DESIGNING A RIGHTS CLEARANCE DOCUMENTATION TOOL (RCDT) IN THE FRAMEWORK OF EODOPEN PROJECT

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The history of the EODOPEN project described in this article dates back to 2008, when the eBooks on Demand (EoD) initiative was launched. The essence of the EoD project is that if anyone from the participating libraries needs a book which is in the public domain, they can order a copy of it from any of the partner libraries, and, after digitization, the document will be made available to anyone electronically after the service fee is settled. Software developed during the EoD has been maintained and renewed by the project team over the years. EoD arrived into the second stage in 2019 by the establishment of the project titled eBooks on Demand – Network "EOD Open". Under the project, 15 libraries in Europe have been cooperating in order to build a common database and related services, including digitization of books and making them available to the large public. International partnership also involves the National Széchényi Library (NSZL). The main task of the NSZL – the leader of the Working Group 6 – is to design and develop the Rights Clearance Documentation Tool (RCDT). This simultaneously fits into the national library's own systems and takes into account the interoperability requirements of partner institutions.

Keywords: copyright clearance; eBooks on Demand; EODOPEN; public domain; out-of-commerce works; orphan works

EODOPEN PROJECT GOALS

Our libraries are one of the most important content providers in the knowledge society. It is in the common interest of users and collection owners to ensure access to cultural goods in the fullest and most free form possible. The tools of the digital world are a major step forward in this process.

However, all of this, in addition to the unparalleled opportunity, poses a number of challenges to libraries. Today, all libraries are aware that the relationship between collections and digital techniques has entered a new phase in which the most important issue is no longer that users have access to catalogues through digital communication. Rather, it is to make the content of the collections available through the Internet.

That is why the eBooks on Demand (EoD) initiative, launched in 2008, has become very popular. The essence of the EoD project is that if anyone from the participating libraries needs a book, they can order a copy of it and, after digitization, the document will be made available to them electronically after the service fee has been settled. Simultaneously with the completion of the service, an ever-expanding, international database was created, in which users have access to the holdings of libraries in digital form in a legally clear manner. To date, the service has been able to meet a large number of reader needs, but the fifteen libraries involved in the project have initiated the renewal and further development of an efficient system. In order to implement it, the second phase of eBooks on Demand was launched in 2019: the *eBooks-On-Demand-Network Opening Publications for European Netizens* project called "*EODOpen*". Participants aim to expand the range of content available and provide an easy-to-use interface for disadvantaged readers, as well as to develop software that provides effective support for rights management. This is exceptionally important, as libraries have long been preoccupied with the question of what to do with the significant amount of textual sources created in the 20th and 21st centuries that they are unable to digitize due to complex copyright regulations.

By publishing digitized and clarified volumes during the project, a further goal is to arouse interest of the 20th – 21st century cultural heritage, including "gray" and scientific literature, and the intensification of intercultural dialogue at the level of national, regional and local communities. To achieve this goal, the project will also involve user communities in the selection of content to be digitized, and also in the processes of digitization and dissemination.

A common portal will be set up to present the results of the project, providing the widest possible access to the digitized 20th – 21st century European literature. When creating the portal, the goal is to provide access for the blind and visually impaired. During the project, librarians and staff from other cultural sectors will be provided with resources to use them to acquire knowledge and competencies that will enable them to think in alternative service formats. Currently, formats that do not support all uses and users are predominantly used in the digitization of library items. One of the expected project outcomes is the provision of actual alternative formats for the blind and visually impaired and for mobile users. Adequate treatment of legal clarity issues is essential for the publication of digitized documents. Another priority of the project is to develop a technical infrastructure for librarians and other staff in the cultural sector to properly document legal clarification activities.

Achieving the above goals would not be possible without a very strictly organised project organisation, where seven working groups (hereinafter *WGs*) jointly perform well-thought-out and logically interdependent tasks.

ORGANISATIONAL STRUCTURE OF THE EODOPEN PROJECT

The EODOPEN project is based upon the partnerships and infrastructure that underpin the eBooks on Demand (EOD) Network. The duration of the project is four years. The consortium of 15 project partners from 11 European countries is led by the University of Innsbruck.

▶ National and University Library – Slovenia;
▶ Moravian Library – Czech Republic;
▶ University Greifswald – Germany;
▶ Vilnius University Library – Lithuania;
▶ University Library of Torun – Poland;
▶ Library of the Czech Academy of Sciences – Czech Republic;
▶ National Library of Portugal – Portugal;

- ▶ National Library of Estonia – Estonia;
- ▶ National Széchényi Library – Hungary;
- ▶ Slovak Center of Scientific and Technical Information – Slovakia;
- ▶ University Library of Regensburg – Germany;
- ▶ National Library of Estonia – Estonia;
- ▶ Research Library in Olomouc – Czech Republic;
- ▶ National Library of Sweden – Sweden.

Within the project organisation, the participating partners form working groups. Project tasks can be divided into four major areas. One or more working groups are responsible for the tasks of the four major areas.

PROJECT TASKS

Project management tasks are the first such area to be performed by the *WG 1 – Project and Consortium Management*. Its responsibilities include liaising with project partners and the EACEA (Education, Audiovisual, and Culture Executive Agency); monitoring the progress of the budget and the work program and organising and conducting meetings of the various project groups; and preparing project reports based on all this.

Communication and dissemination is the second major area covered by the *WG 2 – Audience Development, Communication and Dissemination*. This working group updates and evaluates the communication and audience development plan; facilitates dialogue on the selection of materials to be digitized; and promotes digitized content and project results, and disseminates best practices in rights management.

Quality assessment and quality control are an integral part of any well-functioning project. In the EODOPEN project, this is the task of the *WG 3 – Evaluation and Quality Assurance*. Quality assurance is present in all phases of the project and includes the finalization of the evaluation plan; and carrying out an evaluation at the end of the project.

The fourth area is the active implementation of the professional content of the project (cultural activities, publications, studies, research, etc.). This task is performed jointly by four working groups:

The *WG 4 – Delivery Formats of Digitized Material for Special Needs* develops guidelines and recommendations for display formats and evaluate related

solutions, as well as compile training materials on display formats for library staff.

The *WG 5 – Rights Clearance Assessment and Support* creates knowledge bases for rights clearance and organises preparatory and practical workshops to develop best practices for legal clearance.

The *WG 6 – Rights Clearance Documentation Tool* sets out the technical infrastructure requirements for the legally proper documentation of legal clearance activities; and sets out the requirements for the implementation of the rights management documentation tool in other workflows and institutional/organisational environments related to legal clarification; then performs device testing at the end of development.

The *WG 7 – Digitizing and Making Available: Common Portal* sets out the requirements for a common portal, based on which it is their task to create and make the portal sustainable.

The National Széchényi Library is the head of the *WG 6*. In the following, we present their work and the framework factors that determine it in more detail.

COPYRIGHT CLEARANCE AND COPYRIGHT STATUSES

Copyright clearance is a process for identifying copyright status of collection resources in order to provide legal access to these materials. The process can be semi-automated, but in most cases human intervention can hardly be avoided (e.g. due to the lack of relevant data in the database). Also, copyright clearance can cover managing access to digital materials, i.e. licencing management, as well.

As for copyright statuses, there are quite many of them. At our recommendation that we compiled for library partners running mass digitization projects, we identified more than 20 different copyright statuses which can be registered as a part of bibliographic data in the MARC 21 field 540. We suggest registering rights information as controlled value where it is possible, values can be taken from the following vocabularies:

- ▶ https://creativecommons.org/
- ▶ http://rightsstatements.org/

Including rights information into records in a normalized way is quite a new initiative, which is

proved by the fact that the one and only ISO publication on the topic, which is actually a technical report, was released just in 2020, under the title *ISO/ TR 22038:2020 Information and Documentation — Description and Presentation of Rights Information.* However, it would be good to see, from a copyright aspect, what titles in libraries are the most circulated. To tell the truth, we already have some data: in a presentation[1], delivered in the IFLA World Library and Information Congress in 2021, Kyle K. Courtney from Harvard University stated that according to a survey U.S. libraries circulate approximately 2 billion (1,947,600,600) copyrighted items a year.

If we combine the aspects of copyright protection and commercial availability, we can specify three large sets of works.

In the public domain (1) you mainly find works with expired term of protection of copyright. So, these are free to use, although there are cases when a memorial institute does not provide a free of charge access to them, or, much more typically, it provides free access only to public domain materials of quite a low resolution. In any case, many of public domain resources are culturally valued materials, most of the books for required reading belong here, pupils and students might have easy access to these ones, but, at the same time, we can reasonably assume that mainstream works are typically not in the public domain.

Copyrighted materials can be further categorized according to commercial availability as in-commerce (2) or out-of-commerce (3). Orphan works are a subset of the latter one. And, of course, digital contents which have been made available under alternative models (such as Open Access and Creative Commons) are also needed to be mentioned here.

It can be asserted that works in the public domain are the easiest to identify, however it is not so trivial at all. Many cases data on authors is not available, information on illustrator or the writer of the preface is missing from the catalogue description, so automated filtering is not an option. A rule of thumb might come in handy, such as assuming that all books published more than 110 years ago belong to the public domain.

As for copyrighted materials, libraries and other cultural heritage institutions can benefit from exceptions and limitations provided by various copyright laws in order to create a balance between the interest of right holders and the interest of society. These exceptions and limitations generally permit you to digitize specific materials for specific purposes, for

instance in the Hungarian Copyright Law you find that public libraries and other institutions "qualifying as public collections shall be allowed to make copies of works if these do not serve, either directly or indirectly, the purpose of earning or increasing one's income", which is a typical wording when exceptions and limitations are concerned. Copying by libraries might serve the purpose of archiving, for example.[2]

Hungarian Copyright Law even enables libraries to provide free access to digitized copies by displaying them "freely on the screens of dedicated terminals on the premises of such establishments to certain individual members of the public for the purposes of scientific research or private study", and so on.[3]

We have to admit that "displaying digitized copies freely on the screens of dedicated terminals on the premises of the library" is something that definitely does not meet the usual interests and demands of our patrons in the Digital Age. It was realized by stakeholders as well, and the other exceptions and limitations focus on specific subsets of materials protected by copyright, mainly on those of lower market value.

SUPPORTING DILIGENT SEARCH

At the outset, Rights Clearance Documentation Tool (RCDT) was planned to support diligent search which needs to be conducted in order to identify orphan works. What is diligent search about?

The European Parliament and the Council adopted the directive 2012/28/EU on certain permitted uses of orphan works on the 25th October 2012. As it is defined in the document (Article 9), "Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 29th October 2014". In Hungary, a Government Decree – 138/2014 (IV. 30) – was created and brought into force for the detailed regulation of the use of orphan works.

A work shall be considered an orphan work if none of the right holders in that work is identified or, even if one or more of them are identified, none is located despite a diligent search for the right holders having been carried out by the beneficiary organisation. If a work is identified as an orphan one, the

library (and other beneficiary institution) may make it freely accessible to the public in such a manner that the members of the public can individually choose the place and time of access; it also may freely reproduce the orphan work in its collection or archives for the purposes of digitization, ensuring certain access, indexing, cataloguing, preserving or restoring it.[4]

As a minimal requirement for diligent search, a group of sources is listed in the Annex of the directive.[5]

So, at the beginning, copyright clearance procedure was designed according to the list provided by the directive and relevant Hungarian laws. Then a questionnaire was sent to project partners to inquire about their workflows and identify requirements for RCDT, our outlined workflow was attached to serve as a guideline in responding. Beyond workflow partners were asked about the legislative background of rights clearance and the data models considered to be implemented when developing RCDT. We needed to clarify as well if the system to be designed should include licence management with its full documentation (including contracts and e-mails with right holders, etc.) and registering Creative Commons licences and Open Access declarations too.

COPYRIGHT CLEARANCE WORKFLOW RECONSIDERED

Responses provided by our project partners have been analysed and integrated into the common workflow of copyright clearance, which is an important component of the specification under construction.

Partners mainly agreed on the metadata elements and value vocabularies to use in the documentation tool.

In the questionnaire we asked partners about the existence and feasibility of Books In Print databases in the relevant countries and we got to know that it is not a typical service in the region covered by project members, however, existence and usability (e.g. queryability through standard interfaces) of Books in Print databases involving access data on in-commerce works might become crucial as so called DSM directive came into force. The full title of the document is *Directive (EU) 2019/790 of the European Parliament*
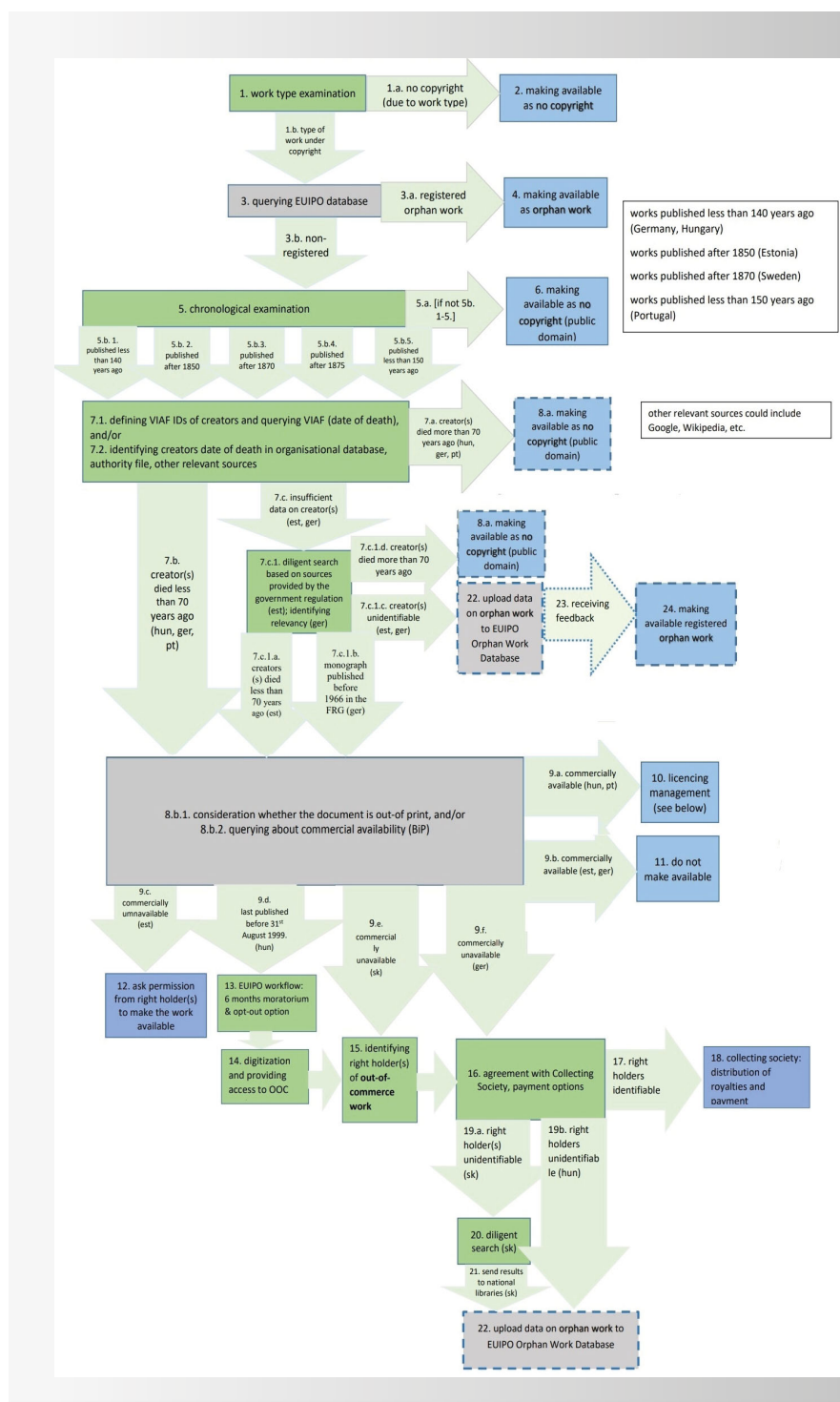
Copyright clearance workflow adjusted after the directive coming into force

and of the Council of 17th April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC[6] (hereinafter the DSM Directive). An adoption of the Directive by Member States could make copyright clearance procedures much simpler[7].

At the first period of the project, we were not aware of what requirements the law would specify for identification of an out-of-commerce work, but it was anticipated that the requirements would be much simpler than those applied for orphan works. The original goal of EODOPEN had been to support workflow for diligent search which needs to be conducted in order to identify a work as an orphan one; this goal seemed to require reconsideration. To see the possible consequences of this reconsideration, we should have a look at the impact of DSM Directive on copyright clearance workflows already applied in libraries.

In the Hungarian adoption of the directive there is a cut-off date, which means that all works <u>last</u> published before 31st August 1999 can be assumed to be OOC. It implies that – as a part of the copyright clearance workflow – one has to check if the work was published again in a later period, i.e. after the cut-off date. If it was not, it needs to be registered in EUIPO database, and six months after its registration as out-of-commerce work it will be allowed to be made digitally available. In the meantime, right holders have the possibility to exclude their works from the licensing mechanism set out in the Directive without any consequences, i.e. without their work being made available by CHIs.

SPECIAL CRITERIA OF MANAGING COPYRIGHT DATA

Managing copyright data has some special aspects which should not be ignored when designing a tool such as RCDT. To illustrate the issue, we need to use concepts laid down by FRBR/IFLA LRM models of IFLA.

Copyright belongs to the intellectual/creative content, i.e. Work/Expression entity, while traditional bibliographic databases focus on the descriptions of particular editions, books, i.e. Manifestations. We are developing a system where information needs to be organised in a way to
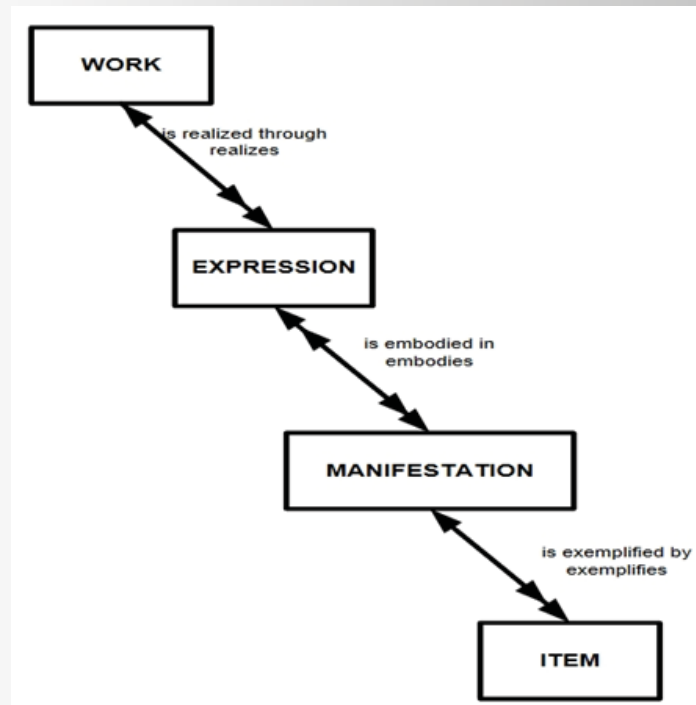

Relationships between *Work, Expression, Manifestation,* and *Item*[8]

support separation of different entity levels in the bibliographic dataset. Another aspect we need keep in mind is that books contain various works: preface, illustrations, in many cases they are collections of different works, might be translated or transformed from others, and all of these have different "life cycles", and these facts are not reflected in our old-fashioned bibliographic databases, either.

Last but not least, we need to mention that RCDT needs to be flexible enough, so that it can meet the various requirements defined by our partners.

FINAL NOTES

And, finally, it is worth to mention that functionality of RCDT will be mainly effected by regulations such as those included in the DSM Directive and its adopting laws, however there is another solution to make digitized, copyrighted library materials accessible, and it is implied by the judgement of the European Court of Justice In Case C-174/15. It enables e-lending digitized books for European libraries in a model which is similar to the so-called controlled digital lending (CDL) implemented in North America. We shall see down the road if it serves as a feasible solution.
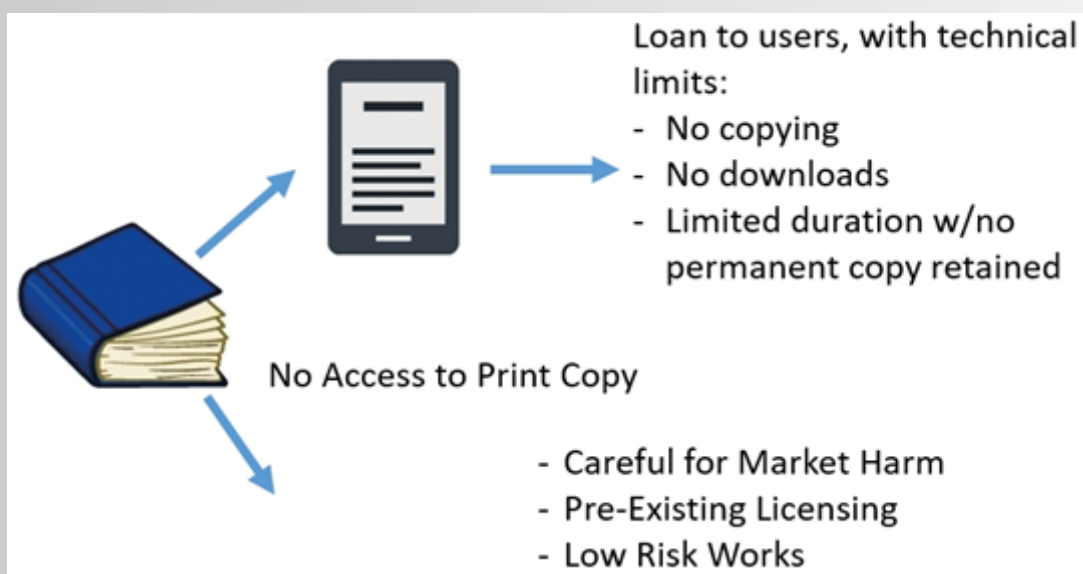
The CDL Methodology[9]
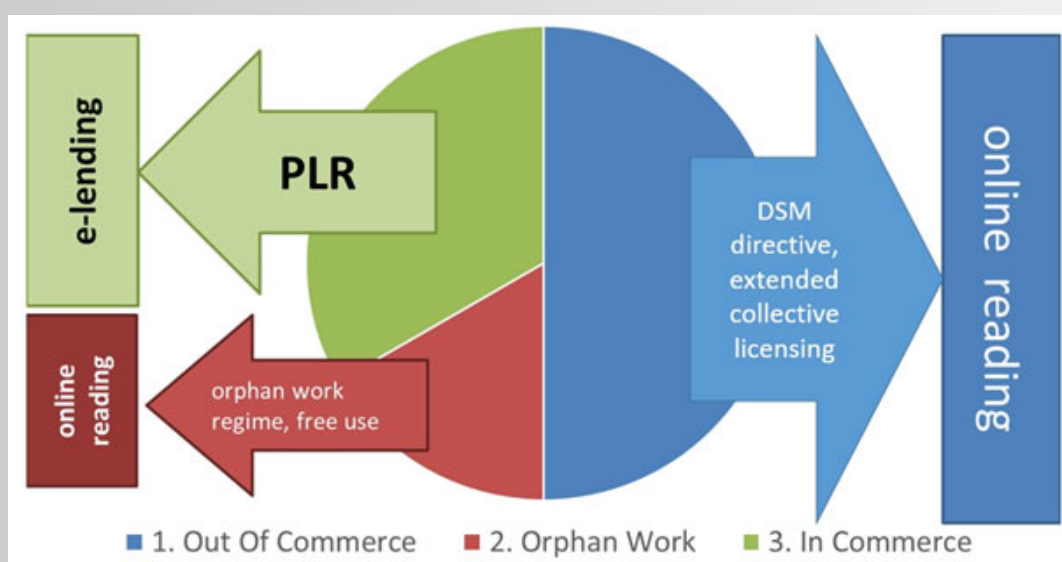
The simple spectrum of future library services regarding copyrighted library materials

NOTES

[1] COURTNEY, Kyle K.. *Expanding Global Digital Access through Controlled Digital Lending*. In: IFLA WLIC 2021, 17th August 2021 [online lecture]

[2] Act LXXVI of 1999 on copyright: „Section 35 (4) Public libraries, educational establishments [section 33(4)], museums, archives and video or audio archives qualifying as public collections shall be allowed to make copies of works if these do not serve, either directly or indirectly, the purpose of earning or increasing one's income and

a) the copy is necessary for scientific research or archiving,

b) the copy is made for public library supply or for a use specified in section 38(5),

c) the copy is made of a minor part of a published work, or of a newspaper or periodical article, for internal institutional purposes …"

[Accessed: 22nd September 2021]. Available at:

https://www.hipo.gov.hu/sites/default/files/szjt_lxxvi_1999_en_rev_1.pdf

3   Act LXXVI of 1999 on copyright: "Section 38 (5) In the absence of an agreement on use to the contrary, works forming part of the collection of publicly accessible libraries, educational institutions [section 33(4)], museums and archives, as well as picture or audio archives qualifying as public collections, may be displayed freely on the screens of dedicated terminals on the premises of such establishments to certain individual members of the public for the purposes of scientific research or private study, and, to this end, such works may be freely communicated, including making them available to such members of the public, provided that such a use is carried out in a way and on conditions as provided for in a separate law and is not aimed, either directly or indirectly, at earning or increasing income." [Accessed: 22nd September 2021]. Available at:

https://www.hipo.gov.hu/sites/default/files/szjt_lxxvi_1999_en_rev_1.pdf

4   Act LXXVI of 1999 on copyright: "Section 41/F (1) The institutions specified under section 38(5) and the public media service radio and television organisations (hereinafter jointly "beneficiary institutions"), for performing their tasks of public interest,

a) may make the orphan works in their collection or archives freely accessible to the public in such a manner that the members of the public can individually choose the place and time of access,

b) may freely reproduce the orphan works in their collection or archives for the purposes of digitization, ensuring access pursuant to point a), indexing, cataloguing, preserving or restoring them." [Accessed: 22nd September 2021]. Available at:

https://www.hipo.gov.hu/sites/default/files/szjt_lxxvi_1999_en_rev_1.pdf

5   Government Decree No. 138/2014. (IV.30.), Section 2 (2)

6   Directive (EU) 2019/790 of the European Parliament and of the Council of 17th April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC. [Accessed: 22nd September 2021]. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019L0790

7   The DSM Directive, Article 8, 1.: "Member States shall provide that a collective management organisation, in accordance with its mandates from right holders, may conclude a non-exclusive licence for non-commercial purposes with a cultural heritage institution for the reproduction, distribution, communication to the public or making available to the public of out-of-commerce works or other subject matter that are permanently in the collection of the institution, irrespective of whether all right holders covered by the licence have mandated the collective management organisation …"

8   RIVA, Pat, et al. *IFLA Library Reference Model: A Conceptual Model for Bibliographic Information.* International Federation of Library Associations and Institutions, 2017, p. 83. [Accessed: 23rd September 2021]. Available at:

https://www.ifla.org/wp-content/uploads/2019/05/assets/cataloguing/frbr-lrm/ifla-lrm-august-2017_rev201712.pdf

9   Ref. 1