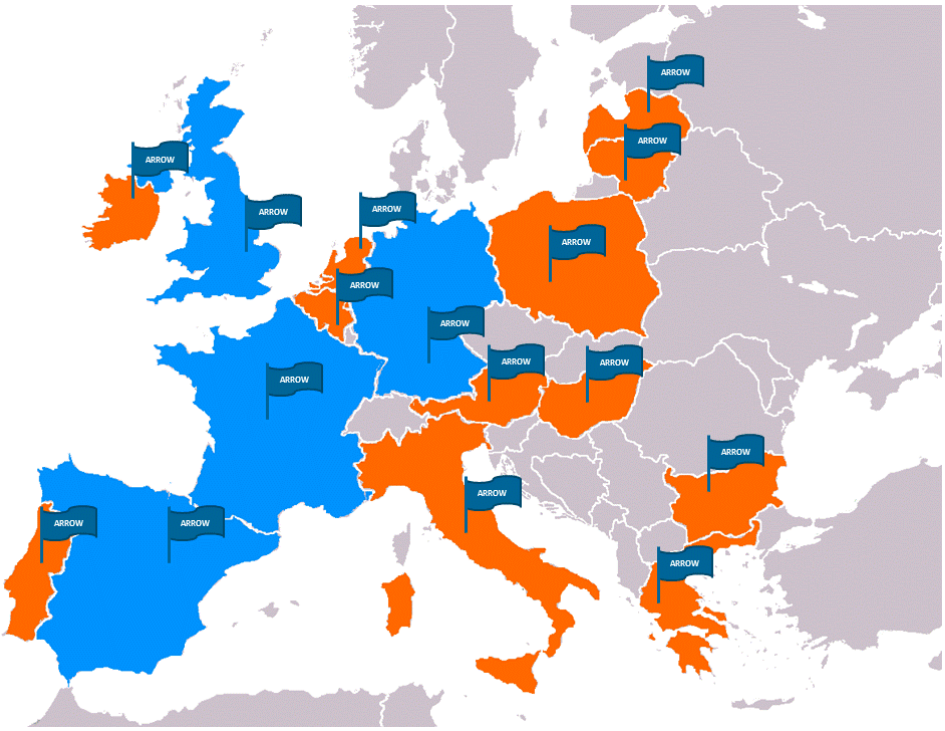
The system should be neutral to legislative framework and business model, so to be able to serve the implementation of both the European Directive on orphan works and the Memorandum of Understanding on out of commerce works as well as any further model.

Achievements

Extending the number of countries covered

The ARROW system is now established in 16 European countries (see figure below). Austria, Belgium, Bulgaria, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Poland, Portugal, The Netherlands have been integrated in the system during ARROW Plus so that, at the end of the project, they have an infrastructure to meet the requirements of the digitisation programmes that include in-copyright books.

In some of these countries the coverage of the data-sources is only partial. This is not a real limitation for future use of the infrastructure: once the system is in place, adding further sources is possible with reasonable effort, and at the same time partial workflows already generate value to specific use cases: in all the countries where ARROW is established, it can support the determination of public domain status as well as of the identification of out of commerce works.
In particular, the integration of CMO data requires the definition of business rules highly depending on the legal framework that is not defined in many cases, so that CMOs preferred to wait for actual demand before investing in this direction. In any case, in all the target countries also those players, and in particular RROs, carried out the preliminary work to be ready to join the system when the demand will emerge.



The effectiveness of the integration has been validated, resulting in decrease of the time for diligent search more than 95% in all countries.

Enhancing the pre-existing system

The validation exercise at the end of the ARROW project showed that the system was able to provide excellent performances under certain conditions, but still required to be improved to increase flexibility in cases where the input data did not respect the prerequisite set in the first phase and, in particular, in the usability of the user interface (63% of users found the system somewhat difficult to use).
The enhancements developed in ARROW Plus started from the recommendations of the previous project, enriched by a thorough analysis of the requirements in the 12 additional countries involved and by the feedback provided by three use cases where the system has been used in actual digitisation programmes.
The result is a much richer system, including a number of new functionalities (to make just some examples: the possibility to configure matching and clustering parameters on country basis or according to use case specificities, authors names extraction from unstructured text, new algorithm to determine if a work is in public domain) and a renovated interface now appreciated by users involved in the validation: over two third of the interviewees found the system easy or very easy to use.

The three use cases running during the project life provided the most encouraging results, since they refer to actual use of the system in production, and therefore go far beyond the mere demonstrator.
In UK we collaborated with the Wellcome Library and the British Library for two digitisation programmes (for books on history of genetic and the first world war respectively) featured by similar elements: the lack of particular legislative background to deal with orphan or out of commerce works, so that the value was there when the system enabled reaching rightholders to ask permission, and the inclusion in the programmes of books first published in several countries, which can be approached only thanks to a (at least) European platform.
In France, ARROW has served the largest digitisation programme in Europe for in copyright works, launched after the issue of a new legislation regulating the matter. The capability of serving also this case demonstrated the value of the decision taken during the first project to build up a system flexible enough to accommodate different legal background and business environment.

Developing new book data infrastructure

The ARROW system works integrating different data sources. The issue in many EU countries was the lack of essential data sources, such as BIP databases and RRO repertoires. From this, we included in our objectives the ambitious idea to support the book community to develop these instruments, which are essential for the trade far beyond the scope of the ARROW Plus project.
The two initial objectives of creating software both for managing a BIP and a RRO was turned during the project to concentrate on the BIP side only. The reason was that, in parallel, another project was developing a RRO management system, WISE (Web IFRRO Software Environment), which perfectly fitted the same needs. Therefore, we supported this initiative through developing an ad hoc module to ensure full ARROW compliance, and through piloting WISE.
As for the BIP database, six countries are now prepared to use the ARROW software for setting up local services, having defined a specific sustainability plan in each country.

Analysing the extension of ARROW services to the image domain

Managing rights data about still images is much more complex than for literary works. This is due to much poorer descriptive metadata available for images (in particular when they are embedded in books published many years ago, as it is typical in the digitisation programmes) and the lack of well-established standard identifiers and metadata schemas.
ARROW Plus produced a feasibility study to design the way to approach the problem, which remains very challenging without a dedicated project.

A valuable network of stakeholders

ARROW Plus achievements were possible mainly because of the commitment of a broad community of stakeholders in the countries involved. More than 50 organisations representing stakeholders have been involved in the national working groups by a consortium that already counted 26 partners.
The main strength of the project is exactly in this networking capacity, which fostered the collaboration within the book sector of stakeholders representing the whole value chain: authors, publishers, collective management organisations and libraries.

Long term sustainability and Arrow Association

The long term sustainability of the ARROW system relies first on the high level reputation that the system acquired in the five years of the two projects. The fact that ARROW is included in the Directive on orphan works among the sources to be consulted when carrying out a diligent search is just one signal of this. Even more important is that the leading digitisation programmes in Europe asked and are continuously asking ARROW to serve them as far as management of rights information is concerned.

Such reputation also goes beyond the EU boundaries, as shown, for example, by the interest of a US commercial company to use ARROW for the determination of public domain status of European works included in their commercial digitisation plans.

The position of ARROW in the nascent market of service provision for diligent search for orphan works and rights management in out of commerce agreements is excellent. The prospect of this market depends on the actual digitisation plans that in medium and long term will be developed in Europe.

The implementation of the Directive on orphan works and of the MoU on out of commerce works is promising on this respect. Starting in particular in the second part of 2014 new initiatives in this field are expected throughout the EU.

To approach this new market in the best way, the ARROW and ARROW Plus consortia together decided to set up the Arrow Association, a new membership organisation that received the IP rights in the ARROW System and is ready to operate to serve the needs of several and different digitisation programmes in Europe.

Further information:
Arrow Association
Corso di Porta Romana 108, 20122 Milano, Italy
Email: arrow@aie.it

Website: www.arrow-net.eu

Timeframe

- ARROW Project
  - Official project start date: 1st September 2008
  - Official project end date: 28th February 2011
  - Full Partners: 16
  - Supporting partners: 13
- ARROW plus Project
  - Official Project start date: 1st April 2011
  - Official project end date: 31st December 2013
  - Full Partners: 26
  - Supporting partners: 10

ARROW: who's who

- Biblioteca Nacional de España (ES)
- Bibliothèque nationale de France (FR)
- British Library (UK)
- Deutsche Nationalbibliothek (DE)
- The European Library - Koninklijke Bibliotheek (NL)
- Narodna Univerzitetna Knijznica (SL)
- National Library of Norway (NO)
- University of Innsbruck (AU)
- Federation of European Publishers
- Associazione Italiana Editori (IT) – coordinator
- Federación de Gremios de Editores de Espana (ES)
- Marketing und Verlagsservice Buchhandels (DE)
- Int. Federation of Reproduction Rights Organisations
- Copyright Licensing Agency (UK)
- CINECA (IT)
- NUMILOG (FR)

Supporters: The European Digital Library, National Library of Finland, Publishers Licensing Society, Swedish Publishers Association, Syndicat National de L'Edition, Author's Licensing and Collecting Society, Copydan Writing, Kopinor, Kopiosto, Sazor, Stichting Lira; Centro Español de Derechos Reprográficos ; Centre Français d'exploitation du droit de Copie

ARROW Plus: who's who

- Associazione Italiana Editori (IT) (coordinator)
- Int. Federation of Reproduction Rights Organisations
- Federation of European Publishers
- EDItEUR
- Marketing und Verlagsservice des Buchhandels (DE)
- The European Library – Europeana (NL)
- Istituto Centrale per il Catalogo Unico (IT)
- European Visual Artists
- Coordination of European Picture Agencies
- European Writers Congress
- Société des Auteurs et Compositeurs Dramatiques (BE)
- Latvian Book Guilds (LV)
- Hungarian Publisher's and Bookseller's Association (HU)
- Portuguese Publishers Association (PT)
- Lithuanian Publishers Association (LT)
- Boek.be –Huis van het boek vzw (BE)
- CIELA (BG)
- University Library of Innsbruck (AT)
- Polska KsiąŜka (PL)
- The Irish Copyright Licensing Agency (IE)
- Osdel (GR)
- Centro Español de Derechos Reprográficos (ES)
- CINECA (IT)
- DI-TECH (IT)
- BeeNear (RO)
- EKT-NHRF (GR)

Supporters: Bibliothéque nationale de France, Copydan Writing, National Library of Latvia, Latvian Booksellers' Association, Kopiosto, St. St. Cyril and Methodius National Library of Bulgaria, Conference of European National Libraries, Polish Chamber of Books, Polish Association of Book Publishers

ARROW system components

- ARROW facilitates the process of carrying out a diligent search by means of a comprehensive system:
  - **Arrow Web Portal Services**: it represents the interface between the user and the system
  - **The Rights Information Infrastructure (RII)**: it is the backbone of the ARROW system and the engine that enables ARROW to query and retrieve information, to process this information and take decisions on the successive elaboration and finally to exchange information according to a planned workflow
  - **The ARROW Work Registry (AWR)**: it stores all the relevant pieces of information collected by the RII workflow in a structured way that allows the retrieval and use of those information in the framework of ARROW services
  - **The Registry of Orphan Works (ROW)**: it is the subset of the AWR referring to works that have been declared as "probably orphan"

Workflow is executed on country-basis, starting from the country of publication of the book requested by the library. This also complies with the agreed HLG guidelines on diligent search

ARROW complexity: Manifestation<=>Work

- A request for permission to digitize and use a book refers to the manifestation level
  - a book in a specific edition and format (paperback, hardcover, large print)
  - a book published by a specific publisher
  - a book that may be still in print or out of print
  - a book that may be still copyrighted or not
- Rights clearance depends on information at work level
  - The in print/out of print status of the work depends from the in print/out of print status of all its manifestations published
  - If the manifestation requested for digitisation is out of print but another manifestation of the work is in print, then the work has to be considered in print
  - As the chain of rights might be very complex and all rightholders must be identified (authors, contributors, publishers)

ARROW solution

- TEL Processing
  - Matching: match library query with available records from the National Libraries aggregated by The European Library to identify the requested book calculating the matching probability percentage
  - Work extraction and Clustering: extract the work from the manifestation record, retrieve records of other books (manifestations) of the same work and cluster them in a work record
  - VIAF integration: authoritative data about authors and contributors, forms of the names, dates of birth and death, nationality

  - Copyright Status Algorithm:
    whether the work is In Copyright or in Public Domain

For more “behind the scenes go to Matching and Clustering

ARROW complexity:
In Print/Out of Print works

A work that is commercially not available as declared by the appropriate rightholders, regardless of the existence of tangible copies of the work as normally understood.

ARROW solution

- BIP Processing
  - ISBN query: for each manifestation of the work with an ISBN retrieve the corresponding record in the Books in Print catalogue containing information on the commercial availability of the manifestation
  - Non-ISBN query (Authors+Title): using work metadata retrieve any additional (to the above) manifestation of the work in the Books in Print catalogue containing information on the commercial availability of the manifestation and add them to the cluster

  - Publishing Status Algorithm:
    whether the work is In Print or Out of Print

ARROW complexity: Orphan/Not Orphan works

In some cases rightholders cannot be identified or located; as a result, works can be classified as ‘orphan’. […] Both text-based and audiovisual material include substantial amounts of works with unclear copyright status

ARROW solution

- RRO processing
  - Rightholders identification: whether the rightholders are known to the RRO and in case whether they are members
  - License Proposal or Refusal: whether the rightholders have provided mandates for the requested work and the requested use, according also to the rights status of the work (In copyright, In print, Out of Print), to the type of requesting organisation and national copyright legislation (exceptions, etc.)
  - Suggested Actions: how to proceed to finalise the transaction

  - whether the work is Not Orphan or Probably Orphan

Registry of Orphan Works

- At the end of the process in ARROW, all information about the Target work and its manifestations are stored in the AWR-ARROW Work Registry
  - In the case of Orphan Works the information stored in the AWR are accessible via Internet and form the ROW-Registry of Orphan Works
  - At the moment, for pilot purposes, all works are searchable and displayed in the AWR, regardless their Orphan Status
  - For each work, basic bibliographic information are displayed, along with the set of ARROW assertions on its rights status: in public domain/copyrighted; in print/out of print; orphan/not orphan
  - For each work, published manifestations are displayed, being the source of information the National library (TEL catalogue) or the Books in Print database
  - For each work, its history is maintained to document diligent search: how ARROW Assertions change over time

To sum up

- ARROW can provide the following pieces of information:
  - the work (≈ Expression) of which the item the library wants to digitise is an manifestation
  - other manifestations of the same work (≈ Expression)
  - whether the work is copyrighted or in the public domain
  - whether the work is In Print or Out of Print (as well as whether each manifestation of the work is In Print or Out of Print)
  - who is the rightholder or rightholder representative to be contacted to obtain the permission to digitise and use a work
  - how to get the licence to digitise and use the work, when appropriate
  - whether the work is considered Orphan or rightholders are known and traceable

ARROW
and Orphan Works

ARROW and the OW Directive

- Joining the ARROW system offers the opportunity to get prepared for the implementation of the Orphan work directive, due by 29 October 2014
  - the ARROW system has been listed among the appropriate sources to be consulted in conjunction with a diligent search process for rightholders of published works
  - The ARROW system workflow itself complies with the principles established by Directive as far as the diligent search is concerned
    - The search is done according to country of the work's origin and prior to the use of the work and title by title , finally each step of the search is documented and results stored
    - In the case of Orphan Works the information is stored in a Registry of Orphan Works available for searches and for rightholders to claim their rights ownership individually or through a collective representative

Registry of Orphan Works functions and services

- Public available service
  - Search in the ROW
- Claiming service for rightholders
  - claiming of rights ownership
  - browse of own claiming requests and their status – My claims
  - receive notification of accepted/refused claim
- Back office service for the ROW manager
  - browse of claiming requests
  - management of claiming requests
  - approval or refusal of claiming requests
  - update of the work rights status and history

Registry of Orphan Works

Simple Search

Search: Work Manifestation

Title

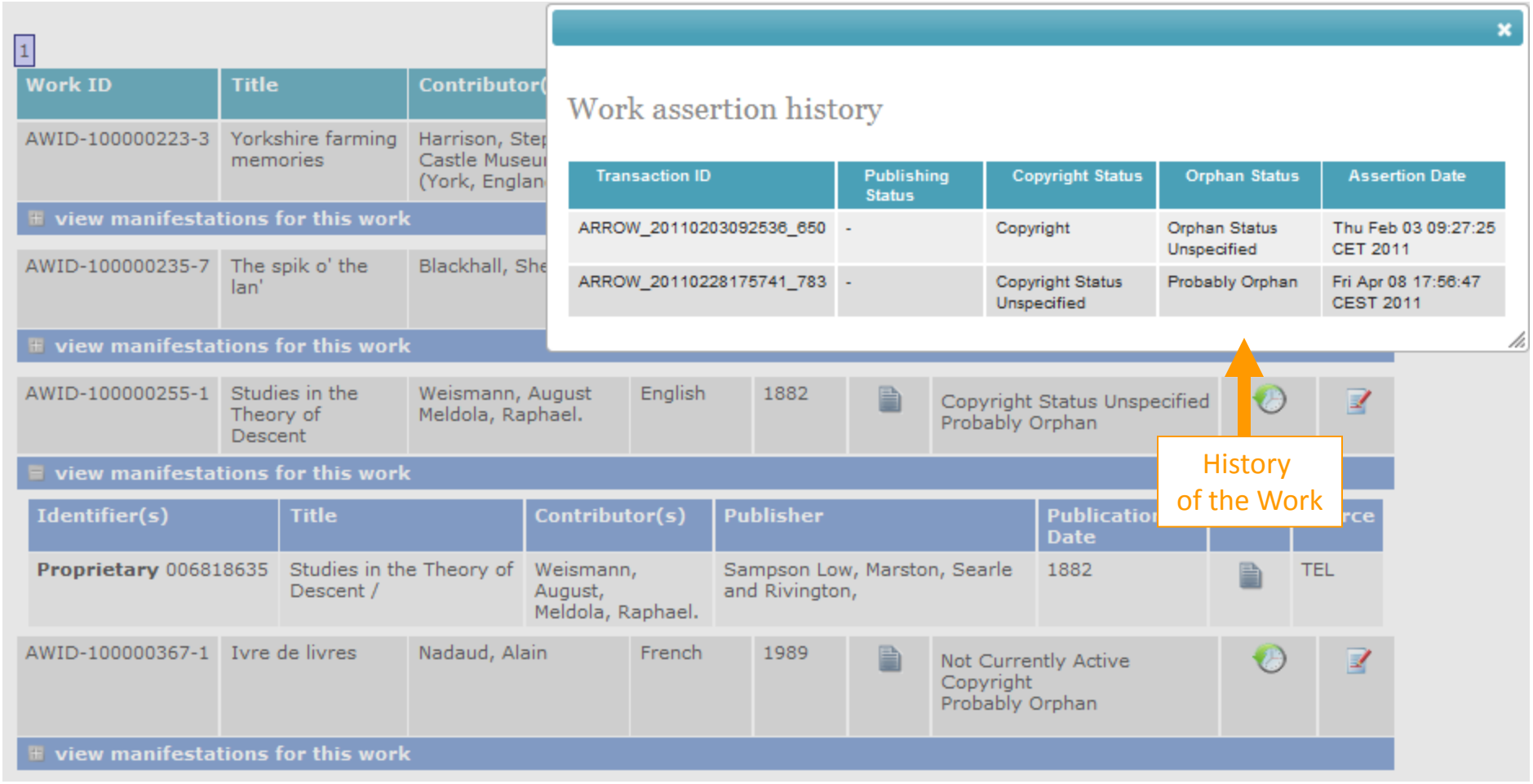
Contributors +

Search Reset

1

Work ID	Title	Contributor(s)	Language	Work date	Detail	Work Status	History	Claim
AWID-100000223-3	Yorkshire farming memories	Harrison, Stephen Castle Museum (York, England)	English	1981		Copyright Probably Orphan		
view manifestations for this work								
AWID-100000235-7	The spik o' the lan'	Blackhall, Sheena.	sco	1986		Copyright Status Unspecified Probably Orphan		
view manifestations for this work								
AWID-100000255-1	Studies in the Theory of Descent	Weismann, August Meldola, Raphael.	English	1882		Copyright Status Unspecified Probably Orphan		
view manifestations for this work								
AWID-100000367-1	Ivre de livres	Nadaud, Alain	French	1989		Not Currently Active Copyright Probably Orphan		

Document Diligent Search



Put an end to the Orphan Status

Simple Search

Search: Work Manifestation

Title

Contributors +

Search Reset

1

Work ID	Title	Contributor(s)	Language	Work date	Detail	Work Status	History	Claim
AWID-100000223-3	Yorkshire farming memories	Harrison, Stephen Castle Museum (York, England)	English	1981		Copyright Probably Orphan		
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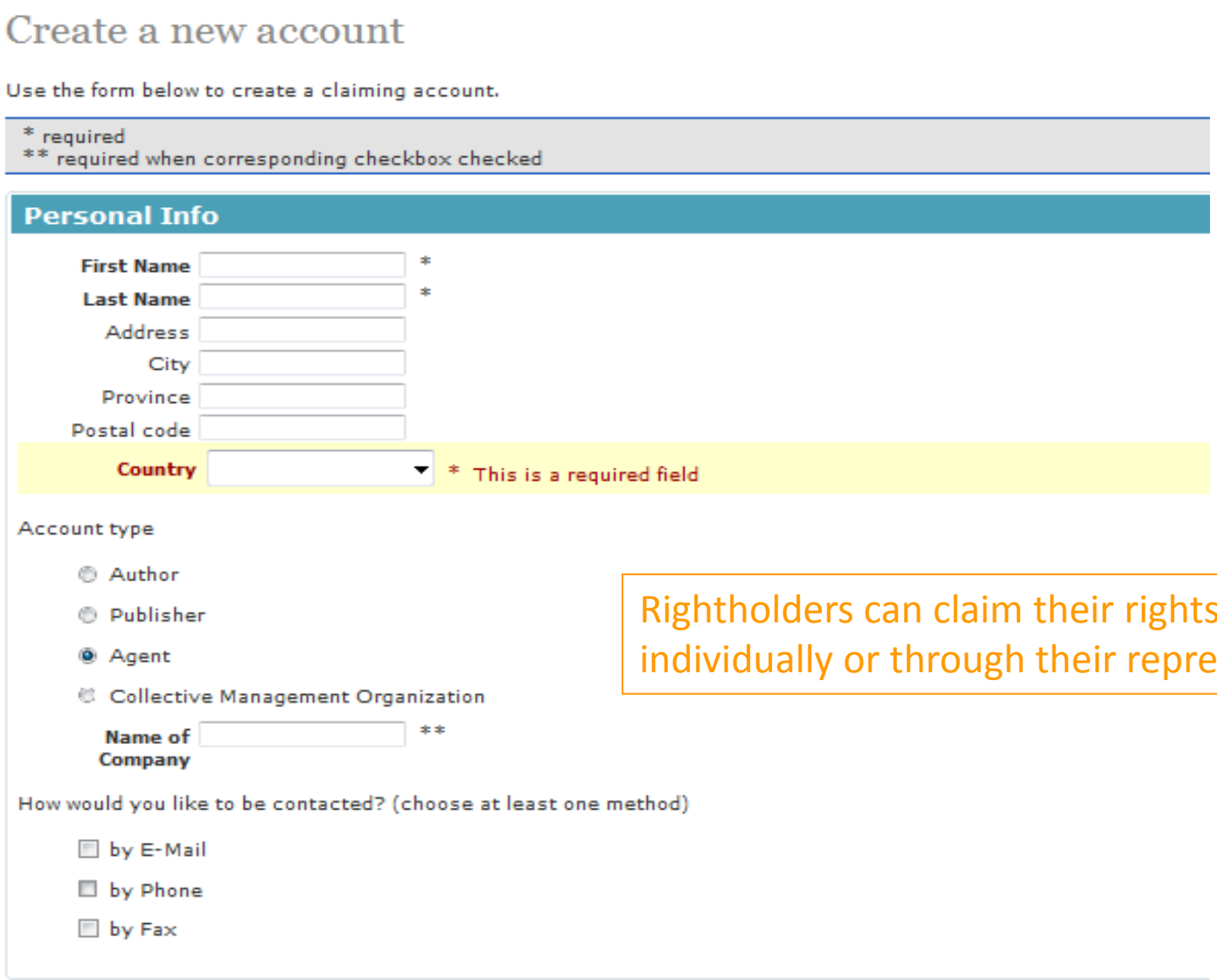
view manifestations for this work								
AWID-100000367-1	Ivre de livres	Nadaud, Alain	French	1989		Not Currently Active Copyright Probably Orphan		

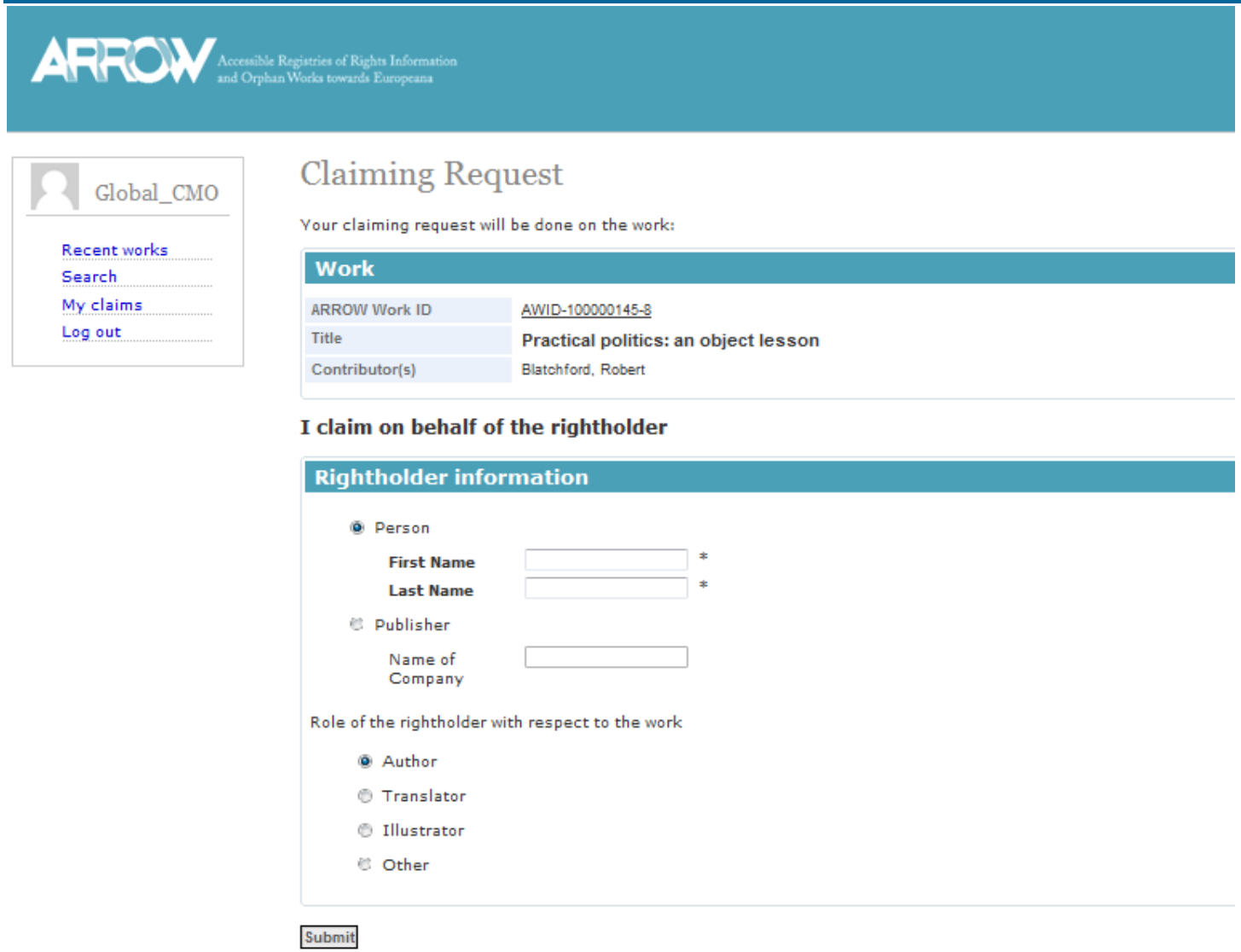
Rightholders can claim for rights ownership

Rightholders - Register as a claimer



Rightholders can claim their rights on a work individually or through their representatives

Rightholders - Claim for rights ownership



Rightholders - My claims

Accessible Registries of Rights Information and Orphan Works towards Europeana

Global_CMO

- Recent works
- Search
- My claims
- Log out

My Claiming Requests

This is the case of a CMO claiming on behalf of many represented rightholders

1

Work Id	Work Title	RightHolder	Status	Request date	Elaboration date	Response date
AWID-100000323-X	Cuando yo era niño	Nieto Amada, Josè Luis **author of introduction and commentaries**	Accepted	2011/04/15	2011/04/15	2011/04/17
AWID-100000084-2	Tanz durch's Infrarot	Wyss, Hans **heir of the author**	Under elaboration	2011/04/15	2011/04/15	
AWID-100000133-4	Venice: a dream of the Adriatic	Thomas Cook Group **publisher**	Accepted	2011/04/15	2011/04/15	2011/04/17
AWID-100000311-6	My darling's story book	Pesch, Doro **illustrator**	Under elaboration	2011/04/08	2011/04/15	
AWID-100000205-5	Notes on-- the churches of St. Helen, St. Nicholas, St. Michael, Abingdon	Abingdon Churches Council **publisher**	Accepted	2011/04/08	2011/04/08	2011/04/15
AWID-100000271-3	Selected poems	Mazzucchi-Oliver, Paola **bernard oliver's heir (daughter)**	Accepted	2011/04/08	2011/04/08	2011/04/08

ROW manager – back office

ARROW Accessible Registries of Rights Information and Orphan Works towards Europeana

mazzucchi

- Recent works
- Search
- My claims
- ROW Manager
- Log out

Claiming Requests

1 2

Work	Request date	Claimant	Status	Elaboration date	Response date	Action
AWID-100000128-8	2011/04/19	gregory, gabriella **author**	Under elaboration	2011/04/19		
AWID-100000145-8	2011/04/14	Blatchford, John **author**	Accepted	2011/04/15	2011/04/19	
AWID-100000154-7	2011/04/15	AIE **publisher**	Refused	2011/04/15	2011/04/15	
AWID-100000192-X	2011/04/17	Griffin, H.J. Junior **author**	Pending			
AWID-100000203-9	2011/04/17	People's Literary Agency **agent**	Pending			
AWID-100000190-3	2011/04/17	People's Literary Agency **agent**	Under elaboration	2011/04/17		
AWID-100000323-X	2011/04/15	Global CMO **cmo**	Accepted	2011/04/15	2011/04/17	
AWID-100000084-2	2011/04/15	Global CMO **cmo**	Under elaboration	2011/04/15		
AWID-100000133-4	2011/04/15	Global CMO **cmo**	Accepted	2011/04/15	2011/04/17	
AWID-100000205-5	2011/04/08	AIE **publisher**	Refused	2011/04/08	2011/04/08	

ROW manager – accept or refuse claims

ROW manager – accepted claims

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- Recent works
- Search
- My claims
- ROW Manager
- Log out

Claiming Requests

1

Work	Request date	Claimant	Status	Elaboration date	Response date	Action
AWID-100000145-8	2011/04/14	Blatchford, John **author**	Accepted	2011/04/15	2011/04/19	
AWID-100000323-X	2011/04/15	Global CMO **cmo**	Accepted	2011/04/15	2011/04/17	
AWID-100000133-4	2011/04/15	Global CMO **cmo**	Accepted	2011/04/15	2011/04/17	
AWID-100000205-5	2011/04/08	Global CMO **cmo**	Accepted	2011/04/08	2011/04/15	
AWID-100000271-3	2011/04/08	Global CMO **cmo**	Accepted	2011/04/08	2011/04/08	
AWID-100000271-3	2011/04/13	moraalessia **agent**	Accepted	2011/04/13	2011/04/13	

An accepted claim is the end of an Orphan Work

ROW manager – claim accepted

ROW manager – refused claims

Work	Request date	Claimant	Status	Elaboration date	Response date	Action
AWID-100000154-7	2011/04/15	AIE **publisher**	Refused	2011/04/15	2011/04/15	
AWID-100000205-5	2011/04/08	AIE **publisher**	Refused	2011/04/08	2011/04/08	
AWID-100000133-4	2011/04/13	moraalessia **agent**	Refused	2011/04/14	2011/04/15	
AWID-100000400-7	2011/04/08	Caroli, Cinzia **author**	Refused	2011/04/08	2011/04/08	

A refused claim maintains the Orphan status of a Work

ROW manager – claim refused