D6.2 Feasibility Study on diligent search of image rights

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INTRODUCTION

ARROW was borne of a desire to ensure that European libraries and cultural institutions could provide greater public access to European cultural heritage through the digitisation of their collections[1], such collections being made up of works both protected by and out of copyright, and where protected by copyright, of works where the authors and rights holders are known or, alternatively are found to be orphan works (unknown or untraceable authors and rights holders following a diligent search).

ARROW addresses all these categories by providing a search process which identifies the rights holder(s) and facilitates tracing those owners or, for those works which are ultimately found to be orphaned, provides a process for diligent search (in line with the recently adopted European Directive 2012/28 on certain permitted uses of orphan works[2] & the High Level Expert Group's Due Diligence Guidelines for Orphan Works[3]).

Led by libraries, book publishers and RROs (including collecting societies for literary and published works) and working with: established rules for recording bibliographic data, a unique identifier against which published works are registered (ISBN) and registers of published works produced by libraries (VIAF) and for commercial purposes by publishers (BiP), it is not surprising that ARROW was built around rights management information held in and on books. On that basis, ARROW has shown that it can provide an effective search tool to identify text authors and book publishers.

The purpose of the ARROW follow-up programme to ARROW, is to sustain the results of the first program, extend its application to 12 target countries and to investigate whether information on Image Works embedded in and appearing on the cover of books can be integrated into the ARROW work flow.

Due to the range of business models applied in the image sector, it cannot be assumed that the corresponding rights in embedded Image Works have been transferred to either the publisher or to others, such as the text author, in fact, in most cases this is highly unlikely.

[1] EUROPEANA
[2] Directive of the European Parliament and of the Council on certain permitted uses of orphan works, 2012/28 EU, OJ L, 299, Page 5-12
[3] http://ec.europa.eu/information_society/activities/digital_libraries/doc/hleg/orphan/guidelines.pdf

Therefore, libraries must go a step further if ARROW is to be complete and the search complete. They must carry out a diligent search not only for the text element of a given publication but also for each of the Image Works in the publication.

The European Union has addressed this issue in its Directive 2012/28 EU on certain permitted uses of orphan works which has been approved by the European Parliament and the Council on 25 October 2012.[4] For the issue of embedded images in books the following draft provision will be applicable and should be noted for the purpose of this study:

Article 2
Orphan Works

1. A work or a phonogram shall be considered an orphan work if none of the rightholders in that work or phonogram is identified or, even if one or more of them is identified, none is located despite a diligent search for the rightholders having been carried out and recorded in accordance with Article 3.

2. Where there is more than one rightholder in a work or phonogram, and not all of them have been identified or, even if identified, located after a diligent search has been carried out and recorded in accordance with Article 3, the work or phonogram may be used in accordance with this Directive provided that the rightholders that have been identified and located have, in relation to the rights they hold, authorised the organisations referred to in Article 1(1) to carry out the acts of reproduction and making available to the public covered respectively by Articles 2 and 3 of Directive 2001/29/EC.

(…)

Consequently, it is essential that for publicly accessible libraries and other educational and cultural establishments, that envisage the digitisation and making available to the public of their collection, that diligent search covers embedded images in books and on book covers if those libraries and establishments wish to make use of the privileges for the use of books as foreseen in the Directive.

The challenge for Work Package 6.2 within ARROW Plus is to determine whether the ARROW search process can in principle be extended to Image Works contained in books. This naturally raises the question of whether a system designed around libraries and book publishing can be made to work for image works.

[4] Footnote 2

The need to take into account the Image Works sector in connection with the text and, to a lesser extent with the audio-visual sector, has been raised in the past and is well documented in the reports on the process of creating sector specific guidelines on diligent search for the High Level Expert Group on Digital Libraries which became subject to a Memorandum of Understanding signed on 4 June 2008 with Commissioner Viviane Reding.[5]

SOME POINTS OF PRINCIPLE

To ensure the full co-operation and involvement of authors and intermediaries of image works, of all types, with the ARROW project, this study must first acknowledge the concerns of right holders in image works, before it can begin to consider ARROW's potential:

- The Arrow process, if refined to include image works, cannot on its own replace other diligent search procedures in relation to the use of orphan works, or in any other context;
- A digital copy of an artwork taken from a book or similar source cannot replace access to original artworks, or quality reproductions of those artworks, whether for reference, cultural, educational or other purposes;
- Work must begin now on improving identification of authors and rights holders of individual Image Works embedded in books (and other media) including improvements to the bibliographic records held by libraries, standardisation of the information held in books, and the data held by publishers and others working with the ARROW process;
- Support should be given to promoting legislation and technology which discourages and prevents the removal of image metadata, improves the application of the Author's moral rights and improves the way in which image work and right holders are credited;
- It must be recognised that the cost for diligent search and identification of works is not the same as the price paid to the right holder for use of the work.

[5] MoU, 4 June 2008, appendix to joint reort, pages 5-8, http://ec.europa.eu/information-society/activities/digital_libraries/doc/hleg/orphan/appendix.pdf

PURPOSE OF THE DOCUMENT

Building on the original ARROW project, this Feasibility Study forms part of ARROW Plus, exploring the potential of the ARROW system to support fully the diligent search of image rights contained in books, whether those works turn out to be orphaned or not.

It reviews more general issues to do with the identification and recording of Image Works and Authors and the challenges which these raise, before outlining the main business models for Image Works. It analyses and summarises the role of different players in the value chain, whether author, or right holder or intermediary, with the twin aims of assessing their ability to contribute to the development of the ARROW system and an appraisal of the potential value to them of the ARROW system. It incorporates points arising from the Report on legal aspects.

It provides a brief outline of the ARROW Workflow including those where the potential for extending ARROW to incorporate image works as part of ARROW Plus had already been noted, as well as reporting on the pilot, and related case studies, and targets and the options which have been identified during that process. It also proposes a possible extension to the ARROW workflow in the form of an Image Works Cluster (IWC) which answers the need for both author-based and image-based searches.

It takes account of the voice of individual authors of image works with information obtained in interviews carried out with the senior officials or members of three European Economic Interest Groupings and at a meeting with these groups held in Brussels in September 2012. They are European Federation of Illustrators (EIF), European Federation of Journalists (EFJ), Pyramide (representing photographers' organisations).

It evaluates other tools which have the potential to contribute to the identification of image works and authors including the range of image databases already in place, their focus and their potential for interoperability and to connect with the ARROW work flow. It also includes an evaluation of identification systems for image works and rights information and the potential of visual recognition software.

It returns to the need for industry co-operation and the development of policy which contributes to, enhances and protects measures in support of the identification of image works in online and more traditional media environments.

The conclusions and "next steps", or recommendations provide an indication of the extent to which the further development of Arrow can support the inclusion of image works and rights and the potential for the promotion of a more comprehensive project to explore the issue of image rights.

RELATIONSHIP WITH OTHER DOCUMENTS

Within the High Level Expert Group on Digital Libraries a stake holder dialogue took place to create sector specific guidelines which led to a Memorandum of Understanding signed by the stake holders including EVA and was also signed by the Commissioner Viviane Reding on 4 June 2008. The joint report and in particular the Appendix includes a description of the complexity of rights of image works in books and the need to link the efforts in developing solutions together with the text sector. [6]

ARROW PLUS D6.1: Analysis for Integration of Visual Artists' Data Bases is the first deliverable prepared by WP6 in March 2012 gathering information on existing databases that include information on visual works in books.

Documents from ARROW Project (2008 -2011):

ARROW D7.2: Validation documents on Arrow including a visual material pilot phase. The document was prepared for the first program, ARROW based on piloting in the 4 countries UK, Germany, France and Spain. The excel tables on the DNB – diligent search reveal that the German visual work CMO, VG Bild-Kunst, and EVA member, took part in the piloting back in 2010 for the images identified by the Deutsche National Bibliothek in the 73 cases contained in the pilot search request. All requests by the library could be answered by VG Bild-Kunst for the international image repertoire they manage in very little time. The pilots and case study for Germany prepared for this study relate to the 2010 search request and deepen the analysis. In a statement prepared by CEPIC on the 2010 search it is developed that the identification of image authors and rights holders in 2010 was incomplete in particular

[6] See Footnote 5

concerning a book on photography, “FOTO-AUGE”, a reprint published in 1973 from the 1929 original version with 79 illustrations. The search performed by VG Bild-Kunst in 2010 is reported specifically for this study and the results feed into the joint analysis of the pilot.

Documents from the current ARROW PLUS Project (from April 2011):

ARROW D3.1: User requirements for Arrow deployment

This ARROW PLUS document deals with the 12 target countries of ARROW PLUS (Austria, Belgium, Bulgaria, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Netherlands, Poland and Portugal). It assesses the situation and condition found in each of these countries with regard to a future introduction of ARROW, provides conclusions and recommends next steps. To some extent sources for information on authors and rights holders for visual works are included in the text. These relate to EVA members and observers in the respective countries. (See also Annex 4 to D3.1. that provides a list of all organisations being part of the assessment, including the EVA members and observers)

For the purpose of this study the investigation on databases including information on images has been deepened and was built on the results of D3.1 and supported by WP3 that holds the contacts to the NCP.

The outcome and recommendations for the 12 target countries is reported in Chapter 3 of this study.

The findings of the study are supported by several reports specifically prepared and which are presented as appendices to this document.

“The Rights on Images in Books” by Professor Alain Strowel, Brussels, is a legal study providing legal background information on a general European level;

CEPIC prepared several reports, two initial reports investigating the use of image identifiers in the Image industry and the larger issue of “Identifying Images and orphan works”. These two reports were established in order to answer the question raised under D6.3 whether a unique standard identifier for image works in books is likely to be developed. One further report investigates visual orphan works in historical archives as an effort to provide alternative but

reliable data in a field where there is almost none. The last reports are the three CEPIC case studies, reported on in part 2., and in their analysis.

The list of the CEPIC reports is as follows:

- Orphan Works Survey in Historical Archives (Sylvie Fodor/ Angela Murphy)
- Review of Existing Unique Persistent Identifiers (Angela Murphy)
- Orphan Works and Image Licensing (Sarah Saunders)
- German case study/ analysis of the German 2011 pilot (Bernd Weise)
- UK case study/ The Ascent of Man (Angela Murphy)[7]
- French case study/ La Belle Epoque
  (Cornelia van Arnem and Marie-Christine Petit)
- Three Case Studies for ARROW/ including report on visual technology (Sylvie Fodor)

Appendices prepared by EVA:

- "The German pilot as regards embedded images", Dr Anke Schierholz and Carola Streul, prepared on the 2010/11 pilot where the German collecting society VG Bild-Kunst participated.
- "OnLineArt, a report describing OLA and its relevance for ARROW", prepared by Carola Streul for OLA.
- "Exploring Inclusion of image material", Carola Streul, results of WP6 meeting on 3 May in Paris

STRUCTURE OF THE DOCUMENT

This Study is structured quite simply, first to give an overview of Image Works, Authors, right holders and intermediaries (Chapter 1), then an analysis of potential sources of information on Image Works and Authors including evidence from the pilots and targets and on case studies (Chapter 2). It then analyses the ARROW workflow and puts forward a proposal for a possible Image Works Cluster (Chapter 3) before turning to the bigger picture where it looks at some of the major policy and regulatory issues for Image Works and their Authors and also gives a perspective on longer term solutions including the use of Image based searches and other technological solutions (Chapter 4). Finally, the Study provides a series of Conclusions and Recommendations for next steps to be taken (Chapter 5).

The Study opens with an introductory section and concludes with 11 appendices.

[7] Up-dated version from August 2012

1. CHAPTER ONE - IMAGE WORKS

1.1 DEFINING IMAGE WORKS

Image Works are artistic, graphic and plastic works including but not limited to fine art and other artworks, illustration, graphic design, sculpture, architecture, photographs and works of artistic craftsmanship and photographs of other works of artistic or cultural interest.

Authors of Image Works are artists, illustrators, designers, sculptors, architects, photographers, craftspeople, etc.

1.2 PURPOSES FOR WHICH IMAGE WORKS ARE CREATED

An insight into the complexities of the Image Works sector, its different players and their varying legal positions, can be obtained by looking at the different purposes for which these works are created.

Image Works may be commissioned for commercial use, for example, in the case of illustrations for book covers, photographs for advertising, designs for furniture, etc. Alternatively, as is the case for most fine art and sculpture, the work is created for the purpose of sale of the original work, rather than for its reproduction and it only acquires reproduction value subsequently. Some works are created neither for reproduction nor for sale, but acquire value as cultural objects and reproduction value in the marketplace. Some works, mainly photographs, may be commissioned or purchased for reproduction purposes through picture agencies or press agencies or from the photographers themselves.

A clear distinction between, for example, fine arts, photography and illustration is not possible because many authors work across artistic disciplines. An artist may work as an illustrator to earn a regular income or use photographic techniques to create fine art work or take photographs of his own works. A graphic designer or an architect may create photographs or fine art work, etc.

The fine arts are less affected by the digital shift because the art market still relies on original works that are sold and change owner as physical objects, that is in analogue form. However, related uses, such as the catalogues of auction houses and comparable items are subject to

new business models due to the move to digital and online publishing and distribution methods.

More market oriented Image Work categories, such as photographs and illustration, which are created for reproduction and commercial publication via the print media sector have been considerably affected by digital developments. In this environment, global intermediaries have appeared in recent years, in particular the Getty and Corbis picture agencies but other photo agencies have developed their businesses along similar lines. Individual photographers and illustrators and artists are increasingly making their works and/or licences for reproduction of their works available through their own websites or through "portfolio" websites.[8]

1.3 RIGHTS IN IMAGE WORKS

1.3.1 Authors' rights or Copyright protection of Image Works

Copyright applies to image works in the same way as it does to literary, dramatic and musical works across the European Union. To be protected, such works must be original[9], the copyright belonging to the author and lasts for their lifetime plus a further seventy years. There are some differences in protection afforded to Image Works under national law, particularly with regard to the protection of certain photographs which may not have the full level of copyright protection afforded to other "creative" works. Article 6 of the Term Directive states that "photographic works are original in that they constitute the author's own intellectual creation". The scope for interpretation of this at national level is wide.[10] Also see 1.5.3 on rights ownership in Image Works below.

1.3.2 Rights in image works

As with all other copyright protected works, such as music, film or literature, the authors' rights in visual works comprise two main categories: economic exploitation rights and moral rights.

Exploitation rights are transferrable and intermediaries can be mandated to exercise the rights, however, the author will remain as the primary right holder.

[8] Interviews with EIF and AOI
[9] Prof. Alain Strowel "The Rights on Images in Books" (see Appendix ….)
[10] Prof. Alain Strowel "The Rights on Images in Books" page 4 (see Appendix ….)

Until recently, the licensing of image works in print media has relied heavily on the analogue reproduction and distribution right in relation to the reproduced copy (the reproduction right) but there are other rights including those applicable to the digital and online environment. These are the distribution right and, in a wider sense, rental and lending rights, broadcasting rights and, most importantly, the right to communicate the work to the public including the making available right.

In the context of ARROW and its clearance function and in relation to the digitisation of collections held in European libraries[11], the following rights in an image work are needed:

- Right to make a digital copy (the reproduction right);
- Right to communicate the work to the public which includes making it available online.

It is rare that book publishers are in a position to grant the rights in embedded images to libraries due to several factors, including the date of the introduction of these rights which was in 1996 through the two WIPO Treaties WCT[12] and WPT[13] and the EU Directive of 2001 on certain aspects of copyright in the information society[14] and its implementation into national law. That is, the rights did not exist and therefore did not apply to material published before 1996.

1.3.3 Moral rights

The moral rights of an author cannot be waived, though UK copyright law takes a different approach to other parts of Europe on this. The moral rights include the right of:-

- first publication, which may only take place with express permission of the author;
- attribution of the work to its author, that is, the right to be credited whenever the work appears either as an original or as a copy;
- integrity of the work, which enables the author to prevent modifications.

As the ARROW process seeks to provide a solution for published books and by the fact that any Image Works appearing in books are “published”, this Feasibility Study does not attempt

[11] Commission recommendation of 27.10.2011 on the digitisation and online accessibility on cultural material and digital preservation, EUROPEANA
[12] WIPO Copyright Treaty, 20 December 1996
[13] WIPO Performan ad Phonograms Treaty, 20 December 1996

to deal with the question of unpublished works. Nevertheless, it is worth noting that moral rights is an issue which will have to be dealt with for "stand-alone" images and the often discussed publication of works donated by heirs or in "found" items.

The right to be credited as the author plays a central role with regard to orphan images. Where authors and rights holders of works cannot be traced, incomplete credits in published book are often the biggest problem, that is, the authors cannot be identified because they have not been credited in the published version. Technical tools such as identifiers and visual recognition software are a promising means by which to reduce this problem and to prevent it worsening in the future. However, proper attribution of authors and rights holders must be ensured to prevent the future creation of orphan works.

The moral right to protect the integrity of the work provides an additional protection, that is, the author has the right to be identified in public only with works that have been approved by him. This moral right impacts on the ability to exploit a work economically. If a modified version of a photograph has not been authorised for use, the photographer may not easily identify his work and thus claim his rights. Again the development of visual recognition software may help to resolve this issue of identifying such works.

A more detailed explanation of the legal issues around moral rights is provided in Prof. Strowel's report.

1.3.4. Exceptions and limitations to copyright

Exceptions to copyright under Article 5 of the Information Society Directive, and which potentially, could be applied for the purpose of library digitisation programmes, have already been found to be too limited to cover the rights needed for digitising books.

The two exceptions are:-

1. Art.5.2. non-commercial specific reproduction by public libraries and archives;
2. Art.5.3.communication to the public and making available on dedicated terminals.

[14] Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, OJL 167, 22.6.2001

Prof. Strowel analyses these in his study and concludes that neither could be applied in the case of a Europe-wide mass digitisation programme such as Europeana, as the first exception applies only to public libraries and archives operating on a non-profitmaking basis and not for uses made in the context of online delivery of protected works. The second exception, does not allow the library to make the images and books available to the general public, such as through an online portal.[15]

1.4 THE USE OF IMAGE WORKS IN BOOKS

Though practice varies from country to country and is dependent on the negotiating strength of each Image Work Author in the marketplace (as well as on national law as it protects the interests of the author), publishers are normally granted a licence by the right owner for each Image Work included in a publication. That licence is likely to be limited to the right to make copies and to distribute those copies. The licence will also be limited by territory, by time and, perhaps most importantly, for use only in the context of the named publication (and possibly in any promotional material associated with the named publication).

Licences granted for past publications are also unlikely to include the making available online right, as the right only came into existence as part of the Information Society Directive (Directive 2001/29/EC). Also see 1.3.2 above. Generally speaking, the reproduction right as it was granted in older contracts does not cover the right to digitise a work, as this was not envisaged at the time the original contract was entered into. This position was confirmed in interviews with representatives of the professional bodies on evidence of industry practice.

CEPIC points out that contracts between picture agencies and photographers who started their career in the analogue area, may be renewed and amended in order for their stock to be digitized and the photos then published on the commercial websites of picture agencies and libraries. For photographers more recently contracted to picture agencies, the right to digitize will routinely be incorporated into their contract, as the promotion of their photographs would otherwise be impossible.

It is possible that rights to digitise older works have been granted to the picture agency but this is more likely if the photographer is still working and is actively represented by a picture agency than it is for photographers' estates; and it is also less likely the older the book, or the longer it is out of commerce . This applies only to photographers with contracts with picture

[15] Prof A Strowel

agencies and is not the case for the many individual photographers or other creators of Image Works who are not represented through picture agencies.

1.4.1 Image works - examples of potential use in books

As part of the work for this Feasibility Study it was considered whether the diligent search for images in books could be facilitated if certain categories of books could be excluded from any Image search because they do not contain any images. That would, of course, necessitate that for clearly defined book categories there is certainty that no image are used. Although there are books which have no images, for example, certain textbooks, it is not possible to define a category of books with "no images" in a reliable way. Certainty can only be provided by a complete register or database comprising information on all Image Works both inside and on the cover of books.

The following table gives an idea of the variety of books that include Image Works on the cover or inside. Its purpose is not to give an exhaustive list of the ways in which Image Works appear in published books but rather to raise awareness of how difficult it is to exclude any category of books.

Table 1: Ways in which Image Works are used in books

	Potential use	**Example**
AUTHOR OF THE IMAGE WORK IS….	the subject of the book	Artist's monograph
	the Writer and Illustrator	Children's storybook, scientific book
	the creator of a Graphic book cover	Most books, whether fiction or non- fiction
	the subject of the book	History of art
	the only contributor to the book	Series of engravings in a book about the countryside
	a substantial contributor to book	Gardening book
	one of many contributors to a book	Travel guide
	the Contributor of photographs of image works by another image author	All books where art work appears - for example a Guide to works in a National Gallery's collection

Image Works can appear in any kind of books as embedded works or on the cover. Their usage is not limited to particular categories of books although there are certain types of books which are likely to hold more images than others, for instance modern travel guides,

dictionaries, art books and exhibition catalogues, children's books and comic strips or graphic novels. Any kind of book - be it from the fiction or non-fiction sector - can hold illustrations, at the very least on the book cover, in order to attract the attention of potential buyers.

This line of thinking has not been pursued further in this study due to the range of images, the variety of purposes for which they are used in books and the very many types of books. Reliable categorisation is just not possible while there is no catalogue or database available which incorporates information on all Image Works in books and while there is no other technical tool available that can provide the level of certainty needed.

1.5 RIGHTS HOLDERS IN IMAGE WORKS

1.5.1 Authors of image works

The authors of protected Image Works are the main right holder of all rights related to their work including the same economic and moral rights which a text author owns in his or her work.

Additionally, and – if the work is an original resold on the art market – the list also includes the resale right.

As explained earlier in the chapter, the author's right is inalienable but the right to exploit the work can be transferred to third parties or a mandate given for the representation of the author, or for the exploitation of the work. The transfer of rights is generally limited to the extent necessary for the exploitation to go ahead, whether in terms of duration, or the number of copies permitted but it can also include all exploitation rights in relation to a work.

1.5.2 Copyright in photographs of image works

The way in which artistic works are made accessible for reproduction purposes gives rise to a second set of Image Works with a second set of rights. These arise where an artistic work or other cultural object (in which copyright may or may not subsist) is photographed and where national copyright legislation acknowledges photographer as "authors" of their "own intellectual creation" or when that same national legislation recognises neighbouring rights[16]. In addition picture agencies and library may require payment for photographic rights. These rights should not be confused with the rights provided by copyright. They are contractual rights and for picture libraries and agencies provide a necessary layer of protection by

ensuring that, for instance, publishers do not re-use photographic material provided under a contract for a specified usage for another entirely different usage. The contractual relationship and agreement protects the library and its investment in the conservation of the physical photograph and the marketing of the work, regardless of whether this work is still protected by copyright or not.[17] Where there is doubt, the providers of such images claim "contract rights" by licensing the right of access to the relevant image. So, two sets of rights exist. They are:

- the rights of the artist in the underlying artistic work or other cultural object;
- the rights (copyright or under contract) in the photograph which belong in the first instance to the photographer, or in cultural organisations employing such photographers, the rights belong to the cultural organisation itself[18] or to a picture agency that commercialises the image material.

Where the artistic work itself is protected by copyright, permission must be obtained from the owner of copyright in that work before the photograph is taken and before the use of the photograph can be licensed. This can be seen as a symbiotic relationship, as without the artwork there is nothing to photograph, but without the photograph the artists will not have any means of selling reproductions of their work to publishers and other media.

The resulting image is only protected by copyright when it results from creativity (see before and Prof. Strowel's report). For photographs this is generally the case because a low level of originality is sufficient to qualify the photograph as a protected work of some kind. On the other hand, images produced in an automated way do not qualify for copyright protection. For instance scans of artwork, when made available on a post card or other copies of such works, are not protected.

Rights in such photographs (whether of copyright or contract i.e. access rights) are normally managed through picture agencies operated by museums and galleries or through specialist commercial picture agencies. In many cases, the rights in the underlying artwork, particularly for contemporary and modern "fine" artworks, are likely to be managed through a collecting society acting on behalf of the artist.

[16] For reference, see Prof. Strowel's legal analysis and comparison of National legislation
[17] Information provided by CEPIC
[18] Bridgeman v Corel. Jonathan Rayner James QC an opinion for the Museums Copyright Group

Though two sets of rights are referred to here, it is true that in some cases the original Image Work has been photographed more than once and more than one photographer or picture agency can offer a licence for the work. This presents an additional hurdle for the clearance of the rights in the photograph and for the peace of mind of the library wishing to clear rights in such a case. It is a problem to be resolved (see Chapter 2 case studies for more on this).

Before leaving the complex situation regarding certain photographic rights, it is worth mentioning that when clearing rights in such works, it is often necessary to clear other rights, not necessarily copyright related. These are the rights of models or individuals appearing in the photograph (contractual or in some cases "personality" or privacy rights), other forms of IP such as trademarks should be noted and in some countries within Europe there are other rights, for example, in France where works of architecture must also be cleared. However, as discussions with the professional bodies representing photographers have shown, it is normal for professional photographers to keep records of contracts for such rights and so the photographer concerned should be in a position to act as the contact point for clearing such rights.[19] Picture agencies will always require from photographers a proof of the model releases. On the other hand, French legislation recognises, even to professional models, the right change their mind, the "*droit de repentir*": a certain level of uncertainty when publishing photographs of people cannot be completely eliminated and must be accepted.

1.6 ROLE OF INTERMEDIARIES

On the whole, most image works are licensed directly by the copyright owner i.e. the individual artist or photographer, or by a third party of their choosing which is mandated to act on their behalf. That could be an agent or manager, an image library/picture agency/press agency, or a collecting society.

1.6.1 Agents and Managers

Agents and managers operate in the sector (particularly for advertising photographers and commercial illustrators)[20]. On the whole, their role is to represent the artist or photographer and negotiate contracts for commissioned work but with the rights being retained and licence being granted directly by the individual right holder.

[19] See the template "Standard Release Form", the Getty Images "Model Agreement and Release" and "Property Release" appearing in the appendix to "Beyond the Lens", 3rd edition 2003, edited by G. Thomas and J. Ibbotson.

[20] Confirmed in interviews with the European professional bodies representing photographers and illustrators, though it should be noted that agents of this type do not operate in many of the Nordic countries where sole traders and companies cannot be represented by agents under the law

1.6.2 Picture Agencies and Image Libraries

Image libraries and picture agencies are commercial companies operating in the image production and licensing industry (the terms are used interchangeably.)

An introduction to photo agencies and libraries

Photo agencies represent mainly photographers, sometimes illustrators[21]; they supply photographic images, but increasingly video footage as well[22], for a range of uses in all forms of media: newspapers and magazines, book publishing in all categories, calendars and postcards, advertising, web usage etc..

Picture agencies have a range of different contractual arrangements with the photographers they represent from full assignment of rights through exclusive deals for representation or for specific images, transfer of rights through an employment contract (including automatic ownership by the employer in some territories such as the UK), to non-exclusive arrangements for the work of a photographer or, again, an edited selection of images.[23] The relationship is an individual relationship and reporting and payments are monthly.

The tasks of picture agencies are:

- To produce images (representation, assignment, own staff production);
- To manage these images (filing, cataloguing, indexing, keywording, captioning, scaning…);
- To promote the images (on-line promotion, CDs, fairs, clients newsletters, exhibitions etc.);
- To preserve these images (databases, historical archives);
- To license these images on-line and off-line in all media, including books, newspapers and magazines;
- To manage and distribute payments (photographers and other contributors, sub-agents).

[21] Examples from the BVPA (Germany) membership : Catprint Media GmbH (http://www.catprint.de), die Kleinert.de, Bilarchiv für Illustrationen und Animationen (http://www.kleinert.de)
[22] Getty Images, Fotolia of PoundFive distribute music as well …
[23] Examples of contracts may be found on the websites of some picture agencies

In addition to these tasks, picture agencies are increasingly tracking copyright infringement using visual recognition software.[24]

Picture agencies vary greatly in size but the majority will be small to medium-sized businesses with staff from 5–10, from small independent operations acting on behalf of small groups of photographers or providing specialised content to large global operations e.g. Getty Images or Corbis. CEPIC estimates that it's members offer images and represent photographers of just under 50% of all photographers represented worldwide by photo agencies through its European based and international membership or a number of 150 000 as a low estimation, with professional and semi-professional entering the market every year [25]. Today most of the major photo agencies have a global presence with offices throughout the world and even the smallest picture libraries have distribution deals with other picture libraries in other countries.[26] The size does not determine their international representation but their mode of operation. The following examples will provide an overview of the variations both in size and in operation: at one end of the scale, Getty Images has 120 million of images and 50 million of them are digitized and available via its various websites. The other 70 million are held on its Hulton Archive collection in London. The vast majority of images in its creative images collections (the core of Getty Images' business) are owned by third party photographers. In the UK alone, they represent 3.700 photographers. At the other end of the scale, a small but very professional agency such as La Collection in France will have 200.000 fine arts images available in their on line database with an additional archive of 30.000 analogue images. They represent 26 photographers and a couple of illustrators. In-between these two extremes, there will middle-size agencies such as mauritius-images or AKG Images in Germany. Mauritius images has 14 million digitized images and claims to represent 700 photographers through an international network in 80 countries, and AKG Images is an historical archive of 10 million images, 2 million on-line and 300 photographers represented through its offices in three countries.[27].

Picture agencies are often specialised. The most common fields of specialisation are: news (press agencies), travel photography, life style, food photography, animals and nature

[24] For a presentation of the use of visual recognition softwares, see CEPIC report « Three Case Studies for ARROW, Implementation of VisualTechnology », page 25
[25] 20 European countries, additional countries such as the USA, India, Israel. Amongst affiliates (non voting members) is the ASMP, representing 7,000 photographers in the USA
[26] http://www.gettyimages.co.uk/ or http://www.corbisimages.com/search/
[27] http://www.gettyimages.com/, http://www.mauritius-images.com/index.php, http://www.akg-images.com/, http://www.lacollection.eu

photography, the fine arts. Fine Art picture libraries, such as Akg-images or the Bridgeman Art Library represent museums collections, private collections, individual photographers exclusively specialising in art photography or they will send photographers on assignment to make shots of specific works. Also to be noted is the trend for cultural institutions to create their own image library as specific profit centres. Rather than entrusting their collections of photographs to third-party picture libraries cultural organisations create their own picture library as an independent structure, whose revenues will support the museum or cultural institution in their public mission. There are many successful examples, such as The Tate Gallery[28] (London), the National Portrait Gallery (London), RMN (agence photo, de la Réunion des musées nationaux, Paris)[29], bpk (Bildarchiv Preußischer Kulturbesitz, Berlin)[30]. Magazine publishers too create special photo departments; although the interest in syndication material has significantly decreased in the last couple of years (Ringier, Bonnier, CondéNast, Mondadori etc.).

Key points for photo agencies:

Technology. In the last 15 years, the advance of digital technology has radically changed the way the picture industry works. An important amount of technological change had to be integrated, affecting production, transmission and protection of photography, and business models, in a very competitive environment and a continuous downward price spiral. On the other hand, picture agencies were amongst the first businesses to embrace these technological changes and in some cases ahead of them. Corbis, for example, was created in 1989 as a 100% digital business (it purchased analogue archives, such as the Hulton archive, or, later, the Sigma Press archive in France, and started to digitise the image stock in these purchases). By the end of the 1990s, the vast majority of picture agencies had a functioning e-commerce website and were dealing in a digital environment. Either that or they were bought out or merged with another company. It is an industry which is moved by the conviction that technology can fix most of the issues. That is technological change and issues in the marketplace can be solved by parallel technological developments in rights management and indeed, speedy solutions have been found to a great many issues. Visual technology for example, which is a solution proposed to ARROW to improve its search capacity, is less than 10 years old: this means that it was only just born when the High Level

[28] http://www.tate.org.uk/about/business-services/image-licensing – Many other examples may be found in the BAPLA membership: http//www.bapla.org
[29] http://www.photo.rmn.fr

Expert Group on sector specific guidelines for a diligent search met for the first time in 2006 in Brussels.

Images published are only a portion of images produced. Another important element to know in the context of this report is the proportion of images marketed (that is, images actually published) relatively to the total number of images held by picture agencies: the former figure is a portion of the latter. For example, akg-images mentioned above holds a total of approximately 10 million images in its archive, whereas 2 million are available in digital form and the yearly turnover is obtained with a core of 5,000 images. The archives of picture agencies are constantly growing, through new acquisitions and/or contributors. However, the number of images which are actually published is a small percentage of the total. These figures put the issue of "orphan works" in existing print publications held by national libraries into proportion, given that the amount of pictures actually published is only a portion of the number actually produced and that this portion is held by a comparatively small number of stakeholders.

In principle, picture libraries do not hold any orphans into their files. If a library is identified as the source for a photographer or a photograph, this means there is an existing contractual relationship and current contact details are available in the database. However, as the historical archive report published by CEPIC informs, a number of historical picture agencies do publish images on their own name when after a diligent search no author was identified or traced (orphan works) [31]. Often generated incomes are kept in escrow for a certain period of time.[32]

1.6.3 Collective Management Organisations

Collecting societies for visual works (CMOs) are authors' organisations set up by artists and photographers in order to manage and defend their copyright. These societies are trustees[33] and manage the rights on a not-for-profit basis for worldwide repertoire of close to 110,000 authors and heirs.

[30] http://www.bpk-images.de
[31] Appendix I, Results of CEPIC survey on Orphan Works in Historical Archives, 28 September 2011, Sylvie Fodor and Angela Murphy, page
[32] Appendix 1, see foot note 31
[33] Collective Rights Management in Europe, Anke Schierholz in European Copyright Law, a commentary, edited by Michel Walter and Silke van Lewinsky, 2010, page 1151

Authors, or their heirs, become members of a CMO for visual works by signing individually a mandate or contract that includes a list of works to be managed on their behalf. Normally the artist includes their entire catalogue in the list.

The CMOs license primary uses, such as:-

- Analogue reproduction and distribution of works in print media including books, newspapers, magazines, postcards, posters and others
- Broadcast of the works on television channels
- Reproductions on merchandising products
- Digital reproduction and making available online (through the international one-stop-shop OLA, see below)

Remuneration for secondary uses and legal exceptions and blanket licences includes:

- Private copying and reprography for educational and other purposes
- Cable retransmission
- Public lending and rental and others.

CMOs for visual works also manage the resale right for the benefit of the author of an original work that is resold on the art market.

The CMOs license use of Image Works based on published tariffs and collects remuneration on behalf of its members, which is distributed on an international basis. The CMOs retain a fee from the amounts payable to its members to cover their administrational costs.

Author categories

CMOs manage the rights for primary uses only for those Image Work Authors that do not engage in competitive commercialisation of their works. That is, the reproduction and distribution rights are only managed for authors of fine arts and a limited number of

photographers who create art work by photographic means or who, for other reasons, are in a comparable situation. This is the case for photographers' estates, such as the Bauhaus – photographers, or for estates of genre photographers, such as August Sander, Siegfried Enkelmann, Charlotte Rudolph, Martin Hürlimann, Albert Renger-Patzsch, Alfred Stieglitz, Hugo Erfurth, Man Ray, Alexander Rodschenko, Paul Citroen, but also contemporary photographers like Candida Höfer and many others.

The vast majority of photographers and illustrators must promote their works to ensure its commercialisation. This is a service that CMOs cannot provide because as trustees and not-for-profit organisations they are obliged to treat all members equally. For this large group of authors and rights holders which includes also many picture agencies the CMO manages only secondary uses and remuneration rights.

Extended Collective Licensing

Given the reference to secondary uses and remuneration rights in the previous paragraph and given the recommendation in favour of collective licensing in the Memorandum of Understanding on Out of Commerce Works[34], signed in September 2011 by representatives of libraries, publishers, authors and collecting societies, it is worth explaining a little more about ECL at this point.

Extended Collective Licensing (ECL) is a legal concept originally developed and applied in the European Nordic countries. It has the effect of extending the conditions of a license agreed between the national collecting society and a representative number of rights holders to all third party rights holders for future uses of the same kind. Legislation differs in the respective Nordic countries but in general ECL applies for uses clearly specified by law and authors and rights holders who are not member of the CMO have the rights to opt-out.

ECL has been proposed for use outside the Nordic countries as a solution for Orphan Works and for out of commerce works and in relation to large scale digital uses by libraries and other cultural institutions. Its proposed introduction in the UK, as Clause 43 of the then Digital Economy Bill caused widespread concern amongst rights holders, mainly because there were insufficient safeguards and restrictions on its application. Nevertheless, some rights holders

[34] http://ec.europa.eu/internal_market/copyright/docs/copyright-infso/20110920-mou_en.pdf

are aware of the benefits which accrue from a stronger system of collective management such as that offered by the Nordic model[35].

National cooperation

CMOs for visual works co-operate at national level to negotiate remuneration for secondary uses, such as private copying and cable retransmission and reprography where it works closely with the local RRO. In some countries, such as for CopyDan in Denmark, the societies function under one roof. In others, such as Germany the visual CMO, VG Bild-Kunst works jointly with VG Wort but as an additional party to negotiations.

International cooperation

The CMOs for visual works exchange mandates and collect fees and remuneration on an international basis through representation contracts which, in most cases, are reciprocal. Not every country has a CMO for visual works and in some countries there is more than one CMO for visual works. In Europe there are no CMOs or no active CMOs in several of the new member states, for instance in Poland, in Bulgaria and in Romania. However, there are several societies in Belgium, SABAM and SOFAM and more to manage the resale right; in the UK there is DACS and ACS.

For international cooperation between CMOs in the field of digital and online uses there have been some developments. See below on OLA.

All CMOs for visual works are members of CISAC[36] [37]and follow its Binding Professional Rules.

CMOs are author orientated

CMOs for visual works manage rights based on the identity of the author and not on the identity of his or her works. The reason for this originates in the particular way in which art works are created and commercialised:

[35] Interviews with professional bodies.
[36] www.cisac.org
[37] Footnote 31, page 1156

Painters and sculptors create original works that they sell and which are thus disseminated. In general, artists do not keep records about the buyers or on the resale of their works, partly because artists have no interest in the necessary level of administration needed. When artists become well known, generally at a later stage of their career, many works are already disseminated with no knowledge of their destination, at which point it is too late to record the information. For such artists it is neither reasonable nor affordable to expect them to create registries and archives of their work.

The management of rights based on the authors' identity is a very efficient tool because the collecting societies work with a proprietary standard identifier of names, the IPI number which is applied by all CISAC societies. The contact databases of the individual members of collecting societies are regularly updated and consolidated. A diligent search based on the names of authors can be performed for each known name within seconds, and by any of the EVA CMOs. This is reflected in the results obtained from the 2010/2011 German Pilot of ARROW, where the German CMO VG Bild-Kunst performed a diligent search based on the DNB search request that included names of visual authors whose works appeared in the searched books[38].

The difficulty of performing a diligent search for Image Works has its roots in the fact that no complete registers of Image Works in books exists. Such a register has not previously been needed.

Identifiers and visual recognition software

Rights management within collecting societies is based on the author's identity. Therefore, they do not currently apply work identifiers or use visual recognition software. Numbering systems such as the ISNI[39] standard are not applicable because the CMOs are not supplying the image material, that is, reproduction quality copies, for the authors they represent.

Photographers and picture agencies that manage and commercialise images containing other artistic works (see 1.5.2 above) rarely incorporate a direct link to the authors and rights holders of works that are incorporated in such images.

[38] DNB_diligent_search_Tables, ARROW, 2011
[39] http://www.isni.org/

For example, a photographer who takes an image of a painting by Georges Grosz may enter his own identifying number and metadata in the digital file of the photo. If further commercialised by a picture agency or a museum then the additional identifier of the intermediary is likely to be added. However, an identifier for Georges Grosz, whose rights are represented by a collecting society, is not entered.

For other rights holders where commercialisation of the work is based on work identification, for example with many picture agencies, a search using author names may only be reliable in some cases.

While visual recognition software is an impressive tool that can assist in the matching of image works, it is not applied by collecting societies because they do not hold works-based reference databases. While work oriented rights holders/users, such as picture agencies, hold specific images by an author which can be entered into such a database, collecting societies do not. Furthermore, by their nature, collecting societies for visual works are obliged to manage all the rights of their members without discrimination. They are therefore restricted, that is, they cannot provide the works of some authors (i.e. only those which are reproduced) with a special tool for protection which would then result in discrimination against member authors. Furthermore, the investment needed to set up full work archives for each of its members could not be justified by the benefit to be gained from such tool. As not for profit organisations and as trustees to their member authors, CMOs could not justify the level of investment required.

Some CMOs have set up image databases as a service for their members providing users with image material and all rights included in a package. These services are still in their start-up phase but those that are already well-developed are:- France with the *banque d'images*[40] of ADAGP and in Spain with the *image database*[41] of VEGAP. Since these services work with a limited choice of identifiable works, an approach which incorporates the application of identifiers and visual recognition software is now possible.

[40] http://bi.adagp.fr/IB/index.php
[41] http://www.bi.vegap.es/en

1.6.4 OnLineArt[42]

A more recent development in cross-border licensing of Image Works by collecting societies for visual works is OnLine Art (OLA). OLA was set up in 2002 with 8 founding members to offer an international "one-stop shop" for global licensing of artistic works on websites. OLA now has 16 members including Australian, Canadian and American members alongside its European membership. Article 3 of OLA's statutory objectives are:-

- The administration of online-rights related to works and authors of visual works and photography in the digital environment.

- The control of the online uses of these works and the execution of the necessary steps to prevent the illegal use of these works through electronic distribution.

OLA has a mandate from each of its member organisations to manage the two key rights (see rights granted at 1.3.2 above) which libraries and others need for their digitisation programmes. The OLA[43] database of individual authors of image works provides a single access point for identifying, locating and clearing the rights of 55,000 creators of image works, mainly fine art but also including those photographers and estates of photographers which have mandated OLA through national collecting societies to represent them for their "primary" as well as "secondary" or remuneration rights, such as, August Sander, Albert Renger Patzsch, Hugo Erfurth, Arthur Köster, Lucia Moholy, Man Ray, Alexander Rodschenko and Paul Citroen. They also manage the rights of German non-commercial picture agencies, such as university archives, for rights related to the digitisation projects from printed books

1.6.5 Professional bodies, associations and unions

With most Image Works Authors operating as individual freelancers or small companies, their professional bodies, associations and unions do not get involved in collective bargaining agreements on their behalf and have no direct role in rights management for their members[44]. However, they do play an important role in advising their members both individually and collectively, in establishing standards of practice within their sector and in the fight to maintain and improve the rights of their members.[45]

[42] OnLineArt, weltweite Multirepertoirlizenzen an Werken der bildenden Kunst, Carola Streul in Kunst, Recht und Geld, Festschrift für Gerhard Pfennig, S.511
[43] OnLine Art, Report Describing OLA and its relevance for ARROW for D6.2. Reference material for the Feasibility Study on Inclusion of Image Information in the ARROW Work Flow, author C Streul EVA – wp6 leader
[44] Interviews with professional bodies
[45] Ibid

The three main groupings consulted for the purpose of the Feasibility Study were Illustrators, represented by the European Illustrators Forum (EIF), Photojournalists, represented by the European Federation of Journalists (FEJ) and Photographers, represented by Pyramide. Together these bodies speak for some 76 associations and unions which in turn represent over 50,000 individual professional Image Works Authors most of whom operate as freelancers or sole traders.

1.7 LIBRARIES; DIGITISATION AND ORPHAN WORKS

Staying with Image Works in books this Study now turns to what has been achieved thus far on the issue of orphan works, what it is that libraries actually want to do with those works, the potential size of the problem as far as orphaned Image Works are concerned and whether there is a case for special treatment of Image Works when it comes to declaring them orphaned.

1.7.1 Image works, ARROW and diligent search

Visual works have played a minor role in the yearlong discussion on the European digital library project. In 2008 the High Level Expert Group prepared in working groups sector specific guidelines for diligent search. Audio-visual, visual, text and music were the different sectors that were dealt with in these small working groups. The outcome of the different sectors were reported separately and in a joint report which became subject to a Memorandum of Understanding signed by stakeholders and by the Commissioner, Viviane Reding, in June 2008. The report on the visual sector noted the complexity of the issue. In an annex a cross sector analysis with the text group was recommended in order to clear the issues of embedded images in books and other print media, but unfortunately was not followed up.[46] However, the specific report was a source of information gathered by libraries, archives, photographers and collecting societies. The document noted the complexity of the search, the unlikeliness that Image Works embedded in books were true orphans (see 1.6.2 on orphan works above), the problems resulting from inaccurate crediting and the use of "domaine reservé" or "rights reserved" where the author had not been searched for and finally that collective management needs to be considered.[47]

[46] Appendix to the joint report on sector specific guidelines for diligent search, June 2008, http://ec.europa.eu/information_society/activities/digital_libraries/doc/hleg/orphan/appendix.pdf

[47] http://ec.europa.eu/information_society/activities/digital_libraries/doc/hleg/orphan/mou.pdf memorandum of Understanding on diligent search for orphan works, 4 June 2008

On 20 September 2011, the Memorandum of Understanding on key principles on the digitisation and making available of out of commerce works was signed by representatives of libraries, authors, publishers and collecting societies. The text set out key principles for the licensing of content when books and journals that are out of commerce are made accessible by libraries and public collections.

The Orphan Works Directive, which was adopted in October 2012, leaves the Image Works sector, particularly that of embedded art work and photography, in an ambiguous status. The status of such works as separate copyright protected works is recognised, but authors and rights holders are not in a strong position to defend their rights.

Once digitised the identification of images and their authors and rights holders is precarious because, as stated earlier, the metadata is regularly stripped from digital files, credits are not provided or are incomplete, in particular for photography, thus creating new orphans. However, where collecting societies are licensing reproductions in books, the related credits tend to be much more accurate and complete.

1.7.2 What is it that Libraries want to digitise?

For clarity and to achieve co-operation with Image Works Authors and their representatives libraries need to explain exactly what type of material they wish to digitise and make available online. The closest explanation available so far appears in two brief case studies sent in an e-mail by Ben White of the British Library.

Case 1. Europeana 1914-1918 at the British Library

Covers a range of material much wider than books. The British Library recognizes that ARROW is for published books.

That material which comes in the form of published books presents a problem because of the UK's particular legal situation. That is, neither ALCS or the CLA (or DACS for that matter) are in a position to licence the communication to the public right (including making available online) for the range of right holders likely to be covered by the material and which goes outside their direct membership. In addition, the specialist nature of the material means that

the proportion of material which is not represented collectively is very high and therefore presents a high risk of legal action for the British Library.

Case 2. Wellcome Trust

A history of medicine project now forming part of the ARROW Plus pilot involving ALCS and PLS in the UK. The material again goes much wider than books. It includes manuscripts and early-published books, as well as 1700 key books. It is estimated that 90% of the material is protected by copyright.

While these cases are indicative of work on collections which is clearly of value and in the public interest and, quite apart from the more general issue in the UK relating to what rights a collecting society is in a position to grant, neither case is simple, whether in terms of the Image Works and Authors likely to own rights in such material and or in terms of a starting point for involving the visual arts in the ARROW project. Neither case involves Image Works published solely in Books, they are both very specialised collections of material, they include unpublished material and private material which is of a type, where as CEPIC suggests, the project managers would be very much better employing specialist professional picture researchers to identify and locate Image Works Authors, and to identify and locate other right holders in such works and to clear those rights.

1.7.3 What is the real size of the problem?

The European Commission's Impact assessment[48] for the Orphan Works Directive concluded that orphaned photographs are a significant problem:

"(…) it would be extremely difficult to identify the owners of entire collections of photographs whose provenance is unknown. The lack of attribution or other identifying information makes diligent search particularly difficult. Moreover, the technology to carry out visual searches as compared to text based searches is not as highly developed and is very costly."[49]

The UK's Gowers Review report estimated 90% of orphan works within photography.[50]

[48] http://ec.europa.eu/internal_market/copyright/docs/orphan-works/impact-assessment_en.pdf
[49] Footnote 1, summary of the impact assessment on cross-border online access to orphan works, 24.5.2011 SEC (2011) 616
[50] http://www.hm-treasury.gov.uk/d/pbr06_gowers_report_755.pdf

CEPIC in it Historical Archive survey[51] questioned this 90% figure. The survey was conducted amongst 28[52] leading commercial photographic archives from the CEPIC membership in 5 European countries dealing exclusively with historical material: 50% of all archives answered that orphan works comprise less than 10% of their stock, while 20% of the respondents said that orphan works comprise between 20% and 30% of their total stock. CEPIC concludes:

"The percentage of Orphan Works in commercial historical picture archives is significantly lower than the amount of orphan works estimated to be in public institutions as quoted in the Gower Review 2006 – and reinterpreted in the Impact Assessment of the European Commission. An explanation may be found in the nature of the institutions surveyed. Libraries handling historical material are rights-oriented businesses: their job goes beyond the conservation of the collections and they will clear rights from day 1 of the acquisition. Indeed the survey indicates that 90% of the participating libraries carry out an extensive Diligent Search in order to source authors – using various sources from Internet search to expert knowledge. "

Interviews with artist organisations indicated that for illustrators and photographers the numbers of orphaned works were very high, though the Association of Illustrators suggested that it was mid-range for illustrators in the UK but the situation was getting worse. The EFJ said that its member unions were reporting high numbers of orphan works for its photojournalist members, suggesting that the situation was in fact better for its journalist members.

Though the EFJ said the problem was a worsening one for all authors, writer journalists were, on the whole, given bylines as a matter of course whereas photojournalists were rarely credited. For illustrators in particular, part of the problem was that they were not aware of the need to "sign" their works. The general lack of respect given to their "moral rights" in some countries such as the UK was flagged by most and for all three groups the problem was exacerbated by internet and digital use which did not encourage or permit the use of a credit and by digital production techniques which stripped the author's metadata from an image as a matter of course.

EVA, representing 25 European collecting societies for visual arts and with an international repertoire of close to 110,000 artists of all types but particularly strong on fine art and

[51] CEPIC survey on Orphan Works in Historical Archives, annexed to this Feasibility Study
[52] 26 in Germany, France and UK, 1 in Italy and 1 in Spain

publicly recognised Image Works Authors, said that the instance of orphan works was low for their members. Their reasons were that the works were instantly recognisable, more likely to be recorded, the work was more likely to be respected than other image works authors and more likely to be acknowledged i.e. credited. In particular where collecting societies licensed the reproduction of an artwork in a book the credit lines were accurate.

CEPIC's opinion on the subject is as follows. As the quoted survey on orphan works in historical archives suggest, the number of orphan works strongly depends on the way the images are stored/kept, whether the images are researched and how they are researched. Any figures should be treated with care and in context (including the figures from CEPIC's survey on orphan works in historical archives). Consequently it is wrong to believe that because 90% of the images kept in museums are qualified by the museums as orphans that the percentage of orphan works in general is 90%, or that the books kept in the museums are the same books they now wish to digitise.

CEPIC estimates that the actual number of non-credited photographs (so called orphans) will vary greatly depending on the medium. For example, in social media, the number is probably higher than 90%, with Facebook enabling the tagging of people's faces in an image but not the tagging of the author's name.

In online newspapers and magazines, the proportion is also very high and press images are shared widely on the internet by interested users. According to visual companies interviewed by CEPIC in the course of the ARROW Plus project, in only 10% of professionally produced photos was the metadata still available[53].

Again, in newspaper and magazine print media, earlier random surveys carried out manually by national trade organisations on selected publications, figures for credits range from 0% to 80%, with quality publications such as Der Spiegel or National Geographic crediting almost all photographs and regional newspapers rarely providing credits for photographs.[54]

In books, the proportion of non-credited works will be lower. To start with, many books normally carry credits so that at least some information appears as well as the Image Work

[53] CEPIC interviewed 10 companies involved in visual search. Note the work of the Embedded Metadata Manifesto, set up by the image metadata standards body IPTC.

itself. As the CEPIC two case studies carried out in the UK and France demonstrate[55], it is possible to discover the majority of rights holders of "embedded images" in published works as long as those carrying out the rights clearance have the requisite knowledge and expertise. Part of the challenge will be to ensure that removing human expertise to make way for automation does not create more orphan works.

The real percentage, at least with regard to books, could perhaps be found if there was a register of orphan works including those identified in book searches.

1.7.4 Orphaned Image Works – a Case for Special Treatment?

A work becomes "orphaned" because the right owner(s) cannot be identified or, if identified, cannot be located. Identification is not the main issue for literary works or for publications; most authors and publishers are credited within the publication. The biggest issue for such works is locating the right owner.

For Image Works, particularly photographs, the situation varies. While Collecting Societies for Visual Arts generally find the standard of credits in books afforded to their artist and photographer members satisfactory, CEPIC finds the standard of credits variable and in some cases poor. CEPIC argues that "an image without a name is not an orphan but a non-credited image i.e. with no sufficient text information attached, be it a credit line or metadata" (see CEPIC on Orphan Works at 1.7.3 above) and that the first hurdle to be overcome for such works is identification of the author which may be a challenge due to:

- changes in legislation;
- carelessness by the user
- convenience of the user;
- unsatisfactory nature of available technology.

Conversations with professional bodies representing Image Works Authors, indicated that the following should be added (perhaps as a slightly less diplomatic version of the first set of challenges):

[54] Evidence gathered in Germany by BVPA (German Association of press and illustration picture agencies) and in France by UPP (Union des Photographes Professionnels and part of Pyramide Europe). Crediting is obligatory in both countries.
[55] See attached case studies on the Ascent of Man in the UK and La Belle Epoque in Frances, particularly the summary of results shown as Excel files.

- routine stripping of metadata (carelessness and convenience);
- marketplace pressure (increasingly so in the digital and online market) (convenience);
- failure of legislation in some countries e.g. UK to encourage proper respect for moral rights;
- lack of education and awareness of rights on the part of Image Works Authors and of Image Works Users (whether professional or otherwise);

As most of these are factors over which Image Works Authors have little or no control, and at a time when there is increased demand for access to such works online and digitally, it seems reasonable that Image Works which are potential "orphans" should be given particular treatment.

For these reasons ARROW must pay special attention to accommodating Image Works and their Authors within the ARROW work flow.

1.8 CONCLUSION

This chapter has dealt with the rights in Image Works, their ownership and management, the use of Image Works in books, the role of intermediaries in the Image Works world, libraries, digitisation and orphan works and whether the diligent search process for Image Works and Authors should be different to that for other categories of work.

The main issues which must be addressed if the ARROW process is to incorporate Image Works and authors are:

- The difficulty of identifying and locating right holders as a result of the poor quality of data and the lack of uniformity given to the credit and acknowledgement of Image Works Authors whose works are published in books, by publishers and by libraries in their bibliographic records;
- The two sets of rights (and possibly more) in photographs of other protected Image Works;
- The very different ways in which Image Works and their Authors are represented and their rights commercialised in the marketplace and the conditions under which they are made available;

- Resulting in two very different ways of searching for information on Image Works, that is whether such information is author based or Image based;
- The moral rights, particularly that of attribution, as it would apply to a digitised version of an individual image work for which rights were granted as a result of the ARROW process.
- The lack of respect accorded to Image Works in the marketplace.

By its very wording, the draft Directive on Orphan Works (see page 4) makes it clear that the rights of the authors of image works embedded in books and on covers must be cleared alongside the rights of publishers and not as part of those rights.[56]

We conclude, therefore, that the Image Works, their Authors and intermediaries managing rights on behalf of authors of image works must be integrated into the ARROW Plus process if libraries wish to digitise image works taken from publications, or to digitise publications with embedded image works and then make those publications available online.

[56] Footnote 2.

2. CHAPTER TWO – SEARCH, IDENTIFY, LOCATE & CLEAR – FINDING SOLUTIONS

The original purpose of the work packages within this chapter was to identify potential sources of data on Image Works and Authors, where it could be utilised to achieve matching results and in what form it could provide a solution for incorporating Image Works and Authors into the ARROW workflow.

It was hoped that the findings of the questionnaire sent via WP3 to the National Contact Points and other ARROW partners e.g. National Libraries and BiP databases in pilot and target countries would provide an indicator of the potential for further exploration but the response level has limited its value. One National Library which took part in the original programme expressed a very real interest in co-operating on case studies but the offer was later withdrawn on the basis that it was lacking in sufficient resources to participate in ARROW Plus, not only in the Image Works part of ARROW Plus. This was disappointing.

CEPIC and EVA then turned to the promising Case Study carried out by VG Bild-Kunst for the original ARROW Pilot in Germany. CEPIC was already carrying out its own case study project and agreed to work on the original German case study to investigate picture agency rights in the same dataset of Image Works. Case studies were also carried out both by EVA and by CEPIC in the UK and France. The studies were thorough and detailed but as CEPIC points out, "in the time available and with the resources available at this stage it is not possible to demonstrate all the possibilities for discovering rights holders". [57] Most importantly, with the exception of the German pilot, these were not "real" search requests instigated by libraries, nor could they replicate "real" requests. However, a comparison of the two approaches – query from a National Library v. real search carried out by professional picture researchers on books – provides a number of insights summarized in a last document: "Summary of Findings: Three case studies for ARROW"[58].

Interviews with professional associations and unions took place in June 2012, mainly to find out more about how those sectors within the visual arts which represented individual Image Works Authors operate; what databases and registries of works existed and what was

[57] Quote from CEPIC's Case Study
[58] Document previous ref., annexed to the Feasibility Study

available; whether their members used identifiers and metadata and finally, to ask their views on ARROW or an ARROW like process for Image Works and Authors. Due to the interest expressed by these groups, a meeting was arranged in Brussels in early September where further discussion on ARROW took place and possibilities for co-operation emerged.

The following is a summary of what happened within each of these work packages.

2.1 INFORMATION HELD ON IMAGE WORKS AND THEIR AUTHORS

2.1.1 Publishers

CEPIC provided the following analysis of information in publications:

"Although rights holders usually require publishers to publish credits and identify image rights holders, this information is not usually displayed in a way that facilitates rights holder discovery as this was not the business of the publishers themselves.

Information in publications has not been designed to fulfil the requirement for this rights information to be made publicly available or for these elements to be automatically indexed.

Rights information in books is often not sufficiently detailed – and rarely includes information about the image identifiers of individual images.

Nevertheless, the information given has generally been sufficient for professional researchers to discover rights holders on an item level basis."[59]

And on information held by the publishers themselves, CEPIC has the following to say:

"Publishers do not hold detailed rights information about the individual images reproduced in their publications but the rights licensed in an analogue world have been held in analogue formats (e.g. advice notes, invoices, etc., held in folders and files) – and would only be held in databases in summary form to indicate what licences have been negotiated on a contractual basis for that particular work."[60]

[59] CEPIC, *Review of existing persistent unique identification systems: interim report on image identification", Sylvie Fodor and Angela Murphy*
[60] Ibid.

2.1.2 CEPIC

Picture libraries and agencies have taken a close interest in the development of digital technologies and CEPIC itself is a partner in Work Package 6. As the body representing image libraries at European level, CEPIC is optimistic about the possibilities for a future business model based on direct licensing and suggests that digital technology itself can provide users with easy access and low transaction costs for both commercial and non-commercial uses.

Image library databases are individually designed for the needs of each commercial operation. Due to the nature of the business, Image Library databases are normally Image and/or Work based linking to the author in the "back office" for licensing and royalty payment and accounting purposes.

The content of picture agency databases has been analysed in detail in D6.1.[61] The main conclusion of the survey is that while picture agencies hold a great amount of detailed information about both the images and their authors, the information will not necessarily be homogeneous or held in one single database within the same organisation. For example, all organisations will have the name and the date of birth and/or death of the author but this information will not be held in the same format. One reason for this diversity is the difference between the organisations themselves (size/ country of origin etc., see 1.6.2.), another is the history of mergers and acquisition of stocks of images, with the potential for relevant information to be lost in the process.

In general, it can be said that all library databases hold precise information about creators and rights holders, from name, to date of birth and death, to contact details of the author, the licensing body representing the rights holder, information on model or property releases, etc.. On the other hand information such as the ISBN of the publication where the picture was published, the contact details of the licensees, the date of publication may not be held inconsistently and only on an "if known" basis.

The potential for linking this data to the ARROW Process will be considered further in Chapter 3.

[61] Page 25 to 31: precise description of content of picture agency databases

2.1.3 Collecting Societies for Visual Arts (EVA)

As member based operations, the databases of collective management organisations are Image Work Author based, again linking back to individual works for back office purposes – the work titles being listed in licence agreements with users and in royalty statements for artists. Some collecting societies are now developing work/image databases (see 1.6.3) but until now the focus has been on the author.

As with Image Libraries, such databases were developed along individual lines, appropriate to the needs of members and users in a particular territory. However, with an established network of bilateral agreements and the growing need for a network for cross-border licensing the result has been an international membership list arranged by author name, the artist's dates (including date of death where applicable) and by the society holding the direct mandate from the artist.

Through EVA, OLA (see 1.6.4 above) has expressed an interest in participating in current and future work on ARROW.

The potential for linking individual society and international repertoire databases to the ARROW Process is returned to in Chapter 3.

Image Works Authors represented by visual arts' collecting societies are amongst those most frequently reproduced in books. Their works are often recognisable and can immediately be identified with the author's name. Included in this group are a proportion of photographers and illustrators.

Collecting societies for visual works own and hold individual non-compatible databases structured around the names of their members. For licensing purposes and for royalty payments they are in direct and regular contact with those members and, where applicable, with their estates. They also hold a mandate on behalf of each member which allows them to grant, on their behalf, the rights needed by libraries for digitisation programs for all their works. As a result exact details of the work are less important (though still valuable for rights management purposes)

Many of these societies are also members of OLA which, as previously described, holds a central, name based, database of 55,000 Image Works Authors all of whom are members of Collecting Societies for visual works subscribing to OLA.

It has been demonstrated[62] that, where bibliographic data included in the search request from the library incorporates the name of the Image Work Author(s), individual Collecting Societies for visual works can provide a very fast[63] response to the library which:

- confirms the identity of the author (also permitting additional data checks to ascertain the named author is the correct one);
- gives permission and grants rights for library digitization.

Collecting Societies for visual works license "primary" rights i.e. reproduction and distribution rights in the form of licensing agreements to book publishers (amongst others). As a result they hold information on each license granted for the accounting purposes and payment to the member as well as for enforcement i.e. to ensure the publisher complies with the terms of the license granted.

Information held includes publication details such as name of publisher, title and ISBN alongside information on the image works author on whose behalf the license has been granted and the image works which have been licensed for reproduction.

EVA reports that while all its members keep this information, only some will hold it in database form though it is understood that this information is preserved and held by the collecting society for at least 20 years.

In this case, OLA cannot act as a source of information linking books to the image works and authors as it does not licence books, though it does keep information on licenses granted for digitization and making available online.

It should also be recognized that this is no substitute for a complete record of the Image Works and Authors included in a particular book because in many cases it is unlikely that the collecting society will have licensed every image work in a named publication.

Apart from the management of "primary" rights on behalf of their members, mentioned above, Collecting Societies for visual works also manage "secondary" i.e. remuneration rights.

[62] The German Pilot as regards embedded images, Anke Schierholz and Carola Streul, 2012
[63] The German Pilot as regards embedded images, Anke Schierholz and Carola Streul, 2012

Such rights differ from society to society and the methods for managing the rights also differs according to national legislation, market development, participation of image works authors.

In most countries the societies participate in the collection, allocation and distribution of reprographic rights. In three countries at least, that is, Germany, the Netherlands and the UK, the system is claims based and those claims come direct from the image works author, incorporate data about the books in which the image work appears. This data could make a positive contribution to the ARROW search process.

Collective Management Organisations represent a considerable number of photographers and illustrators for their primary as well as for their secondary ("remuneration") rights.

Well known photographers and their estates: EVA has carried out a small case study of a cross-section of 16[64] well-known and often used photographers and their estates and checked this against the VIAF database. In every case there were numerous matches.

Non commercial picture archives: In Germany, VG Bild-Kunst (collecting society for visual arts) holds a mandate from non-commercial picture archives such as archives of Universities which also includes licensing through OLA.

2.1.4 Professional Bodies, Associations and Unions

Given the high percentage of photographs which it is claimed are orphaned, it is worth investigating further whether authoritative databases and information on individual photographers, photojournalists and illustrators is available and if not what type of data is held and by whom and also at the application of identifiers and visual recognition software to their works.

While the three European bodies, EIF, EFJ and Pyramide do not hold extensive databases of Image Works Authors, the professional bodies which make up their membership hold complete member databases and in many cases keep information on past members or others falling within their repertoire. While searches were possible by member name it was unlikely that other types of search would be possible and even less likely that information was held on individual works created by each member (though see reference to portfolios below). It was felt that the type of data held, whether it was accessible and where it was held, was likely to

[64]OnLineArt, A report describing OLA and its relevance for ARROW, Carola Streul, 2012

depend on national legislation regarding the profession (and on data protection) and the way in which the business had developed in each country.

For Finland and possibly for other Nordic countries, the organisation represented almost 100% of possible individual professional photographers. Those not registered were more likely to be retail businesses making prints or producing passport photographs. For EFJ members, the percentage of photojournalists was more difficult to estimate due to the fact that, as far as membership records were concerned, there was no distinction between writer journalists and photojournalists. At a national level, the UK's AOI estimated that there were 5,000 professional illustrators in the UK and with 1,300 direct members and a further 800 represented through its agent members, it probably covered 20% of the UK's potential population of professional illustrators.

Registers were maintained for membership administration, none were held for rights management purposes. For the Associazioni Illustratori their database also provided a landscape of Italian illustration over 30 years and was available for historical and research purposes. Also at national level, the AOI maintained a database of illustrators for awards and competitions. In Finland the database of the photographers' organization was used for social security payments. The EFJ said that the completeness of the database depended in part on the definition of a journalist from country to country but most needed a press card to operate professionally in which case a higher percentage would be registered with the organisation. In some countries this was provided by the union but in others a special commission provided the cards, for example, in France Belgium separate registers were kept for this purpose.

Professional bodies were unlikely to allocate a number to the member for anything other than internal purposes such as membership administration. Some societies provide member "portfolio" sections on their website[65] which are searchable by member name, work or key words but again any numbering system is internal to the portfolio site. The situation was similar for commercial "portfolio" sites such as *Hire an Illustrator*[66].

All three organisations said they thought that their member organisations would be willing to provide technical information on the format in which their databases were currently held, though each member organisations should be asked individually.

[65] www.home.the-aop.org/Portfolios
[66] http://www.hireanillustrator.com/i/

The three professional bodies were unaware of the existence of a central database(s) but there was no reason why they should not be set up, other than the lack of resources. Illustrators, noted the growth in registers of works, such as *SafeCreative*[67] but did not know how effective they were.

When asked if they knew whether the databases of member organisations were compatible, the EIF said it was unlikely and the other organisations did not know. The EFJ emphasized here that for journalists, the information held was considered to be highly sensitive and unions could have problems sharing information due to the need to protect their members' identities.

In principle, the representatives of the three European organisations saw the establishment of a central database of Image Works Authors as a positive step. However, the biggest problems were the need for positive promotion to organisations and individuals, an understanding of its purpose by organisations and individuals, and again the need to protect privacy, security of data and the freedom of the press.

[67] www.safecreative.org

2.2 CASE STUDIES AND PILOTS

The purpose of this part of the work was to investigate how the different parties providing information on images in books can achieve search results which match the search requests provided by libraries and other collections. For this purpose investigations were also carried out in Germany, France and the UK.

2.1.2 Methodology

In general two different approaches were considered:

- Piloting of search requests from libraries
- Case study on a book, or books, chosen by the Work Package partners

The first approach had the advantage of coming closer to the real searches to be expected from a library request. Such information would help to focus on test searches for the type of Image Works most likely to be requested in real cases and what type of uses they would be put to. It is surprising how little is known about the plans which libraries have in place for their future digitisation projects (see 1.7.2), and it is essential for the confidence of Image Works Authors and their representatives in the ARROW process, that they know and understand clearly what it is that libraries need.

The second approach had the advantage that the partners in this ARROW work package could focus more precisely on the specific groups within the Image Works sector e.g. works, rights, authors, sources, which the study might identify. While these groups might not appear in the library search requests, it might help to identify some wider grouping or area of commonality which could provide a solution.

It should, of course, be noted that the pilots and case studies were samples chosen to give some insight into the complexity of searches for image authors and rights holders. Searches could be simpler in some cases, more complex in others. What the case studies were unable to achieve was a full picture, which would only have been available with the co-operation of the full range of work package partners as happened in the original ARROW Pilot.

Again, in summary, the aim was to get a feel for the extent to which collecting societies and CEPIC members can:

a) **identify** right holders in Image Works in books;
b) **locate** right holders in Image Works in books;
c) **grant** the rights in those Image Works which libraries need to digitize their collections.

GERMANY

For Germany the investigation was built on the 2010 ARROW Pilot based on the search request issued by the Deutsche National Bibliothek (DNB) for 73 books; out of this number 25 were recorded by the library as containing illustrations.

The pilot passed through the regular work flow of ARROW and the different steps of the clustering process with the TEL, BiP and the VIAF databases. However the databases did not hold sufficient amounts of information on images in books because the library book entries were limited to data that made the book recognisable for the purpose of the library collection[68]. Data on the Image Works Author and/or on the Image Works themselves was available only when they were the subject of the book.

The DNB had then added manually the names of Image Works Authors embedded in the books. For one book, FOTO AUGE, a book about art works originally published in 1929 and reprinted in 1973, the DNB had scanned and added the bibliographic page of the book with the references to Image Work Authors and other rights holders and sources. The search request was sent to VG Bild-Kunst as well as to VG Wort, the German RRO, to add information respectively for images and for text.

VG Bild-Kunst queried the search request with their membership directory which took only moments for each listed Image Work Author's name. In particular, for the FOTO AUGE book (1929/1973), VG Bild-Kunst identified and located 35 images out of a total of 79 of the Image Work Authors within their membership and for which VG Bild-Kunst was also in a position to grant licenses for the scanning, digitisation and making available. The remainder were partly in the public domain and partly unknown.

[68] Compare with D.6.1, Analysis for Integration of Visual Art's Databases

The picture agencies report includes a statement on the 2010 search request which analyses the quality of the additional information provided by the library. The statement gives an interesting insight into the business of picture agencies in the sector and provides information on how and why specific knowledge about photographs and on other image material, such as the expertise offered by specialist picture researchers and the integration of visual recognition software, can produce much more precise and complete information.[69]

FRANCE

In the piloting for 2010 the BnF specifically chose books that contained images and illustrations but regrettably was not in a position to provide an actual search request for the purposes of this Feasibility Study. CEPIC prepared a case study on the book "Belle Epoque". The French EVA and OLA member, ADAGP, added information on the international CMO repertoire for the CEPIC case study (which identified 12 authors within their membership) and due to the absence of a BnF search request also prepared a case study on a schoolbook.

UNITED KINGDOM

CEPIC prepared a case study and report for the book "The Ascent of Man" by Jacob Bronowski (1973). The UK's EVA and OLA member, DACS, also prepared search results for the international CMO repertoire on 3 publications and prepared an analysis of the CEPIC case study for the collecting society repertoire.

For the two books selected for France and the UK, the picture researchers were briefed to carry out a search of the type normally used in the case of a re-edition of books, using the same Image Works and noting the steps, tools and methods used in order to see whether these steps could be automated in ARROW[70]

2.2.2 Results

As already reported, no new searches could be instigated through libraries so no real or definitive search results are available. CEPIC made a thorough report on its case studies and EVAs own report is also available and they need further detailed study, particular in relation to making improvements to the data needed for the better development of search requests and suited to identifying and locating Image Works and Authors and in CEPIC's case some

[69] Additional rights holders could not be located by CEPIC because the photographs concerned in FOTO-AUGE are in public domain; instead CEPIC identified pictures where currently the image material is available

thoughts on how visual technology can be utilised as part of the process. Most immediately relevant for this Feasibility Study are the conclusions of the case study reports by CEPIC and EVA.

The German pilot from the first ARROW program now enriched with picture agency information continues to provide the most complete and informative analysis of an Image Work and Author search.

2.2.3 Conclusions

Before turning to the direct conclusions from the case studies, there are three points to be made over which Image Works Authors and their representatives have no control:

1. If at this very preliminary stage of incorporating image works and authors into the ARROW process, their representatives are presented with the most complicated material/collections/search requests possible, rather than being presented with simpler, more focused collections of images in books to work on, then they are likely to fail, or not be in a position to help ARROW develop. Can that really be the intention?
2. Whether the format for the bibliographic data, the search request, the TEL, VIAF, BiP and the ARROW process itself, can incorporate or be adapted to incorporate, Image Works and Author data even if it were available and whether libraries have the resources to initiate that process of change and, if so, whether BiP and other database operators already working within the process are willing to take up those changes.
3. Whether publishers should be required to incorporate information on Image Works and Authors into their publications in a standardized way to facilitate quick and easy extraction of data on Image Works and Authors for search and clearance procedures

And one conclusion on collecting societies for visual works:

4. Collecting societies function very efficiently on an author name orientation but they cannot apply work oriented search tools, due to the specific way in which the art works they represent are created and disseminated. That is, collecting societies can provide an efficient and fast search based on author names but only when the search request itself includes the names of the visual authors they represent.

[70] Three Case Studies for ARROW, page 4.

The remaining conclusions take as their starting point (with additional comments) CEPIC's own conclusions to its case study report:

5. **"That the information provided by National Libraries is not sufficient to find the right holder of the specific image"**. That is Library search requests are lacking in information, or the right type of information, on Image Authors and Works. Data on Image Authors and Works i.e. credit lists etc, is available in books but this information does not appear in the search request nor is it included in the Library's bibliographic records.

6. "Information included in the credits may be misleading or incomplete". Information on Image Authors and Works included in publications may be misleading as to the number and type of right holders in a particular Image Work. The information provided on individual Image Authors and right managers may be incomplete. In some cases credits are omitted. To obtain information on Image Works it is currently necessary to carry out a manual search of the publication. CEPIC, therefore recommend that searches should include visual as well as text-based searches

7. Issues related with the "source". The "source", that is, the source of the material which is provided to the publication for reproduction purposes and which is only a concern if the picture agency or collecting society cannot prove that it has located the correct right owner of the source or demonstrate that the source has the right to licence for that right owner.

Collecting societies hold an exclusive mandate for those it represents for primary rights. If the society has the exclusive mandate then the chain of rights is in place to permit that society to licence the library for the rights it needs, regardless of when and by whom the original rights were licensed to the publication.

Collecting societies also have the potential to make available data held from authorisations, for reproductions of Image Works in books, which have been granted to publishers over the past decades, available for an additional ARROW cluster. The data provides the link between book identifiers, such as the ISBN (if available), the title of the book, the publisher and text author with the names and Image Work titles of the embedded works and works appearing on the covers of books. Although this concerns the international fine arts repertoire and that

of a limited number of photographers and their estates, these authors and rights holders play a particular role in book publications. Being renowned Image Works Authors their work is in high demand by publishers. Tests of the authors' names against the VIAF data base, indicate numerous matching book titles e.g. Georges Grosz, Joseph Beuys, Man Ray, Miro Francis Bacon, de Chirico, Roy Lichtenstein etc.).

The names of these authors are always mentioned in the books, either in the title, on the bibliographic page, in the credits and in the text. Being members of collecting societies they are easily identified, located and the collecting society responsible for issuing a license is easily determined.

CEPIC members must also be in a position to confirm that they have identified and located the author or right holder and can confirm that they are able to clear the rights needed by the library. In support of that, they too will need a chain of rights demonstrating that they:

a) have exclusive control over access to reproduction quality copies of these image works (i.e. that no other right holder could possibly come forward and mount a completing claim), or;
b) are the licensor of the original reproduction quality copy by their appearance in the original credit list (or some other form of evidence), or;
c) demonstrate that they acquired the archive containing these reproduction quality copies from the source originally identified in the credit list.

Otherwise, if the rights in the original photographic reproduction are to be respected, they cannot license that image in that book for reproduction, though they can, perhaps, offer the library another version of the photographic image and any licence needed for that version.

In any case CEPIC members will only deliver licenses if they are secure in the rights, as this lies in the professional responsibility of the Picture Agency. Where the circumstances are unclear, the license will not be delivered

8. Blind Search v. Visual Search As already stated, CEPIC does not feel that "blind" search that is text-based search without access to the images is sufficient. However, a search without visual reference is the basis of the existing ARROW work flow. Image Authors and Works will not change this approach immediately. The alternative therefore is to work with it

and adapt it. Non-visual searches are possible only where sufficient information is available. Visual i.e. manual searches should be incorporated for Image Works as part of the process, where it can be made to work. Visual recognition software, combined with identifiers, registries and metadata is not yet a perfect technology but it has potential and long term possibilities and should be explored for its potential as a tool for the protection of copyright in the Image rights field[71] and in support of ARROW as part of diligent search

9. Information on pictures should be as "relevant" as possible The German pilot was successful in identifying a large percentage of Image Authors and Works represented through collecting societies. Therefore the data available through the ARROW search process is at least partly relevant and will work well for certain categories of books. Data available on other rights holder was, however, poor. More information on this can be found in the analysis provided by Bernd Weise for CEPIC[72] However, there is a challenge, which is to improve the data at the first level of interrogation i.e. bibliographic data/search requests and publication data/credits. CEPIC's suggested datasets are a good start. They are:-

- Full name of the author (surname, middle name, last name, pseudonym if relevant)
- Name of the source
- Title of the picture (caption)
- Type of illustration (painting, illustration, photograph, graphic etc.)
- Page number for unmistakable identification (helpful in recent publications)

To which, given the relevance of the author for collecting societies and professional organisations could be added:

- middle names or initials
- pseudonym
- dates for the author

Consistency of terminology and meaning are essential. For example, for the interpretation of "source".

[71] A description of how a visual search functions is provided in pages 25-27 of "Three Case Studies for ARROW".
[72] "Statement on search results of the German National Library on books including images that have to be examined for their rightsholders at picture agencies" by Bernd Weise, attached to the Feasibility Study

However, it must be recognised that the more complicated and time consuming preparation of such datasets become, the less likely they are to be applied. It is noted that data from the Ascent of Man took CEPIC seven hours of preparation. On a more positive note, the Paris meeting concluded that certain large cultural institutions dealing in Image Works might be encouraged to set bibliographic data standards for Image Works and Authors.

CEPIC also states that once the name of the author of the photograph of the artistic work is found then tracing that author in an individual picture agency database is very quick and that the percentage of located rights in photographs of artistic works could be increased if more of the right type of picture library were interrogated. This could be relatively simple to achieve as the number of libraries producing this type of material is relatively small and specialised.

10. Additional query sources should be added to ARROW CEPIC says that while there is a single point at which collecting society databases can be interrogated, this is not yet the case with picture agencies in Europe, so a multiple database search would be necessary. Although at the meeting in Paris, CEPIC members said there was little coherence between data sources of picture agencies and image libraries, the basic information which ARROW seeks, such as the author's name, will in any case be available. However, for picture agencies, the real need is for access to more information than just the author's name in order to allocate a name to the correct picture usage or trace "orphans", when the author's name is either absent or wrongly indicated .

In this respect, there are moves across the visual media field, to provide gateways to content which draw on the data of different sectors and of individual providers (such as image libraries). The Phase 2 Report on the proposal for a Digital Content Exchange has recommended the setting up of a "Copyright Hub" in the UK[73], and CEPIC itself is involved also in the Linked Content Coalition. The existence of these projects shows that integration of data is of growing importance; for future access to visual material across media and national boundaries as well as forming part of the copyright protection of works in the digital environment.

There are also projects in the image library industry where data from different libraries is made searchable from a single access point. Europeana is an example of an aggregated image

[73] http://www.ipo.gov.uk/dce-report-phase2.pdf

search, using data provided by different contributing archives, supplied in a standard format. The search is preformed centrally, but the user is directed back to the original web site to view results. PacaSearch, run by the American image library association PACA, is another example of this kind of technology. The issue for the future is motivation for image providers to supply data to a central hub, but as we have discussed, this motivation is increasing.

As with collecting societies, professional bodies of image authors certainly hold author based data and this one reason why it is suggested that they are enabled to participate in future work on ARROW.

For CEPIC another issue with the source is that many potential sources credited in the books are not linked to ARROW. In the aforementioned case studies, named photographers were credited in approximately 30% of the cases, picture agencies in another 30%. The question which CEPIC believes must be raised is: what happens to the remaining 40%? Will these photos be considered "orphans"? By linking to these "rights" and/or "data "sources", ARROW increases its chances of finding the "parent" – although this project is challenging, it is worth investigating for the sake of reducing the number of "orphans" to a more reasonable proportion.

Like collecting societies, professional bodies certainly hold author based data and this one reason why it is suggested that they are enabled to participate in future work on ARROW.

11. **Potential improvements to the databases already included in the ARROW work flow and cluster.** The VIAF database has the most detailed and accurate data connecting book identifiers with authors of image works. Testing the database shows that entering the names of Image Works Authors led to matches against book titles, the more renowned the artist, the more titles matched (see conclusion 7. above). However the reverse search is not as efficient: when the search engine is queried with the same book titles there is little matching of authors' names. If the search process could be reversed, the VIAF could be used for a large number of renowned visual authors whose works are regularly subject to publication in books.

12. **Additional expert searches by picture editors and archivists could increase the success rate.** This point is made at 1.7.2 and above and is one of the reasons why a "pre-process" stage is suggested for the extension of the ARROW process to allow expert searches

particularly where specialist material and collections are concerned. However, it must be recognized that expert searches are expensive and time consuming.

2.3 ASSESSMENT OF THE 12 TARGET COUNTRIES

To assess the situation in the 12 target countries for the purpose of introducing ARROW and including data bases for images in books; questionnaires, prepared by EVA, were sent to the ARROW PLUS National Contact Points (NCP) with the assistance of ARROW Work Package 3. The aim was to receive information on the status of image information in the respective countries.

The questionnaire was sent to RRO contacts in Austria, Belgium, Bulgaria, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Netherlands, Poland and Portugal, for onward circulation to: National Libraries, Books in Print (national database managers) and Collective Management Organisations for literary and artistic works.

The thrust of the questionnaire (20 minutes to complete) was:-

- Whether the databases of the addressees contained any information on images in books;
- If so, the extent to which the databases contained such information;
- Whether they had complete information on images in books;
- If the addressees included some information but made a choice of what to include or exclude, what information was entered and which was not.

The questionnaires were sent out in February 2012 with minimal response. Following several e-mail reminders and calls between then and August 2012, EVA was able to collect sufficient responses to make worthwhile a basic analysis of the findings. In fact, EVA finally managed to obtain replies from at least one of the partners (National Library, Books in Print or Collective Management Organisation) in Belgium, Greece (both for Phoebus (photographers) and OSDEETE (art works), Hungary, Ireland, Italy, Latvia, Netherlands. Explanatory e-mails were also received from Poland and Portugal with whom it had been impossible to establish telephone contact. Despite repeated calls, there was no response from Austria (which shares its BiP with Germany) or from Lithuania.

For the purpose of this study the contact points for EVA and CEPIC members are listed in the table below:-

COUNTRY	CEPIC	EVA	RRO	Responses from			
	MEMBERS	MEMBERS & OBSERVERS	MEMBERS	National Library	BiP	CMO	Other
1. Austria	AnzenbergerAgency APA-PictureDesk IMAGNO brandstätter images	Die Verwertungsgesellschaft bildender Künstler (VBK)	UIBK	-	-	VBK	
2. Belgium	ImageGlobe by Belga News Agency	Société d'Auteurs dans le domaine des Arts Visuels (SOFAM) Société Belge des Auteurs, Compositeurs et Editeurs (SABAM)	SACD-SCAM OCLC	Yes	-	Sofam	Meta4books
3. Bulgaria	Profimedia		Ciela Norma AD	Yes via e-mail	-	REPRO BG	Publishers Association
4. Greece	VISUAL HELLAS		OSDEL	Yes	-	OSDEETE Phoebus	Chamber of Fine Arts
5. Hungary	Europress Photo Agency Profimedia-Reddot d.o.o. PuzzlePix Ltd.	Vizuális Művészek Közös Jogkezelő Társasága Egyesület (HUNGART)	MKKE	Yes	-	Hungart	
6. Ireland	National Gallery of Ireland Wavebreak Media	The Irish Visual Artists Rights Organisation (IVARO)	ICLA via e-mail	Yes via e-mail	Yes	IVARO	
7. Italy	Alinari 24 ORE - Alinari Archives ANSA Arnoldo Mondadori Editore S.p.A. CuboImages srl Expert System SPA PHOTOFOYER SRL tips images	Società Italiana degli Autori ed Editori (SIAE)	ICCU	Yes	-	SIAE	
8. Latvia	All Over Press Finland AFI picture agency LETA	Autortiesību un komunicēšanās konsultāciju aģentūra/ Latvijas Autoru apvienība" (AKKA/LAA)	LLA	Yes	-		
9. Lithuania	All Over Press Finland ELTA agency Scanpix Baltics	Lietuvos Autorių Teisių Gynimo Asociacijos Agentūra (LATGA-A)	LBG	-	-		
10. Netherlands	ANP B en U Buiten-Beeld HillCreek Pictures BV Hollandse Hoogte BV ImageGlobe Netherlands Imageselect Impact in IT IQ images Nationale Beeldbank Reporters Visions B.V.	Stichting Pictoright					
11. Poland	Agency Forum Poland BE&W agencja fotograficzna Sp. z o.o. East News Fotochannels Sp. z o.o.		PK	-	-	SAiW Yes via e-mail	
12. Portugal	Atlantico Press LDA	Sociedade Portuguesa de Autores (SPA)	-	-	-		

2.3 CONCLUSIONS

From the available answers collated by EVA, the following general conclusions seem possible:-

- There is a high percentage that already have data on visual works in their databases and the rest consider it feasible to include this data in search requests in the future;
- Libraries are generally the source of the data material;
- Overall there was a positive desire to learn how to improve records learning from the ARROW experience.

Other conclusions are that the image information databases available in the 12 target countries are similar to those in the 4 ARROW pilot countries. Therefore the results documented in deliverable 6.1 are still valid for the target countries. In several countries databases are of a lower quality than in the pilots but that is only because there are less book entries held by national libraries available and perhaps, in part at least, to the fact there is no BiP. It seems unlikely that the information in BiPs now being set up in several countries will hold wider information extending to images.

CEPIC has national associations which could act as contact points for individual picture agencies in each of the countries which are listed in the above table. In Belgium, Bulgaria, Greece and Portugal there is one unique contact while in all other countries several picture agencies can function as ARROW contact.

The CMOs have members of observers in most of the countries but not in Bulgaria or Poland. In Greece there are two CMO's. One for artists and one for photographers. They are in contact with EVA but are not members.

3. CHAPTER THREE - ARROW PROCESS AND THE INTERFACE WITH IMAGE WORKS AND RIGHTS

3.1 INTRODUCTION

The purpose of this Feasibility Study is to investigate if information on visual or image works embedded and on cover of books can be integrated into the ARROW work flow, that is, to address the practical aspects of incorporating Image Authors and Works into the ARROW Process and that is what this chapter concentrates on.

Chapters 1 and 2 of this Feasibility Study have identified a wide range of issues and concerns which surround a process of this type and the proposal for an interface with Image Works and rights introduces some complexities to be resolved at design stage alongside the need for increased resources but, if the right kind of technological support, resources and sufficient goodwill are available, then a solution can be found. Even a process which results in the granting of digitisation rights for a percentage of Image Works Authors and their Works in books through the expansion of the ARROW process, would be an achievement and would give encouragement to those stakeholders willing to participate in the exploration of a more complete solution

These issues are discussed again, in the context of industry co-operation, policymaking and regulation, and alternative solutions, in Chapter 4. Though acknowledged in this Chapter, they should not prevent Image Works Authors, or their representatives, from participating in ARROW, wherever that is possible, nor should they inhibit the development of an Image Works process within ARROW.

Issues and concerns which do directly impact on the development of any Image Works element to the ARROW Process are:-

1. Recognition of the differences between and within categories of Image Works (markets, rights management, etc);
2. The current lack of respect accorded to photographic Image Works (in terms of acknowledgement, correct crediting – including whether or not there is a credit at all, preservation of metadata, moral rights) as compared to that accorded to literary

works and published editions (with the exception of credit lines for reproductions of art works licensed by collecting societies);

3. That the process should cover the full spectrum of Image Works and their right owners;
4. The possibility that alternative systems may be more effective for identifying and locating right holders and rights in some cases;
5. The risk that the ARROW process could be further developed for the licensing of commercial markets and uses which interfere with or compete with, individual control of rights and licensing arrangements already in place in the market.

This Study does not accept the view that the differences between Image Works and Literary Works/published editions make them so unique that there is no place for Image Works Authors and Image Works in the ARROW process but it does acknowledge that there is a challenge. That challenge is fragmentation, at the very highest level in the divide between the focus of those managing such rights e.g. whether their data and systems are image based (as is the case for CEPIC Members)[74] or whether it is author based (as is the case for collective management organisations and professional associations). At a practical level the result is that there is no single solution to be found and no single candidate for an authoritative database of Authors or of Works (or even a few such databases) to be incorporated into the ARROW process.

There are, however, three groups which have demonstrated a real interest in the ARROW process which do hold, or whose members hold substantial databases which could contribute data, or which could be encouraged to develop their databases, for use in the ARROW process. Those groups are:

a. professional bodies representing individual Image Works Authors (EFJ/FEI/Pyramide);
b. picture libraries/agencies (CEPIC); and
c. visual arts collecting societies (EVA).

Two of these are already ARROW partners, the third grouping has now confirmed its interest in future involvement with the process.

[74] "Image based" refers to the fact that picture agencies are suppliers of image material; search in their data is also possible by the names of photographers;

The Feasibility Study also accepts that there are alternatives to searches based solely on databases of Image Works Authors including:

- Searches of metadata for information on the work and author (and/or their rights representatives);
- Searches of metadata for unique identifiers cross-checked with searches of registries of works;
- Utilisation of visual recognition technology for to search for works and authors;
- Manual/visual searches of works and for authors.

These all have the potential to assist with the identification of Image Works and to help locate Image Works Authors. Any development of the ARROW Plus process for Image Works Authors and for Image Works must include opportunities for the further exploration of these processes. These alternatives are addressed in Chapter 4.

Finally, If ARROW's primary aim is to provide clearances for the rights in books for the purpose of digitising library collections and for making those works available online to the public i.e. rights of reproduction and for the purpose of preservation and archiving and communication to the public (including making available online) for non-commercial use, and if Image Authors and Works are to form part of that process, anything outside a closely prescribed definition of those rights and uses cannot at this early stage be allowed to "muddy" the process.

With the ARROW workflow designed around search requests based on library records, with registers of publications suited to library and publisher needs, and rights management information based on authors and other right holders held and represented through literary and publisher collecting societies and RROs[75], this Chapter asks whether, where and how the ARROW process can be extended to provide the most effective and complete way of:

- Carrying out a search request for an image author and work;
- Identifying the author of an image work;
- Locating the author or other right holder in the work and/or their representative

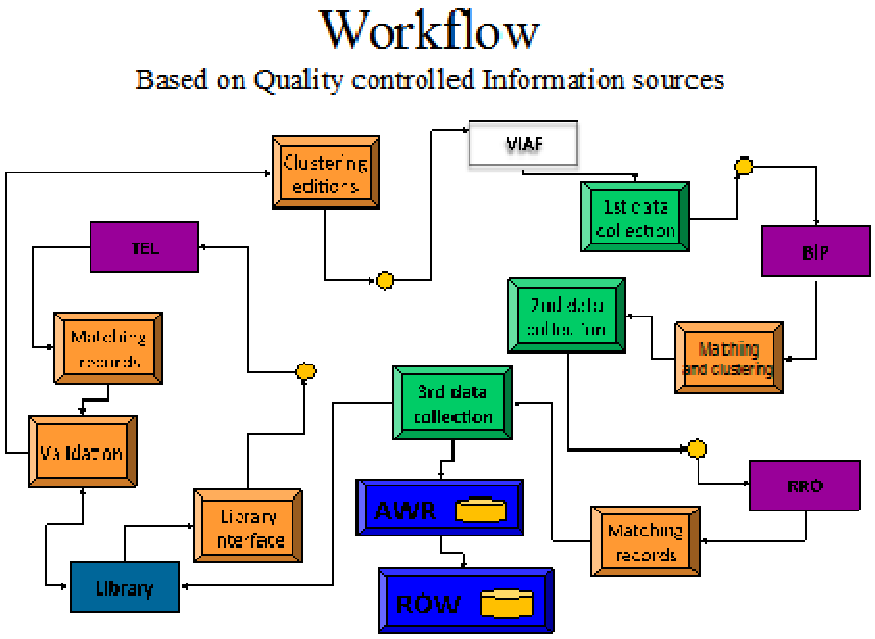
[75] Original description of ARROW elements?

- Clearing the rights in that work.

This analysis takes the form of a four-step process:-

Step 1: Understand the original ARROW workflow.
Step 2: Identify opportunities to "bolt on" processes for identifying and locating image authors and works within the ARROW workflow.
Step 3: Review the potential for an Image Works Cluster
Step 4: Consider what more is needed to further develop the ARROW workflow

3.1.1 Step 1: Understanding the ARROW workflow



For the purpose of identifying ways of integrating Image Works into the ARROW process, the ARROW workflow (see diagram of search process above) above is more easily summarised in seven stages[76]. Though recognising that ARROW's designers may see this as over-simplification, it does make the process much easier for a layperson to grasp. The approach taken by this Feasibility Study is to treat each stage within this structure as an opportunity for interacting with Image Works and their Authors.

[76] As presented by Paola Mazzuchi during her presentation to visual arts interests at the meeting organised by EVA in Paris in May 2012

Taking this simplified structure as the starting point, it is possible to identify what information on Image Works is available at each stage, where, how and by whom that information can be enriched and where there are potential interactions and connections with databases of and information about Image Works and Authors. The following is a stage-by-stage analysis.

3.1.2 Step 2: Identifying opportunities to add in Image Works and Authors

Library submits a request to ARROW

The request to ARROW is based on bibliographic rules used by libraries for their catalogues and the library metadata provides only for entry by book. The request will include:-

- the publishers' name
- the publishers' nationality
- where the book was first published
- ISBN of the book
- the author or authors' names
- an indication of whether the book is illustrated

Where the Image Works Author is a major contributor (see Chapter 1.4.1 Table 1, showing examples of potential used of Image Works in books), the library record also allows them to be included as an "author" and, dependent on the quality of the entry, they may be listed. Nevertheless, this leaves a great many Image Works Authors unlisted and, of course, there is no guarantee that the list, where provided, will be complete.

The titles of individual Image Works appearing in the publication are not listed in the search request.

Before moving on from the library request, Paola Mazzucchi's presentation in Paris in May and at the CEPIC conference in June noted that, as a preliminary to submitting a request, the

library selects a collection of material for digitisation. The British Library's own query to EVA and ARROW about how it will deal with a project to digitise a collection of First World War Photographs[77] suggests that some collections could result in requests for mass digitisation of specialised material containing a high proportion of Image Works. That is, material in documents and manuscripts, stand-alone photographs, and originating outside more normal sources e.g. private and domestic circles, as well as including images appearing in books. It may be helpful to find ways of flagging the specialist nature of such material at an early stage in the ARROW process, thus providing opportunities for alerting or diverting those searches to those more likely to be in a position to identify, locate and clear the rights.

TEL Matching, Tel Clustering, VIAF Clustering and BiP Clustering

This part of the process interrogates authoritative databases such as VIAF (Virtual International Authority File) and BiP (Books in Print) against the library search request providing opportunities for cross checking, confirming and enriching the data included in the original search request.

Through VIAF, the ARROW search process can add dates, variations in names (pseudonyms, etc.), nationality of the author and other contributors. It may provide additional Image Works data, for example, where the search request merely records a book as "illustrated", or add names of additional contributors of Image Works. It can also confirm other data such as ISBNs.

Through BiP, the ARROW search process accesses records originally created by the publishers and again cross checks, confirms and enriches the original search request including ISBN, author and title, new editions and whether the book is in print. Information on Image Works includes that on the cover of the book. It may provide an indication of the type of Image Work and some information about the Image Work Author.

Again, these stages do not provide a complete source of information on Image Works included in books. Any data held on Image Works and Authors is incidental to its main purpose.

[77] Ben White, British Library

RRO Clustering

At this point the search data is at its most complete and RROs and their match it against data held on text authors and publishers.

RROs and Collecting Societies for visual works regularly work very closely together under different models for cooperation, dependent on national traditions. In Nordic countries RROs and other collecting societies tend to operate under one roof, whereas in the UK the 3 collecting societies concerned, share one agency for RRO purposes. In other countries the societies are independent, with the RRO representing the text repertoire consisting of publishers and writers but working jointly with the CMO for visual works.[78]

However, most RROs[79] do not hold data on individual Image Works Authors or Image Works, only on the authors of literary works and on publishers (though again, this information is often held by the collective management organisations for authors and publishers). As far as Image Works are concerned, the role of the RRO is therefore limited to the clustering part of the process, that is, cross checking, confirming and enriching the original search request, it cannot provide the vital link through to data about the Image Work and its Author.

RRO revenue is distributed through Collecting Societies for visual works according to agreed keys. While RROs may be able to provide sample indications of the material used, in general they do not have precise data on Image Works or Authors or used. It is normally left to the Collecting Society for visual works concerned to distribute the revenue back to Image Works Authors according to their own key agreed with members or with other national representative bodies for individual authors and in some cases this is a claim-based system, as in Germany, the Netherlands and the UK.

The Collecting Societies for visual works hold membership data, including names and contact details. They also hold details of the licences granted on behalf of their members and they hold mandates to grant rights on behalf of those members.

In the case of “secondary” or remuneration rights such as the revenue from reprography, Collecting Societies for visual works may hold identification and location data on non-

[78] Example: VG Bild-Wort and VG Bild-Kunst in Germany
[79] For those taking part in ARROW compare with D.6.1., Analysis for Integration of Visual Art Databases

members as well as members, as well as supplementary data, particularly where they operate a claim-based system, as claimants are normally required to include information on publications including ISBN numbers and titles[80]. The question is whether this data is accessible and if so how?

Collecting Societies for visual works can certainly be integrated into the ARROW process and could make a contribution to the ARROW search process for Image Works Authors, probably at the point following RRO input into the search data. RROs also have strong links with Collecting Societies for visual works and are already exchanging some forms of data, so this could be another good reason for adding the Collecting Societies for visual works at this point.

However, they cannot alone provide data on the full repertoire of Image Authors and Works.

Response from ARROW

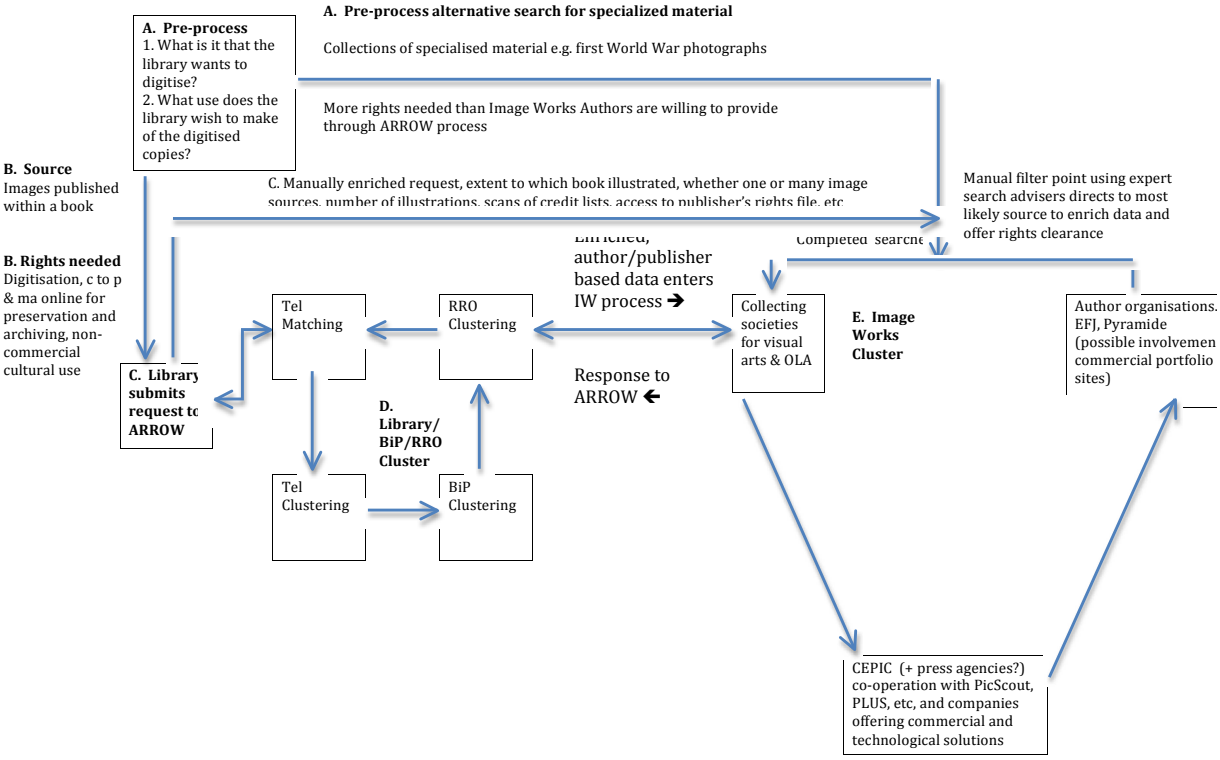
Once the data enrichment process and RRO search is complete, ARROW collates the resulting information and produces an automated response to the library search request.

It is proposed that at this point a further stage is added which incorporates a search process for Image Works Authors and their Works, that is, an Image Works Cluster (IWC).

[80] DACS and ADAGP could identify image authors from the CEPIC case studies ("Ascent of Man" and "Belle Epoque") which are members for primary rights and others which are members for remuneration for secondary uses. See the result tables for the case studies from DACS and ADAGP.

3.1.3 Step 3: Potential for an Image Works Cluster (IWC)

Diagram showing an Image Works Cluster added to the ARROW process



A. Pre-process

Right holders in Image Works must be confident about what it is that a library wants to digitise and how they intend to use those digital copies.

The aim of the pre-process is to address these two issues where the request involves specialised material made up of, or incorporating Image Works (other than those in books).

Positive:

It removes the search request from the ARROW Process to a point within the Image Works Cluster (IWC) where it can be directed to the best and most effective source(s). Potentially it saves time.

It keeps control of the licensing arrangements for such material with the right owners or their representatives.
Any specialised material included in publications can continue through the ARROW process while searches for non-publication material are carried out in parallel in the IWC.
It has no impact on the main ARROW Process.

Negative: It inserts a signposting point into the IWC which needs at least some manual control, management and expertise. This could be costly. While demonstrating the willingness of rights holders to help libraries, it is dependent upon the full co-operation of those involved in the IWC (and right holder links outside the IWC). It will, however, put the onus on the Image Works community to work together to provide a solution which gives certainty to libraries. It is possible that this manual search process could be combined with the manual search process under C. to provide only one manual filter within the IWC.

B. Rights Needed and Potential Use

Rights holders in Image Works want clarity. That is, precise information about how libraries want to use Image Works.

The ARROW search request includes a series of permission sets. At present the permissions sets indicate options which grant a range of very limited digitisation and making available rights as follows: within the library, on the internet, academic use, print document supply and digital document supply.

These options would seem appropriate for the use of Image Works as long as it is clear that the rights are being granted for such uses in the context of the publication and as long as the type of establishment being given the licence remains closely proscribed.

C. Library submits request to ARROW/bibliographic data

For Image Works and their Authors, data provided in library search requests is in many cases, inadequate and incomplete and ways must be found to improve it.

Positive:
More data would result in many more Image Works cleared, permitting many more books to be digitised.

Image Works Authors would have more confidence in the completeness of search requests coming from libraries.
Where search requests include no Image Works, or where limited Image Works or Authors are listed, then the main ARROW Process is unaffected and there are few or no delays in providing a response.
There would be an additional channel from the IWC back to the originating library permitting further checks to be carried out or further requests for information to be sent.

Libraries would need to invest time and resources in communicating direct with the IWC and in differentiating between types of publications, that is:

- those not including Image Works;
- those including a complete list of Image Works Authors
- those including Image Works where at least some are not fully credited

Those not including Image Works could go direct to the main ARROW process but would not continue into the IWC. Those where the library was confident that it had a complete list of Image Works Authors and Sources included in the publication would go direct to the main ARROW process and then on into the IWC.

Where the publication includes illustrations/plates, and where there is any doubt about the completeness of the credits, then the search request could continue through the main ARROW process and IWC, but be flagged, for a parallel manual search which would, wherever possible, involve:

- provision of scanned copies of the index of illustrations/plates;
- or where the illustrations/plates are acknowledged on the copyright notice page, a copy of that page.

This information could then be forwarded to a point in the IWC and the findings recombined with the Image Works part of the ARROW process once checks were carried out

CEPIC recommends that libraries should initiate such manual searches confirming the extent to which a book is illustrated, whether one or many image sources are involved, provide scans of credit lists and that publishers' rights files should be accessed as part of the process, if at all possible. The manual search of librarians may be supported in an automated way, using

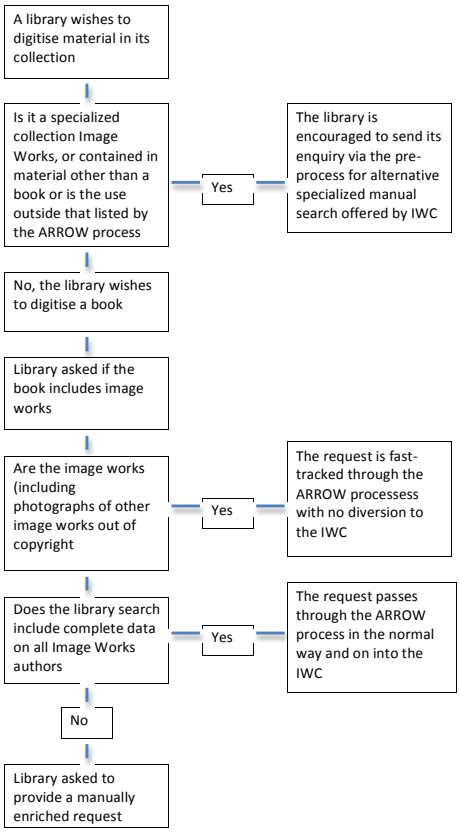
existing technology or building on current research in these areas. Further investigation is necessary to see how this might be made possible.

While EVA members see the need for this recommendation, they are conscious of the cost of administering such searches. Handling requests from users which require a licence is a service which is part of their daily business, as are the costs of maintaining and updating a membership directory, skilled staff and the infrastructure to support these services. These are all included in their own administration fees deducted from the revenues of their members. The cost of a manual search of the type recommendation must, therefore, be covered by license fees payable by the libraries for the use of the illustrations in the books and not be subsidised by members of collecting societies.

Outstanding issues: Due mainly to their own resourcing issues, the degree to which libraries have been able to co-operate with EVA/CEPIC, has not been entirely satisfactory to date. Can resources be found within ARROW to increase their level of co-operation, particularly when, perhaps, they see a more effective and cheaper alternative being to lobby for more exceptions to copyright under statute e.g. widening library, educational and non-commercial use and introduction of the widest possible orphan works exception.

Whether publishers could also be persuaded to co-operate further by providing access to their rights files, and the format in which those rights files are available, should also be investigated.

Diagram showing Steps A-C



D. Library/BiP/RRO Clustering

The search request is enriched at every stage in the existing ARROW process, with the RRO (including author and publisher collecting societies) at the point of greatest enrichment. With the data at its richest at this point, RROs are the most obvious point at which to add an Image Works Cluster (IWC) into the process.

While representing publisher members, RROs are one remove from the publishing industry. Representatives of individual authors were nervous of involvement in a process which is

controlled by publishers[81]. Using RROs as the entry point into the IWC maintains the "arms length" approach and keeps the IWC firmly under the control of Image Works Authors and their representatives.

The ARROW search request is built around library search requests using bibliographic data held by the library which incorporates publication and author data. It is then enriched with data available from publishers and again including publication and author data. The only link available to Image Authors and Image Works is publication and author data. Data on Image Works themselves (rather than authors) is rarely included in the search request. When Image Works data is available it comes in the form of the Title of the Work which can in any case be confusing.

It follows, that while acknowledging the limitations this has for Image Authors and Image Works, the author and publication data must be the starting point from which to build Image Authors and Works into the ARROW process.

Visual Arts Collecting Societies already share data with RROs and many are either members or agents for RROs (in the same way that author and publisher collecting societies are). Visual Arts Collecting Societies also take an author-based approach to data, hold substantial databases of Image Authors and additionally hold licensing data including publication data, though that licensing data may not currently be accessible through anything other than a manual search. Visual Arts Collecting Societies can also offer OLA and its database of Image Works Authors as a single contact point.

E. Image Works Cluster

This Feasibility Study proposed that the Collecting Societies for visual works provide the bridge between the main ARROW process and the IWC, probably through OLA (see below and at 1.6.4 above). As previously stated, the Visual Arts Collecting Societies already share data with RROs, have relationships with RROS, take the same author-based approach to data and hold some publication data in the their licensing systems. OLA can provide a single entry or contact point. It is already a functioning entity with a network covering most European countries, Switzerland, the USA and Canada.

[81] Author interviews

This does not mean that the Visual Arts Collecting Societies hold any imprimatur over the IWC, it means that they are the entry and exit point for author-based searches which come from the main ARROW work flow.

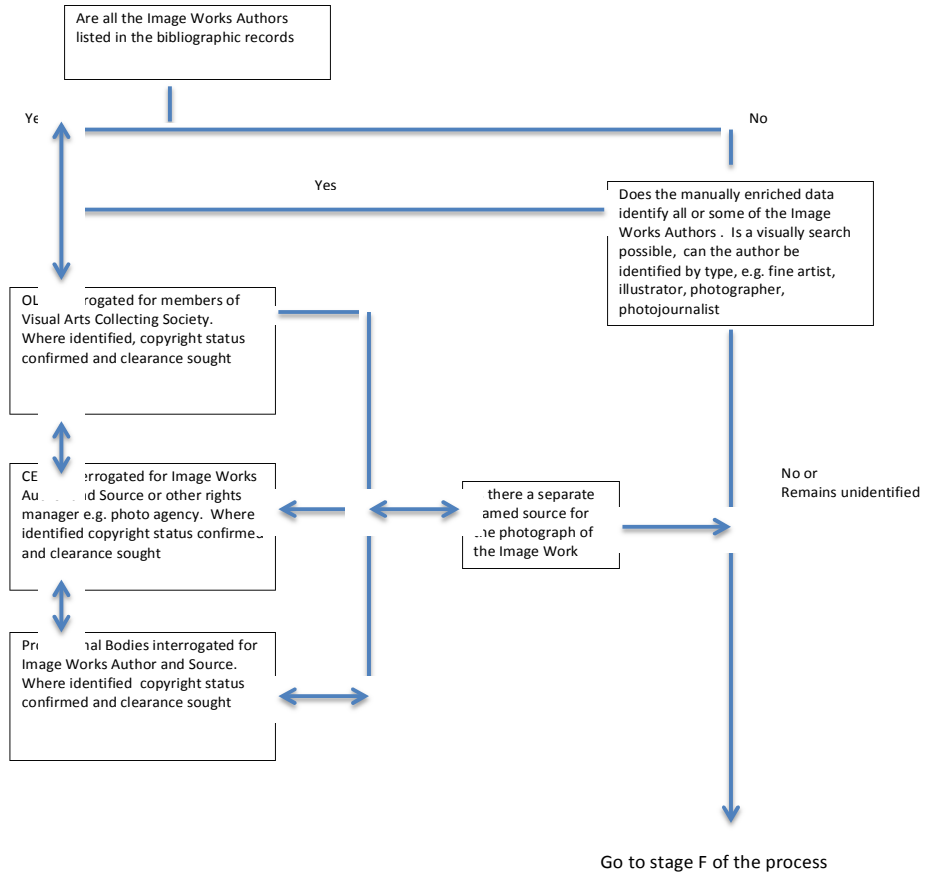
Whether the Collecting Societies for visual works could also provide the resources needed to act as the channel for the manual search processes suggested under A. and C is for subsequent exploration, particularly given, the proposal under F. below.

Given the paucity of data available about Image Works and Authors, it may, in the short term, be necessary to expand the search request at the point at which it enters the IWC.

Many Collecting Societies for visual works are members of OLA. OLA provides a central database of Image Works Authors (providing access to an international as well as European repertoire of authors and works) represented through the collecting societies. It is able to clear certain rights automatically for certain of its members (i.e. without reference back to individual societies managing those rights) and can interrogate individual collecting societies (who in turn are in direct contact with individual right holder members for permission). Where other rights are requested, or for information about other Image Works Authors who may only be registered with the Society for certain specific rights e.g. Artist's Resale Right or for secondary/remuneration rights/collectively managed rights which fall outside OLA's remit, then the relevant Collecting Society for visual works can be contacted directly. Collecting Societies for visual works should, therefore, be the entry point into the IWC and the exit point for completed searches.

OLA could also provide the point at which manually enriched search requests received from libraries e.g. scans of credits pages/index of plates/right holders are received and recorded for circulation within the IWC.

Diagram show step E. the Image Works Cluster



Search requests based on the Image Work Author will work as far as the Collecting Societies for visual works are concerned, though additional information would be helpful where there

is any question over the identity of the author, and also to assist in the process of identifying the actual work which has been digitised. Image Work Author search requests could also work, for individual Image Work Authors registered as members with the professional organisations, should those organisations be in a position to develop complete and complementary databases of their members. It may even be possible, if a manually enriched search is incorporated into the IWC, to identify a percentage of photo agencies and other image source rights holders. However, for the ARROW process to function 100% the IWC within the ARROW process must, ultimately identify and locate all possible right holders.

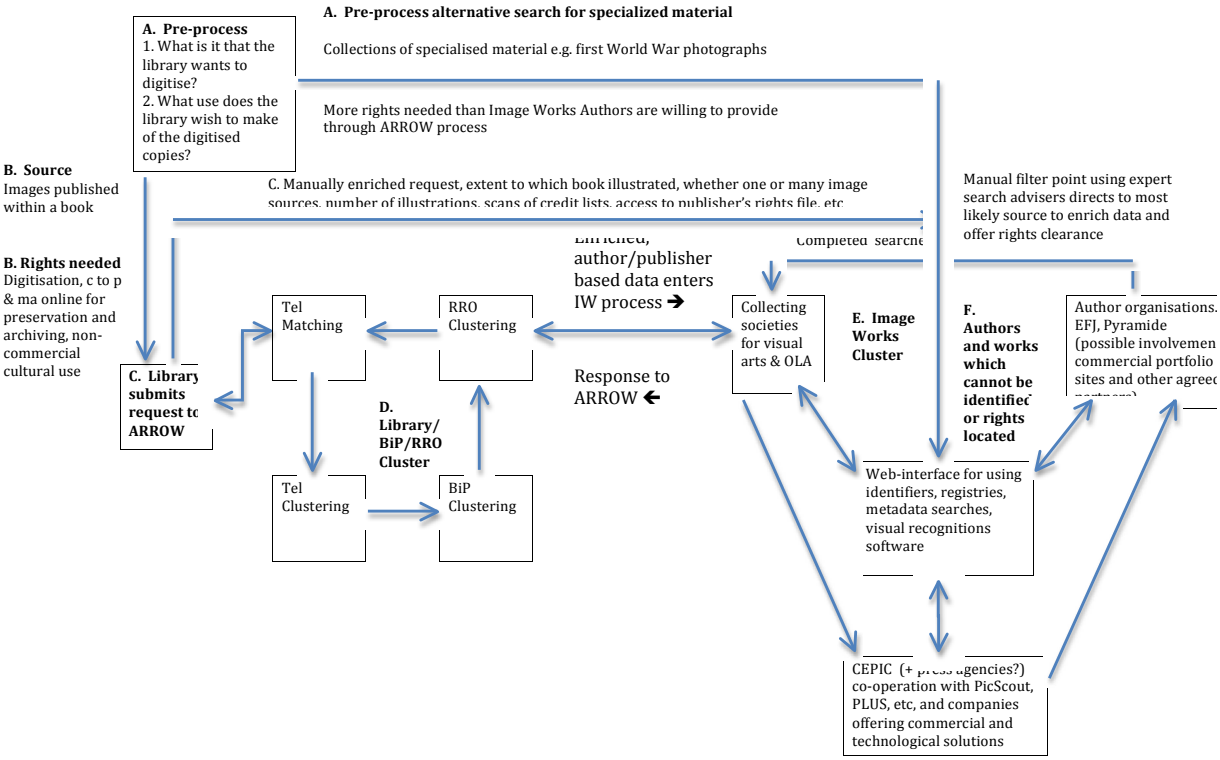
It is proposed that OLA should provide the entrance and exit point to the IWC. This is merely for convenience and simplicity and the proposal has the support of both the collecting societies for visual arts and was favoured by the professional bodies representing individual authors. However, CEPIC has expressed some doubts as to whether an entrance and exit point via OLA would be effective for its members.

While CEPIC recognises the value of querying a number of different databases reflecting the parts of the Image Works Cluster, there are issues of governance that need to be tackled so that ARROW becomes the recipient and processing agent for the data, rather than any of the partners or constituent areas. Any part of the workflow where data is processed and queried should be governed by clear guidelines set up to effectively ensure that data is secure and treated in a way which is sector neutral, and in the interests of all rightsholders.

Thus, the different players in the image sector are less dependent on each other's work structures and progress and while each could apply its own preferred search method regardless of the other parties, there is a risk of multiplying efforts to achieve joint results and a risk of complicating the ARROW process unnecessarily.

3.1.4 Step 4: Consider what more is needed to further develop the process or processes

Table showing additional stage F. for authors and works where rights holders cannot be identified or located



Given that library search requests are for images published in books, most will not carry metadata or unique identifiers which is the first reason why this step comes at the final point of the IWC. It also needs to come after Image Author checks have been carried out within the main workflow, so that the existing ARROW workflow is not delayed or disrupted. It allows for the re-incorporation of searches for Images which have passed through the pre-process or where additional non-author based information has been added by a manually enriched request.

Where Image Authors are not identified, or where the Image Author is known but they or the rights cannot be located at the end of the author-based IWC process, this stage within the search will check whether and to what extent images in books, contain metadata, or identifiers linking to registries and numbering systems.

It will also allow for a CEPIC-led project, working with a range of partners, which explores and develops the setting up of a central access point for interested rights holders, whether picture agency, individual rights holder or collecting society for visual works, to apply technology or expertise to the images and to provide a response to the original search request. If successful, the channels for the pre-process and request for manually enriched data could ultimately providing a by-pass route for the author-based workflow within ARROW. It would also provide a testing ground for technology, whether visual recognition software, standardisation of data, unique identifiers and the setting up of registries,

There is more on this proposal at Chapter 4.2 Alternative and in Chapter 5 at Recommendations 4.3 and 4.4.

Positive:

Any Authors, Works or rights managers identified and located through such searches will further reduce the number of potential orphans at the end of the process.

It could provide the partners in the IWC and ARROW with information on the percentage of existing images published in books which do contain such information and with feedback on the challenges faced and the potential for exploring this route further and may, therefore, encourage Image Authors and their representatives to start to develop and better use metadata, identifiers/registries and visual recognition software.

It provides an Image-based search as an alternative to an author-based search.

This stage in the process is not merely a final test for the ARROW process, it introduces into ARROW the capacity to carry out a very different type of search which could be the foundation for future forms of search and which will start to explore the possibilities for developing unique identifiers for Image Authors and Image Works, to encourage Image Authors and their Representatives to take up identifiers, develop registries and better utilise metadata as a means for identifying and locating right holders and tracking the use of works. With this capacity in place and with the agreement of all right holders in books, it may then be possible to extend the ARROW process to cover the identification, location and clearance of rights which go wider than just the material in books.

Some thinking on Visual Works information held by libraries, right holders and their representatives and request process

Organisation	Data held	Type of image author or work identified in data	Process	Search request sent
Libraries	Bibliographic rules apply to library catalogues. Library metadata provides only for entry by book. Author identified in library metadata in marc field. Or where image author is not author of book but may be listed alongside author as a major contributor.	Image author is subject of book. Image author is listed as author in marc field. (May also include information on their creative role i.e. artist, photographer)	Identification automatic	Naming Image author and providing book data.
Libraries	As above but information referring to fact that a book is "illustrated" is noted in library records.	Image Works inside book.	Introduction of manual check for Image Works and any identification data contained in the book. Visual recognition software may be of benefit to process	ARROW ALERT on inclusion of illustration triggers request providing book data and available Image Works data. Checked via CMO plus associations of authors and CEPIC members.
Libraries	Bibliographic rules apply. Entry by book but existence of Image work noted in library metadata.	Image Work on book cover	Introduction of manual check for identification of book cover. Visual recognition software may be of benefit to process	ALERT provides book data and available Image Work data. Checked via ARROW against BiP database as well as via CMO, associations of authors and CEPIC members.

Visual Works information provided by databases against library requests

Organisation	Data held	Type of image author or work identified in data	Process	Search request
VIAF	Dates, names variants, nationality against identified authors and contributors	May pick up more information on image authors identified in data or additional image authors not identified in library data, or image authors where book is recorded only as "illustrated". Also links to other potential data sources such as ISBN or other unique ID	Arrow workflow searches for additional details against library request	
BiP	Book entry metadata. Records created originally by publishers , quality checked and enriched.	Image Work on cover of book or on an edition of book. Will provide an indication of the type of image work and information about the image author	Arrow workflow searches for additional details against library request	
CMOs for visual arts ad OLA	Internal databases or database of members and non member (mandating for certain rights) Image authors held for commercial licensing, allocation and	Fine art (including cultural goods) Other types of Image Works including photographs and graphic works according to membership, mandate and distributions	Searchable database	**Yes**

	distribution of collectively managed rights and for accountancy purposes			
CEPIC Members – 1 commercial image libraries and agencies	Internal databases of right holders for commercial licensing and accountancy purposes not currently accessible Some image search online	Photographs Heritage works Photographs of other Image Works	Searchable databases not currently accessible. Public online image search. Database matching limited by extent to which proper crediting of image works author and whether metadata (if existing) identifies photographer or agency. Possible link to photographer through accountancy data for royalty payment if photographer retained rights.	
CEPIC Members – 2 Public Institutions	Content management system for the collection plus internal database as commercial image library. Some image search online	Photographs Heritage works Photographs of works and objects held in collection	Content management systems and searchable databases not currently accessible. Possibly 2 also applies	
Associations of authors	Member databases Some image search online	Range of Image Works from sub categories of works e.g. photographs, commercial disciplines e.g. graphic design, special interest groups e.g. wildlife artists, etc	Databases of Image authors unlikely to be linked to works. Image galleries and portfolios may be searchable. Visual recognition software may be of benefit	

4. CHAPTER FOUR – ISSUES, CHALLENGES AND ALTERNATIVES

Having developed a potential Image Works Cluster and identified a point within the existing ARROW process at which it can be incorporated and, having also proposed some supplementary processes by which more complex searches can be added to the process, it would seem natural to move straight onto the Feasibility Study's conclusions and recommendations. However, there are a range of wider issues and challenges which must addressed and some alternatives to author based searches which must be explored if the incorporation of Image Works and Authors into the ARROW process is to have a longer term possibility of success.

The ARROW process is not ideal for identifying and locating Image Works Authors and their Works. It was designed around books and library records and those records contain insufficient detail about Image Works embedded in, or on the cover of books, for a thorough search to be carried out or to return complete results. Furthermore, the information held in library and publishers databases such as TEL, VIAF and BiP is incomplete, as far as Image Works and Authors are concerned.

Image Works Authors and their representatives, being well aware of the potential value of ARROW[82], realise that they are not in a position to choose a system or process more suited to their needs. ARROW is already functioning and so the starting point for incorporating Image Authors and Works into ARROW must be library search requests designed around books and databases built for publishers and which, first and foremost, concentrate on information on books. Image Works Authors and their representatives do not have a simple alternative solution to offer.

Where bibliographic records are complete, or where the Image Works Author is well known, then their name is likely to be noted in library and publisher databases, searches are more likely to be successful. The collecting societies for visual arts are certainly in a position to identify their members from such a search but they only represent a proportion of Image Works and Authors.

[82] From interviews with professional bodies

At national level, professional bodies, associations and unions also hold author information in the form of member data but it cannot be accessed through a single source, nor can it currently be shared, and such organisations have limited resources which are, in any case, used to support their main function which is to represent and lobby for the interests of their members.

Picture agencies cannot currently provide a single source of data on the authors and other rights holders or on the works they represent and in any case they are commercial operations focused on income producing activities and this means that part of their data may be commercially sensitive. While links to ARROW must include picture agencies, their involvement requires a different approach to that for collecting societies and it should have at least some potential for commercial application to ensure take up by their members. Furthermore, solutions for picture agencies must also take account of the need to identify and locate the sources of Image Works and resolve the complex situation regarding ownership of photographs of other artistic works, whether as authors of copyright work or whether as owners of other rights applying to those works.

None of these challenges should prevent Image Works Authors and their representatives from working towards solutions which could immediately contribute to ARROW or which could at a later date, be added to the ARROW process.

Before turning to alternative solutions for identifying and locating Image Works and Authors available through developing technology, this chapter flags some of the challenges arising from the regulatory/political environment and at the relationship between the Image Works sector and other sectors within the media and publishing industry and at relationships between stakeholders within the Image Works sector itself.

4.1 OUTLINE OF CHALLENGES

4.1.1 Legal framework and political environment

Many individual Image Work Authors, feel they have been given the rough end of the deal, particularly where policy developments on orphan works are concerned.

While, on the one hand, libraries and cultural establishments demand easier access to works, on the other, ever-increasing numbers of Image Works are being orphaned through no fault

of their authors. The biggest problem being the failure by users of all types to credit the authors of works whenever and wherever it is published or disseminated compounded by the removal of metadata, or the over-writing of metadata, as part of the production process. The law may be on the side of the Image Work Author, but enforcement is a challenge, particularly for individual authors with less bargaining power and particularly where the problem is exacerbated by difficulties in enforcing the author's moral rights.

In discussions with representatives of Image Works Authors, it was clear that they felt that these issues were driving much of the debate on orphan works, particularly where photographers, photojournalists and illustrators were concerned. The EFJ's representative said that: "Having done so much good work on the High Level Guidelines with the development of the MOU on diligent search, it is a pity that in developing its orphan works legislation, the European Commission has failed to address the issue of moral rights, or the issue of retention of metadata and the proper crediting of photographs".[83] That is, while concentrating on the need to digitise collections in libraries and other cultural establishments, by making access to orphaned works easier, policymakers have failed to incorporate into their proposals measures for reducing the numbers of orphan works in the future by improving the respect accorded to Image Works and their Authors, nor have they put in place other safeguards for protecting those works and the Author's future interest in that work.

There are other issues in the regulatory sphere which make Image Works Authors doubtful about policymaker's intentions at national as well as European level, including differentiations between commercial and non-commercial uses, the possibility of ever wider exceptions for certain types of use, the failure to make enforcement of their rights easier or improve user awareness of rights. All of these make it hard for them to accept the need for legislation, or indeed for initiatives such as ARROW, which increase access to their works without addressing the fundamental background issues that make it so difficult for Image Works Authors to maintain control over their work where it really counts.

4.1.2 Image Works and the Publishing Industry

While book publishers may be the "good guys" of the publishing and media industries, the relationship between individual Image Works Authors and publishers can at times be fraught.

[83] Interview with Pamela Morinière, European Federation of Journalists and International Federation of Journalists on 10th July 2012

This is less of a problem for the collecting societies and for many picture agencies as they are on a more equal footing with publishers and in the case of the collecting societies the Image Works they are licensing are for known Authors and are thus “unique”.

For individual Image Works Authors the situation is a little different with individuals being subject to market pressure on price and less able to negotiate favourable contractual terms. In many cases, this results in the loss of their right to a credit (and in the UK in a waiver of their moral right) and an inability to enforce their rights when contract terms are broken.

Publishers regularly remove metadata from Image Works. As CEPIC says this could result from carelessness by the user, or for the convenience of the user or as Pyramide suggests, metadata could quite simply be overwritten as part of the production process. Whatever its cause, the practice of removing metadata on Image Works and Authors, or the failure by publishers to safeguard the integrity of that metadata does not encourage co-operation or make a good basis on which to build a partnership.

From an ARROW perspective there are three issues relating to increased co-operation:

As far as the extension of the ARROW process is concerned publishers need to be kept at arms length from the point at which Image Works Authors become involved in the process and any control over that part of the process should remain with Image Works Authors and their representatives;

CEPIC has identified that publishers’ rights files are potential source of information on Image Works and Authors used in books. Availability of and access to such files should be explored but this cannot be possible without increased co-operation and trust.

BiP data does not currently contain complete information on Image Works Authors or Works which are published in listed books. The possibility of improving the quality of data held on Image Works and Authors should also be explored. Again this means increased co-operation and trust.

4.1.3 Image Works and Libraries

The demand for access to orphan works comes from libraries and other cultural establishments. As far as Image Works Authors are concerned, other than for mass digitisation, such establishments have not yet made it absolutely clear what it is they want to

do with Image Works and how they plan to use them (see 1.7.2 above). While the ARROW process has been designed around the digitization of collections of books, the few examples given by libraries are from far more extensive collections of much wider ranges of specialist material.

Authors of all types are keen to improve public access to their work and in any case it is in libraries, museums, galleries and archives that original creative works, in the form of manuscripts, artworks and other cultural objects are preserved. Nevertheless, given the potential for misuse of copyright protected work once it is digitized and once available to the wider public, it should be absolutely clear at the outset what it is that libraries want to use those works for.

The other major issue for Image Works Authors is the inadequacy of the bibliographic data held by libraries on the Authors themselves and on their Works. This is not a fault of the libraries, they have not previously needed to record such data and their data is, in any case, based on that readily available in the book. However, co-operation which could improve bibliographic data and also the data available through the ARROW search request must be explored in a spirit of co-operation.

4.1.4 Relationships within the Image Works Sector

Relationships within the Image Works Sector can present an even greater challenge in any attempt to develop a consensus. Some of this is due to traditional differences and arises because of the different ways in which collecting societies, picture agencies, press agencies and individual Image Works Authors operate.

Under Work Package 6.1 and 6.2, ARROW has presented these groups, particularly CEPIC and EVA with an opportunity to work together for the first time. Their approaches to the analysis and to the issues raised by the ARROW process are very different but their conclusions are similar and they wish to continue with this work. Interviews with the three key European bodies representing organisations of individual Image Works Authors, indicate that their message is similarly clear, that is, that at European level they have a good awareness of ARROW, were aware of the challenges and all were interested in contributing though lacking in the resources needed to participate.

There were some differences between the views of the three professional bodies on the contribution which collecting societies and picture agencies could make but, in general, it was felt that collecting societies played a positive role in Europe and that their author led approach would work if they could gather together sufficient information on authors and if their administrative cost were kept at a low level. There was greater hesitation about picture agencies as an advocate for individual Image Works Authors, partly due to the fact they were commercial companies which might not have the interests of individual photographers and illustrators at heart and partly due to the fact they were image led in their approach. Nevertheless, photographers welcomed the involvement of those parts of CEPIC with which they were most closely aligned.

Independently, both collecting societies and picture agencies command an impressive repertoire of Authors and Works and are integral to the further development of an Image Works process for ARROW.

In terms of the impact on the ARROW process, the main differences between the three groups consulted for this Feasibility Study are:

- Some are not for profit organisations, while others are commercial operations and they each have very different aims and imperatives.

- In terms of providing a single unifying solution, all are under-resourced, particularly the professional bodies representing individual Image Works Authors.

However, the greatest challenge is perhaps the differing approaches to information taken by these organisations. The databases of Visual Arts Collecting Societies are author based as are the databases of the individual professional bodies which make up the EIF, EFJ and Pyramide. Databases of the individual picture agencies which make up CEPIC's membership contain the physical images – linked to the name of the author in the internal database because they are image material suppliers. Their relation to the authors depends on the contractual basis, which will vary depending on country, size and business model of the agency.. For instance, it may be a buy-out in the field of stock picture agencies or an exclusive representation contract. Due to their nature as image material supplier, the image is in the centre of their activity as a basic line. . Individual Image Works Authors (as opposed to the organisations of which many are members) are also likely to be Image based, that is, where they hold their

work in database form it will be stored for archival or access purposes according to image. Those databases which are author based are, as shown in the German Pilot, likely to be easily searchable, as long as they can be made compatible with the ARROW process. Databases which are image based are not going to be compatible with the ARROW process and an alternative means of incorporating these into the process must be found.

4.2 ALTERNATIVES - *"THE ANSWER TO THE MACHINE LIES IN THE MACHINE"*[84]

Much of the information in this section is drawn from "Review of Existing Persistent Unique Identification Systems" by Sylvie Fodor, Executive Director of CEPIC and Angela Murphy, Consultant to CEPIC and from "Orphan Works and Image Licensing, Options for ARROW PLUS and other Orphan works proposals, a CEPIC discussion paper", by Sarah Saunders. A more complete understanding of the issues can be obtained from these papers.

As CEPIC's members are not author-orientated in the way that Collecting Societies for Visual Works are, they are naturally more interested in the potential of digital technology to provide solutions for discovering, identifying, managing, tracking and monitoring the use of the works which their members own or represent. CEPIC members are also expert in researching right holders and licensing image rights. It therefore seems natural to follow their lead in this field.

4.2.1 Existing numbering systems

Picture libraries and agencies hold extensive databases, for which they use a wide range of image codes and numbering systems which are internal to the company. Such systems are tailored to the needs of the individual company and are used to identify images, identify rights holders of individual images, provide licensing information, track image distribution and for accounts and royalty payment purposes. With the growth of the picture agency business and with global distribution resulting in cross-border partnerships between agencies, their numbering systems have become much more sophisticated.

Some examples showing the complexity of picture agency numbering systems can be found on page 9 of CEPICs report[85]. However, the most important things to note are that these numbers are "Image codes" applying to the work itself and the code is internal to the picture

[84] Quote from Charles Clark, 1933-2006 - publisher and lawyer and authority on the law of copyright.
[85] "Review of Existing Persistent Unique Identification Systems" by Sylvie Fodor, Executive Director of CEPIC and Angela Murphy, Consultant to CEPIC

agency, it is not based on a single register of works providing a unique identifier and used by all picture agencies.

Individual Image Work Authors are allocated a unique ISNI by the Collecting Societies for Visual Arts as a member of the international repertoire of authors belonging to those societies. This unique number is mainly used for internal purposes and there is no register of the works of the Author.

While the professional bodies which are members of the EIF, EFJ and Pyramide hold complete member databases, these are unlikely to allocate a number to the member for anything other than internal purposes such as membership administration. Some societies provide member "portfolio" sections on their website[86] which are searchable by member name, work or key words but again any numbering system is internal to the portfolio site. The situation is similar for commercial "portfolio" sites.

There is no authoritative, single existing numbering system currently in place through which either Image Work Authors or their Works can be registered.

Even if such a system could be introduced for Image Works and their Authors, there would also need to be a parallel standard format for recording information on Image rights in books introduced across all players including libraries and publishers which could permit the exchange of information.

4.2.2 Metadata linked to a single unique image identification system

Metadata is "data about data content".[87] It is now standard for metadata to be incorporated into digital objects and in the case of Image Works it provides information about the image, including the rights holder, and can be a particularly valuable tool for photographers.

For the development of the ARROW workflow, the interesting point about metadata is that the capability already exists for publishers to use metadata embedded in images in XMP using IPTC and PLUS standard schemes to identify the images and its rights. If the use of these standards were to be adopted by publishers as part of their workflow, and relevant rights

[86] www.home.the-aop.org/Portfolios
[87] en.wikipedia.org/wiki/Metadata

data were to be included in the printed version of a book, detailed information about individual images could be shared and could be incorporated into bibliographic data and library search requests to facilitate identification and location of the rights holder.

The challenges which metadata presents are:-

- Embedded metadata is often stripped out by software, so is not always present in the image
- Software systems are still catching up with the technology (e.g. ability to read and write XMP) so the metadata is not always visible to publishers.

4.2.3 Visual recognition software

Originally prohibitively expensive, image recognition technology has changed enormously in recent years and picture libraries now view it as the mean by which to detect and track illegal uses of their images on the internet. CEPIC believes it has the potential for wider application and suggests that if adapted to the library/publishing environment it could be "fit for tracking "orphan works", that is, it would have potential for identifying images in books as part of the ARROW process.

Different technological developments are underway and have been subject to the report by Sarah Saunders on image identifiers, Appendix III. All track images automatically using image recognition software.

The basic principles behind the technology are:

1. The picture agency, a library, a publishers supplies scans images published in books or or .pdf's of printed pages from books
2. Each image is processed and a fingerprint of the images supplied or appearing in .pdf's is loaded input into a database by the institutions owning registries
3. A reverse image search is carried out by the institutions in their registries
4. The images are compared against the fingerprinted images that exist in the registries
5. The results are then made immediately available to any user interested via a web interface

6. The results contain the textual data showing the author and other textual data, or the lack of, and indicating which picture agency, or private, or author collection handles the image(s).

The process for including visual recognition in the IWC requires, by definition, the existence of a digital copy of the image. In a number of circumstances, for example, when the digitisation is made by the library under the exception for preservation and the library is then looking for the permission to make the digitised book available in the Internet.

Visual recognition can be included in different phases of the workflow; in the pre-process stage of the IWC, which would be particularly valuable in case of lacking or poor metadata, or – on the opposite – at the end of the IWC, when the search based on metadata only doesn't produce results or in both cases to certify the metadata actually referrers to the image(s) in question.

The search can either be made in closed proprietary databases of picture libraries or institutions handling registries of databases or in the web, which can be seen, in this case, as a huge public database[88]. Understanding that the web may yield a high quantity of inexact results.

In the first case, and after steps confirming legally[89] that the holder of the matching image is identified as the rights holder or rights representative, the picture agency can offer the library a licence for digitisation or alternatively, other picture agencies holding the same image are in a position to offer another version of the image to the library for digitisation purposes.

[88] Several free reverse image search engines are available on the web; in particular TinEye (built by Idée) and Google Search, but there are several others. One example is provided in Appendix II of the Annex report "Three Case Studies for ARROW". The example, however, shows the result yielded from web search is not as precise and clear as when searching in a closed database where the image is linked to additional (rights and licensing amongst other) information. Solutions directly addressing the issue of rights holders search are also available: PicsSout has developed a plugin for image users who are searching for images on the Internet to be used legally: Image ICR. Users download a free plugin and the software searches for images via a browser that enables the user to search for the copyright owner of images stored within the PicScout ImageIRC platform.

[89] See above 2.2.3.7.page 50, a match based on visual recognition alone provides no certainty on copyright status, rights delegation and exclusivity except if the image is linked to precise additional data as provided in image databases or registries.

In the second case, it is possible that the result will be limited to additional metadata, extracted from the credits associated to the image, which should probably be further processed in the IWC.

It is important to note that visual recognition supports both text-based and visual search, which may be useful to support the extraction of metadata from the credits printed in the books.

Ideally, a process of this type which replaces manual search with an automated software-driven search could work for ARROW. It should make it simpler and quicker to carry out searches for Image Works.

The exact role of visual recognition in the ARROW workflow needs further exploration, including analysis of cost implications and the legal framework that may allow scanning *before* the search, at least the pages containing the images.

Steps 2-6 as outlined above are then carried out, except that the images used for comparison are taken from picture agency online archives and databases rather than the web. Once identified as the rights holder or rights representative, the picture agency which granted the original licence to the publisher can offer the library a licence for digitisation, or alternatively, other picture agencies holding the same image is in a position to offer another version of the image to the library for digitisation purposes.

Ideally, a simple process of this type which replaces manual search with an automated software-driven search could work for ARROW. It should make it simpler and quicker to carry out searches for Image Works.

However, it pre-supposes that commercial companies will be interested in providing such a service, it is cost dependent. It could work for picture agencies but unless all other Image Works are included in a registry it is unclear how it could work for individual Image Work Authors or for collecting societies. This needs further exploration.

5.2 RECOMMENDATIONS

RECOMMENDATION 1: ARROW

Recommendation 1.1 - Image Works Cluster

ARROW to work with EVA, CEPIC and the three professional bodies representing individual Image Works Authors, on a project to develop an Image Works Cluster (IWC) (see Chapter 3) as an add-on to the existing ARROW process including a comprehensive author based search and to explore and initiate a process for an image/work based search. Investigations should provide technological support for the design of the process, or processes and the linking points within the process. For example, it is not clear how many contributors can be added in the Query Form or whether it may be better to distinguish between contributors who are writer authors and those who are Image Works Authors.

Recommendation 1.2 – Author-based search The first part of the integration of Image Works and their Authors should function along the lines of ARROW's existing automated process (but incorporating a manual search element) with a search based on the name of the Image Work Author.

Recommendation 1.3 – Image-based search The second part of the integration of Image Works and their Authors should be to investigate the potential for developing an alternative technology based process based on automated and manual searches for Images.

Recommendations 1.4 – bridge between ARROW & IWC ARROW to collaborate with RROs and the Collecting Societies for visual works on a project to provide a bridge between the existing ARROW process and the IWC for the author-based search process.

Recommendation 1.5 – shared and equal interest That it must be clear that within the IWC all partners have equal status but the author based search should come through EVA for logistical reasons.

Recommendation 1.6 – adapting ARROW's search request and process working with the partners in the IWC and with library and publishers databases, ARROW to investigate whether the format for its search request, bibliographic data in libraries and the databases forming part of its search process such as TEL, VIAF and BiP can be adapted and expanded to

incorporate the complete range of Image Work information needed for the IWC to carry out a comprehensive author based search and to support the exploration and development of a process for an image/work based search. ARROW also to investigate whether stakeholders are willing to implement any changes.

As the VIAF database contains the most detailed and accurate data connecting book identifiers with Image Work Authors, it should be investigated for the possibility of reversing its search process (see Chapter 2.2 11.)

Recommendation 1.7 - Manual search As an essential part of ensuring a complete search is carried out. ARROW and the IWC to investigate:

a) the possibility of incorporating a parallel pre-process for specialist collections of material to be directed straight to a point within the IWC where specialist manual searches of such material could be carried out and from which search requests could be directed to those most likely to be in a position to assist in the clearance of such material.

b) the inclusion of a flag within the ARROW search request which allows the library to alert the IWC as to whether the publication incorporates Image Works and also, whether or not the library considers that its bibliographic records on Image Works for that publication are complete. Where they are not, then the IWC should be able to send a request to the library for additional information to facilitate a manual search.

Recommendation 1.8 – Linked Heritage Project As the first objective of the Linked Heritage Project'[90] is to "contribute large quantities of new content to Europeana", it is surprising that its current work packages do not appear to prioritise work on copyright protected material. Some exploration of the potential links between ARROW and the Linked Heritage project might prove valuable to support the identification, location of and clearance of rights, particularly in specialised collections which include high proportions of Image Works in documents and photographs as well as in books. This would enable pre-clearance of more complex material either before entry into the ARROW process and perhaps, in parallel to the main ARROW process.

[90] http://www.linkedheritage.org/

Recommendation 1.9 – value of categorising books The possibility of excluding certain categories of books from the Image Works Search process, that is, books which do not include Image Works should be investigated by ARROW itself. However it was not a route pursued in this Feasibility Study, because it requires certainty and given the quality of bibliographic data at present available and the difficulties involved in categorising such publications, it did not seem a useful approach.

RECOMMENDATION 2: Collecting Societies for Visual Works

Recommendation 2.1 – OLA as the portal for Author based search Collecting societies for visual works to prepare a report on OLAs potential to provide the bridge to the RRO point in the ARROW workflow and to act as a central portal for Image Author based requests and to explore how these request could be sent to collecting societies which do not currently participate in OLA. Also, how the request could be forwarded automatically to CEPIC and the professional bodies for them to initiate parallel searches.

Recommendation 2.2 – collecting society databases Collecting Societies for Visual Works to be encouraged to develop interoperable databases, or a web interface between databases which allows them to share historical licensing data which will permit societies to integrate more fully into ARROW's book-based search process. The resourcing of this work, including possible financial and technical support and legal issues would need to be considered.

Recommendation 2.3 – other data held by collecting societies EVA to be asked to prepare a report on visual arts and reprographic rights indicating which collecting societies for visual works in which countries participate in the licensing activities of RROs, which collect and distribute revenue from RROs, which are claims based, what data is held on the distribution of revenues from reprographic rights where and how it links publications to Image Works Authors and their works. The report should also cover the extent of the information held, its veracity and the form in which it is held (e.g. on paper or as a database). Similar reports could be encouraged on the resale right and on other remuneration or secondary rights, both of which could contribute useful data to the ARROW process.

Recommendation 2.4 – standard international numbering for Image Authors As the most author-orientated point in the IWC, and if it wishes to preserve it author orientation in a world increasingly dependent on technology and data, EVA should encourage its members to investigate the further development of an international standard author code for Image

Works Authors. This could include the possible extension of the IPI number applied to all members of CISAC societies but not currently used externally or more widely and also the ISNI available for contributors to media content.

Recommendation 2.5 – Entry point for manually enriched search EVA to agree with other members of the IWC whether it can provide the entry point at which manually enriched search requests enter the IWC or whether some other point is more practical. EVA members and OLA to consider the cost of administering this additional function.

Recommendation 2.6 - Governance EVA to work with other members of the IWC to establish rules of governance and transparency. EVA to be responsible to involve all IWC partners in the process.

Recommendation 2.7 – Image databases in collecting societies With the development of collecting society image databases (see Chapter 1.6.3). ADAGP and VEGAP (as the two most advanced) should be approached about contributing directly to work on the alternative image based search process with a view to reporting back to EVA.

Recommendation 2.8 – Collective licensing as an alternative model Taking into account the complexity of the problem and the possible solutions and the urgency with which libraries are searching for solutions and while recognising that individual licensing is preferable , the EVA societies propose collective licensing solutions such as those promoted by the MoU on out of commerce books could also be adopted for orphan images in books.

RECOMMENDATION 3: Professional Bodies representing Individual Image Authors

Recommendation 3.1 – third partner for IWC That the European Illustrators Forum, European Federation of Journalists and Pyramide (representing photographers) be invited to participate as the third partner in the IWC, acting as the contact point for their own member organisations and for the illustrators, photojournalists and photographers which are members of those organisations.

Recommendation 3.2 – Awareness That the three European organisations be provided with information, resources and funding by ARROW to increase awareness of ARROW, the development of the IWC within ARROW and to encourage the involvement of national organisations and individual Image Works Authors. Underlying that work should be an

improvement in awareness of the issues around orphan works and the objective of library digitisation projects. Any information to be made available in a clear, easy to understand and easy to disseminate form, noting that while the European representatives spoken to for this Feasibility Study were well aware of the issues and had a reasonable awareness of ARROW but commented that they found its website difficult to follow.

Recommendation 3.3 – bringing membership data together A project to be initiated and funded which would allow the three European professional bodies and their national member organisations to investigate the potential for bringing together data held on the three groups: illustrators, photojournalists and photographers, with a view to:-

a) establishing standardised and interlinking databases searchable by author name, including the updating of existing databases, to make such databases more comprehensive, ensure compatibility and potential for exchanging data while addressing and resolving issues relating to data protection, confidentiality of data and particularly for journalists, issues associated with press freedom and the technical measures needed to protect the integrity of such data.

b) identifying and inviting participation in, with links to, or possible endorsement of other databases, as trusted partners, such as those held for the issuing of press cards to photojournalists and commercial and non-commercial portfolio sites.

RECOMMENDATION 4: CEPIC Members

Recommendation 4.1 – staying in the loop on author-based developments While recognising that the present author-based process of ARROW is not ideal for the working processes of CEPIC and its members, it is recommended that CEPIC remains part of the IWC as proposed, participating in the author based search flow to the extent that it is willing to ensure it stays in the loop on author-based developments

Recommendation 4.2 - **manually enriched searches** That CEPIC works with ARROW and other members of the IWC to use and develop manually enriched data from the Pre-Process and ARROW search request, in the form of scans/pdfs/credit lists etc which can be requested from libraries to help in the development of that part of the ARROW IWC process for "Authors and Works which cannot be identified or rights located" utilising a simple author-based search resulting from a search carried out through the main ARROW workflow .

Recommendation 4.3 – Technical tools - That CEPIC works with ARROW and other members of the IWC to help develop technical tools in support of librarians' work providing description of the work and identification of the author.

Recommendation 4.4 – Image-based search process That through ARROW, and bringing in commercial partners able to contribute to technological solutions, CEPIC should oversee the development and testing of automated image based search process consisting of:-

a) for the short to medium term within the ARROW search process, a central point of access accessible by multiple picture agency databases

b) use of a combination of enhanced manual searches (thanks to access to information databases) and the potential of visual recognition software adapted to the specific needs of ARROW;

c) an exploration of the potential for building a hub which can fit into the ARROW process, either as part of the IWC or independently, and involving a registry or registries of works, linked to identifiers and thumbnails containing metadata.

Recommendation 4.5 Involvement of collecting societies and professional bodies CEPIC to be responsible for informing and involving Collecting Societies for visual works (see Rec. 2.6 above) and professional bodies representing individual authors (recognising that some individuals will wish to take up a technology based search option) in this work.

Recommendation 4.6 Linked Content Coalition and Rights Integration Data project. That work undertaken under the ARROW / IWC umbrella takes into account other ongoing and future projects in this field where CEPIC or other partners are active, with the aim to achieve consistency, in particular the EU supported Linked Content Coalition and RDI project or the work within the IPTC metadata photo working group.

Recommendation 4.7 – co-operation on photographs of artistic works CEPIC to consider working with EVA on an internal IWC information exchange project, that is, where the Image Works Author who is a member of the Collecting Society can be identified but where the owner of the rights in the photographic reproduction of the work are not known and vice

versa. There are only a limited number of picture agencies and collections in cultural establishments specialising in such material and a small scale project investigating and co-operating on this issue might prove fruitful in clearing more such rights.

Recommendation 4.8 – comfort for libraries CEPIC to produce for ARROW and for the comfort of libraries an agreed and authoritative statement and guidelines on the position regarding images for which it is no longer possible to confirm the original right holder but where rights are currently held by one or more picture agencies which is/are in a position to grant digitisation rights for their version of the image.

Recommendation 4.9– specialist image research At the point at which the pre-process is set up it is suggested the Picture editors and archivists with specialist rights clearance knowledge (and perhaps including other specialist rights managers in both picture agencies and collecting societies) should be consulted with a view to identifying forms of search or sources of information on images in books which have not yet been considered.

RECOMMENDATION 5: Libraries

Recommendation 5.1 – library records Libraries have indicated a willingness to improve their records as a result of the ARROW experience. Libraries to work with ARROW and the IWC to determine the extent to which they can improve their cataloguing systems, including bibliographic records, to incorporate complete information on Image Works in books (see Rec. 1.6 above). Suggested data sets appear in Chapter 2.2 point 9 which should be added to information already included in the request (see Chapter 3.1.2 Step 2). These to be further investigated before being finalised.

Recommendation 5.2 bibliographic standards for Image Works and Authors ARROW should investigate whether a group of large cultural institutions with a particular interest in Image Works might be encouraged to set bibliographic data standards on Image Works and Authors for use by all libraries and other cultural institutions (see note at Chapter 2.2.3).

Recommendation 5.3 – manual search Libraries to investigate the potential and cost of providing scans, .pdfs of Image Works and credit lists of information on Image Works and Authors for a) all books containing images which they wish to digitise and b) for provision on request by the IWC

Recommendation 5.4 – co-operation Future co-operation between IWC partners and libraries, e.g. case studies and testing for an ARROW process which incorporates Image Works must be based on real search requests instigated by libraries. It follows, therefore that libraries must have resources allocated for this level of co-operation and there must be willingness from within the library community to participate in the work.

Recommendation 5.5 – case studies Further case studies should be carried out, in which libraries are directly involved, to investigate the type of books most likely to be digitised, the categories or types of Image Works most likely to be requested and the practical purpose for which digitisation rights are being requested. This information is necessary for the re-assurance of Image Works Authors and their representatives.

Recommendation 5.6 – support for pre-process The complexity of the material involved in the examples already provided by libraries, results in the need for a "pre-process" (though this may serve other purposes) and is likely to demonstrate only the difficulties of identifying and locating Image Works Authors other than the potential. Simpler examples focusing on images in books are needed.

RECOMMENDATION 6: Publishers

Recommendation 6.1 – standardising credits in books To investigate whether publishers would be prepared to work with the IWC partners within ARROW to incorporate standardised presentation of information on Image Works and Authors into their publications to facilitate quick and easy extraction of data on Image Works and Authors for search and clearance procedures in the future.

Recommendation 6.2 – publishers' rights files An investigation to be carried out into whether publishers' "rights files" or information extracted from those files can be made more accessible for the purpose of identifying and locating rights holders in Image Works, including the format of such files.

RECOMMENDATION 7: FUTURE REGULATION AND POLICYMAKING

Recommendation 7.1 – Orphan Works With the adoption of the Orphan Works Directive in early October, ARROW and all its partners are encouraged to support improvements to related legislation and initiatives which would prevent or reduce the creation of orphan Image Works in the future.

It is essential that European and national legislators deal with issues which have resulted in the existence of orphans and which as a result of digital reproduction is leading to the creation of vast numbers of new orphan Images. The twin problems of lack of credits and stripping of metadata can be brought closer to resolution in three ways:-

- Stronger moral rights legislation and greater respect for moral rights;
- Simpler and cheaper enforcement measures to prevent routine stripping or overwriting of metadata;
- Industry accord and agreement on appropriate credits and respect for metadata within Image Works.

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IX. *OnLineArt, Report describing OLA and its relevance for ARROW, D6.2, Carola Streul, July 2012*

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D3.1 User requirements for ARROW deployment from the running ARROW PLUS project, Enrico Turrin, FEP March 2012

Jurisprudence

Bridgeman v Corel, http://museumscopyright.org.uk/resources/articles/bridgeman/ referring to the opinion prepared by Jonathan Rayner James QC for MCG

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Carola Streul, „OnLineArt" in Kunst, Recht und Geld, Festschrift für Gerhard Pfennig, 2011, S. 511ff.

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