

IPR and Business Models for Performing Arts Content

Best Practice Recommendations



Authors:

Netherlands Institute for Sound and Vision, the Netherlands:

Lotte Belice Baltussen, Maarten Brinkerink, Johan Oomen, Wietske van den Heuvel

University of Amsterdam, Theatre Studies:

Josefien Schuurman

University of Cambridge, MAA:

Sudeshna Guha

University of Florence,

Paolo Nesi, Pierfrancesco Bellini, Michela Paolucci

Editor:

Lotte Belice Baltussen

Title:

IPR and Business Models for Performing Arts Content. Best Practice Recommendations

ECLAP DE5.2.3 WG B, version 1.2 13 June 2013

Web version: <http://www.eclap.eu/136200>



ECLAP Best Practice Network

<http://www.eclap.eu/bpn>

This work is licensed under a Creative Commons

Attribution Non-Commercial Share Alike Licence (CC-BY-NC-SA)

<http://creativecommons.org/licenses/by-nc-sa/3.0/>



Table of contents

1. EXECUTIVE SUMMARY	4
1.1. A THREE-STEP MODEL FOR CLEARING RIGHTS OF PERFORMING ARTS CONTENT	4
1.2. BUSINESS MODELS, REVENUE MODELS, AND OVERALL SUSTAINABILITY PLANNING	5
2. INTRODUCTION	7
2.1. WHAT TO EXPECT FROM THIS REPORT	7
2.2. USERS AND STAKEHOLDERS – HOW TO READ THIS REPORT	7
2.2.1. Novice	8
2.2.2. Advanced	8
2.2.3. Expert	9
2.3. METHODOLOGY	9
2.3.1. Desk research	9
2.3.2. Expert interviews	9
2.3.3. Survey	10
2.3.4. Face-to-face meetings	10
2.4. CURRENT TRENDS	11
2.4.1. A new Renaissance	11
2.4.2. Exemplary recent developments in the UK	12
2.4.3. Need for change	12
2.4.4. Public data as open data	12
2.4.5. Europeana and CC0 licensing	13
2.4.6. IPR Management for Conditional access	13
2.4.7. Concluding remarks on trends	15
3. PART I - IPR CLEARANCE: A THREE-STEP APPROACH RECOMMENDATIONS FOR PERFORMING ARTS INSTITUTIONS	15
3.1. OBJECTIVES	15
3.2. STEP 1. WHAT KIND OF ACCESS DOES MY INSTITUTION WANTS TO PROVIDE?	18
3.3. STEP 2. WHO ARE THE RIGHTS HOLDERS?	20
3.3.1. The institution holds all the rights	20
3.3.2. The institution holds some rights	20
3.3.3. The institution holds none of the rights	21
3.3.4. The work is out of copyright	21
3.3.5. Orphan works - rights situation is unknown	22
3.3.6. Out-of-print works	22
3.4. STEP 3. WHICH METHODS CAN I USE TO CLEAR THE RIGHTS?	23
3.4.1. Individual licensing agreements	24
3.4.2. Collective agreements through Collective Management Organisations (CMOs)	24
3.4.3. Extended collective license	24
3.4.4. Open licenses	25
3.4.5. Diligent search	26
3.4.6. Public domain mark	27
4. PART II - BEST PRACTICE RECOMMENDATION - BUSINESS MODELS AND SUSTAINABILITY	29
4.1. INTRODUCING THE BUSINESS MODEL CANVAS	29

4.1.1. Customer segments	30
4.1.2. Value proposition	30
4.1.3. Channels	30
4.1.4. Customer relationships	30
4.1.5. Revenue streams	31
4.1.6. Key resources	31
4.1.7. Key activities	31
4.1.8. Key partnerships	32
4.1.9. Cost structure	32
4.2. TYPES OF REVENUE MODELS FOR PERFORMING ARTS CONTENT	32
4.2.1. Free / Freemium	32
4.2.2. Licensing	33
4.2.3. Funding	34
4.2.4. Sponsoring	34
4.2.5. Public/private partnerships	34
4.2.6. Advertising	35
4.2.7. Pay-per-download	35
4.2.8. Subscription	35
4.2.9. Donations	36
4.2.10. Physical product sales	36
4.3. CREATING A SUSTAINABLE BUSINESS PLAN	38
5. CONCLUDING REMARKS	40
6. ANNEXES	41
6.1. UNIVERSITY OF AMSTERDAM CASE STUDY: OPENING UP A DIGITAL THEATRE ARCHIVE WITH MANY RIGHTS HOLDERS	41
6.2. UNIVERSITY OF CAMBRIDGE CASE STUDY: TO HAVE IS NOT TO HOLD – BEING SENSITIVE TO TRADITIONAL CULTURAL EXPRESSIONS	46
6.3. SAMPLE LETTER FOR RIGHTS CLEARANCE	48
6.4. GLOSSARY	50
6.5. CONTRIBUTORS	51
6.6. OBJECTIVES AND PRIORITIES OF WORKING GROUP B	53
6.7. SURVEY	53
6.8. WORKSHOPS	54
6.9. EXPERT INTERVIEW SCRIPT	55
BIBLIOGRAPHY	57

1. Executive Summary

In the cultural heritage field, performing arts institutions are lagging behind in providing online access to their rich collections. [Pool & Ho 2011; Bailey & Langley 2012; Hauttekeete & Evens 2009] This means that educators, students, researchers, performing arts lovers and performers themselves cannot access a representative portions their favourite scripts, videos of theatre plays, pictures dance performances and orchestra recordings. When online access is provided, this is often done within the scope of a specific project. When the funding period ends, these project websites are often no longer maintained and become outdated, because a clear sustainability plan is missing.

Because the first step towards a greater online presence of performing arts content lies with collection holders, this deliverable is aimed at institutions – large and small – that have digitised at least a part of their holdings. A distinction is made between novice, advanced and expert readers and a reading guide is provided for each type of reader.

This report is however specifically aimed at those working in institutions with digital performing arts collections that need guidelines for:

- the IPR issues at play when they want to provide online access to these holdings.
- sustainability planning beyond the project period.

These Best Practice guidelines in this report are focussed on answering the following questions:

- What are Best Practices for clearing IPR of performing arts content?
- Which revenue models are suitable for performing arts organisations based on the kind of access to cultural objects?
- Which steps should organisations follow when they are planning for sustainability?

In this report, content is defined as: the digital object (audio, video, image, text) combined with the information about this object (metadata). Furthermore, it is assumed that the content provider fully owns the rights to the metadata. This report is based on the contribution and feedback collected from both within the ECLAP consortium as well as from external experts and institutions, through interviews, workshops and surveys. A complete overview of this input and these experts is given in sections 2.3. Methodology and Annexes **6.7. Survey**, **6.8. Workshops** and **6.9. Expert interview script**.

1.1. A three-step model for clearing rights of performing arts content

The three-step guide for rights clearance is:

Step 1: What kind of access does my institution want to provide to the content?

You need have a clear idea about what you want to achieve by clearing rights. Does your institution only need to clear rights for one project the coming years, or would it serve you better to invest in developing a more generic agreement that makes it possible to show content online for other projects and purposes as well? Or even more ambitious: does your institution want to make content available for sharing and (re)use? The **first Best Practice**

recommendation is: the more open and generic you can clear the rights, the better. Of course, this will result in higher costs in man-hours and money in the short term. However, in the long run, making these open and generic agreements will greatly benefit your organisation, since you will not have to go through the same lengthy rights clearance process again and again. **Secondly**, even though it might be easier to persuade rights holders to say ‘yes’ to putting their dance pictures, musical recordings, or theatre scripts if you only allow educational users with a protected login, this can be frustrating for performing arts lovers who do not have the right access credentials.

Step 2: Who are the rights holders of the content?

When you've determined the permissions you need, it is important to find out who the rights holders are, if any. The rights status can be as follows:

1. The institution holds all the rights
2. The institution holds some of the rights
3. (All) rights belong to third parties
4. The work is out of copyright and thus falls in the Public Domain
5. The rights situation is unknown
6. The work is out-of-print

Performers, directors, choreographers often entrust institutions to take care of their works, but very often this does not entail transferring (most of) the rights. Complex layers of rights are present especially in audiovisual productions, where rights can lie with the director, composer of the music, author of the screenplay, but also with producers and performers. This will mean a large investing in time and effort has to be made in clearing rights. The same can be the same for orphan works and out-of-print works, for which a large-scale diligent search is necessary. Only in few cases, a work is in the Public Domain, or the institution itself has acquired the rights. An important recommendation is that **once the rights status has been determined**, it is vital that this information is **registered in your institution's database**.

Step 3: Which methods can I use to clear the rights of the content?

Rights can be cleared with third parties by striking individual or collective agreements, but also by persuading them to opt for open licenses. In cases where your organisation is the rights holder, providing access is not an issue. This is different for orphan works and out-of-print works, for which a diligent search needs to be done first to find rights holder. If they are not found, it can be a risk to then still provide online access. The Best Practice recommendations here are to **register the agreements** made; this is instrumental for keeping a central, clear overview of what can and cannot be done with this content not only for current, but also for future projects. If your organisation is the exclusive rights holder of content, **choose open licenses**. The choice depends on a well-formulated cost-benefit analysis and the willingness of the management to ‘open up’. If a work falls in the Public Domain, **use the Public Domain Mark to make this explicit**.

1.2. Business models, revenue models, and overall sustainability planning

A business model forms the basis for determining how value is created. One model that is used frequently in the cultural heritage and public sector³¹ is the Business Model Canvas developed by Alex Osterwalder and Yves Pigneur. Their definition of a business model is:

“[It] describes the rationale of how an organization creates, delivers, and captures value.” (Osterwalder & Pigneur, 2010, p. 14). The Business Model Canvas consists of nine building blocks, such as Value Proposition, Revenue Streams and Customer Segments, and puts the end user(s) at the core. Furthermore, revenue models are a crucial part of a business model. Ten of the most salient revenue models in the cultural heritage sector are discussed, such as Free/Freemium, Licensing and Public/Private Partnerships. These are used by inspirational projects and institutions like The Space, Institut National de l’Audiovisuel (INA) and Cinecittá Luce / Google Cultural Institute respectively.

A solid business plan does not only focus on possible business and revenue models for current projects and services but also contains a sustainability plan. This is necessary because the risk of only planning ahead for the period of a project is running is that it will quickly be discontinued once this period ends. The following four recommendations for sustainability planning are made:

- **Define metrics to measure revenue:** Metrics can demonstrate the success of a business. By regularly measuring aspects like revenue, amounts of views, reuse of data etc. it is possible to adjust and to evaluate it. Also, **involve creators and performers** in establishing metrics.
- **User studies: Users** need to be **at the core** of new business models. The needs of users determine the kind of access that is required. **Regular user research** ensures a better access to collections.
- **Diverse revenue streams:** Merely focussing on acquiring funding and hoping that this will be enough to sustain your project or institution will no longer work. A key factor is moving to **diverse revenue streams**, either in-kind or financially, or **pooling together** with other institutions for renting server space for example
- **Organisational support:** a project cannot be sustainable if there is no internal support for it from within the organisation itself. Before starting with a project, it is key to check with the Management Board and others that determine the multi-year plans of the organisation if there is a sufficient interest in carrying out the project, even when the funding period is over.

2. Introduction

2.1. What to expect from this report

In the cultural heritage field, performing arts institutions are lagging behind in providing online access to their rich collections. [Pool & Ho 2011; Bailey & Langley 2012; Hauttekeete & Evens 2009]. This means that educators, students, researchers, performing arts lovers and performers themselves cannot access a representative portions their favourite scripts, videos of theatre plays, pictures dance performances and orchestra recordings. When online access is provided, this is often done within the scope of a specific project. When the funding period ends, these project websites are often no longer maintained and become outdated, because a clear sustainability plan is missing.

To help performing arts organisations in providing online access to content, this report focus on Best Practice recommendations for two general topics for:

- clearing IPR for performing arts content.
- an overview of business and revenue models for digital performing arts content and consequent best practice recommendations regarding sustainability.

Since examples of best practices of these revenue models are scarce in the performing arts, inspiration will also be sought in more general examples of the broader cultural heritage domain that include access to research information and documents as general aspect of culture since they are used as a sources for educational purpose.

A reading guide for this report can be found below, which is followed by a section on methodology. After this, the current trends in IPR and business model development are discussed. Then the two main Best Practice recommendations sections follow that contain [I] a three-step guide to clearing rights, and [II] sustainability planning recommendations respectively. Each subsection is concluded by a Best Practice summary. Finally, the future work and conclusions are discussed. For those interested in a larger overview of the topics at hand, it is recommended that they read the annexes and the first and second versions of this report (DE5.2.1, DE5.2.2¹).

Please note that this report is not written to serve as legal advice. In order to obtain legal certainty of the rights status of a work or for advice on how to best proceed with clearing rights, please contact a legal professional.

¹ <http://www.eclap.eu/4359>, <http://www.eclap.eu/115230>

2.2. Users and Stakeholders – How to read this Report

The ECLAP project aims to make performing arts heritage available online for three kinds of user groups: education and research, leisure and tourism, cultural heritage professionals.

This report is however specifically aimed at those working in institutions with digital performing arts collections that need guidelines for:

- the IPR issues at play when they want to provide online access to these holdings.
- sustainability planning beyond the project period.

This report is also of interest for cultural heritage institutions that are also making the transition to (more and broader) online access. The reason for this is that although the focus of the Best Practice guidelines in this report lies on performing arts, IPR legislation does not differ that much for cultural content in general, unless explicitly stated otherwise. So, although the guidelines might sometimes appear generic, we give as many performing arts-specific examples and tips as possible. What this field is a clear and understandable transfer of knowledge concerning IPR and IPR clearance based on existing information, not a re-invented wheel. This also goes for the existing literature and cases related to sustainability planning.

We have not made a distinction between the size of institutions, since although it can be expected that smaller organisations have less knowledge on or experienced with IPR and business models, this has turned out to not to be the case. Instead, we have opted to provide guidance based on the differences of the experience levels of those reading this report: novice, advanced and expert.

2.2.1. Novice

You are a professional working at a performing arts institution that has just begun or is about to start making cultural objects available online. They have little or no experience in clearing rights or business model development and they will benefit highly from practical guidelines. They are advised to read this entire report, and to also delve into the recommended literature and case studies provided.

2.2.2. Advanced

You already have experience in making performing arts content available online. You also have at least a basic knowledge of IPR and have some experience in business model development, but your organisation does not yet have a fully structured approach towards clearing rights or creating new business models. You have a need for an overview of examples and best practices to extend their existing knowledge. You can thus skip the section 2.3. Methodology and 2.4. Current Trends and go straight to Section 3. Part I - IPR Clearance: a three-step approach Recommendations for performing arts institutions (p. 15). You are advised to look up the recommended literature and case studies you have not heard of before.

2.2.3. Expert

If you are an expert, you are highly experienced in the field of IPR and business model development. The guidelines will mainly serve as a quick referral guide that might contain some new insights. More importantly for the performing arts field, you might be able to contribute to improving the guidelines in this report with your experience. You will be able to determine which sections might be interesting for you by picking and choosing from the headers in the Table of Contents, or by looking at the visualisations of the Best Practice guidelines on p. 17 and p. 37.

2.3. Methodology

The Best Practice guidelines in this report are focussed on answering the following questions:

- What are Best Practices for clearing IPR of performing arts content?
- Are there differences in IPR legislation for certain user groups, in particular education?
- Which revenue models are suitable for performing arts organisations based on the kind of access to cultural objects?
- Which steps should organisations follow when they are planning for sustainability?

The guidelines are accompanied by examples relevant projects and literature from the performing arts and the cultural heritage field in general. The guidelines were established following a variety of (mainly qualitative) research methods:

- Desk research
- Expert interview
- Survey
- Lessons learned from face-to-face ECLAP meetings

2.3.1. Desk research

Many reports and case studies on copyright and related rights, IPR clearance, sustainability models and business planning were read to start off the research for this report. It became clear very quickly that there are not that many of these out there related specifically to performing arts issues. The most important and relevant literature is highlighted throughout this report, the complete list can be found in the Bibliography (p. 57).

2.3.2. Expert interviews

After the desk research, experts in the field of IPR and sustainability planning were interviewed to gather in-depth and case-based Best Practice recommendations. These 1-hour interviews were held in June 2012 with five experts with knowledge on one or even of the topics. The set-up of the interviews can be found in Annex 6.9. Expert interview script and the experts in section 6.5. Contributors. Throughout the main text of this report, the recommendations by experts are specified.

2.3.3. Survey

In May-June 2012 all three ECLAP Working Groups held a survey. There were 30 questions per working group, and some general questions. There were 14 responses to the WG-B part of the survey, out of a total of 123 responses (11%). Only 9 people completed the majority of the questions in the WG-B part, 8 people completed all questions. Three respondents were ECLAP partners. The survey outcomes thus serve as qualitative and not quantitative input for this deliverable. A wide range of institutions responded to the survey, from a musical theatre in Prague to a Canadian Performing Arts Festival, to universities with performing arts collections. The set-up and outcomes of the survey can be found in Annex **6.7. Survey**.

In the 2012 and 2013, this information have been updated with the outcomes of the workshops and face to face meetings.

2.3.4. Face-to-face meetings

In total, four ECLAP events have been held in which the participants were asked to provide input on the work done by WG-B:

Date	Place	Activity	Short description
9-10 June 2011	Brussels	ECLAP 2011 Workshops: Performing Arts Digital Collections for the New Millennium.	Four plenary presentations on IPR issues for performing arts content, and a WG-B workshop
20 October 2011	Rome	Second ECLAP Event 2011: Performing Arts Digital Collections: ECLAP. Opportunities, Advantages, Experiences, with the participation of Nobel Laureate Dario Fo & Franca Rame. Sapienza, University of Rome, Rome, Italy	Presentation of all three ECLAP Working Groups to event attendees
7-9 May 2012	Florence	ECLAP 2012 Conference: Information Technologies for Performing Arts, Media Access and Entertainment http://www.eclap.eu/65281	Two keynotes on IPR and business models for performing arts content, WG-B workshop New Business Models in the CH Domain
14 November 2012	Ljubljana	ECLAP Workshop Stage heritage at your fingertips	WG-B workshop on the three-step method for clearing rights
10 April 2013	Porto	ECLAP 2013: 2nd International Conference on Information Technologies for Performing Arts, Media Access and Entertainment http://www.eclap.eu/113965	WG-B discussion on rights clearance and missing elements from current clearing method advice

The first meeting in 2011 established the scope and roadmap for year one of ECLAP: provide an overview of the IPR landscape for the performing arts world. During the first ECLAP conference, a workshop concerning business models in the cultural heritage domain was

held. Finally, in late 2012, the first version of the three-step guide to clearing rights for performing arts collection was presented at a public ECLAP event in Ljubljana, in which attendees both from inside and outside the ECLAP consortium gave input and practical insights into their own rights clearance strategies. The updated version of this guide was presented in a discussion session at the ECLAP 2013 conference <http://www.eclap.eu/113965>, in which 70+ attendees (scholars, performing arts students, researchers, ECLAP partners) provided additional feedback, which has been incorporated in this last version of the WG-B Best Practice deliverable. See Annex 6.8. Workshops for an in-depth overview.

2.4. Current Trends

In general, looking at the trends and development in IPR and business model development, there is a course towards openness from governments, policy makers and large cultural heritage projects like Europeana. Cultural heritage organisations are stimulated and in some cases even obliged to provide their data with open licences.

Although harmonisation of international IPR legislation is still in development and copyright is still very much a matter of national laws, there have been calls to change this, especially with regards to providing online access to heritage and fostering economic growth. Neelie Kroes, the European Commissioner for Digital Agenda recently announced this need for change in no uncertain terms via Twitter:



Figure 3: Tweet by Neelie Kroes d.d. 7 June 2011

2.4.1. A new Renaissance

A major influence in current developments is the outcome of the first report by the reflection group “Comité des Sages”, which was set up in April 2010 by Neelie Kroes, and the European Commissioner in charge for Education and Culture, Androulla Vassiliou. The main task of this committee is to “make recommendations to the European Commission, European cultural institutions and any stakeholders, on ways and means to make Europe’s cultural heritage and creativity available on the Internet and to preserve it for future generations.” [website Comité des Sages]

At the beginning of 2011 they published their first report called *New Renaissance* in which they reflected on issues regarding online access Europe’s cultural heritage. A complicated IPR situation in legislation on national and European level is one of them, a reforming IPR to reach the goal of providing this access is another. “When it comes to our common cultural heritage, there is no bigger challenge, there is no more urgent question than to secure the **access** of current and future generations to this heritage.” [Niggeman, Decker & Lévy, 2011, p. 9, emphasis added]. The focus of *New Renaissance* lies on orphan works and out of print works, and developing methods and practices to be able to provide access to them.

2.4.2. Exemplary recent developments in the UK

Another important report that was published in 2011 is *Digital Opportunity. A Review of Intellectual Property and Growth*. The report is an independent review and was commissioned by the British Prime Minister David Cameron. It was chaired and composed by Ian Hargreaves, professor of Digital Economy at the Cardiff School of Journalism, Media and Cultural Studies and Cardiff Business School. The report presents analyses of the existing framework and solutions to the need to change this in order to provide innovation and growth in the economy of the United Kingdom. New policies should be driven by evidence that objectively demonstrates the balance between truly measurable economic objectives and benefits of rights holders on the one hand and the importance of access and use of IPR protected materials by the public on the other. For instance, there are calls for extending the length of the duration of copyright and related rights by rights holders lobby groups and within the EU². However, Hargreaves quotes two high-profile studies that show there is no measurable economic benefit for doing so, or that the economic benefits could actually be detrimental. [Hargreaves, 2011, p. 19] As Hargreaves generally identifies: “Our intellectual property framework will face further significant pressure to adapt in the coming years, as we make our way into the third decade of the commercial internet.” [Hargreaves, 2011, p. 1] Although the report was written from a UK perspective, the analyses and recommendations can be extended to other national and European-wide legislation.

2.4.3. Need for change

Where the Comité des Sage report is more concerned with providing access to cultural heritage, Hargreaves is more focussed on the need for innovation and business to prosper. However, the basic reasons the reports give for the need for change are the same: current national and international IPR legislation was not made to fit the digital realm. Both the need for online access to heritage and for a strong digital economy are highlighted in a recently released strategy by the European Commission: the "blueprint" for Intellectual Property Rights to boost creativity and innovation. [European Commission, 24 May 2011] One of the first results from this took place on 25 October 2012, when an EU directive on certain permitted uses of orphan works was adopted, which will hopefully provide a step in the right direction for institutions to provide access to content of which the rights holders cannot be found [Directive 2012/28/EU].

2.4.4. Public data as open data

An important key action of the Digital Agenda for Europe is to amend the existing Public Sector Information Directive (PSI Directive)³. The main reason for this is that the European Commission deems it vital that information produced by the public sector is as openly accessible as possible for re-use and access, since this has large cultural and financial significance. The Commission claims that open data produced in the public sector can form the basis of new products and services, and that “the expanded economic impacts from the use of PSI are of the order of EUR 70-140 billion.” [Vickery, 2011] In the new version of

² See for instance the Term of Protection proposal made by the European Commission to extend the term of protection for performers and sound recordings to 95 years (http://ec.europa.eu/internal_market/copyright/term-protection/term-protection_en.htm).

³ http://ec.europa.eu/information_society/policy/psi/revision_directive/index_en.htm

Directive, it has been proposed that cultural heritage institutions also should adhere to it. In short, open data is a focal point for the European Commission.

Even though opening up data from heritage institutions is a trend on both a national and European level, it is not yet decided whether the PSI Directive will in fact also be extended to heritage institutions and if so in which way. There are several reasons for this. First of all, the PSI Directive is demarcated to apply to institutions that produce information within the scope of their public task. It is however not yet clear if only metadata falls under this interpretation, or digitised content as well. Secondly, if content is indeed also to be opened up for re-use, a related issue is that many cultural heritage organisations only own the rights to a very small part of their collection, and / or only have a relatively small part of the collection that falls in the Public Domain. Thirdly, there are financial concerns. For instance, the overhead of providing open access to data would (especially for smaller institutions) be a large burden to bear, although some of these costs could be compensated. Also, institutions fear that they will lose (potential) sources of income as a result of providing free and open access to data. [Dietrich and Pekel, 2012] It will take some time before the PSI Directive is amended, but the calls for open access to data and its re-use are heard and answered loud and clear around Europe.

2.4.5. Europeana and CC0 licensing

In several countries, initiatives have been launched to guide and facilitate opening up cultural datasets and to stimulate the re-use of this data for innovative applications⁴. Europeana released a report in November 2011 about the benefits and risks of making metadata available openly. From September 2012 it will be mandatory for organisations to release the metadata they make available through Europeana under CC0, thus contributing it to the Public Domain. A large consultation was held among heritage institutions around Europe to find out how opening up data impacts their business models. The general conclusion was that “over time, the benefits will no doubt outweigh the costs”, since opening up data increases the institutions’ relevance, fulfils their public mission and creates greater access to new users [Verwayen, Arnoldus and Kaufman, 2011]. Only in cases where metadata is directly contributing to the revenue stream of an organisation opening up data would immediately affect their income.

2.4.6. IPR Management for Conditional access

The Creative Commons licensing framework (discussed in more detail in 3.4.4. Open licenses) allows users to share content as they like, but with some possible restrictions on its reuse (no commercial use, attribution, no derivative, etc.). For example, the Creative Commons No-Derivatives license allows everyone to download and share content, but it does not allow users to perform derivative works. CAS are specific restrictions that are not addressed by CC licenses, since all of the CC licenses share the same characteristic: content can be shared and downloaded by everyone without any technical restriction. CC licenses are only legal tools and do not pretend to perform the enforcement of the rights by using some technical and technological solution. For example, they do not include tools to

⁴ Examples are Open Culture Data in the Netherlands (<http://www.opencultuurdatabank.nl/about/>) and the Culture Hack days in the UK (<http://culturehackday.org.uk/>).

guarantee that in the case of CC No Derivative work, the users accessing that content are technically limited in downloading and reusing that work.

CAS solutions are capable to enforce restrictions, such as geoblocking, e.g.: content with conditional access cannot be downloaded and played in Germany. Another conditional access example is only making content available for educational purposes. In most of the cultural heritage directories such as IEEE, ACM, Vimeo, ECLAP, and also on YouTube, etc., rights holders that contribute content can define some simple rules to regulate the conditional access to their content. Once the user has obtained the content, if the content is not protected with some encryption you may be requested to legally respect the licenses imposed by CC. The presence of a CAS such as implemented in the aforementioned portals, could be a simplification for (i) obtaining the clearance of rights, since some of them can be protected and not released to the distributor online portal, (ii) creating and enforcing a business model, for example a pay per play model, or a monthly subscription to enable some conditional access rights.

The classical rights associated with conditional access systems that can be enforced (controlled by the conditional access tools into portals, and mobiles) are limited to a reduced number of rights and conditions with respect to those mentioned in the MPEG-21 or ODRL or IFIP ontologies and standards. Among them the rights of: play, download, embed, etc. differently constrained according to different conditions on the basis of the:

- Device: PC (web), mobile, tab, set top box, came station;
- Content kind: audio, video, images, document, 3d, braille, etc.;
- Media resolutions: high, low and medium;
- Duration: short, medium and log; or in terms of seconds and minutes;
- localization / nationalities, country: Europe/USA, country by country, ..;
- user role: education, research, impaired, etc.;
- institution IP domain for enforcing the payment for domain as in MPEG-21;
- language: Italian, English, etc.;
- etc.

ECLAP, YouTube, Vimeo and others adopted a subset of these conditional access restrictions in their IPR models. In those cases, the adoption of a conditional access produces legal implications for the users and thus many aspects are also reflected into the Terms of Use of the portal.

Also in ECLAP we followed that kind of solution by providing the possibility of defining IPR models for conditional access and enforcing them into the access to content via the ECLAP portal^{5, 6}, as explained in the Terms of Use.

Moreover, also Europeana is moving in that direction. The Extended Europeana Licensing framework⁷ is going to provide support for formalizing access rules according to different reuse scenarios; and for integrating an access control to real content belonging to the reuse framework, tracking usage events and thus supporting the report about the content usage data. This will imply the revision of the Europeana Data Exchange Agreement. The IPR status of the digital objects will be accessible and described by appropriate rights labels attached to them to allow users to know what uses they are allowed to make of the object.

⁵ ECLAP IPR model: P. Bellini, P. Nesi, M. Paolucci, "IPR Management Models for Cultural Heritage on ECLAP Best Practice Network", Proc. of the IEEE International Conference on Communic., IEEE ICC 2013, Workshop "Beyond Social Networks: Collective Awareness", 9-13 June 2013, Budapest, Hungary, IEEE Press.

⁶ ECLAP IPR Wizard, <http://www.eclap.eu/4021>

⁷ <http://www.europeanaconnect.eu/results-and-resources.php?page=8>

2.4.7. Concluding remarks on trends

It will take quite some time and research to implement productive and workable changes to IPR policy on an international level. The developments are followed closely throughout the ECLAP project. Although this Best Practice deliverable does not (and should not) attempt to provide theoretical high-level solutions, the recommendations below provide concrete tips and examples, which point in the right direction and offer information and inspiration.

3. Part I - IPR Clearance: a three-step approach Recommendations for performing arts institutions

3.1. Objectives

These three-step guidelines are developed for performing arts institutions that want to provide (more and broader) access to their digital collections. The various activities in working group B have resulted in a three-step approach in how to deal with IPR issues. There is no single solution when dealing with IPR issues. Instead, this three-step approach will guide performing arts institutions in choosing the best solution possible for their collections with regard to institutional policy and national legislations. These IPR guidelines are also informative for other cultural institutions.

The three steps can be applied on a collection level (clearing rights for one (sub)collection in bulk) and on record level (clearing rights per content item). Each step contains a question and the outcome determines how to proceed:

- Step 1: What kind of access does my institution wants to provide to the content?
- Step 2: Who are the rights holders of the content?
- Step 3: Which methods can I use to clear the rights of the content?

Content is here defined as: the digital object (audio, video, image, text) combined with the information about this object (metadata). In this report, it is assumed that the content provider fully owns the rights to the metadata. An organisation owns the metadata when it was written by people employed by the organisation, and only not when it was written by third parties like freelancers with whom no solid agreement were made about the transfer of these rights. Also, factual metadata (e.g. date, author) falls in the public domain, since facts cannot be copyrighted. It should be noted that the collection of the metadata of an organisation (the database itself) can have database rights⁸. It is thus in the vast amount of cases up to an organisation to decide how to license metadata. Europeana has opted for the CC0 Public Domain Dedication in its data provider agreement.

⁸ http://ec.europa.eu/internal_market/copyright/prot-databases/index_en.htm

Novice readers are advised to read through all the steps described below (and preferably also the case studies and literature mentioned) to first get an overview of the factors in play when clearing rights. Advanced readers can jump to the sections they know apply to them and experts are advised to glance through this section and the case studies and literature mentioned that they do not know yet. This can best be done by first looking either at the Table of Contents, or the visual overview of the rights clearance steps guidelines below.

Clearing rights for digital performing arts collections

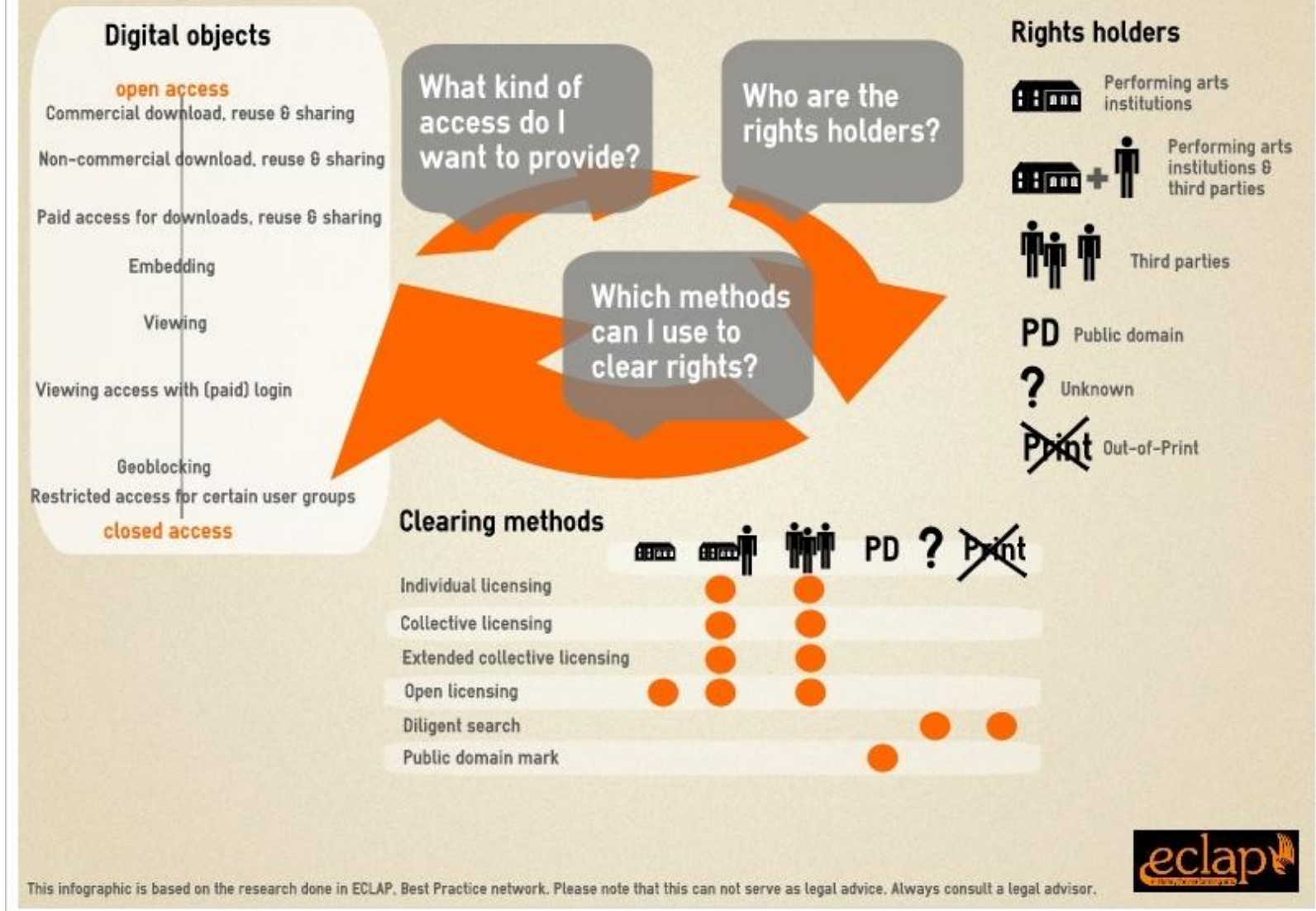


Figure 1: Visualisation of the three-step approach to clearing IPR.

3.2. Step 1. What kind of access does my institution wants to provide?

This step focuses on the question 'What kind of access does my institution wants to provide?' Since not every type of access requires the same kind of rights clearance, having a clear notion of what kind of access you want to provide is important. It is also important to distinguish between metadata and digital objects, since often the rights of the metadata lies with the institutions that created the metadata, whereas the rights of digital objects often lies with third parties.

The checklist below provides an overview of the permissions you need for various types of access⁹. It is possible to choose multiple forms of access for various collections. An institution can decide to provide full access to some content and more restricted to other content.

Yes/ no	Types of online access for performing arts content	Permissions needed	Examples ¹⁰ .
	Access to content is restricted to specific user groups (e.g. education, media professionals).	Publish online for the specific user group within a restricted environment.	Getty Images Les 2.0 ED*IT
	Online access to the content is restricted to users from a specific country (geo-blocking).	Publish online for the specific user group within a restricted environment.	BBC iPlayer
	Only users with a (paid) login have access to the content	Publish online within a restricted environment.	Les 2.0 ED*IT
	Only users that pay a fee have access / can download, re-use and share the content.	Publish online. Paid downloads Paid sharing Paid reuse	INA Getty Images Corbis BBC Motion Gallery
	No viewing restrictions: users can view content online, without having to login.	Publish online	Many cultural heritage institutions provide access to their content online. 11, 12

⁹ Based on the various types of access formulated in [Van Den Heuvel and Baltussen, 2011].

¹⁰ List of examples and URLs in alphabetical order. BBC iplayer: <http://www.bbc.co.uk/iplayer/>, BBC Motion Gallery : <http://www.bbcmotiongallery.com/>, Corbis Images, <http://www.corbisimages.com> , ED*IT: <http://www.ed-it.nu/>, Europeana: <http://www.europeana.eu/>, Getty Images: <http://www.gettyimages.nl/>, INA: <http://www.ina.fr>, Les 2.0: <http://www.les20.nl/>, Open Images: <http://www.openimages.eu> , Youtube: cultural heritage channels, see for instance Cinecitta Luce channel <http://www.youtube.com/user/CinecittaLuce> or The Netherlands Institute for Sound and Vision channel <http://www.youtube.com/user/BeeldenGeluid>, Wikimedia <http://www.wikimedia.org>

¹¹ Based on the results in the ENUMERATE digitization survey by [Stroeker and Vogels, 2012]. One of the most well-known and largest projects in which metadata is provided online is Europeana, which at the time of writing provides access to 20 million records of many European heritage organizations.

¹² <http://www.europeana.eu>

	Users can embed content on an external website.	Publish online Sharing	Cultural heritage on YouTube Open Images Wikimedia
	Downloading, re-use and sharing of the content is (only) allowed for non-commercial purposes.	Publish online. Downloads for non-commercial use Sharing for non-commercial use Reuse for non-commercial use	Open Images Wikimedia
	Users can re-use and share digital objects, even for commercial purposes.	Publish online. Downloads Sharing Reuse	Open Images Wikimedia

First of all, you need to have a clear idea about what you want to achieve by clearing rights:

- Does your institution only need to clear rights for one project?
- Do you need a more generic agreement that makes it possible to show content online for other projects and purposes as well?
- Does your institution want to make content available for sharing and (re)use?

It is also important to keep in mind which portal you want to use when providing access. When you are building your own portal, you can control the conditions of access. If for instance, you want your collection to be part of Europeana, you need to at least provide access to your metadata under a CC0 licence, which also includes commercial reuse. A platform like Open Images allows users to remix content, which also calls for an 'open' set of permissions in which you have to use Creative Commons licenses.

In some cases, certain target groups have easier access to digital objects than others, for instance in the field of education. There are plenty of exemptions with regards to using (parts /quotations) copyrighted materials within the walls of a physical, face-to-face educational setting, since "An educational exemption has been, without exception, part and parcel of twentieth century copyright law, both within the international and domestic legislative frameworks." [Suthersanen, 2010]

Whatever kind of access you want to provide, since "Non-harmonisation of IPR legislation in the EU is an issue"¹³, you need to keep in mind that the rights status of content might vary per member state.¹⁴ These factors will influence the complexity and scope of the rights clearance process, and you will have to make a solid cost-benefit analysis for each factor. In general, it can be said that the more open and generic you want to make the agreements regarding access (and (re)use) of content, the higher the costs in man hours and money will be for the rights clearance process on the short term. However, in the long term, making

¹³ Interview quote Liz Bishoff

¹⁴ Interview quote Liz Bishoff

these open and generic agreements will greatly benefit your organisation, since you will not have to go through the same lengthy rights clearance process again.

Best Practice Recommendations for *defining the type of access to content*:

- Make sure everyone in your organisation is on the same page on the type of access you want to provide.
- Make sure you understand the possibilities and limitations of the platform you want to make the content accessible on with regards to rights clearance. E.g. can you implement protected logins or geoblocking, or not?
- Try and aim high and clear content in the most generic way possible. This will certainly impact the running time, man hours and possibly costs of the rights clearance process, but it will serve you better in the long run

3.3. Step 2. Who are the rights holders?

When you've determined the permissions you need, it is important to find out who the rights holders are, if any. The rights status can be as follows:

1. The institution holds all the rights
2. The institution holds some of the rights
3. (All) rights belong to third parties
4. The work is out of copyright and thus falls in the Public Domain
5. The rights situation is unknown
6. The work is out-of-print

3.3.1. The institution holds all the rights

Some cultural heritage institutions have obtained all rights of objects in their collection. In this case, the clearing process is fast and easy and step 3 of this three--step simple. However, most institutions do not hold all rights for all collections.¹⁵

3.3.2. The institution holds some rights

Rights clearance is a complex issue, but in the case of arts material specifically, “there are many rights layers [...], from the rights of the writer of a script to the related rights of the performance or artwork”.¹⁶ Especially rights of video productions can be hard to clear, since there are often multiple rights layers involved of both authors, performers and the camera men. Rights might have to be cleared with the following people (not an exhaustive overview, but it covers the most important ones):

- The director (in almost all EU countries the rights holder)
- The composer of the music used in the performance (in most EU countries designated as co-author)

¹⁵ See e.g. the answers in section 6.7. Survey.

¹⁶ Interview quote from Amanda Rigali

- The author of the screenplay (in most EU countries designated as co-author)
- The author of the dialogue (in most EU countries designated as co-author)
- The producer (related rights: often has the exploitation rights)
- The performers (related rights)
- The recorder of the piece (e.g. camera person)
- The choreographer
- Graphic designer

There are many Collective Management organisations (CMOs) representing a variety of authors and performers.¹⁷ They might hold some or even all of the rights you want to clear.

Relevant literature:

- Angelopoulos, C., 2012. *Determining the Term of Protection for Films: When Does a Film Fall into the Public Domain in Europe? Extract*, Strasbourg: European Audiovisual Observatory. Available at: http://www.obs.coe.int/oea_publ/iris/iris_plus/iplus2LA_2012.pdf.en.
- Nina, Ñ., Bout, L. & Vooren, G., 2010. *Final Guidelines on Copyright Clearance and IPR Management*, European Film Gateway / European Commission.
- Robrechts, T. & Kerremans, R., 2009. How to contract with rights holders? A legal analysis. In T. Evens & D. Moreels, eds. *Access to archives of performing arts multimedia*. Brussels: Vlaams Theater Instituut / IBBT, pp. 75–94.

3.3.3. The institution holds none of the rights

The rights can also be hold entirely by third parties, the same parties as described above. In this case, institutions need to clear all the rights with the third parties.

3.3.4. The work is out of copyright

When all rights of a work have expired, the work falls in the Public Domain. The Public Domain and the two types of materials that can fall into the Public Domain are defined as follows in the Europeana Public Domain Charter:

1. **“Works on which copyright protection has expired.** Copyright in a work in most of Europe lasts for 70 years after the death of its longest living creator. (...) It means that almost everything published, painted, photographed or released anywhere in the world before the 20th century is out of copyright and in the Public Domain.
2. **The essential commons of information that is not covered by copyright.** Works are not protected by copyright if they are not original. (...) This essential commons is regarded as too important for the functioning our societies to be burdened with legal restrictions of any nature even for a limited period.” [Europeana, 2010, p. 3]

The related rights of performers and producers expire 50 years from the date of the performance, the publication or communication of the fixation¹⁸.

¹⁷ A nice overview of CMOs in various European countries can be found in Nina et al., 2010.

¹⁸ For the specific European regulations, see [European Parliament / Council of the European Union, 2006]. It should be noted that the European Parliament and the Council of the European Union accepted an amendment of the existing Directive 2006/116/EC on the term protection of copyright and certain related rights (Directive

A very useful tool for determining if a work falls into the Public Domain in a EU country is the Public Domain Calculator¹⁹ developed within the Europeana Connect project.

3.3.5. Orphan works - rights situation is unknown

Orphan works are works of which the “rights holders cannot be identified or, if they are identified, they cannot be located in order to ask the necessary permissions.” [Koskinen-Olsson, 2010, p. 256] For many digitisation and online access projects, orphan works can be a great obstacle in a project’s progress. However, for a work to be classified as an orphan work, a diligent search must be performed first. The relevant resources would usually be those of the country of the work’s origin. [ARROW, 2010 (a), p. 15]²⁰ If the rights holder(s) still cannot be traced after a diligent search the work is considered to be an orphan.²¹ How an orphan work can be used after this diligent search depends on developments within the ARROW (Accessible Registries of Rights Information and Orphan Works towards Europeana), EU-broad legislation which is being developed as part of Directive 2012/28/EU on certain permitted uses of orphan works²², and the risk your organisation is willing to take in publishing these works online.

3.3.6. Out-of-print works

Out-of-print works are works which are no longer being commercially distributed, but that are still protected by copyright. Who owns the rights to an out-of-print work depends on national legislation “as well as contractual arrangements between the creator and publisher/producer.” [Ricolfi et al., 2008, Annex 7] The ARROW project is developing a tool²³ for establishing whether a work is out-of-print or an orphan, but currently there is no easy way of determining whether a work is out-of-print. For now, what is first needed is a diligent search (see above). When rights holders are indeed traced, you can make either individual or collective agreements.

2011/77/EU). This amendment means the term of protection of the related rights of performers and sound recordings is extended from 50 to 70 years. The amendment is still to be implemented in European member states, but it will greatly impact which sound recordings fall in the public domain and which ones will not. The amendment is only applicable to performers whose efforts have been fixated on a phonogram (i.e. has been recorded), and is thus focussed on musicians and does not deal with other related right of performers such as actors, acrobats and dancers.

¹⁹ <http://outofcopyright.eu/>

²⁰ These principles have been developed within the ARROW (Accessible Registries of Rights Information and Orphan Works towards Europeana) project (<http://www.arrow-net.eu/>) and are based on the recommendations of the High Level Expert Group on Digital Libraries (specifically the Copyright Subgroup) (http://ec.europa.eu/information_society/activities/digital_libraries/other_groups/hleg/index_en.htm) which was set up by the European Commission. Both of these websites contain a lot of relevant resources on the subject.

²¹ See the website of the EU Directive on Orphan works for the latest news and regulations:

http://ec.europa.eu/internal_market/copyright/orphan_works/index_en.htm

²² http://ec.europa.eu/internal_market/copyright/orphan_works/index_en.htm

²³ <http://www.arrow-net.eu/presenting-arrow-system>

Best Practice Recommendations for *determining rights holders*:

- It is vital that this information is registered in your institution's database. The best way to do this is in the field(s) of the metadata schema used in your institution containing rights information, such as DC:rights in the Dublin Core metadata model.
- Keep in mind that performers and authors might have transferred (some of) their rights to Collective Management Organisations. Even though they might give permission for online (re)use of content, the CMO itself might have to give permission as well, or might even be the sole rights holder.

3.4. Step 3. Which methods can I use to clear the rights?

Once it has been determined who has to be approached to clear rights in Step 2, agreements have to be made in order for the content to be made accessible online. This can be visualised as follows:

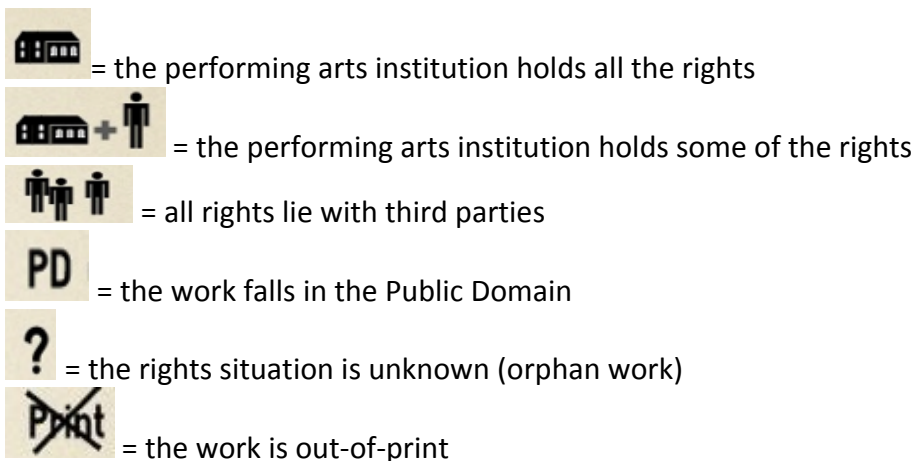


Figure 2: Overview of types of agreements that can be made for online access to collections, depending on the rights holder situation.

Below, these options are discussed individually.

3.4.1. Individual licensing agreements

If you only have a small collection you want to make accessible online, the simplest route can be to strike one-on-one agreements with the rights holders. They might request a remuneration. This is often overlooked or not taken into account when online cultural heritage projects are set up. In many cases no specific budget is reserved to remunerate rights holders, even though “remuneration for creators and performers is important”.²⁴ Note that the most common type of license is a non-exclusive license. This means that the rights holder(s) can also still use the content as they wish.

Relevant literature:

Some helpful tools to use have been developed within the UKvWeb2Rights project:- IPR and Legal Issues Toolkit¹ and the Final Guidelines on Copyright Clearance and IPR Management¹

3.4.2. Collective agreements through Collective Management Organisations (CMOs)

When making a great number of works available to the public, individual licensing agreements might not be the best option, since the transaction costs for these licences are very high. In many European countries, rights holders have their rights voluntarily managed by CMOs. [Axhamn, 2011 / Korteweg, Hugenholtz & Poort, 2011]

An example of the collective agreement made between a heritage institution and CMOs in order to provide online access to content is the one between the National Library of the Netherlands and CMOs that represent text writers, and artists, photographers and graphic designers (Lira and Pictoright). Through this agreement, 3 million pages from national, regional and local newspapers from the Netherlands have become accessible online. [Koninklijke Bibliotheek, 2010]

The advantage of such an agreement is that there’s no need to individually approach rights owners, but striking a collective agreement still costs a lot of time and often money. Furthermore, CMOs cannot “provide full legal certainty”, since compulsory rights management is more an exception than a rule, with the result that the mandate of CMOs is limited to their members [Korteweg & Hugenholtz, 2010] Therefore, collective agreements are mostly interesting in cases when many if not all rights holders are presented by a CMO, and the CMO itself is well-organised.

3.4.3. Extended collective license

A model that has many of the same features as mandatory collective rights management is the Extended Collective Licensing (ECL) model, which is mostly employed in the Scandinavian countries. ECL is a combination of voluntary rights management by CMOs and a legal expansion of the scope of collective licences to right-holders who are not represented by the CMO.

A big advantage of the ECL model is that the licensing party is protected from claims by ‘outsiders’ i.e. authors who are not represented by the CMO, since they also have the right

²⁴ Interview quote from Dr. Philip Schlesinger

to remuneration and in some cases also the right to prohibit the use of their materials if they present themselves to the CMO who has provided the licence. Also, ECLs can also provide a solution to providing access to orphan and out-of-print works [Axhamn, 2011 / Korteweg, Hugenholtz & Poort, 2011 / Korteweg & Hugenholtz, 2010].

The prerequisite for an ECL model to work is that there is a strong CMO that represents many rights holders in the country where the model is introduced, and that the CMO is well governed and operates transparently.²⁵ Another issue that is not per se solved by ECLs are territorial issues.²⁶ Content can be blocked for website visitors from outside the country for which the licence is issued, although there are reciprocal agreements between collecting societies from different countries so they can arrange remunerations and represent authors from their sister organisations. Also, there are some unions for different types of CMOs in Europe that help overcome this problem.²⁷

3.4.4. Open licenses

The basic premise for open content is that exceptions within the applicable copyright framework of a work are granted. It makes it possible to openly access and (re)use a work without having to ask the rights holder for permission each time by applying so-called open licences to a work. With an open license, the author/creator/owner of a work explicitly provides a certain freedom for end-users, which is all done within the copyright framework. In a way, the license builds upon this framework in the form of a non-exclusive agreement between the author and the end-user.

Creative Commons licences have become a worldwide online standard and have been adopted in the framework of the rights metadata element of Europeana. [Zeinstra et al., 2010] CC licences are non-exclusive, which allows creators to enter into commercial contracts to exploit works that they have also made available under a Creative Commons license. Furthermore, the licenses are machine-readable, which means that they can be found through search engines, thus improving the findability of openly licensed content. [Lund et al., 2009]. Please note that the rights protected by CC licenses are only one option in the broad possibilities for content producers, authors, and distributors in which they ground their businesses. Also, once content has been labelled with a CC license it cannot be revoked to a more restrictive model.

²⁵ From interview with Dr. Philip Schlesinger

²⁶ From interview with Robin Kerremans

²⁷ For more information, see for instance <http://www.bumastemra.nl/en-US/Auteursrecht/InternationaleRegels.htm>

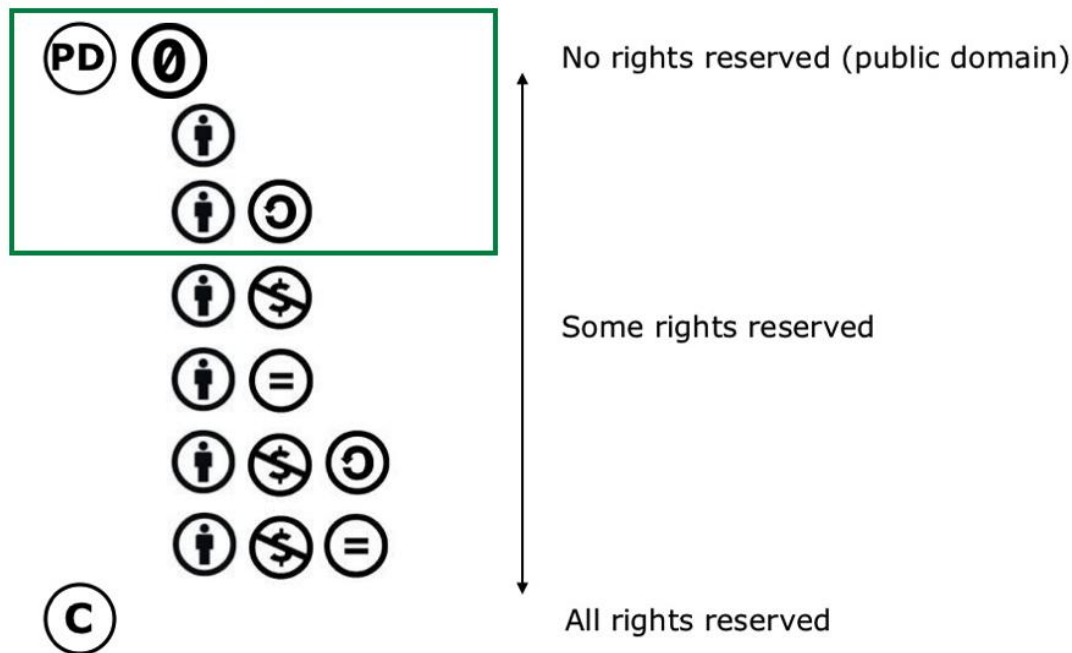


Figure 3: Image by Maarten Zeinstra (Kennisland). The figure visualises the 'openness' of content, ranging from All Rights Reserved to Public Domain. See <https://p2pu.org/en/groups/open-glam/> for the complete background.

Although it might be hard to convince rights holders to consent with them since they explicitly downloading and sharing of content, “there is a lot of interest and goodwill in heritage institutions for using Creative Commons licenses”.²⁸ The reason for this is that they are adopted worldwide and make reuse and sharing of content on multiple platforms possible without having to get permission from the rights holder(s) each time. [Lund and Holjsholt-Poulsen, 2009; Kerremans and Croux, 2010]. Some ECLAP partners have already used Creative Commons licenses to make content available on the ECLAP portal, such as ESMAE, Sound and Vision, MUZEUM and the University of Cambridge.

3.4.5. Diligent search

In the case of unknown copyrights, diligent search is required to discover the rights holders. The diligent search principles are defined as follows:

- The search is done prior to the use of the work
- The search is done title by title or work by work

The relevant resources would usually be those of the country of the work’s origin. [ARROW, 2010 (a), p. 15].

In the case of orphan works and out of print works it will not always be possible due to lack of time and resources to follow the diligent search principles, especially in cases where works have many layers of rights. For instance, depending on existing contracts and agreements, to make a recording of a theatre performance from the 1970s available on the ECLAP portal, permission might be needed from the producer, director, composer, writer of the screenplay, costume designers and the actors. All rights owners have to be traced. In

²⁸ Interview quote from Robin Kerremans

some cases some rights holders may be deceased, which means that the heirs have to give permission.

3.4.6. Public domain mark

European IPR legislation is not yet fully harmonised. This means that for instance a digitised work that is in the public domain in one country might still be protected in another. [Niggeman, Decker & Lévy, 2011] Creative Commons has worked with Europeana to develop a Public Domain Mark (PDM)²⁹, which is used to explicitly indicate if a work is in the public domain.

²⁹ <http://creativecommons.org/publicdomain/mark/1.0/>

Best Practice Recommendations for *rights clearance methods*:

- Registering the agreements made and the rights status of content is a process which is often forgotten, but it is instrumental for keeping a central, clear overview of what can and cannot be done with this content not only for current, but also for future projects.
- If your organisation is the exclusive rights holder of content, you can choose to add any of the available open licenses. Another option is to develop your own licenses and access conditions, but this can be a long and expensive process. The choice depends on a well-formulated cost-benefit analysis and the willingness of the management to 'open up'.
- If a work falls in the Public Domain, use the Public Domain Mark to make this explicit.
- The older a collection, the harder it can be to clear rights, since rights holders or their heirs will be hard to trace. Make sure that this does not happen again for newly acquired collections and make solid new agreements for these collections in at least the rights to show content publicly on both current *and* future platforms are given.

Helpful documents:

ECLAP was asked by both many internal and external stakeholders to provide documents that can further complement these best practice guidelines. To this end, we have asked the University of Amsterdam and University of Cambridge to write case studies about their rights clearance process and decision-making. Also, we've written a sample letter that you can use to send out to rights holders.

- 6.1. University of Amsterdam case study: Open

Short description of the organisation and collection(s) for which rights were cleared.

The University of Amsterdam (UvA) traces its roots back to 1632, when the Golden Age school Athenaeum Illustre was established to train students in commerce and philosophy. Today, with

Relevant literature:

- Some helpful tools to use have been developed within the UK Web2Rights project: IPR and Legal Issues Toolkit ¹ and the Final Guidelines on Copyright Clearance and IPR Management¹
- Peters, R., 2013 (forthcoming). *Intellectual Property Rights "Best Practice" Guidelines. Deliverable 4.4*. London: Europeana Fashion / Victoria & Albert Museum. This report by the Europeana Fashion project gives great insight in rights clearance processes and workflows and is of particular interest to organisations with images and / or videos of costumes in their collections. See <http://www.europeanafashion.eu/> for more information

4. Part II - Best practice recommendation - Business models and sustainability

The cultural heritage sector is being hit hard by the economic crisis, and funding cuts are being made all around Europe. Institutions are increasingly under pressure to generate more income; for example, in the Netherlands performing arts institutions are expected to gather more than 20% of their income themselves. [Timmermans, 2012] This means that a shift in mindset is needed and business model and sustainability planning become more important. This section provides an overview of a commonly used business model canvas and the most-used revenue models in the performing arts sector, after which a visual overview is given of:

1. which revenue model fits best with...
2. which type of target user...
3. depending on how openly you can provide access to performing arts content.

4.1. Introducing the Business Model Canvas

A business model forms the basis for determining how value is created. There are various ways of setting up and structuring a business model, but one that is used very frequently in the cultural heritage and public sector³⁰ is the Business Model Canvas developed by Alex Osterwalder and Yves Pigneur. Their definition of a business model is: “[It] describes the rationale of how an organization creates, delivers, and captures value.” (Osterwalder & Pigneur, 2010, p. 14). Thus, a business model as specified in this definition is a tool that can be used for conceptualising ideas and creating a framework for determining how to develop a new project or activity. Osterwalder and Pigneur’s business model is not focussed solely on capturing economic value, but social and cultural value as well, making it very useful for the performing arts sector. Furthermore, the needs of the end users are central to the Business Model Canvas, which means that setting it up makes it necessary to look at the value proposition from their perspective as well as your own organisation. Below, the Business Model Canvas and its building blocks will be explained, followed by an overview of revenue models, closing with a reflection on sustainability planning. The Business Model Canvas consists of nine distinct building blocks, each of which will be described in more details below,

³⁰ For instance, it has been used in the EUscreen project (Van den Heuvel & Baltussen, 2010), Europeana (Verwayen, Arnoldus, & Kaufman, 2011), for a study on business models for Public Sector Information Re-Use (Ferro & Osella, 2011) and the Dutch Business Model Innovation Cultural Heritage project (BMICE) (De Niet, Heijmans, & Verwayen, 2010). See also (Timmermans, 2012) for an in-depth analysis of the Business Model Canvas as a tool to facilitate the search for sustainability.

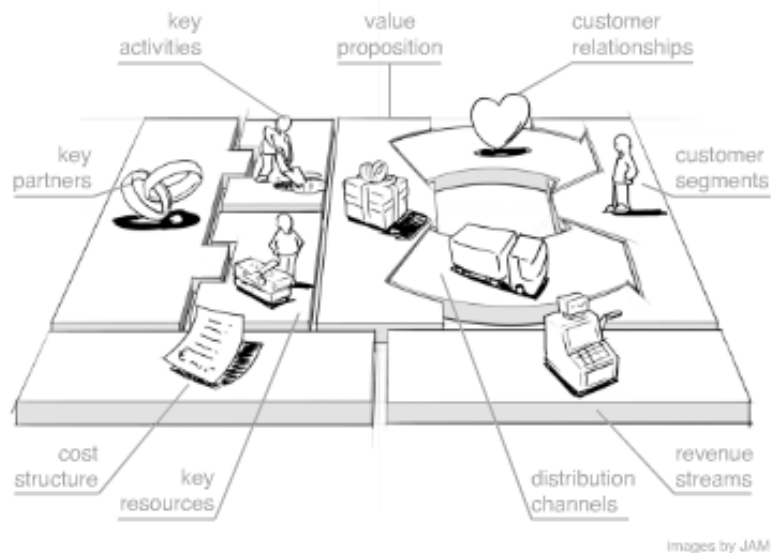


Figure 4: The Business Model Canvas building blocks

4.1.1. Customer segments

In the Customer Segments block, it is defined which group(s) of target users are aimed “to reach and serve”. (Osterwalder, 2010, p. 20) Thus, it is not necessary to fill the business model canvas per target user group, but that one business model can fit multiple customer segments, even though each group might require a different approach. In the case of ECLAP for instance, each user of the portal can customise some of user interface elements and add or eliminate them based on their needs and preferences (e.g. query cloud, user statistics).

4.1.2. Value proposition

When developing a product or service, it is important to offer the customer segments a unique value proposition that is different from other products or services. ECLAP has a clear value proposition: it offers central and free online access to previously unavailable and highly dispersed performing arts content for various types of user groups. This is a very powerful value proposition, since there are as of yet no central access points for performing arts online, and heritage institutions have unique collections that cannot be found elsewhere.

4.1.3. Channels

The ‘Channels’ building block makes explicit how the value proposition is delivered to the customer segments. There are various types of channels that can be used to reach various customer segments, ranging from online channels like a website to offline events. ECLAP’s main channel is of course the online portal, but many existing and new user groups are also reached through the ECLAP conferences and workshops. Furthermore, experts are formally invited to join the ECLAP user groups via email and regular mail. On this regard, the presence of a conditional access solution with IPR models can simplify the management of the access, and can motivate the anonymous users to subscribe at the service in order to get more access rights.

4.1.4. Customer relationships

“The Customer Relationships Building Block describes the types of relationships a company establishes with specific Customer Segments.” (Osterwalder, 2010, p. 28) Customer relationships differ from channels, since the channels merely deliver the value proposition, whereas a customer relationship is the method with which the relationship with the user groups is maintained. This can be done through channels that customers can use to contact an organisation (email, phone, Facebook, Twitter), but also by offering customers recommendations about specific products or services that might be of interest to them. On the ECLAP website, users can comment on the project’s Best Practice results through the Working Group pages,³¹ and user surveys and expert interviews are held regularly to gather feedback from (prospective) users.

4.1.5. Revenue streams

The revenue streams building block can consist both of economic revenue and ‘soft’ revenue streams. The various ways in which economic revenue can be created will be discussed in more detail in section 6.3.2 below. Examples of revenue models are subscription fees, funding and physical product sales like DVDs and CDs. Examples of ‘soft’ or non-monetary revenue are increased access to an institution’s collection and user contributed content that can be used to supplement existing collections. In the case of ECLAP, non-monetary revenue is generated by the vast and central increase of access to performing arts collections. Also, the consortium partners gain exposure from participating in the ECLAP project. No direct economic revenue is gained from the project as of yet, but users interested in the content of the ECLAP partners can find links from the ECLAP portal to their respective sales channels, which could increase economic revenue indirectly. This mechanism is also stimulated by the fact that some conditional access restrictions are applied to content. For example, on ECLAP, a content producer may decide to adopt an IPR model in which the access to high quality video is granted only to research and education and registered users to their specific channel, or in other content, may decide to adopt models granting access on mobiles but not PC for anonymous users.

4.1.6. Key resources

Key resources are “the most important assets required to make a business model work.” (Osterwalder, 2010, p. 34) These resources can be categorised in four distinct ways: physical, intellectual, human and financial. For ECLAP, these categories can be structured as follows:

- Physical: The content and the metadata provided by the partners, and the ECLAP platform itself.
- Intellectual: The knowledge in the ECLAP consortium regarding the content and the technical aspects of the project.
- Human: The (collaboration between) ECLAP partners and the various user groups.
- Financial: The funding by the European Commission, which makes the project possible.

4.1.7. Key activities

“The Key Activities Building Block describes the most important things a company must do to make its business model work” (Osterwalder & Pigneur, 2010, p. 36). In the case of ECLAP

³¹ <http://www.eclap.eu/3502>

and other comparable European projects, these key activities are described in the Work Package descriptions in the Description of Work.

4.1.8. Key partnerships

The key partnerships are the various partners and suppliers that “make the business model work” as part of the key activities (Osterwalder & Pigneur, 2010, p. 38). ECLAP has many different partners, of which the most important ones are part of the original project consortium. They execute the technical activities of the project, and are responsible for contributing content, the project’s Working Groups and dissemination. Furthermore, ECLAP has affiliated partners, who can also be content providers, but can contribute to networking activities and provide technical advice as well.³² Furthermore, ECLAP is part of the Europeana network, through which the content on ECLAP becomes findable as well.

4.1.9. Cost structure

“The Cost Structure describes all costs incurred to operate a business model.” (Osterwalder & Pigneur, 2010, p. 40) A complete cost projection is not part of the business model canvas, but of the more detailed and broader business plan, of which the business model canvas forms a part. That being said, the details of the Key Resources, Key Activities and Key Partnerships already give an indication of the order of costs expected to execute a business model.

Below, we focus more in depth first on the Value proposition (Section 6.3.3), Customer segments and Customer relations (Section 6.3.4) and will then sketch a possible business model canvas for ECLAP (Section 6.4). Firstly, we’ll outline some possible revenue models that are of use to both ECLAP, and cultural heritage institutions in general, in order to create an idea of the possibilities of valorising a business model financially.

4.2. Types of revenue models for performing arts content³³

4.2.1. Free / Freemium

Many cultural organisations provide access to (part of) their collections for free, as part of their public mission. [Verwayen, Arnoldus and Kaufman, 2011] The non-monetary revenue of providing free access is that the content and services provided are broadly made accessible to a diverse and large range of user groups, and that these can also reach potential new users. The free model is often combined with other revenue models, such as funding (in the case of ECLAP), advertisements, sponsoring and donations. These will be elaborated on below. Placing advertisements on the websites of cultural heritage organisations of cultural heritage projects is not very broadly adopted, since this can conflict with the public mission and policies of institutions, and with IPR agreements made with rights holders, who often only consent to non-commercial use of their content [Cousins, Verwayen and Collier, 2008] Although a free model doesn’t seem to make business sense at first, according to Dr. Philip Schlesinger, “distributing for free or low prices can create interest. There is certainly a trade-off there.” In other words – free access allows for the possibility to spread content far and wide, which in turn drives people to it.

³² For a complete list of ECLAP partners, see <http://www.eclap.eu/3578>

³³ Divisions of revenue models based on previous work on business and revenue models by [Van Den Heuvel and Baltussen, 2011]

In order to create monetary revenue, the free model is often extended to a freemium model. This is a model “by which a product or service (typically a digital offering such as software, media, games or web services) is provided free of charge, but a premium is charged for advanced features, functionality, or [virtual goods](#).” [Wikipedia, 2012] The key factor for a freemium model to work is that the costs per user are very low, so that even when only a small percentage (5%-10%) of the users pay for added value products or services, the model is profitable. The required break-even percentage of users paying for the freemium services or products is called the conversion rate. [Anderson, 2008; Shmilovici, 2011] According to Nancy Maron, Freemium models can be very interesting for heritage institutions: “It allows you to provide a baseline of access, and charge for extras such as downloading in high quality. An example of a basic A version and an added-value B version are image licenses like the ones by the Institute national de l'audiovisuel (INA)³⁴ of France. INA offers free streaming access to a large part of their collections, but their commercial branch offers broadcast quality downloads through a specific portal aimed at commercial re-use.”

Free examples: YouTube (in combination with advertisements)³⁵, The Space: Digital Arts Service³⁶ and Artyčok.tv (in combination with funding, see below).

Freemium examples: British Pathé offers free, low-quality video streaming, but for a fee of £70 per month institutions belonging to the MLA Accredited Scheme can download unlimited broadcast-quality footage and stills (offer on website d.d. 13 July 2012).³⁷ See also the examples mentioned in the paragraph above.

4.2.2. Licensing

Many institutions with cultural heritage collections often provide licensing services for professionals that want high-resolution material for re-use in productions. Licenses can mostly be acquired via the customer service, or via a website. The license fees depend on the type of usage (commercial, educational), the expected size of the audience, the scope of usage (one-time presentation, worldwide online access), period of use, quantity (length of video footage, number of images). Sometimes licenses are offered in combination with the pay-for-download model, which will be elaborated on below. In the cases where the institution that holds the material is not the rights holder, they can act as a broker that helps with clearing rights for licenses for a fee.

Licensing examples: The Prelinger Archive³⁸ combines the free model with licensing. People can use the online archive materials for free, but “at the fee level, you can get physical materials and written license agreements with your name at the top.” [Oomen et al., 2009] INA also offers a range of licensing options and services. The Netherlands Institute for Sound and Vision offers license clearance services for a fee.

³⁴ <http://www.ina.fr/>

³⁵ See for instance the YouTube channel of the Bolshoi Theatre: <http://www.youtube.com/user/bolshoi/videos>

³⁶ <http://thespace.org/>

³⁷ <http://www.britishpathe.com/museums>

³⁸ <http://archive.org/details/prelinger/>

4.2.3. Funding

Many cultural heritage institutions and projects are for the large part dependent on funding. Most funding (such as subsidies and grants) is awarded for a longer period of time, and can be provided either by a non-profit, governmental or commercial organisation. Furthermore, many institutions receive structural funding from their national or local governments.

Funding examples: The Space³⁹ is a digital arts service BBC, which brings together theatre, concerts, opera, dance and more through various media. The project is funded by the UK Arts Council. Classical Planet⁴⁰ is a website funded by the Spanish government that offers access to videos of concerts by young musicians from the major European conservatories, 3000+ lectures for 18 instruments, live music broadcasts, and classical music compositions. Of course, ECLAP itself is three-year project funded under the ICT-PSP programme of the European Commission.

4.2.4. Sponsoring

Sponsoring can be provided by a person or organisation that supports an initiative financially and / or by supplying goods and services. In return, a sponsor can for instance be mentioned on the website and in publications, which generates positive exposure for them.

Sponsoring examples: The Rabobank is the main sponsor of the Dutch Bach Society⁴¹, and specifically aims to set up and further develop the educational programme.

4.2.5. Public/private partnerships

A revenue model that is similar to funding and sponsoring are public/private partnerships. In these partnerships, a private and often commercial organisation provides funds or other (monetary) support to a public organisation in order to realise a project. Specifically for the cultural heritage sector, public/private partnerships often entail a collaboration that results in the digitisation of a collection, which can for a limited time be exploited commercially by the private backer. [Niggeman, Decker and Lévy, 2011] The agreements made should be carefully examined in order to make sure that the interests of public institution and the public are represented and maximised as best as possible. For example, the private partner should only have exclusive exploitation rights for a limited number of time, the digitised materials should become openly accessible and the digitisation standards should confirm to the quality expected by a cultural institution.

Public/private partnership examples: The National Public Library of Austria and Cinecitta Luce in Italy are working with Google on digitising a very large part of their holdings and provide free access to them online.⁴² This is part of the large-scale Google Cultural

³⁹ <http://thespace.org/>

⁴⁰ <http://www.classicalplanet.com/>

⁴¹ <http://www.bachvereniging.nl/index2i.php>

⁴² See for example <http://www.onb.ac.at/ev/austrianbooksonline.htm> and http://www.openculture.com/2012/07/italys_largest_film_archive_to_youtube.html

Institute⁴³ project, in which Google partners with memory institutions to make diverse cultural heritage accessible worldwide.

4.2.6. Advertising

Putting ads on a website is a common revenue model. Also, in order to sustain the ‘Free’ model, many organisations use advertising as a source of income. Even though advertising on websites is very common, it “is still not supporting even those industries that increasingly depend upon it for survival”. [Maron et al., 2009]. Also, as mentioned before, heritage organisations are often reluctant to have advertisements on their websites, since this might conflict with their public mission or conflict with their non-profit image.

Advertising examples: Facebook offers a variety of advertising schemes, such as sponsored stories and ad banners.⁴⁴ INA also uses advertising on its public, general website through banners.

4.2.7. Pay-per-download

A revenue model that is very common for stock footage and stock image websites is to charge users (mostly media professionals) a one-off fee per download. This can be done through micropayments that allow users to transfer a small amount for every download via payment methods like Paypal. The key is to make any transaction very easy, to lower the threshold for users as much as possible. Per download, the user can indicate the type of license needed. So, the pay-per-download revenue model is often used together with the licensing model.

Pay-per-download examples: For professional re-use: Getty Images⁴⁵. For the general public: Pictures and maps from the collection of the Dutch National Archives online catalogue⁴⁶. The British website Digital Theatre⁴⁷ offers pay-per-download access to recent and contemporary theatre, opera, ballet and dance. It is also possible to pay for downloading a mobile or tablet app. An example is ‘The Tempest for iPad app’⁴⁸ by Luminary Digital Media, which people can use to collaboratively analyse The Tempest by Shakespeare through annotations, comments and sharing. The app also provides access to audio, images and video.

4.2.8. Subscription

Although a subscription model can be either free or paid, in this deliverable it is defined as a monetary transaction that allows users to access and use content and services, often for a specific time period. This model can be combined with the freemium model.

⁴³ <http://www.google.com/culturalinstitute/#!home>

⁴⁴ <https://www.facebook.com/about/ads/#stories>

⁴⁵ <http://www.gettyimages.nl/>

⁴⁶ <http://www.gahetna.nl/collectie/afbeeldingen>

⁴⁷ <http://www.digitaltheatre.com/collections>

⁴⁸ <https://luminarydigitalmedia.com/joomla-1p5/>. At the time of writing, the app cost \$9.99 / €7,99.

Subscription examples: Dutch educational platforms Les2.0⁴⁹ and ED*IT⁵⁰ charge institutions for a fixed price per student and / or employee, who can in turn register for free if they can demonstrate their affiliation with the paying institution.

4.2.9. Donations

Non-profit platforms like the Internet Archive and Wikipedia usually don't ask any fee for the use of their services, but financial donations by their users instead. Donations can be made through various payment methods, such as a traditional bank transfer or by sending a check, but donations via SMS and Paypal are possible as well. New types of donation revenue models are now also emerging. An example is the crowdfunding website yooook⁵¹, a platform that develops tools that “allow authors to bring new responses to the stakes posed by digital content over networks, an by establishing an ideal equilibrium between technology, funding and copyright.” One of their revenue models is called the Liberation poll. The content supplier can indicate the amount he or she would like to receive through donations. When this amount is reached, the content is released under a specified Creative Commons license, which ‘frees’ the content for public use.

Donations examples: The Sydney Opera House⁵² has an extensive donation programme. Another form of donations is collecting money through crowd funding platforms like Kickstarter. Various theatre projects have successfully been funded through Kickstarter, and there are many current ones open for donations as well.⁵³

4.2.10. Physical product sales

Some cultural heritage organisations offer their users the option to buy books, DVD's and CD's that are related to their collections. Media professionals can also buy physical copies of content on hard drives or video carriers, but here, physical product sales refers to materials that are meant for the consumer market.

Physical product sales examples: The Victoria and Albert Museum in London – which is also home to a Theatre and performance department – has a large online shop⁵⁴, in which people can buy prints and posters, jewellery, and order prints on demand from the V&A collections. The INA has a Boutique service⁵⁵ that allows people to order DVDs, CDs and images on demand, and to buy books and DVD boxes curated by INA.

⁴⁹ <http://www.les20.nl/>

⁵⁰ <http://ed-it.nu/>

⁵¹ <https://yooook.net/>

⁵² http://www.sydneyoperahouse.com/support/donate_now.aspx

⁵³ <http://www.kickstarter.com/discover/categories/theater>

⁵⁴ <http://www.vandashop.com/>

⁵⁵ <http://boutique.ina.fr/>

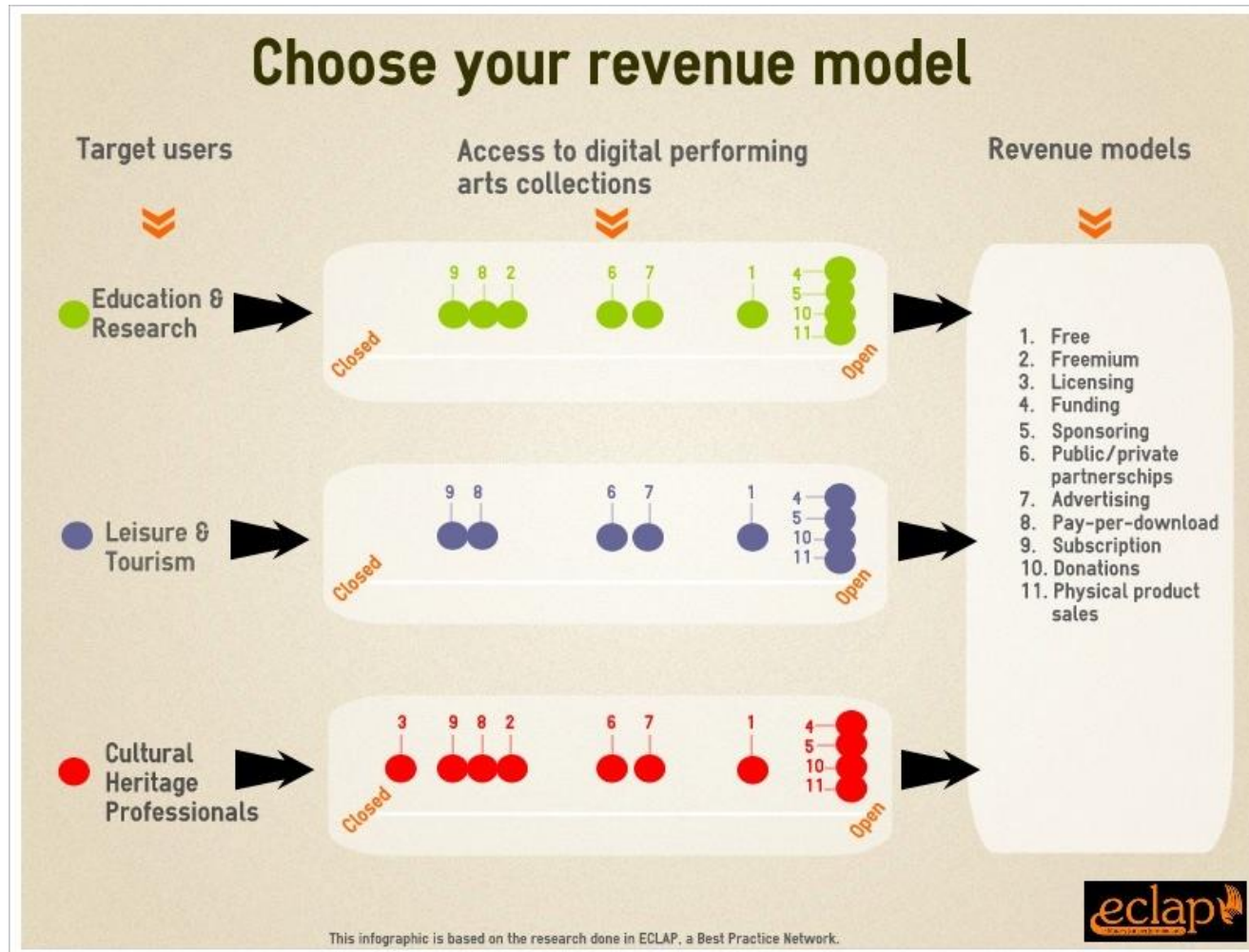


Figure 5: Overview of common revenue models used for projects from three macro categories: Education & Research, Leisure & Tourism and Cultural Heritage Professionals. This is based on the analysis of the revenue models used by the examples mentioned above.

4.3. Creating a sustainable business plan

A solid business plan does not only focus on possible business and revenue models for current projects and services but also contains a sustainability plan. This is necessary because the risk of only planning ahead for the period of a project is running is that it will quickly be discontinued once this period ends. It should be noted that planning for sustainability can be limited by organisational structures. As mentioned by one of the respondents of the survey, “Our business models are determined at the university and/or national level.”⁵⁶ Still, general conclusions can be made that are useful for all types of cultural heritage and specifically performing arts institutions. The following four recommendations for sustainability planning are based on the experts interviews held, the survey results and the literature studies.

- Define metrics to measure revenue
- User studies
- Diverse revenue streams
- Organisational support

Define metrics to measure success

Metrics can be used to demonstrate the success of a business model and the effectiveness of a certain approach. By regularly measuring aspects like revenue, amounts of views, reuse of data etc. it is possible to adjust and to evaluate the business model. It is also highly recommended to involve creators and performers in establishing metrics and to “to understand the non-economic preconditions and not just the economic ones. The nature of collaborations - what is traded, like experience, skills - is also contingent on establishing what added value is, what the ‘soft benefits’ are.”⁵⁷

User studies

Users need to be at the core of new business models. [Timmermans, 2012] They are becoming increasingly vocal in what their needs are and about how they expect to be able to access and (re)use cultural heritage. [Geser & Mulrenin 2002] In the words of Nancy Maron: “doing research on the demands and wishes of your end users is key. Ask yourself the questions: is it valuable enough? Is the audience interested enough? You need to examine these issues, and the fundamental question is user demand. [...] If you know what drives them and what they want, you can adapt to that and create specific services that they actually want.” The needs of users determine the kind of access that is required. Regular user research ensures a better access to collections.

Diverse revenue streams

Merely focussing on acquiring funding and hoping that this will be enough to sustain your project or institution will no longer work. This is a key recommendation made in the literature on business models for cultural heritage (e.g. Timmermans, 2012; BMICE consortium 2011) and by the business model experts that were interviewed. Nancy Maron

⁵⁶ See overview in section 6.7. Survey for more details.

⁵⁷ Interview quote from Dr. Philip Schlesinger.

stated that: “It is important to not just focus on one revenue model, but to investigate multiple models. We often see some experimentation, in order to see what will fit best. More is not necessarily better, but experimentation with which combination of models works best for your situation is useful”. This is confirmed by and elaborated upon by Liz Bishoff: “A key factor is moving to diverse revenue streams, either in-kind or financially, or pooling together with other institutions for renting server space for example. Another trend in revenue models is e-commerce (e.g. selling analogue copies), Freemium models (e.g. free lo-res for education/studies / licensing for hi-res with costs depending on the type of usage and providing free access after a certain time period after digitisation (e.g. private/public partnerships)”.

Organisational support

Finally, a project cannot be sustainable if there is no internal support for it from within the organisation itself. Liz Bishoff comments: “in the research we’ve done, we found that part of the problem was that institutions were dealing with digital initiatives as projects instead of the core mandate of the institution. If this mandate does not exist, projects will soon die out after the initial funding period is over.” Thus, before starting with a project, it is key to check with the Management Board and others that determine the multi-year plans of the organisation if there is a sufficient interest in carrying out the project, even when the funding period is over. It is easier to gain support by making the business case clear and demonstrating how the project will generate revenue, also in the long term.

Best Practice Recommendations for *sustainability planning*:

- Get an overview of what your main business model will look like by filling out the business model canvas.
- Determine which possible revenue models fit your project.
- Write a business plan that focusses not just on the short term, but on the long-term benefits of your project, and on whether your organization will keep supporting it once the project period ends
- Define metrics to measure success and steer on them if they deviate.
- Make sure you understand what your end users want and need, without their support and interest, you will be left with a failed project and nothing to show for it!

5. Concluding remarks

Many objects in the performing arts collections still fall under copyright. Although it is recommended in this report to provide as open access as possible, this is not an easy task to achieve. Especially in the case of orphan works and out of print works it will not always be possible due to lack of time and resources to follow the diligent search principles discussed in this report. This also goes for works that have many layers of rights. For instance, depending on existing contracts and agreements, to make a recording of a theatre performance from the 1970s available on the ECLAP portal, permission might have to be asked to the producer, director, composer, writer of the screenplay, costume designers and the actors. Not only that, but all the rights owners should be traced in order to ask for permissions. In some cases some rights holders may be deceased, which means that the heirs have to give permission. Also, it should be taken into account that European IPR legislation is not yet fully harmonised. This means that for instance a digitised work that is in the public domain in one country might still be protected in another. Still, getting a grasp of rights issues as set out in this report can hopefully aid performing arts institutions to start the clearance process with the easiest collections and gather experience for more complicated cases.

Furthermore, cultural heritage institutions need become more aware of the need to plan for sustainability. This starts with developing a sound business model, based on the needs of end users and with a strong value proposition. Furthermore, it is vital to experiment with various revenue models in order to find out what works and what doesn't. By relying too much on funding, which is being cut in many countries on a large scale, institutions run the risk of not being able to adapt to the current financial climate. In the cultural heritage sector and the performing arts world in particular, information on this is not yet abundant, and metrics in order to measure both financial and 'soft' benefits are still being developed.

These issues pose challenging questions to performing arts institutions, but it means great steps and new opportunities to learn and connect with old and new audiences and rights holders alike emerge. It is time for the performing arts world to fully step into the digital age and make unique and rich collections available to as many people as possible.

6. Annexes

6.1. University of Amsterdam case study: Opening up a Digital Theatre Archive with Many Rights Holders

Short description of the organisation and collection(s) for which rights were cleared.

The University of Amsterdam (UvA) traces its roots back to 1632, when the Golden Age school Athenaeum Illustre was established to train students in commerce and philosophy. Today, with more than 30,000 students, 5,000 staff and 250 study programmes (Bachelor's and Master's), many of which are taught in English, it is one of the larger comprehensive universities in Europe. Teaching and research at the UvA are conducted in seven faculties: the Humanities, Social and Behavioural Sciences, Economics and Business, Law, Science, Medicine and Dentistry, with programmes offered in almost every field.

Department of Theatre Studies

The department of Theatre Studies is housed in the centre of Amsterdam together with the University Theatre. It has an extensive BA and MA program (3 years and 1 year respectively). It also offers a 1.5 year MA in Dramaturgy and participates in the MA International Performance Studies (1.5 year) and in the Research MA Art studies (2 years). At the UvA, Theatre Studies is mainly about theatre in Western and Eastern Europe, the United States, and countries where Dutch is spoken. The focus is not solely on drama, but also on opera, cabaret, mime and dance performances.

Collections

The collection of the Department of Theatre Studies consists of a small, valuable group of video registrations of contemporary theatre performances - all from leading companies in the Netherlands. Between 1990 - 2010 and in close collaboration with directors and choreographers Theatre Studies has recorded several performances of amongst others: Emio Greco | PC, Toneelgroep Amsterdam, ZT Hollandia, and Veenfabriek. Three hundred video items of these selected performances will be published on Open Images, ECLAP and Europeana. A large part of the selection belongs to the artistic oeuvre of Emio Greco, Gerardjan Rijnders, Johan Simons and Paul Koek.

What kind of access did you opt for and why? (e.g. using open licenses, behind a login)

For the Department of Theatre Studies, the main aim of providing its holdings of digital performance registrations was to make the content sustainably available for educational purposes: easy online access for learners and educators and preferably a level of permission that would allow educational (re)use.

Another important part of providing access to these digital registrations was to collaborate with the involved performing arts companies. It was an opportunity to actively involve them in an archival project, to strengthen and enlarge the network between the university and the artistic domain and share the creation of a European performing arts portal at an early stage.

Since there are no legal exemptions for the online educational use of digital heritage, in agreement with the main creators of the performances, the Department chose to clear the rights with an open licence that allows the types of reuse compliant with the aims of our clearing project (online educational (re)use) in order to maximize access and use of the content. For this purpose, we selected on the one hand the Creative Commons licensing model and on the other hand we joined the platform *Open Images* with our content.⁵⁸

⁵⁸ See www.openimages.eu.

The choice for *Open Images* as the starting point of our aggregation route was an important step in realizing the goals of the UvA content provision to ECLAP and Europeana. On a policy level, the platform's aims coincide with those of the Theatre Studies departments. Openness and sharing are at the core of *Open Images* and Beeld en Geluid has effectively translated these aims into the open infrastructure and design of the platform. It is built in order to facilitate data sharing, access and (re)use as much as possible. Besides, *Open Images* allowed us to create a special portal within platform, which makes it easy to reach out to Dutch user groups, specifically interested in theatre.

Open Images supports the CC licence model. Creative Commons licences guarantee multi-platform and multi-device access. Another important feature is that the licence builds *on top of* existing copyright laws, and that it is non-exclusive. In other words, the rights holder does not transfer his/her rights, but gives consent in publishing under the license conditions, while at the same time remaining his/her copyright and thus the right to strike other licence agreements as well. For any use of the content not specified in the legal code of the CC-license (e.g. commercial use) the rights holder needs to be contacted again to acquire permissions.

As a university we would have preferred to choose a CC-license that allows for all forms of re-use. For their sustainability and financing the academic faculties of the university do not depend on business models that include heritage content or metadata. On principle we would like the registrations to be as widely accessible and reusable as possible. Practically it would have allowed the content to be shared on open platforms like Wikipedia. However, the registrations are about works from artists outside the university and going beyond non-commercial licenses was clearly a *no go* for the performing arts companies and creators. The possibility that audiovisual derivatives of their artistic work could be commercially exploited is too sensitive and for them outweighs the benefit of maximizing use for individuals, education and creative companies.

So we opted for the CC-license Attribution-NonCommercial-ShareAlike (CC BY-NC-SA 3.0) or in some cases Attribution-NonCommercial-NoDerivatives (CC BY-NC-ND) for creators who did not feel comfortable with the idea that others could re-edit and remix their content, even though this would only be possible for non-commercial purposes. CC BY-NC-SA 3.0 allows users to freely download and redistribute a work for non-commercial purposes. The user is also free to translate, remix, and produce new works based on this work as long as the author or licensor of the original work is credited, the new creations are licensed under identical terms and they are non-commercial in nature. The CC BY-NC-ND license also allows free downloading and distribution for non-commercial purposes, but not the creation of new works.

Who are the rights holders of the collection (e.g. describe the various rights holders: director, photographer, performer, playwright, set designer, etc)

The first step of tracing the copyright holders was to trace the *actual creators and contributors* to the performances and the associated music and written works. To identify those people, we unravelled the layers constituting performances and performance recordings.

LAYERS of creators and contributors:

1. The registration, the work that is actually licensed
 - a. Camera operator
2. The performance
 - a. Theatre company
 - b. Artistic director of the performance
 - c. Actors
3. The written work and it's adaptation process for a performance
 - a. Playwright / novelist

- b. Translator
 - c. Publisher of (the edition of) the play or novel
 - d. Dramaturge (when acting as playwright and/or translator)
4. Music in the performance
- a. Composer
 - b. Performing musicians on a recording
 - c. Publisher of a recording
 - d. Live music performers
5. Stage setting / decor
- a. Scenographer
 - b. Designers for costumes and stage settings
 - c. Audio-visual or photographic work in the performance, identifiable as a unique work or contribution

How did you clear the rights?

Step 1 Preliminary research

Research into existing types of rights agreements for performances plus research into practices of clearing these rights for online access.

- Desk research on rights and performing arts and on projects working on the same issues.⁵⁹
- Interviewing colleagues at project or institutional positions involved in performing arts archiving and publishing heritage content.⁶⁰
- Interviewing the involved company directors.

These practices are up to this day largely dependent upon rights practices in neighbouring artistic domains and are mostly not very formalised. The reasons for this are:

- The performers are completely focused on the constant creation of new work and to a degree neglect to document and archive intellectual and formal information about performances. Company archives are often inaccessible or non-existent.
- Performing arts professionals know very little about their own (related) rights and rights status of the productions they are involved in.
- Rights clearance for performances is in the Netherlands approached on a single performance basis. There are no examples of Dutch projects that aim to make large performing arts collections of digitized objects online available. There are no common practices for large-scale rights clearance of performances with multiple rights layers.

Due to these reasons we decided to approach all possible rights holders related to the different layers of creation and contribution. The assumption that the producer/director of a performance is the rights holder in terms of publishing and exploiting the registration of a performance is untenable in the Dutch situation with its non-formalized agreements and practices. Secondly we decided to conform to this by approaching rights holders quite informally. This was possible because our Theatre Studies department staff members know many of the performing artists personally.

Step 2. Legal advice

Take legal advice from IPR experts beforehand. The specific rights status of a work can be highly complex and subject to legal exemptions.

⁵⁹ We used the previous version of this report, DE5.2.2, WG-B, as the basis for our desk research. It contains an extensive, valuable overview of relevant publications and websites on rights and performing arts (see also <http://bpnet.eclap.eu/drupal/?q=en-US/node/4311§ion=group&cd=2&n=2>)

⁶⁰ TIN (Theatre Institute Netherlands), NIMk (Netherlands Media Art Institute) REPLAY, The Archive of Siobhan Davies Dance, and IViR (Institute for Information Law, University of Amsterdam) . The TIN and NIMk were closed during the project due to cuts in public funding.

Since we had no legal expert on the project team, we took legal advice from IPR experts and the legal department of the university. We checked our approach and assumptions with the university policy and most recent trends in IPR law and decided to start the process.

Step 3. Selecting and prioritizing

The first active step we took was to make a critical selection of the collection. This selection was based on the following conditions

- Selection of the key director-creators
- Quality and method of recording (e.g. for practical purposes multi-camera recordings were not selected)
- Quality of the performance in terms of artistic achievement
- Usefulness of the performance with regard to teaching academic and practical dimensions of (Dutch) performing arts
- Estimated success rate of clearing the rights

Subsequently we prioritized the selected performances. Once selected, the main criterion for prioritization was the estimated speed with which we could clear the rights of a performance. Speed was calculated on the amount of contributors and on the multiple roles that the main creator, the artistic director had. (e.g. Gerardjan Rijnders often wrote his own plays.)

The qualitative selection was in our case a relatively easy step, because the Department staff knew the collection very well and knew exactly which performances were of high quality and useful for education. The prioritization was a guess. Beforehand we didn't know which creators or contributors would be positive about the project and which ones would be less inclined to cooperate.

Step 4. Identification of rights holders

The next step was to identify for every selected performance

- What layers of rights holders were relevant (see above)
- Involved individuals whom to discard as rights holders.
- The actual creators and contributors involved according to the layers identified
- The actual rights holder per creator and contributor (heirs, legal representatives, etc.)
- The actual point of contact (agents, etc.)

We benefitted greatly from the efforts made by the former Dutch Theatre Institute (TIN).⁶¹ Their collection department has documented all the important Dutch performances (and many smaller ones) by registering all the key metadata in their productions catalogue. 100% of the performances we selected were present in their database, so this made the first part, identifying all creators and contributors, relatively easy.

Step 5. Tracing and contacting the identified individuals and organisations

Due to the contemporary nature of the performances we were able to actually trace all the rights holders.

- For 10% we already had contact details
- For 15% we received contact details via the collaborating performing arts companies
- For about 65% we approached individuals directly via their own website or social media profile on Facebook, Twitter or LinkedIn
- For about 10% tracing the actual contact was (extremely) difficult and went by word of mouth and internet research. This group included mainly heirs of deceased actors or writers and non-Dutch contributors.

⁶¹ <http://www.theaterinstituut.nl>

The hardest part were people we could trace but did not respond to our writing. In the end though, it turned out that almost everyone responded after a third reminder. Of the ones who did not respond at all, we traced phone numbers by word of mouth. A part of the older artists is quite unfamiliar or uninterested in handling email they receive and they prefer a personal approach. About 10% of the rights holders was really difficult to find and also was traced by word of mouth.

Step 6. Sending a letter of consent via email and asking them to give permission via email reply

We wrote a template letter and specified per rights holder the performances he or she had contributed to. The letter itself was quite informal and contained an extensive annex on the project and its aims. The letters were signed by a representative of the Department and by the relevant artistic director(s).

Step 7. Documenting and archiving all the steps we took per rights holder

We have archived digital and printed versions of the letters and responses of the rights holders. Thus, it will be possible per performance to reconstruct how the rights were cleared and who we approached.

Step 8. Publish items of the performances that were 100% cleared for the CC-license.

In 5 months full time we cleared about 40 performances. We are still working on 20 others, of which five are cleared in principle but have one untraceable, unresponsive or reluctant rights holder.

What were the most salient problems you encountered, and how did you solve them?

1. Although we are dealing with a contemporary audiovisual collection, it was unknown to us if copyright law associated with audiovisual works is applicable to performance recordings. For recent AV works, the producer normally has the reproduction and publishing rights. If there is no producer, e.g. in the case of an independent filmmaker then these rights belong to him/her. The applicability of these laws to registrations of performances that have no formal producer and/or of which the registration is not done by a formal, independent film maker is unknown territory. We didn't know of any jurisprudence about the *status* of performance video recordings, so we choose the labour intense route of identifying all possible creators and contributors.
2. Due to the collaborative and multi-disciplinary nature of the performing arts, the clearing is extremely time-consuming and complex. You never deal with just one rights holder. One solution is to work with a sharp prioritization. We opted to clear the easy performances first, so we had a small set of quick results and built experience before clearing the more complex performances.
3. Our intention was to collaborate intensively with the performing arts companies. For two reasons this was less effective than expected. First of all documenting and archiving performances is not a priority for them. They sincerely support these initiatives, but they do not have the resources to engage deeply in archival heritage projects. Secondly the archives of the companies are often inaccessible or non-existent. Companies don't have dossiers with contracts and documents of performances produced 10 years ago. Knowledge of past performances is kept in the minds of the directors and dramaturges. This makes the identification step even harder. A wonderful exception is Emio Greco | PC in ICK Amsterdam. They have great awareness of the need to document performances and artistic processes and have much experience in documentation and multi-media projects.
4. So beforehand we didn't know which creators or contributors would be positive about the project and which ones would be less inclined to cooperate. It turned out that directors, actors, dramaturges, live musicians and (even) publishers gave, often instant, consent. Translators of historic novels and drama were much more cautious and really needed quite a bit of persuasion. They also were the only ones asking for a financial reward in return for

their consent. Since there was no money to share with the rights holders this was quite a difficult aspect. They often opted for the most restrictive license (CC BY-NC-ND).

5. Besides copyrights, other rights related to portrait and privacy issues can occur. In contemporary theatre and dance there are often scenes in which the actors/dancers are naked. This has an artistic purpose, but being naked on a stage in a confined time and space is quite different than having videos of your bare self on the Internet. We choose to be conservative and protective and all nude scenes were deselected. Only one actor actually requested this.

What were the most important lessons-learned of working on rights clearance for this collection?

1. Within the performing arts domain there is huge support for archival and digital access projects. There is a sense of urgency to document the live arts and to preserve those documents. Of the approached right holders 90% was instantly positive about the project and didn't hesitate about agreeing to make the performance registration online accessible. The documents are derivatives and themselves not the actual work. The professionals make money with the live event, not with the derivative documents; they are not interested in the documents in terms of financial gain. This attitude made this project possible.
2. However, the artists are cautious to break the barrier between non-commercial and commercial when it comes to publishing full registrations online. They don't expect to gain financially, but don't want others to be able to do so either. The inclination of rights holders to give consent for a CC license could in our case be predicted more or less by *economic interest*. For translators this economic interest is as much entangled with derivative works as with purely their own work. Our impression is that since the reward for the initial work, the translation, is often small, they follow the trail of derivative works, in our case the fifth layer: text – drama – performance – video – digital copy. Writers are more used to dealing with rights aspects of their work than performing arts professionals. The economic interest of this last group, e.g. dramaturges and performers, is largely connected to live events.
3. The domain needs to take responsibility for its own archival processes. In the end the holdings of the Department of Theatre Studies only encompassed about 200 performances of which for about 50 we could clear for open online access. Comparatively this is a very small collection. The approach we took on is extremely time consuming and therefore not scalable for large digital heritage projects. One of the main lessons learned is that the performing arts domain, the theatre companies and all the contributors themselves need to develop chains of creation, production, documentation, preservation, access, use and reuse. They need to think of setting the right conditions early in the chain to make preservation and use of the history of the performing arts possible and sustainable.
4. The copyright status of video registrations of performances needs to be reviewed deeply by legal experts. Models should be developed in which the rights to exploit (the derivative documents of) performances are consolidated in clear structures. It needs to be legally clear who decides upon the digital and online afterlife of a performance.

6.2. University of Cambridge case study: To Have is not to Hold – Being Sensitive to Traditional Cultural Expressions

The organisation and collection(s) for which rights were cleared.

The Museum of Archaeology and Anthropology (Now MAA/ formerly UCAM) was established in 1884, and the collection histories are representative of disciplinary developments as well as the arts and cultural objects of various indigenous people all over the world. The collection accessible on ECLAP/Europeana is representative of MAA's core collections, of photographic, anthropological and archaeological holdings, and reflects the pioneering field research of Cambridge ethnographers and

archaeologists during the early 20th century. They illustrate the knowledge transactions with indigenous communities and have been purposefully curated over the last decade to draw contemporary artists and source communities into dialogue for enriching further their educational and cultural values.

What kind of access did you opt for and why? (e.g. using open licenses, behind a login)

Creative Commons, Attribution-Non Commercial-NoDerivs⁶². MAA facilitates the access of its collections widely, however, it takes particular care to thwart subsequent re-uses of images without permission. In this MAA seeks to abide by the origin community's judgements regarding the cultural sensitivity of the objects, and administers and monitors the kinds of access that is given to the collections very closely.

Who are the rights holders of the collection (e.g. describe the various rights holders: director, photographer, performer, script writer, set designer, etc)

The MAA is the right holder of most of the material.

How did you clear the rights?

Through consensus internally with colleagues within MAA. The negotiations have been relatively smooth because only those materials have been made accessible on ECLAP for which UCAM is assured of holding the rights of access through publications.

What were the most salient problems you encountered, and how did you solve them?

MAA follows the pathways of the intellectual property rights that have been adopted by Cambridge University, and holds copyrights of the collections provided to ECLAP. The issue of IPR, however, becomes complicated with respect to the histories of collecting practices, the manner which the communities whose ancestors had made the objects endow values of 'cultural heritage' to the collections, and whether they are even aware of the existence of such collections. Well until the 1970s, many collections have been collected by researchers without regard to traditional cultural contexts. Hence MAA's collections contain secret and sacred material, which the source communities may not wish to provide access.

The problem for many people in the world is that most IPR legislation arose in the West, and within a western cultural tradition, with emphases upon ideals of individuality and universal property rights. Within this legally formalised western tradition, most traditional cultural expressions (TCEs) and traditional knowledge of 'indigenous' communities were freely appropriated as being authorless and ownerless, while the products resulting in these appropriations were owned under IPR and copyright.

The legal status of TCE under IP laws remain unclear, as rights are legally owned by the creators and not by traditional bearers. There is no real technical or legal description of TCEs, but WIPO (the World Intellectual Property Organization) does provide some characteristics. Unlike works and performances that are clearly covered by IPR and copyright, TCEs:

- are handed down from one generation to another, either orally or by imitation,
- reflect a community's cultural and social identity,
- consist of characteristic elements of a community's heritage,
- are made by 'authors unknown' and/or by communities and/or by individuals communally recognized as having the right, responsibility or permission to do so,
- are often not created for commercial purposes, but as vehicles for religious and cultural expression, and

⁶² The full license text can be found here: <http://creativecommons.org/licenses/by-nc-nd/3.0/>

- are constantly evolving, developing and being recreated within the community (cf: <http://www.wipo.int/tk/en/folklore/>)

The 'living' aspect of TCEs makes them very hard to be protected under current IPR and copyright laws and conventions. They often seem like social life rather than creative works. Therefore, it is useful to explore not only the ways in which rich collections of TCEs and inscriptions of TCEs held by museums and archives are/can be used, but also the ways in which cultural stakeholders are using existing IPR laws for extending their own artistic expressions.

What were the most important lessons-learned of working on rights clearance for this collection?

An engagement with IPR issues focuses attention on the performative spaces that are created by the collections themselves. Collections sourced from non-European indigenous communities have complicated biographies, and their curation involves making them accessible to the 'origin' communities, in their on-going cultural expressions and performances. Indigenous groups are increasingly drawing on strategies for creating local documentation and inscriptions of their cultural patrimony so that this documentation can act as a form of control over use and their inscriptions, which will ensure local ownership.

The strategies they use include: a) using existing Copyright; b) the use of communal moral rights for curtailing specific uses of indigenous cultural materials; c) developments of Sui generis measures and systems. Thus, institutions with collections such as the MAA are developing ways of giving curatorial responsibilities to the originating communities, and ensuring that the derivation and inspiration that the Collections engender adequately respects the knowledge and ownership of Traditional Cultural Expressions.

6.3. Sample letter for rights clearance

This letter is based on examples from other cultural and IPR-related projects, most notably Europeana Fashion⁶³, Web2Rights⁶⁴ and the European Film Gateway⁶⁵. It is highly recommended to provide a return envelope with paid postage and the correct address information already printed on it. Note that you should customise every highlighted section in the sample letter, which is put between square brackets based on your situation. Also, you might have to strike specific, more elaborate license agreements for complicated collections and situations. This sample letter does not serve as legal advice; always consult a legal expert before starting the rights clearance process.

SAMPLE LETTER

[DATE], [LOCATION]

Topic: Request for copyright permission for [NAME PROJECT/WEBSITE]

Dear [NAME or SIR/MADAM],

[START WITH: description of the project you are working on, name of the project lead institution and if available, a URL]

⁶³ www.europeanafashion.eu/press-publications/

⁶⁴ <http://www.web2rights.org.uk/documents.html>

⁶⁵ <http://www.efgproject.eu/outcomes.php>

According to our information, you are the copyright holder of, or represent the copyright holder of the following work(s):

[ADD FULL INFORMATION HERE: e.g. the name of the work(s)/object(s) / collection(s); if applicable specify the part / layer of the work the person you are addressing is the copyright holder of.]

We would like to [ADD DETAILS OF HOW THE WORK(S)/COLLECTION(S) WILL BE MADE AVAILABLE: e.g. is it non-exclusive (it will be in practically all situations), will the content be used on an educational website only accessible to users with a login, or do you want to make it available openly through a Creative Commons license]. If you give permission, the online performing arts community would benefit greatly and become more rich and diverse.

We understand that you are [one of the: remove if addressee is only rights holder] the rights holder of the work(s) described above.

We wish to copy and use the work(s) and to provide access to it to under the terms of [INSERT INFORMATION OR REFERENCE TO THE TERMS USE AND ACCESS YOU ARE SEEKING: e.g. a Creative Commons license and a link to the license, the Terms of use of your website].

Neither our organization, nor any [NAME PROJECT] partners will assert any rights over the digitized material you will grant copyright permission for. If you are willing to grant permissions, please confirm how you wish to be credited:

- I want to be credited as follows:

We are working towards a deadline of [DAY MONTH YEAR] and would therefore kindly ask you to respond before at your earliest convenience.

Please confirm if you provide copyright permission for the use of the work(s) as described in this letter by signing the two copies and returning one to:

[NAME
ADDRESS]

On behalf of [NAME OF YOUR ORGANISATION]
[YOUR NAME]
Signature:

Rights holder
Name:
Signature:

Date: [DAY MONTH YEAR]

Date: _____

We look forward to hearing from you. Please do not hesitate to contact us if you have any questions.

With kind regards,

[NAME

JOB TITLE AND / OR PROJECT ROLE

NAME ORGANISATIONS AND / OR PROJECT

EMAIL / TELEPHONE NUMBER]

[IF APPLICABLE, ADD REFERENCE TO APPENDICES, SUCH AS TERMS OF USE OF YOUR PROJECT'S WEBSITE]

6.4. Glossary

Collective Management Organisation

Collective Management Organisations (CMOs) exercise copyright and related rights on behalf of the rights owners that are a member of the CMO.

Copyright

Copyright creates a temporary monopoly of an author to make use of his work (e.g. distribute, reproduce). These are called economic or exploitation rights. An author also has moral rights, which entail that he has the right to be credited as being the author (Right of authorship or right of paternity) and has the right to demand that his work is not distorted or mutilated (Right of integrity). In most European countries copyright lasts until 70 years after the death of the longest living author.

Creative Commons licence

A Creative Commons licence is an open license through which an author/creator/owner of a work explicitly provides a certain freedom for end-users to utilise a work in a way or ways that that normally requires an end-user to ask for permission, within the existing copyright framework. There are six types of Creative Commons licences that authors can assign to their work, which range from open to restrictive. There is also a Creative Commons waiver (CC0) that allows a right holder or rights holders to make a work available without any restrictions by waiving all copyrights *and* related rights. Creative Commons has also worked with Europeana to develop a Public Domain Mark, which is used to indicate if a work is in the public domain.

Intellectual Property Rights

Intellectual property, very broadly, means the legal rights, which result from intellectual activity in the industrial, scientific, literary and artistic fields. [WIPO, 2004, p. 3] Intellectual property can be divided in two general branches: industrial property and copyright.

Open content

Open content in general explicitly refers to free and open creative works. There is no single definition of what open content is⁶⁶. However, the basic agreement is that exceptions within

⁶⁶ The Open Knowledge Foundation for instance states that non-commercial and no-derivative use stipulations should not be part of open content licenses (<http://www.opendefinition.org/>), whereas Creative Commons

the applicable copyright framework of a work are granted which make it possible to openly access and (re)use a work without having to ask the rights holder for permission each time. This is done by applying so-called open licences to a work that provide an easy way for users to understand under which conditions the work may be used. See also: Creative Commons licence.

Orphan work

Orphan works are works of which the “rights holders cannot be identified or, if they are identified, they cannot be located in order to ask the necessary permissions.” [Koskinen-Olsson, 2010, p. 256]

Out-of-Print-works

Out-of-print works are works which are no longer being commercially distributed, but that are still protected by copyright. Who owns the rights to an out-of-print work depends on national legislation “as well as contractual arrangements between the creator and publisher/producer.” [Ricolfi et al., 2008, Annex 7]

Public Domain

When all rights of a work have expired, the work falls in the Public Domain. The Public Domain and the two types of materials that can fall into the Public Domain are works of which the copyright has expired and works that is not covered by copyright.

Related rights

Related rights (also called neighbouring rights) are rights of performers, producers of phonograms and broadcasting organisations who have contributed to a work in a way which is not protected by copyright law in all jurisdictions, but that “contain sufficient creativity or technical and organizational skill to justify recognition of a copyright-like quality”. [WIPO, Understanding Copyright and Related Rights]. In Europe, related rights of performers expire 50 years after the performance or 50 years after a fixation of the performance was published. In 2011, the European Parliament and the Council of the European Union accepted an amendment of the existing Directive 2006/116/EC on the term protection of copyright and certain related rights (Directive 2011/77/EU). This amendment means the term of protection of the related rights of performers and sound recordings is extended from 50 to 70 years. The amendment is still to be implemented in European member states, and is only applicable to performers whose efforts have been fixated on a phonogram (i.e. has been recorded), and is thus focussed on musicians and does not deal with other related right of performers such as actors, acrobats and dancers.

6.5. Contributors

Besides the entire ECLAP consortium, the following people and organisations have also contributed to the development of the Best Practices.

Name	Institution and function	Country	Role
Ñusta Nina	Amsterdam, University of	NL	Keynote speaker WG-B

does include these levels of (re)use permissions in several of its licenses (<http://creativecommons.org/licenses/?lang=en>).

	Applied Sciences. Lecturer Information and Media Law		Workshop, Brussels, 10 June 2011
Johan Axhamn	Faculty of Law, Stockholm University. PhD candidate in intellectual property	SE	Keynote speaker WG-B Workshop, Brussels, 10 June 2011
Nikki Timmermans	Kennisland / BMICE / Media Plusregeling at Fonds voor Cultuurparticipatie. Advisor	NL	Keynote speaker 1st ECLAP conference, 7-9 May 2012
Anra Kennedy	Culture24, Content & Partnerships Director	UK	Programme committee member, 1st ECLAP conference, 7-9 May 2012
Kara van Malssen	New York University, Senior Consultant at AudioVisual Preservation Solutions	USA	Programme committee member, 1st ECLAP conference, 7-9 May 2012
Geertje Jacobs	Rijksmuseum Amsterdam, Head Collection Information	NL	Programme committee member, 1st ECLAP conference, 7-9 May 2012
Liz Bishoff	Partner at The Bishoff Group, cultural heritage consultant	UK	Expert interview, 5 June 2012
Robin Kerremans	Copyright and Media Law Expert: KU Leuven	BE	Expert interview, 7 June 2012
Nancy Maron	Program Director: Ithaka S+R	USA	Expert interview, 5 June 2012
Amanda Rigali	Director, Combined arts and touring: Arts Council England / The Space	UK	Expert interview, 14 June 2012
Philip Schlessinger	Academic Director of the Centre for Cultural Policy Research: Glasgow University	UK	Expert interview, 7 June 2012
Primož Jesenko	National Theatre Museum of Slovenia	SI	Workshop attendee, 14 November 2012
Kornelia Rorman	Cankarjev dom	SI	Workshop attendee, 14 November 2012
Lidija Franjić	Ljubljana Puppet Theatre	SI	Workshop attendee, 14 November 2012
Erwin Verbruggen	Netherlands Institute for Sound and Vision, project manager EUScreen and Europeana Fashion	NL	Quality assurance WG-B Best Practice DE5.2.3.
Heather Caven	Victoria & Albert Museum Head of Collections Management and Resource Planning. Working on IPR clearing guidelines in the Europeana Fashion project.	UK	Email conversations about IPR guideline similarities between Europeana Fashion and ECLAP. Sound and Vision also gave extensive input on the Europeana Fashion guidelines.
Roxanne Peters	Victoria & Albert Museum, IP Manager. Working on IPR clearing guidelines in the Europeana Fashion project.	UK	Email conversations about IPR guideline similarities between Europeana Fashion and ECLAP. Sound and Vision also gave extensive input on the Europeana Fashion guidelines.

6.6. Objectives and Priorities of Working Group B

Working Group B of ECLAP deals with intellectual property rights (IPR) issues and business models for performing arts content. The main goal of this working group is to gather best practice guidelines that relate to ECLAP, and use these to produce an internal working document that is of interest for the performing arts community. The focus of the working group has over the last year shifted from describing the current IPR landscape and explanations of copyright issues to a practical roadmap for clearing rights for showing performing arts content online, and to provide an overview with tips for developing sustainability models.

IPR

Identifying differences in IPR issues for various types of content and various usages.
Making an overview of current practices of the partners in ECLAP.
Examining various models to handle IPR, such as Creative Commons and others.

Business models

Analysing (developments in) business models for exploiting the content, and identifying those that can be applied to by organisations with digital performing arts collections. This will largely depend on the outcomes of the research that will be performed on IPR issues, and the way in which the content in ECLAP can be used. Rights issues for content and sustainability and business models often go hand-in-hand (no clear rights status = no online use of content).

6.7. Survey

The respondents were asked to estimate what percentage of their collection has which IPR status. It turned out that in most cases IPR is a very polarised issue: organisations are either the creators of their content, or the rights lie totally with third parties. As was to be expected, IPR does influence the selection of content the respondents are able to put online. Some reasons mentioned are “the time needed to clear rights”, “rights holders are often unknown” and “video is much, much more complex to clear rights of than photos or texts, since there are often many rights holders”. Almost 80% of respondents are familiar with open licenses and five respondents out of nine already use them.

Half of the respondents (4 out of 8) charge users for re-using content for commercial purposes (Q70). Charging for merely viewing objects either in-house or online is rare. Two people answered that paying fees for (re)use is not applicable, and two other indicated that the fees are dependent on the reason and context of usage. The fees charged for access and / or (re)use are calculated based on various parameters, of which the period of use, the quantity and the type of use are the most common ones (Q71). Funding is the most common sources of income (62.5% public and 50% private funding respectively). Interestingly, none of the respondents are using pay-per-download services. The revenue models mentioned by those who chose ‘Other’ are ticket sales, membership fees for the documentation centre and entrance fees for seminars and workshops. Most respondents indicate that once a project has ended, it is sustained by making it part of the organisation’s

regular tasks, combined with creating a business model strategy (Q75). One respondent commented with “Our business models are determined at the university and/or national level”, which indicates that projects can also be dependent on outside factors over which there is limited control. According to the respondents, this also holds true for creating a business model strategy that works in general (Q76).

The full survey can be found on the ECLAP website⁶⁷.

6.8. Workshops

The following workshops were held in which feedback on the priority of IPR and Business Model topics was gathered from the ECLAP partners, the performing arts community in general and IPR and business model experts:

Where	When	Attendees
Florence, Italy	13 January 2011	10 (internal ECLAP meeting)
Brussels, Belgium	10 June 2011	12 (5 external, 7 ECLAP partners)
Florence, Italy	9 May 2012	15 (7 external, 8 ECLAP partners)
Ljubljana, Slovenia	14 November 2012	10 (3 external, 7 ECLAP partners)
Porto, Portugal	10 April 2013	100 (84 external, 16 ECLAP partners)

The workshop held in Florence, January 2011, resulted in a more detailed list of topics for the first Best Practice deliverables.

- How-to clear copyrights (best-practices). All partners agreed this is a crucial issue for which work needs to start as soon as possible. Partners would like to hear from an expert about best-practices and real-life examples from which they can take (practical) inspiration.
- IPR issues within the educational domain. Partners are interested in learning whether there are special rules and regulations regarding clearing rights for content for educational and research use.
- IPR regulations on a European level and within the scope of Europeana. Since ECLAP is supported by the European Commission, it is important to understand IPR regulations not just on a national, but on a European level as well. Therefore it is important to highlight the various issues and solutions used in other European projects in which content is made available online. Europeana is of specific interest here, especially since the ECLAP metadata and content will become available and findable through Europeana. Also, there is a lot of experience within Europeana and its sister projects with rights issues and rights clearing practices, which is of specific interest to ECLAP.

⁶⁷ <http://www.eclap.eu/92442>

The topics are all IPR related, indicating that the most pressing issues were IPR issues and that business model development was of less importance at the early stage of the project for the partners. This was confirmed during a WG-B workshop that was held during the first public ECLAP event in Brussels on 9-10 June 2011, in which also people from outside the ECLAP consortium took part. After the first version of the Best Practice report (DE5.2.1) was published in Summer 2011, the focus was shifted to also writing about business models. However, as requested by both parties inside and outside ECLAP, a guide for clearing rights was developed, since many performing arts organisations struggle with this. The first version of this three-step guide was presented at a public ECLAP event in Ljubljana in November, in which the participants provided input and feedback. This was consequently incorporated in the next-to-last version of this report in January 2013.⁶⁸ Finally, a discussion session at the final ECLAP conference in Porto on April 10, 2013, was held. This was attended by the largest workshop group yet: 100 people, of which the vast majority were external attendees, comprised mostly of performing arts students from the Escola Superior de Música, Artes e Espectáculo (ESMAE).⁶⁹

6.9. Expert interview script

Introduction:

- About ECLAP
- Explanation BP Deliverable

General questions⁷⁰:

- IPR: Can you go into the various levels of copyright at play for performing arts content, also taking into account the type of content (document, audio, video, image)? Who has which rights, and how should these rights be cleared?
- IPR: How does the call of the European Commission to provide broad online access to cultural content relate to the current copyright and related IPR legislation?
- IPR: What are the most important tips and guidelines you can give to heritage institutions with performing arts collections for clearing rights for showing collections online?
- IPR: Are there projects or specific organisations in the performing arts field that you feel are exemplary for how they deal with copyright and IPR issues in providing online access to collections?
- IPR: What do you think are best practice examples (these can be projects, tools or institutions)?
- BUSINESS MODELS: Many studies regarding sustainability and business models in the heritage sector focus on individual organisations. ECLAP however is a collaborative project funded by the European Commission. The European Commission has called on the heritage sector to provide broad and (as much as possible) free online access

⁶⁸ For a complete overview of this public event and the input provided, please read the workshop report here: <http://www.eclap.eu/113343>.

⁶⁹ For a complete overview of this public event and the input provided, please read the workshop report here: <http://www.eclap.eu/121815>.

⁷⁰ Specific questions were adapted and asked based on the background and expertise of the interviewee. For a complete list of all questions, please contact Lotte Belice Baltussen (lbbaltussen [at] beeldengeluid.nl).

to cultural content. To this end, they are providing funding for projects like ECLAP to do this. However, many of these projects die a slow death after the funding period (2-4 years), can you comment on how this can be prevented?

- BUSINESS MODELS: In projects like ECLAP, multiple partners from various countries in Europe contribute, who all have different funding and sustainability models (funding, donations, sponsoring, license fees, subscription models, etc). How can you ensure that these are channelled into a coherent sustainability model for these kinds of collaborative projects?
- BUSINESS MODELS: a lot of research has been done in the cultural heritage sector in general regarding sustainability, but there is not a lot information out there regarding specific models for performing arts content. Is this necessary, or can the performing arts sector and organisations with performing arts holdings learn enough from these general studies?
- BUSINESS MODELS: In your research into sustainability, what have you found are the 'red threads' that run through successful organisations and projects?
- BUSINESS MODELS: Can you comment on specific issues and sustainability models for the performing arts sector?
- BUSINESS MODELS: What do you think are best practice examples (these can be projects, tools or institutions)?

Closure:

- Thank participant
- Tell them when the DE will be published
- Ask them how they want to be mentioned in the DE

Bibliography

- Anderson, C., 2008. Freemium math: what's the right conversion percentage? Available at: http://www.longtail.com/the_long_tail/2008/11/freemium-math-w.html [Accessed July 13, 2012].
- Angelopoulos, C., 2012. Determining the Term of Protection for Films: When Does a Film Fall into the Public Domain in Europe? Extract, Strasbourg: European Audiovisual Observatory. Available at: http://www.obs.coe.int/oea_publ/iris/iris_plus/iplus2LA_2012.pdf.en.
- Anon, Resources | Archives in the Digital Age | Issues. Australia Council of the Arts. Available at: http://www.australiacouncil.gov.au/resources/reports_and_publications/artforms/digital/archives_in_the_digital_era/issues.
- Arnoldus, M., Loon, L. van & Zeinstra, M., 2012. Schermen met auteursrecht. Auteursrechtelijke aspecten van het online ontsluiten van videokunst, Amsterdam: Kennisland / SBMK / NIMk. Available at: <http://www.kennisland.nl/uploads/fckconnector/120ddb99-bfa2-47f9-af78-d4a81d5909db>.
- Atkinson, S. & Cáliz, J., 2012. Audiovisual Media Open Educational Resources. The case of SP-ARK: The Sally Potter Film Archive. In P. Nesi & R. Santucci, eds. ECLAP 2012 : Conference on Information Technologies for Performing Arts, Media Access and Entertainment. Florence: Firenze University Press, pp. 95–98.
- Axhamn, J., 2012. Trilogue agreement on the Orphan Works Directive. Kluwer Copyright Blog. Available at: <http://kluwercopyrightblog.com/2012/06/13/trilogue-agreement-on-the-orphan-works-directive/>.
- Bellini P., P. Nesi, M. Paolucci, "IPR Management Models for Cultural Heritage on ECLAP Best Practice Network", Proc. of the IEEE International Conference on Comunicazion, IEEE ICC 2013, Workshop "Beyond Social Networks: Collective Awareness", 9-13 June 2013, Budapest, Hungary, IEEE Press.
- BMICE consortium, 2011. BMICE Step-by-step plan, Stichting Nederland Kennisland, Stichting DEN, TNO, Stichting E30. Available at: http://www.bmice.nl/wp-content/uploads/BMICE-Step-by-step_EN.pdf.
- Boch, L., Di Carlo, A. & Gallo, F., 2012. Model, format and services for audiovisual rights management. In P. Nesi & R. Santucci, eds. ECLAP 2012 : Conference on Information Technologies for Performing Arts, Media Access and Entertainment. Florence: Firenze University Press, pp. 89–94.
- Cousins, J., Verwayen, H. & Collier, M., 2008. Summary of Business Plan for Project & Operational Phase 2009 - 2015, The Hague: EDL Foundation.
- Dierickx, B. & Tsois, D., 2009. Overview of collective licensing models and of DRM systems and technologies used for IPR protection and management, ATHENA / European Commission. Available at: <http://www.athenaeurope.org/getFile.php?id=665>.
- Dietrich, D. & Pekel, J., 2012. Open Data in Cultural Heritage Institutions, ePSI Platform.
- ECLAP IPR Model and Wizard. <http://www.eclap.eu/4021>

- European Commission, GREEN PAPER on the online distribution of audiovisual works in the European Union: opportunities and challenges towards a digital single market, European Commission. Available at: http://ec.europa.eu/internal_market/consultations/docs/2011/audiovisual/green_paper_COM2011_427_en.pdf.
- European Commission, 2012. Orphan works. Directive 2012/28/EU, Strasbourg: European Parliament / Council of the European Union. Available at: http://ec.europa.eu/internal_market/copyright/orphan_works/index_en.htm [Accessed January 1, 2012].
- Ferro, E. & Osella, M., 2011. Modelli di Business nel Riuso dell'Informazione Pubblica. Studio Esplorativo 2011, Piemonte: Osservatoria ICT.
- DEN Foundation, KnowledgeLand & Ministry of education, culture and science, 2010. Business Model Innovation Cultural Heritage, Amsterdam / The Hague: DEN / KnowledgeLand. Available at: http://www.den.nl/art/uploads/files/Publicaties/BusModIn_eng_final.pdf.
- Geser, G. & Mulrenin, A., 2002. The DigiCULT report: technological landscapes for tomorrow's cultural economy: unlocking the value of cultural heritage. A. Mulrenin, ed., Luxembourg: Office for Official Publications of the European Communities.
- Guthrie, K., Griffiths, R.J. & Maron, N.L., 2008. Sustainability and Revenue Models for Online Academic Resources, Ithaca S+R / JISC. Available at: <http://www.sr.ithaka.org/research-publications/sustainability-and-revenue-models-online-academic-resources>.
- Hauttekeete, L. & Evens, T., 2009. A guided tour through the archives of performing arts institutions, Ghent: Vlaams Theater Instituut / IBBT.
- Heuvel, van den, W. & Baltussen, L.B., 2011. Online Access to Audiovisual Heritage Status Report, EUscreen / European Commission. Available at: <http://blog.euscreen.eu/wp-content/uploads/2011/04/D7-6-1-Online-Access-to-Audiovisual-Heritage-Status-Report.pdf>
- Hugenholtz, P.B., 2005. Abuse of Database Right. Sole-source information banks under the EU Database Directive. In F. Lévêque & H. Shelanski, eds. Antitrust, Patents and Copyright: EU and US Perspectives. Cheltenham: Edward Elgar Pub, pp. 203–219.
- ISKME, 2012. About | OER Commons. Available at: <http://www.oercommons.org/about> [Accessed July 19, 2012].
- Koninklijke Bibliotheek, 2010. KB en auteursrechtorganisaties sluiten overeenkomst. Available at: http://www.kb.nl/nieuws/2010/auteursrecht_overeenkomst.html.
- Kroes, N., 2008. Being open about standards. In OpenForum Europe. Brussel. Available at: <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/08/317> [Accessed July 18, 2012].
- Langley, S., 2012. Archives in the digital era. Scoping study report, Surry Hills: Australia Council for the Arts. Available at: http://www.australiacouncil.gov.au/data/assets/pdf_file/0017/130274/Digital_Archives_Scoping_Report-v1.pdf.
- Lund, T.B. & Holsholt-Poulsen, L., 2009. Rights Issues. Thematic synthesis report., EdReNe / European Commission. Available at: http://edrene.org/results/deliverables/EdReNeD6.3TSR_Rights_Issues.pdf.
- Maron, N.L. & Loy, M., 2011a. Funding for Sustainability: How Funders' Practices Influence the Future of Digital Resources, Bristol / London: JISC: Strategic Content Alliance /

- Ithaka S + R. Available at: <http://www.ithaka.org/ithaka-s-r/research/funding-for-sustainability/FundingForSustainability.pdf>.
- Maron, N.L. & Loy, M., 2011b. Revenue, Recession, Reliance: Revisiting the SCA/Ithaka S+R Case Studies in Sustainability How twelve digital content projects fared during the economic crisis, Ithaka S+R / HEFCE / JISC. Available at: <http://www.ithaka.org/ithaka-s-r/research/case-studies-in-sustainability-2011>.
- MinervaEC Working Group, 2008. Intellectual Property Guidelines. Version 1.0, Minerva. Available at: http://www.minervaeurope.org/publications/MINERVAeC%20IPR%20Guide_final1.pdf
- Niggemann, E., Decker, J.D. & Lévy, M., 2011. The New Renaissance. Reflection Group on Bringing Europe's Cultural Heritage Online, Brussels: European Commission. Available at: http://ec.europa.eu/information_society/activities/digital_libraries/doc/reflection_group/final-report-cdS3.pdf.
- Nina, Ñ., Bout, L. & Vooren, G., 2010. Final Guidelines on Copyright Clearance and IPR Management, European Film Gateway / European Commission.
- Oomen, J. et al., 2009. Images for the Future: Unlocking the Value of Audiovisual Heritage, Toronto: Archives & Museum Informatics. Available at: <http://www.museumsandtheweb.com/mw2009/papers/oomen/oomen.html> [Accessed July 13, 2012].
- Osterwalder, A. & Pigneur, Y., 2010. Business model generation: a handbook for visionaries, game changers, and challengers. Amsterdam: Alexander Osterwalder & Yves Pigneur.
- Peters, R., 2013 (forthcoming). *Intellectual Property Rights "Best Practice" Guidelines. Deliverable 4.4*. London: Europeana Fashion / Victoria & Albert Museum.
- Poole, D. & Sophie Le-Phat, H., 2011. Digital Transitions and the Impact of New Technology On the Arts, Ottawa: Canadian Public Arts Funders. Available at: <http://www.cpa-opsac.org/en/themes/documents/DigitalTransitionsReport-FINAL-EN.pdf>.
- Robrechts, T. & Kerremans, R., 2009. How to contract with rights holders? A legal analysis. In T. Evens & D. Moreels, eds. Access to archives of performing arts multimedia. Brussels: Vlaams Theater Instituut / IBBT, pp. 75–94.
- Shmilovici, U., 2011. The Complete Guide To Freemium Business Models | TechCrunch. Available at: <http://techcrunch.com/2011/09/04/complete-guide-freemium/> [Accessed July 13, 2012].
- Stroeker, N. & Vogels, R., 2012. ENUMERATE: Report on the Results of the Core Survey 1, ENUMERATE.
- Suthersanen, U., 2010. Introduction to Part II. In Global Copyright Three Hundred Years Since the Statute of Anne, from 1710 to Cyberspace. Cheltenham: Edward Elgar Pub, pp. 169–175.
- Timmermans, N., 2012. The search for sustainability in the cultural heritage domain. Building a knowledge-based infrastructure. In P. Nesi & R. Santucci, eds. ECLAP 2012 : Conference on Information Technologies for Performing Arts, Media Access and Entertainment. Florence: Firenze University Press, pp. 12–18.
- Tsouvaras, V., 2010. Report on the translation of EUscreen metadata on a semantic web language, EUscreen / European Commission.
- Verwayen, H., Arnoldus, M. & Kaufman, P.B., 2011. The Problem of the Yellow Milkmaid. A Business Model Perspective on Open Metadata, Den Haag: Europeana. Available at: <http://version1.europeana.eu/web/europeana-project/whitepapers/>

Vickery, G., 2011. Review of recent studies on PSI re-use and related market developments, Paris: Information Economics.

WGBH, 2009. Challenging Times. Critical Impact. WGBH Annual Report 2008-2009, Boston:

WGBH. Available at: <http://www.wgbh.org/fck/userfiles/file/Ar2008combo.pdf>

Wikipedia, Freemium. Available at: <http://en.wikipedia.org/wiki/Freemium> [Accessed July 13, 2012].

Zeinstra, M. et al., 2010. Guidelines for the europeana:rights metadata element. V4.0, EuropeanaConnect / Europeana.



www.eclap.eu

