



The Publishers' Role in Digital Access to the World's Literary Heritage Towards Balance and Mutual Respect in Mass Digitisation Initiatives¹ Worldwide

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Our Vision

Published literary works are a core element of a nation's cultural life and heritage, and wide accessibility of these works is an important goal in the public interest. Authors, and publishers to whom authors entrust their works, care deeply about their accessibility, their preservation, and their availability for future generations.

Publishers are equally engaged in the digital production, distribution, and making available of an ever-increasing number of already-existing and newly-created literary works. Publishers support the creation of digital libraries based on respect for copyright, including the moral rights of authors. Any digitisation initiative must find a fair balance that reflects the dual nature of works in copyright as both cultural goods and intellectual property. Such initiatives must respect the publishers' responsibilities as custodians of the rights granted to them by authors.

While the digitisation of our cultural heritage is important, our cultural and economic future lies in the creation and publication of new content, relevant to our current and evolving needs. Digital policy must not focus solely on the digitisation of the past, but must also create efficient and diverse digital markets that enable authors and publishers to create and deliver high-quality content as well as new social, cultural and economic opportunities.

Prior Authorisation for Works in Copyright

Copyright subsists in literary works regardless of format, whether traditional or digital. Rightsholders must retain the freedom to choose publication formats and distribution channels. The fundamental principle of rightsholder authorisation before digitising a work must be upheld.

Respect for Creators through Diligent Search

Authorisation requires rightsholder identification. Publishers insist on a careful, meticulous and documented search for the rightsholder in the country of publication. Search criteria should conform to best practices, and should be appropriate for the relevant publishing sector, suitable for the nature of the work, and flexible over time as new information sources become available.

Inclusion of Orphan Works²

Orphan works should be eligible for inclusion in digitisation initiatives. For these works the principle of prior authorisation could be complemented by specific mechanisms, such as collective licensing, or other tools such as the limitation of remedies (safe harbours), in keeping with national legal traditions.

A number of cross-industry and publishing position papers support the inclusion of properly defined orphan works. These papers include provisions dealing with scope of use, notification, labelling, liability and, most importantly, criteria for diligent search³.

Inclusion of Foreign Works

The principle of prior authorisation applies equally to foreign works, but requires special mechanisms that balance the need for practical solutions with the right of national rightsholders to choose how their works in copyright are used worldwide. Digitisation projects must respect the choices made in the relevant legal framework. Technology allows efficient interaction with foreign stakeholder organisations. Accessible and interoperable registries for rights information, such as those envisaged by the European ARROW initiative,⁴ will facilitate these interactions, and embrace local criteria for diligent search.

Best Practice Principles for Mass Digitisation Initiatives

1. **Public Domain Works:** Publishers support Mass Digitisation Initiatives aimed at works in the public domain—ie., works not protected by copyright--that complement commercial offerings.
2. **Priority for Commercial Digital Publishing:** The Berne three-step test⁵ is the foundation for business models which can produce and deliver diverse, high quality and affordable content. It ensures respect for rightsholders' business models, including, in certain cases, their choice not to have their works made available in digital form. Collaboration with rightsholders will ensure that public interest and commercial projects, including those undertaken by non-profit publishers, will complement one another. Partnerships between private rightsholders and public institutions should be encouraged.⁶
3. **Full Rightsholder Involvement Early On:** Rightsholder representatives should be involved in the design of digitisation initiatives before the digitisation of works in copyright begins, and should participate fully in the governance of such initiatives.
4. **Simple, Intelligent and Sophisticated Management of Copyrights:** To the extent that the inclusion of works in copyright can be authorised, rightsholders must be able to manage their rights within the digitisation initiative efficiently, without creating an undue burden for the exercise of copyright. Projects such as ARROW and ACAP⁷ can provide important standards that facilitate communication about rights.
5. **High Quality Internationally Standardised Metadata:** Accessibility and discoverability of digitised works requires accurate, comprehensive, internationally standardised metadata that both describes the work and provides the pertinent rights information. Wherever possible, the process should support existing or emerging publishing industry standards.
6. **High Digitisation Quality:** Authors, publishers, readers, researchers, and scholars expect the integrity and accuracy of published works to be respected. Works must be digitised faithfully, including page images with illustrations and all other graphic elements, following agreed-on high quality standards for image resolution and OCR recognition.
7. **Accessibility for Persons with a Print Disability:** Rightsholders support initiatives that facilitate access for persons with print disabilities⁸. While this issue is being addressed by organisations with specialist expertise as well as by commercial offerings, the opportunities that digitisation initiatives present for collaboration should be considered.
8. **Financing Through Extra Funding;** Mass Digitisation Initiatives are large-scale projects that require substantial new resources. Extra funding must be made available to the libraries that undertake them.

1 Definition of Mass Digitisation Initiatives: initiatives that involve the large scale digitisation of
existing physical collections of books and other printed works with the intent of providing access
2 to the public, undertaken by persons other than the rightsholders.
i.e. works still enjoying copyright protection, but where it is impossible to identify or locate the
3 current rightsholder with a view to obtaining authorisation, despite a reasonably diligent search.
See e.g. International Publishers Association (IPA)
http://www.internationalpublishers.org/images/pdf/PP_Copyright/ipaonorphanworks_position20060423.pdf ;
International Association of Scientific, Technical and Medical Publishers [http://www.stm-
assoc.org/2006_12_01_STM_Position_Orphan_Works.pdf](http://www.stm-
assoc.org/2006_12_01_STM_Position_Orphan_Works.pdf); IPA-International Federation of Library
Associations (IFLA)
[http://www.internationalpublishers.org/images/pdf/IndustryPolicy/IFLAIPA/JointStatements/ifla-
ipa_orphan_works_20070607.pdf](http://www.internationalpublishers.org/images/pdf/IndustryPolicy/IFLAIPA/JointStatements/ifla-
ipa_orphan_works_20070607.pdf)
4 <http://www.arrow-net.eu>
5 Copyright limitations and exceptions should be confined to (1) *certain special cases* which (2) *do
not conflict with a normal exploitation of the work* and which (3) *do not unreasonably prejudice the
legitimate interests of the rightsholder*, see Article 9(2) Berne Convention; see also Art. 13 TRIPS
and Art. 10 WCT.
6 See e.g. Gallica (France) <http://gallica.bnf.fr>; Biblioteca Digital Hispanica (Spain) <http://bdh.bne.es>;
Europeana (EU) <http://www.europeana.eu>
7 <http://www.the-acap.org/>
8 For publisher supported international initiatives see <http://www.visionip.org/portal/en/index.html>
For examples of collaboration at nation level see for the UK:
<http://sharepoint.pls.org.uk/services/accessibility1/Pages/newsletter7.aspx?PageView=Shared>
For France: <http://www.sne.fr/pages/les-enjeux/evolutions-du-droit-d-auteur/edition-adaptee.html>
For the Netherlands: <http://www.dedicon.nl> and
[http://www.nuv.nl/contenttypes/Artikelen/Artikel2406.aspx?Source=http%3A%2F%2Fwww.nuv.nl%2Fweb%
2FPages%2Fdefault.aspx](http://www.nuv.nl/contenttypes/Artikelen/Artikel2406.aspx?Source=http%3A%2F%2Fwww.nuv.nl%2Fweb%
2FPages%2Fdefault.aspx)
For further examples (pre-2007) see [http://www.dinf.ne.jp/doc/english/access/0705_IFLA-
rightscom/part2/index.html](http://www.dinf.ne.jp/doc/english/access/0705_IFLA-
rightscom/part2/index.html)