



What rights clearance looks like for Cultural Heritage Organisations – 10 case studies

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1. Background

As highlighted in our factsheet [‘The 20th Century Black Hole: How does this show up on Europeana?’](#) the lack of available 20th century cultural heritage collections online is clearly illustrated by the Europeana dataset. Reports by cultural heritage institutions to Europeana suggests that this in part due to the complicated copyright status of 20th century collections, often which has never been created with commercial intent. The often time consuming and expensive activity to source and contact copyright holders is compromising the digitisation efforts of museums, libraries and archives.

In an attempt to better understand and highlight the challenges and costs involved for cultural heritage institutions (CHI) in obtaining permission from rights-holders for digitisation projects, Europeana has undertaken interviews with representatives from the cultural heritage sector, based in different EU member states, holding different types of collections. These interviews have formed the basis of a number of case studies that we are presenting in this document. All participants have first-hand experience in balancing the practical day-to-day management of their collection and the expectations in making them available to the public, together with the restrictions imposed by current copyright rules.

2. Key elements extracted from case studies

1. The collections represented by the case studies are works which were either never in commercial circulation or no longer in commercial circulation. These case studies are good examples of the kind of material that is not being made available online due to the disproportionate efforts required to clear rights.
2. Several institutions participating in the study appear to only be choosing works that are likely to be public domain as the difficulty of tracing and clearing rights holders for in-copyright works is too great. This suggests that other CHI could act in a similar pattern which would partly explain the bias of material available and the existing 20th Century Black Hole.
3. The cost for clearing rights for one work varies between €1.39 and €27 per work and often exceeds the economic value of the work themselves.



4. Identifying and locating rights holders was often more expensive than CHI had budgeted for. Even for works likely to be in the public domain, establishing this involves costly rights clearance activities.
5. None of the CHI interviewed used the Orphan Works legislation in order to clear rights for digitization of large collections. This is because the due diligence search requirements were said to be very time consuming per rights holder. From the perspective of the institutions participating in the study this makes the existing OW legislation unsuitable in the context of mass digitisation projects..
6. Based on these case studies, rights clearance is showing as being particularly complex for the AV sector and libraries due to works having more than one layer of rights e.g. books which include photographs where copyright ownership is separate in the books and the photographs featured, copyright lasting for different amounts of time, and often more than one rights holder to identify and contact.
7. The German out-of-commerce law has reduced rights clearance costs, but only for books and because it contains a clear cut-off date.

3. Rights Clearance case studies

This document outlines 10 detailed case studies, representing 6 different institutions from 5 different countries. Each case study provides an overview of the participants, the type of institution and what type of objects have been digitised or prevented from being digitised due to the challenges and uncertainty involving rights clearance. An overview of the costs and challenges in each case study is provided in the annex at the end of the report.

What we asked CHI to help formulate rights clearance case studies

During the interviews we focused our discussions on the following eight questions:

1. Brief description of the collection (s) considered for digitisation or digitised (types of works, period of works, provenance etc) date, author (s), number of works).
2. What type of uses did you clear rights for? (internal use, making available online etc).
3. How many works did you clear rights for?
4. How much time (in person hours) was involved to complete the work?
5. What is the average person cost per hour? (including overhead, unless otherwise specified).
6. Did you incur any other costs? (licenses, equipment, access to databases etc).
7. What were the challenges your organisation faced when clearing rights?
8. What approach did your organisation take to overcome the challenges you faced?

The first case studies were collected from the German National Library on their different types of collections, including WW1 objects and monographs written by German exiles. We continue with one collection per institution interviewed.



3.1 Case Studies 1-5 (German National Library)

Date of interview: December 4th 2015

Background on the collections that were digitised

The German National Library (DNB) was able to share information on the digitisation of several collections with different approaches and processes. In total we are discussing the clearance of 25.800 objects which is estimated to have taken 3.000 person hours (which calculates to 7 minutes per object on average). The costs per hour on a person clearing is calculated to be €64, including overheads but excluding assistance from the legal department and the investment to create the rights clearance process for the DNB. These numbers calculate to an average costs of €7,46 per work (excluding licensing or registration costs). Mrs. Schoeneborn noted that this number should be considered in the light of very strict cut-off criteria the DNB has developed, which are explained in detail below.

What other type of costs did you incur?

For the collections we are discussing DNB spent €500 to register the works for the out-of-commerce works database (one euro per book) and they negotiated 500 out-of-commerce licenses. These costs differed from 5.35 euro for oldest works to 16.05 euro per modern title. These are up-front costs for making available, and incur only once.

Can you elaborate a bit on the challenges of the organisation?

Due to constraints DNB only clear for material that they think might be public domain material. Even that can be very challenging. In order to determine PD status they need to look through each item physically, a book example, and flip through every page to make sure there are no photographs or such that might have additional rights holders than those listed in the catalogue record or on the front page. If the front page even has that type of information. If that type of information is missing clearing is impossible, so they will have to put the object back, but the time investment was made. DNB note all information they find in their master files, for further use in the library.

DNB made efforts to follow the Orphan Works Directive and did a test of due diligence searches for books. However as outlined above the time to search and document all attempts was very time consuming and simply not practical for mass digitisation. The outcome showed that the directive can help with single objects that someone wants to use to show in for example as exhibition.

DNB are very happy with the German law which allows a licensing solution for in-copyright but out-of-commerce books. It does not solve all issues they have, since it only applies to German works and has a cut-off date in 1965, but it makes the work of making objects available easier. What is very useful in the solution is that the fees for making available only incur once and upfront.

What approach did your organisation take to overcome the challenges you faced?



DNB has created very clear guidelines as to when they simply give up making objects available. They select first on a probability that the object is likely to be in the public domain, or whether it could fall under the out-of-commerce law.

Furthermore, the second they see that a work has more than 4 contributors (authors, photographs, illustrations) they set the book aside because rights clearance is too difficult. If illustrations, photographs or other objects within books have no author named they set the object aside as well.

This is a shame, according to DNB, because the more interesting objects for the public (with illustrations) are now often set aside because of rights clearance problems. They have to leave out a lot of works that are interesting for public engagement.

DNB document everything in their workflow meticulously. For future use of the information gathered, and also to set aside works that they can use the out-of-commerce law on.

The DNB has a very well-functioning legal department, which they consult and build workflows with. This is expensive, not included in the hourly price of the clearance, but very useful. 'We realise we are very lucky to have this, not all heritage institutions have direct access to a legal department like ours' says Mrs Schoeneborn.

Case 1: DNB collection of monographs from the period 1930-1950 about the German Exiles

Question	Answer
Brief description of collection in question (types of works, period of works, provenance etc) date, author (s), number of works)	This collection consists of monographs from the period 1930-1950 about the German Exiles. The collection is from all over the world, including private libraries, published in different countries in different languages, including Hebrew and English from different authors. All books determined to be in the public domain were made available.
What type of uses did you clear rights for? (internal use, making available online etc)	All collections mentioned here were cleared for online use (world wide). The PD works are marked as being public domain, a certain number has been made available for view online under an out-of-commerce licence.
How many works did you clear rights for?	22.275 (monographs).
How much time (in person hours) was involved to complete the work?	With an approximation of 7 min clearance per works, clearing for 22275 works we come to about 2600 hours of clearance.
What is the average cost per hour?	€64 euro's per hour (including salary and overheads but excluding the cost of expertise coming from the legal department).
Total estimated cost per item for rights clearance alone	€166,400 for the collection equal to average of €7.47 per item



Case 2: DNB WW1 collection of mixed objects

Question	Answer
Brief description of collection in question (types of works, period of works, provenance etc) date, author (s), number of works)	This is a WW1 collection which has a mix of different objects such as monographies, brochures, flyers, posters and more from the 1914-1918 period. Very different contributors, mostly German.
What type of uses did you clear rights for? (internal use, making available online etc)	Cleared for online use (world wide). The PD works are marked as being public domain, a certain number has been made available for view online under an out-of-commerce licence.
How many works did you clear rights for?	1500
How much time (in person hours) was involved to complete the work?	With an approximation of 7 min clearance per works, clearing for 1500 works we come to about 175 hours of clearance.
What is the average cost per hour?	€64
Total estimated cost per item for rights clearance alone	€11,200 for the collection equal to average of €7.4 per item

Case 3: DNB Collection of historical books and journals

Question	Answer
Brief description of collection in question (types of works, period of works, provenance etc) date, author (s), number of works)	This collection is about damaged media, mostly historical books and journals, material from 1900 onwards. All German contributors, the goal was to find public domain material the DNB could make available.
What type of uses did you clear rights for? (internal use, making available online etc)	Cleared for online use (worldwide). The works determined to be in the PD works are marked as being public domain, a certain number has been made available for view online under an out-of-commerce license.
How many works did you clear rights for?	500
How much time (in person hours) was involved to complete the work?	With an approximation of 7 min clearance per works, clearing for 500 works we come to about 50.8 hours of clearance.
What is the average cost per hour?	€64
Total estimated cost per item for rights clearance alone	€3,700 for the collection equal to average of €7.4 per item alone.



Case 4: DNB Collection of legal texts

Question	Answer
Brief description of collection in question (types of works, period of works, provenance etc) date, author (s), number of works)	This collection concerns legal texts, created by the government but also commentaries to the law created by institutions. Legal texts. Also issues by institutions. Partly public domain by default, but not all. It was all German contributors from 1900 onwards.
What type of uses did you clear rights for? (internal use, making available online etc)	Cleared for online use (world wide). The works determined to be in the public domain are marked as being public domain (can be reused), and the out-of-commerce books only have access permissions online.
How many works did you clear rights for?	863
How much time (in person hours) was involved to complete the work?	With an approximation of 7 min clearance per works, clearing for 863 works we come to about 100.7 hours of clearance.
What is the average cost per hour?	€64
Total estimated cost per item for rights clearance alone	€6,500 for the collection equal to average of €5.3 per item alone.

Case 5: DNB collection of shellac records from 1900-1960

Question	Answer
Brief description of collection in question (types of works, period of works, provenance etc) date, author (s), number of works)	A collection of shellac records and wax cylinders from 1900 - 1960. This collection was chosen because of the expiration of neighbouring rights. This would make rights clearance easier. There was also a selection made based on the underlying copyrighted work: mostly classic music to increase the chance of public domain. Mostly German creators.
What type of uses did you clear rights for? (internal use, making available online etc)	Making available online for access and reuse across Europe of the works that were determined to be in the public domain.
How many works did you clear rights for?	623
How much time (in person hours) was involved to complete the work?	With an approximation of 7 min clearance per works, clearing for 623 works we come to about 72.7 hours of clearance.
What is the average cost per hour?	€64
Total estimated cost per item for rights clearance alone	€4753 for the collection equal to average of €7.47 per item



3.2 Case Study 6 (Mode Museum)

Date of interview: December 3rd 2015

MoMu's collections comprise of three main areas: a 'core' collection of about 25.000 fashion and textile garments, an archival collection (mainly personal or company archives) of about 300 'running' metres and a documentation collections of about 50 metres (consisting of photos, cards, press clippings, folders, flyers, etc.).

Approximately a third of the 'core' collection is contemporary and is still protected by copyright, a third 'orphan works' (mainly anonymous/'unknown named' works 20th century) and a third public domain (19th Century and older). MoMu owns copyright in all digitised versions and metadata of these works. 75% of MoMu's core collection is digitised and published online on Europeana. About a third of the archival collection is in copyright and the documentation collection is likely to be in copyright.

What type of uses did MoMu clear rights for?

MoMu aim wherever possible to make their collections available online. MoMu were a leading partner for Europeana Fashion and published 40,000 of digitised versions of works (fashion garments, archival and document collections) online.

To date rights have been cleared with photographers who make digitised versions of the collections, but not with the designers whose works are represented within the photographs. As MoMu have good relationships with many of the contemporary Belgian designers they have taken a risk-managed approach to make the collections available online for research purposes but not for any reuse. All online collections are clearly marked 'all rights reserved' for this reason. The main challenge is approximately a third of the collection which are orphan works. Often the fashion labels cease to exist or attempting to trace and contact the maker of something produced in a workshop or a homemade outfit where copyright may still apply is very difficult.

For future projects, MoMu want to go for a CC BY license by default, unless there are copyright holders that have any claim on the materials or there are privacy concerns.

How many works did MoMu clear rights for?

MoMu have not started clearing rights for its collections. However to date they have taken a risk-managed approach for example making available online large parts of the archive (about 50%). As the Museum does not currently have a Digital Asset Management System (DAMS) in place but still have a responsibility to provide access to its collections for research, any digital versions of works that have been published have an 'all rights reserved' statement (including low-risk in-copyright works).

How much time (in person hours) was involved to complete the work?

Until now, MoMu took a 'risk managed' approach, which means they only publish material that is low risk. For MoMu this means the works of contemporary Belgian designers (where they have good relationships) orphan works and public domain, all with an 'all rights reserved'



statement. It is very difficult to assess what would be the effort of publishing those items with the CC BY license, which would be their 'ideal target'.

For the public domain works, there is no issue as no rights clearance is required. For the other 2/3rd it's more difficult. MoMu don't want to take the risk of putting a CC BY license on an Orphan Work, since there still is some risk attached to making these works available for commercial re-use, and the orphan works Due Diligence Guidelines do not fully explain how to make such decisions.

Regarding the 'in copyright works' the situation is harder, since clearing the rights of the in copyright works has to be done on an individual basis. Which means asking permission per designer for every creation MoMu have collected. As outlined above approximately a third of the collection comprises of works by unknown makers, fashion labels that no longer exist or workshops that are no longer active. These collections are currently not being made available due to the challenge and time involved to contact often obscure or untraceable individuals and organisations.

What is the average person cost per hour?

29€

What were the challenges MoMu faced when clearing rights?

Convincing partners of in copyright works that MoMu do not exploit their commercial rights by making their content available as a heritage institution and hoping that they allow them to have a CC BY on the images of their works (or eventually another CC license). Another challenge was proving that enough due diligence had been attempted before a work can be considered an orphan work. The current guidelines for the Orphan Works Directive do not fully support this on a practical level when deciding what collections could be made available under an open CC BY licence.

What approach did MoMu take to overcome the challenges you faced?

MoMu are in the process of implementing a Digital Asset Management System which will allow them to better manage specific rights information and the way the in-copyright collections can be accessed and used.

As outlined above to date MoMu have taken a risk managed approach to its entire collections but would support a cultural / public exception to clearing rights based on its public cultural mission, as a museum. In addition some type of indemnity should anything go wrong even after due diligence or following some 'best' practice guidelines has been carried out. From MoMu's perspective this would make them more confident in providing online access and reuse of Europe's cultural fashion heritage.



Question	Answer
Brief description of collection in question (types of works, period of works, provenance etc) date, author (s), number of works)	Fashion garments, photographs, press cuttings,
What type of uses did you clear rights for? (internal use, making available online etc)	MoMu published 40,000 digital images of works from its collections on Europeana Fashion.
How many works did you clear rights for?	To date rights have not been cleared for the collections but a risk managed approach has been taken for areas such as archives. 50 % of the archive has been digitised. This equates to 36.850 which have a digital object
How much time (in person hours) was involved to complete the work?	n/a
What is the average cost per hour?	€29
Total estimated cost per item for rights clearance alone	n/a

3.3 Case study 7 (Nordiska Museet)

Date of interview: December 10th 2015

The Nordiska Museet holds 6 large photography archives which together represent approximately six million photographs. The archive of Swedish publishing house Saxon & Lindström contains approximately 7,000 press photographs from various European fashion houses and magazines dating from c.1930s to 1970. Approximately 5% of the entire photography collections are in-copyright with external copyright holders and there are about 50,000 orphan works in smaller archives.

In contrast, the Museum also holds an archive which was collected by one person and where copyright belongs to the person who took the photographs. The painter Erik Tryggelin (1878-1962) amassed a photographic archive featuring subjects for his work. The Museum acquired the collection in 1963 without explicit transfer of copyright.

What type of uses did the Nordiska Museet clear rights for?

The Nordiska Museet recently made available 16,000 digitised versions of their collections for the Europeana Fashion project. The aim was to provide examples of fashion cultural heritage over the centuries to present day.

How many works did the Nordiska Museet clear rights for?

None – see below

How much time (in person hours) was involved to complete the work?

Both the Saxon & Lindström photo archive and Erik Tryggelin's collection were considered for inclusion and would have added significant value to the understanding of fashion cultural



heritage. However due to the time involved in identifying copyright holders of various press photographs spanning a 40 year period, the Saxon & Lindström archive was excluded from the project. Staff initially spent 5 hours of preparatory due diligence work only to discover that the resource involved to clear rights, digitise and catalogue the works would have significantly impacted on the time restraints and deliverables of the project.

Erik Tryggelin's photo archive is more straightforward in the sense that to make the collection available online, the rights belong to one person. In this case it is not locating a copyright holder that proved to be the issue but more establishing if the photographs would be covered by copyright law in the first place. Most of the photographs date from 1900-1902, but as they would qualify under Swedish law as works of 'artistic merit', copyright in the photographs expires in 2034. It is understood that the photographs were created as reference material for the artist's painting rather than as a basis for direct commercial reproduction. Today they are culturally and socially significant documenting the fashions of the early 1900s but they cannot currently be made available online without having to pay an annual fee to the artist's estate. Of course the creator should be fairly rewarded for his creations but the copyright status of this material is not clear. As the photographs were never made public during the artist's lifetime there is a possibility that they would now be in the public domain. However the time involved to establish this for the organisation is not something that they currently have the resources to do.

What is the average cost per hour?

Not available

What were the challenges the Nordiska Museet faced when clearing rights?

As the Museum identified a substantial amount of cultural and socially important cultural heritage fashion material within its archive, the challenge was the effort and time involved to clear rights for archival material which contains works by a great number of copyright holders.

What approach did Nordiska Museet take to overcome the challenges faced?

To focus their efforts in a more practical way, the Museum made the decision to only include collections for Europeana Fashion where copyright had already been identified or where works were in the public domain. This meant that the press photography documenting the fashion events of the time from the Saxon & Lindström were excluded from the project as were the documentary photographs taken by Erik Tryggelin. It also limited the amount of more contemporary fashion material that could be included as part of the project.

As a result of the challenges faced making such culturally rich collections available online the Nordiska Museet aim to resolve copyright issues in a more active way in the future. They are considering signing up to an agreement between Swedish cultural heritage institutions and the rights management organisation BUS.



Question	Answer
Brief description of collection in question (types of works, period of works, provenance etc) date, author (s), number of works)	Photographs - social history and fashion
What type of uses did you clear rights for? (internal use, making available online etc)	Inclusion on the Europeana Fashion portal
How many works did you clear rights for?	None as it was too complex but 16,000 were made available online where no rights restrictions applied
How much time (in person hours) was involved to complete the work?	Preparatory work of 5 hours for due diligence on a snapshot of the collection.
What is the average cost per hour?	n/a
Total estimated cost per item for rights clearance alone	n/a

3.4 Case study 8 (Victoria and Albert Museum)

Date of interview: January 25th 2016

The Victoria and Albert Museum (V&A) is the world's leading museum of Art and Design and holds over 2,500,000 objects in its collections. Since its inception the V&A Museum has championed art and design in all areas. The Museum has a statutory obligation to promote the public's enjoyment and understanding of art, craft and design; enriching people's lives by promoting knowledge, understanding and enjoyment of the designed world.

Its primary purpose is to make its collections available online and this includes a number of works which whilst having some creative element, were not originally intended for art galleries or commercial markets. This case study focuses on a number of V&A works which are primarily important for their political and ethical messaging where the efforts to clear rights was often secondary in importance to providing online access to shared heritage.

The case study will focus on:

A 20th century propaganda poster collection: One unique donation of over 3000 protest posters spanning the 20th century and includes images from the Russian civil war, the Spanish civil war, Chairman Mao's cultural revolution and anti-Vietnam demonstrations.

The V&A exhibition Disobedient Objects, (26 July 2014 - 1 February 2015), the first exhibition of its kind to focus on the art and design produced by grassroots social movements. The objects were defined by their purpose rather than their material qualities, the range of object types was very diverse. e.g. banners, unofficial street signs, jewellery made in prison, defaced currency, badges, a tear gas mask made from a water bottle, gorilla masks, spoof newspapers, puppets. The focus of the exhibition was on objects created by social movements as tools for



action to be used in the course of a struggle- not works intended for any commercial exploitation.

What type of uses did V&A clear rights for?

The primary purpose of clearing rights for the poster collection was to make them visible to the public online and compliment other areas of the archives which feature protest posters from the late 19th century. The objects themselves are in storage and some are very fragile and therefore the opportunity to digitise them also served to help preserve the original objects themselves. Disobedient Objects highlighted objects all dating from the 1970s to the present, and permission to use them was required for the exhibition catalogue, audiovisual material featured in the exhibition and images to provide context within the exhibition space. All of the objects featured were to support the overall narrative of how works were created to achieve social change rather than any commercial gain. In considering rights clearance and respecting the position of rights holders this also needed to be balanced the role of the Museum in leading research in the field of art and design and promoting public access and engagement.

Time and cost involved to clear rights

Given the unique nature of the poster collection, resource was dedicated to clear rights in an effort to make as much of the collection as possible available online. Over 78 working days (546 hours) were spent clearing rights for 1189 objects and due to the copyright in the posters often belonging to more than one person, this represents over 1913 enquiries to organisations and individuals. This can be understood as an average of 25 enquiries per day relating to approximately 15 objects per day. In spite of concerted efforts to secure permission for all the posters selected, in 9 months (2 days a week) a positive response was secured for only 458 objects. The costs to undertake this work was approximately £6550 (£10.50 per hour).

For Disobedient Objects, approximately 80% of the 100 objects featured were considered in-copyright and permission was secured to use images of the objects. Given the nature of the objects some of the challenges in working with the makers and lenders to the exhibition were not so much centred on clearing rights; in many cases the very spirit in which the objects were created meant that makers and lender were more concerned about any commercialisation of the works such as the Museum charging for entry to the exhibition and in copyright terms were interested in sharing the works to the public under a creative commons ethos. This reinforces the ethical sensitivities of the objects themselves and the open source nature of their creation and distribution.

It is very difficult to accurately quantify the time taken to clear rights for this exhibition as due to the varying level of success in contacting rights holders and reaching agreements, it is not a consistent amount of time spent on this type of activity. It is estimated that rights clearance took 2-3 months and the costs were in the region of £8000.

What were the challenges V&A faced when clearing rights?

For the posters the main challenge was the time involved to identify, trace and contact rights holders. The majority of the 1189 objects were created by more than one artist and therefore



permission was required by more than one source. As the resource allocated for this research was finite it was also important to strike a balance between which objects to prioritise for their significance versus quick wins.

There were a number of challenges when it came to seeking permission to use works for the Disobedient Objects exhibition, largely defining if a work was actually a 'work of art' and therefore in-copyright at all, the number of countries represented within the exhibition (28 including Chile, Columbia, Russia, Libya, Burma and Hong Kong) and therefore the efforts and costs involved in tracing and contacting makers.

Due to the spirit in which the objects were created, many were created collectively so permission was required from groups of people rather than individuals. In some instances the makers had taken political asylum or were in prison, therefore making contact was impossible. Some of the objects were made by skilled artists, designers, engineers and technologists who have professional as well as activist profiles, but the examples of their work that we selected were those created to achieve social change rather than commercial gain. A few objects were made for sale, but even in these cases it can be argued that the primary intention was not commercial gain. For example, during the Iraq War Noel Douglas produced a set of playing cards, 'Regime Change Begins at Home', in response to the fact that the US military had issued soldiers with a set of playing cards listing the 'most wanted' members of Saddam Hussein's government. While amazon.com was used to sell the cards this was primarily a means of achieving wide distribution. Furthermore the review tab on the website was 'occupied' as a forum for anti/pro-war debate.

Some works were created in multiple locations across different countries – such as Cat Mazza's Nike Blanket (an anti-sweatshop petition). Cat is based in the USA, but invited people all over the world to knit or crochet squares for the blanket which she assembled it in Istanbul.

What approach did V&A take to overcome the challenges you faced?

As outlined above, the examples illustrate 2 different ways of approaching rights clearance- one dedicated resource for a permanent collection and efforts to seek permission for a temporary exhibition where lots of objects were on loan.

For Disobedient Objects the co-curators liaised extensively between the V&A's Commercial Rights and Contracts manager and the makers of the objects. For this exhibition, the curators' understanding of the sensitivities of the objects was essential in negotiating the use of images with non-traditional lenders and rights holders who had political and ethical concerns about working with a large institution.

For the posters, as the resource and time allocated to the project was limited, the curator ensured that all efforts to secure rights holders were documented on the Museum's collections management system. This helps to make the rights information transparent and reliable for anyone else wanting to use the objects in some way. This good practice has now set a precedent for any other projects where addressing the challenges of rights clearance are key to making collections more visible online.



Question	Answer
Brief description of collection in question (types of works, period of works, provenance etc) date, author (s), number of works)	Political Posters, banners, unofficial streets signs, jewellery, currency , puppets etc.
What type of uses did you clear rights for? (internal use, making available online etc)	Making digitised images available online and also for display in a temporary exhibition space
How many works did you clear rights for?	1189 posters, 80 objects (mixed ephemeral)
How much time (in person hours) was involved to complete the work?	546 hours for posters. 2-3 months (not continuous for objects)
What is the average cost per hour?	€13.30
Total estimated cost per item for rights clearance alone	€8294,73 for the collection equal to average of €7.0 per item

3.5 Case study 9 (International Institute of Social History)

Date of interview: January 20th 2016

The International Institute of Social History (IISH) collections comprise of 713,547 prints and drawings, 129,901 posters, 570, 956 photos and a number of ephemeral objects including buttons, t-shirts, paintings, stickers, postcards, calendars and stamps. As an internationally renowned centre for social history all of the works held in the collections have a significant cultural and social importance as representations of historical events rather than as works of art.

This case study focuses on the photographic collections of which there are a number of archives where the rights holders are unknown or are known. To balance the rights of the creator versus the public benefit of make cultural content visible online, this case study highlights a challenge to the IISH from a photographer in 2014 which resulted in a law-suit. The outcome has severely impacted on the IISH being able to fulfil their role as the custodians of socio-economic material and to make practically informed decisions on making the collections available to researchers.

The following provides a breakdown of the proportion of photographic archives that are available online in comparison to the number of archives that are physically housed at IISH and could be made available online if right clearance was not required.



Category	Number of Items
Digitised items of visual material for consultation in the online catalogue	271,040 (71,844 photographs)
Photographs where the photographer is unknown	44,175
Photographs where the photographer is known but not necessarily the copyright holder	27,669
Breakdown of photographers and items available online	
Number of photographers (professional or amateur)	3908
Of 2306 photographers the IISH has 1 digitised photo available for consultation in the catalogue (there are a total of 2308 photographs in this category)	
Of 1347 photographers the IISH has 2 to 9 digitised photos available online (there is a total of 4582 photographs in this category)	
Of 128 photographers the IISH has 10 to 19 digitised photographs available online (there is a total of 1744 photographs in this category)	
Of 72 photographers the IISH has 21 to 49 digitised photos available online (there is a total of 2176 photographs in this category)	
Of 53 photographers the IISH has more than 50 digitised photographs available online (there is a total of 16859 digitised photos in this category)	

Currently the IISH has permission to publish 11789 photos of 27669 photos in total. When the photos that are in the public domain are included there is permission for the presentation of 13254 photographs of 27669 photographs.

What type of uses do IISH clear rights for?

The primary focus of the IISH is to make the photography collections available online within the context of the collections for research purposes rather than to attract a public audience. Small displays are sometimes presented on site and last year over 500 photographs went out on loan to other organisations. An area where rights clearance becomes particularly problematic is when a researcher identifies a particular area of interest e.g. photographs of migration, trade worker's strikes as legally the works are in copyright but the task of tracing and contacting so many individuals is time consuming and often prohibits access.

Time and costs involved to clear rights-challenges and how to address them

Few rights have been cleared for the photographic collection. In the past the IISH have taken a view that they will publish small thumbnails online and include all copyright notices, attribution and a notice and take policy. Often the photographs are not great art works (in terms of light balance, camera position, composition), but are great expressions of historical events and are therefore very relevant for researchers.

To date the IISH have approached rights clearance on an individual basis using the approach outlined above.

Wherever possible IISH would like to make their collections available online. Where photographers are known the IISH have had contractual agreements in place. However many of these predate the online presence of collections and do not include permission to publish



online.

There are 44,175 photographs where the photographer and rights holder is unknown. Sometimes the names that are featured on the back of a photograph indicate the photographer but there is no certainty. Often the photographers are individuals who captured a moment in time e.g. a workman on strike who documented the strike and over time it ended up at the trade union office and eventually found a home at the IISH.

In 2014 they were challenged by a known photographer whose 220 works were featured as very small thumbnail images on the IISH catalogue. They took the necessary steps to remove the images from their online catalogue and confirm with their notice and takedown policy. Faced with a claim of 50,000 euros, IISH offered compensation of 3000 euros. The final outcome of the case was that IISH were infringing the copyright of the photographer but that the claim was disproportionate to any damage to his reputation by publishing small images on an online educational resource. Even so the images had to be removed from the site and access restricted to dedicated terminals on site.

As a result of this case the IISH consulted a bureau and for the 250 photographers who have more than 10 photos each on the collection, the following tasks were identified:

- identify who has copyright in the photographs
- locate contact details of the copyright holders
- contact copyright holders and agree terms of use via telephone interviews
- follow up the phone call by sending permission statements and correspondence on this and complete all due diligence such as registering all information on the photographer, including permission, printing and storing the actual permission statement etc.

The estimate to undertake this work was 15.000 euro, that is 60 euro per photographer. Whilst this seemed a reasonable sum proportionate to the work involved to actually search and verify contact this cost was prohibitive for IISH. Furthermore there was no guarantee that the efforts would necessarily lead to contact information, or to contact or to permission to make the collections available. This also only represents a fraction of the collections of the top 250 known photographers and does not include other visual materials like posters, or prints, or drawings and nothing on collections where the copyright holder is unknown. The outcome this recent case only reinforces the difficulties cultural heritage institutions face in both respecting the rights of copyright holders whilst fulfilling their role in providing access to important socio-economic material.



Question	Answer
Brief description of collection in question (types of works, period of works, provenance etc) date, author (s), number of works)	Social history photographs
What type of uses did you clear rights for? (internal use, making available online etc)	Making available online
How many works did you clear rights for?	n/a
How much time (in person hours) was involved to complete the work?	n/a
What is the average cost per hour?	n/a
Total estimated cost per item for rights clearance alone	Each collection is different so it is very difficult to estimate costs as it depends what is in an archive, who owns it, how many copyright holders there are and so on. Please note that €10.0 is a very rough estimate per item.

3.6 Case study 10 (Netherlands Institute for Sound and Vision)

Date of interview: February 12th 2016

The Netherlands Institute for Sound and Vision (NISV) is one of the biggest Audio-Visual Archives in Europe. It holds amongst others the archive of the Dutch Public Broadcasters. NISV has an estimated million hour of Audio-Visual material. Next to that, the collections non-av material such as 3 million photos and objects from the history of AV, such as radio's, old recording devices and jukeboxes. We spoke with Harry van Biessum (NISV) and Lotte Belice Baltussen (former NISV) on a specific collection: The Small Gauge Film Collection. Their data collection for this interview was supported by Valentine Kuypers.

Could you tell me a little bit about the collection, and why you chose to make this one available online?

The Small Gauge Film Collection is a fascinating collection of 1800 (6700 films) hours of amateur film material from The Netherlands, recorded between the late 1910's and the early 1980's. We wanted to make this collection available to the public because it represents a more spontaneous look on history. The bulk of the historic AV collections of Sound and Vision are made by broadcast professionals and are filtered through their standards, this collection is different. It shows people in natural family-based situations which gives us an exceptional good look on how life really was, and also contain fiction film and animations made by non-professionals.

Another argument for choosing this collection were the costs already put into digitising it. There is a lot of diversity in the format of the material (from 8mm to the rare 17,5mm film format), because of changing formats between the decades it was created, this made the digitisation interesting but also expensive. The films were digitised with public money under



the Images for the Future project. We feel obligated to then try and make it available online for the people who financed the digitisation.

We did this work within the scope of the Amateurfilm Platform project, which ran between 2012-2014. Together with our project partners Gronings AudioVisueel Archief and Stadsarchief Rotterdam we made a diverse range of amateur films available online, and collected amateur video material as well. The Amateurfilm Platform is still online and more partners have joined.

Can you tell me about the rights situation of the material?

NISV was donated the collection by Henk Verheul in 2004, the person who collected all the films for the Small Gauge Film Museum (Smalfilmmuseum) he set up. He had to a certain extent document from whom he got the films, and sometimes even who the rights holders were and arranged a transfer of copyright. This was a good starting point.

We knew beforehand that clearing the rights for this collection would be very difficult and time-intensive. Though the quality and cultural value of the material made this worth it, it was even more costly than we anticipated.

What made you think this collection in particular was difficult to clear for online use? Since the filmmakers were all amateurs there is no Collective Management Organisation who represents these creators, we needed to contact the rightsholders, if we could find them, directly. This made it (probably) more time-intensive than negotiating for a license.

A very important aspect of the rights clearance was the ties to the local amateur filmmaker communities in the Netherlands. We needed to ask people for permission to share their parents' or spouse's home movies, sometimes containing very personal stories. This is what makes the collection great, but also hard to clear.

How did you tackle this challenge of individual rights clearance?

With blood, sweat and tears. We spent numerous hours tracking down and talking to the rights holders, explaining what online publication would mean. We feel very responsible for our collections, and also for the community. Even if the rights were technically already transferred to the organisation, these contracts were made in a time when there was no internet, so we felt that if we want to be good guardians of the material we should ask if we could publish them online anyway. We spoke to widows, children, grandchildren in sometimes very emotional states.

We started the clearing process with the amateur filmmakers who were well-known and respected in the community, who had produced high quality movies, and could also function as an example for the other rights holders to convince them to share their material. We also organised two information days for the rights holders, to really help them understand what transferring rights, or permission for publication would mean for the material and themselves. Many were elderly, which resulted in fears on what 'the internet' was. We tried to inform people as best we could, and it ended in building a good rapport with the community.



We also spent time in creating several contracts that were suitable for this work. These contracts had different levels of permission so that people could agree to what they felt comfortable with.

In the end we chose to ask for online publication, not reuse under Creative Commons licenses because we felt that would be a bridge too far for the people to understand and be comfortable with.

What was the result of all this process?

After clearing rights for about 2.5 years, we managed to publish 1,410 films online created by 42 makers. We are very proud of this result, but it also leaves thousands of films digitised but unpublished.

For about 40% of the material we were never able to identify or locate the rightsholder at all, even though we put in a lot of time and money. To give an indication, in the end our legal department spent about 200 hours creating, discussing and finalising contracts. We had about 800 hours of other employees of NISV working on this, managing the project and doing right clearance. We also had the fortune of having three interns on this, who worked on this together for about a thousand hours. They are somewhat cheaper though.

Interestingly, this is about the same amount of hours the collection is long - but only part of it is now online.

So how much did all of this cost?

If we break it down, the legal people were calculated on the budget for €42.17 per hour - the other employees cost about €34.00 an hour and the interns €2.00 an hour. We also hired external legal counsel, which cost €4,100.

If we tally this indication up, the hours, including the external legal counsel, the costs in terms of hours were: €37,634.00 This does not include building the strategy on how to do the rights clearance and the advantage we had on having someone working on this who had existing ties with the community. If we would not have had that, this would have take a lot longer.

If we are adding material costs as well, we agreed to a license with Buma/Stemra for the instances there was background music or other forms of music in the films. They gave us a reasonable quote of about €130.00 a year so we took that.

We also made some costs in organising the information days for the rights holders, about €1,200 in total. This was catering, location hire, that sort of thing. The last material costs we want to mention were the 'community building costs.' Besides the hours spent on this, we also offered to send the home movies to people on DVD if they had never received a copy before. Most people had themselves never even seen the films, so we felt obligated to let them see first what material they were agreeing to share online, and also have a copy for their own use. We think we spent about €250 on DVDs and postage costs on that.

Thank you very much for the information on this collection. Where can we look at them now?



On the Amateurfilm Platform: <http://www.amateurfilmplatform.nl/collectie> - please have a look. There you can also find the films cleared by our partners, Gronings AudioVisueel Archief and Stadsarchief Rotterdam. They were not interviewed but also spent time, money and energy clearing rights for their collections.

Question	Answer
Brief description of collection in question (types of works, period of works, provenance etc) date, author (s), number of works)	The Small Film Collection is a fascinating collection of 1800 (6700 films) hours of amateur film material from The Netherlands, recorded between the late 1910's and the early 1980's.
What type of uses did you clear rights for? (internal use, making available online etc)	Making available online via the Amateurfilm Platform
How many works did you clear rights for?	1410 films
How much time (in person hours) was involved to complete the work?	2.5 years
What is the average cost per hour?	€42.17 per hour (legal advisers) €34.00 per hour for other staff and €2.00 per hour for interns.
Total estimated cost per item for rights clearance alone	€37,634 incl. external legal counsel, at a cost of €4,100 for the collection equal to average of €27