

## **ECP-2008-DILI-518001**

### **BHL-Europe**

**IPR Working documents** (best practice guide, due diligence guide, pro forma licence agreement and cover letter, rights metadata agreements with BHL and Europeana)

|                            |                            |
|----------------------------|----------------------------|
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| <b>Author</b>              | <i>Nancy Chillingworth</i> |



***eContentplus***

This project is funded under the *eContentplus* programme<sup>1</sup>, a multiannual Community programme to make digital content in Europe more accessible, usable and exploitable.

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<sup>1</sup> OJ L 79, 24.3.2005, p. 1.

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## 0 Document History

### 0.1 Contributors

Draft versions of deliverable D4.1 documentation were posted on the BHL wiki for comment and the following persons provided input that was used for the present document.

| Person              | Partner |
|---------------------|---------|
| Nancy Chillingworth | NHM     |

### 0.2 Revision History

| Revision Date   | Author              | Version | Change Reference & Summary  |
|-----------------|---------------------|---------|---|
| 20 January 2010 | Nancy Chillingworth | 0.1     | Initial draft version of proforma agreement and cover letter for internal and external review |
| 31 January 2010 | Nancy Chillingworth | 0.2     | Updated pro forma agreement and cover letter following external review                        |
| 31 January 2010 | Nancy Chillingworth | 0.1     | Initial draft of Best practice guide for internal and external review.                        |
| 5 February 2010 | Nancy Chillingworth | 0.3     | Amalgamated and updated IPR Working docs following external review by Naomi Korn.             |
| 2 March 2010    | Nancy Chillingworth | 1.0     | Updated following review by Henning Scholz, Final version.                                    |

### 0.3 Reviewers and Approvals

This document requires the following reviews and approvals.

| Name           | Position                         | Date             | Version     |
|----------------|----------------------------------|------------------|-------------|
| Henning Scholz | BHL-Europe PCO                   | 02 March 2010    | 1.0         |
| Graham Higley  | BHL-Europe PSG member            | 02 March 2010    | 1.0         |
| Naomi Korn     | External IPR Consultant (review) | 05 February 2010 | 0.1 and 0.2 |

## 0.4 Distribution

This document has been distributed to:

| Group  | Date of issue   | Version |
|--|-----------------|---------|
| BHL-Europe consortia and BHL partners and Naomi Korn | 20 January 2010 | 0.1     |
| BHL-Europe consortia and BHL partners and Naomi Korn | 31 January 2010 | 0.2     |
| BHL-Europe consortia and BHL partners                | 5 February 2010 | 0.3     |
| BHL-Europe consortia and BHL partners                | 2 March 2010    | 1.0     |

## 0.5 Outstanding elements of deliverable D4.1

Deliverable D4.1 is complete except for the agreements with BHL and Europeana projects for reciprocal access to rights metadata. Progress on the this aspect of the deliverable is being led by the Europeana project which has drafted a Data Agreement for content Aggregators. Nancy Chillingworth has contributed to the development of this agreement, but it is yet to agreed in a final form with all Europeana content aggregators. Progress towards this part of deliverable D4.1 will move forward following Europeana's licensing workgroup meeting on 31<sup>st</sup> March 2010.

## 1 Introduction and Background

This guide is for partners of the BHL-Europe project. Its purpose is to outline IPR factors that need to be considered in relation to the scanning and online display of library biodiversity collections of the project partners. Scanning copyright works and making them publicly available without due consideration of rights ownership and clearance presents serious risks. This guide describes risk management strategies and suggested rights clearance processes for project partners to minimise those risks.

Effective rights management is essential to the success and sustainability of the project.

The activities of BHL-Europe cross many legal jurisdictions in terms of the partners involved, origin of material to be scanned and applicable IPR legislation.

Partners must understand and respect their obligations under international treaties (such as the Berne Convention for the Protection of Literary and Artistic works), European Directives (such as **Directive 2001/29/EC**, EC Directive on the harmonisation of certain aspects of copyright and related rights in the information society) and national legislation.

This document is *not* a comprehensive guide to the various national legislations concerned. Individual partners are responsible for providing content and data to the project that do not infringe the intellectual property rights of third parties. It is therefore necessary for project partners to know the relevant legislation of their own country.

### 1.1 Value and Open Access

The main aim of the project is to make biodiversity knowledge accessible on an open access basis to a wide spectrum of end-users. The value the project delivers is not merely in making works available online, but the open access terms under which the works are available. Not only must works be accessible free of charge, they also must be re-usable to a large extent without further permission being required from the rights owners.

The project also shares its data and (in some instances) content with other projects, including BHL, EOL and Europeana. It is essential that project partners ensure that the works and data they make available to BHL-Europe are also licensed for sharing with each other and these other projects.

## **2 Key rights issues and considerations**

Many of the works being digitised and made available for BHL-Europe will be out of copyright. For such works, no permission is needed to scan and post them online.

Works that are still protected by copyright require permission from the rights owner.

### **2.1 Rights complexities**

Copyright is a complex system; ascertaining the copyright status of a work can be problematic; works protected by copyright may have multiple rights owners; rights owners may be unknown or traceable. Reasonable efforts must be made to secure permission to use works believed to be protected by copyright. However it is acknowledged that it may not be possible in all cases to identify all rights owners or secure all necessary permissions to scan and make copyright works available online for the project. Nonetheless, partners should follow risk management strategies and due diligence guidance detailed in this document in order to mitigate the risk to themselves, to the project and to fellow project partners.

### **2.2 Digital Rights Management and Technical Protection Measures**

The use of technical protection measures such as digital watermarking are not compatible with the Open Access principles of BHL-Europe. Such enforcement technologies cannot respect or acknowledge the subtle and subjective concepts of fair dealing or fair use or other exceptions to the monopoly rights copyright confers. Furthermore DRM protected works are not in the spirit of the project and therefore are not suitable for sharing on the BHL-Europe portal.

### **2.3 Rights in digital work?**

Project partners need to be aware whether their country's legislation recognises copyright in the digital version of an out of copyright work. This is necessary in order to identify appropriate licence terms for the work. In general, common law countries (including UK, USA, India, Canada, Australia and New Zealand) do recognise this right. Countries operating a civil law system (including most countries of continental Europe, Central and South America) are less likely to recognise such a right.

This guide does not seek to resolve these differences but sets out principles and advice on the implications of either approach. BHL-Europe partners must ensure that users have access to works on the BHL-Europe portal under Creative Commons open access terms as stipulated in the project's Description of Work to the EC. To this end, participation in the BHL-Europe project depends upon partners not *asserting* rights in the digital version of an out of copyright work.

### **3 Risk Management**

This section describes the project's chosen position relating to the scanning and use of works by the BHL-Europe partners for the BHL-Europe project. It is based upon the level of risk which has been determined by BHL-Europe to be acceptable.

#### **3.1 What are the risks?**

1. Legal liability and potential repercussions for the partner institutions and the project.
2. Damage to the reputations of the partner institutions and to the project.
3. Erosion of relationships with publishers and other third party rights owners with whom we need to co-operate to secure permission to include in-copyright material as part of BHL-Europe.

#### **3.2 General considerations**

BHL-Europe partners should:

- assess material for scanning to determine its likely copyright status.
- follow due diligence guidelines as detailed under the 'Rights clearance' section of this document.
- use the risk category bands described in this document to determine risk.
- identify the date of publication of material for scanning by checking either the physical item, library catalogue or both. The risk category will be assigned on the basis of this information.
- where possible, base copyright duration upon the death date of the author, or in the case of multiple authors, the last of those to die plus 70 years, regardless of who owns the rights.
- when identifying and preparing material for scanning, assess the likelihood of embedded third-party content within the work and whether or not this renders the work too risky to scan.
- limit any liability should rights information that was provided in good faith by the purported rights owner is subsequently found to be incorrect, e.g. where the person granting the permission is not the rights owner, by ensuring any agreement made with a publisher contains relevant warranties and indemnities to protect it and the Project partners against any losses and damages.

BHL-Europe partners must:

- only supply content to the project that does not infringe third party rights, or that is considered acceptable risk having followed risk management and due diligence guidelines in this document.
- provide accurate and comprehensive rights and licensing metadata with the content they supply to the project.

### 3.3 Banding material by risk category

In order to alleviate risks of copyright infringement, material that is intended for scanning should be classified into one of three bands. Material that presents too large a risk should be rejected for scanning.

BHL-Europe partners may scan and supply low and medium-risk items as defined below, giving a maximum cut-off year of 1910 for material whose rights are not owned by the partner or if the author died before 1939.

See [Appendix A](#) for further information on Risk bands and licensing implications

#### 3.3.1 Low risk material (Band 1: published before 1860)

- It will be assumed that this material is legitimate for scanning unless otherwise notified.
- BHL-Europe will adopt a stated procedure by which they can be notified of any infringement and the process by which the material would be withdrawn in such cases by notice and take down procedures

#### 3.3.2 Medium risk material (Band 2: published 1861 - 1910)

- If death of the author occurred before 1939 it will be assumed that this material is legitimate for scanning unless otherwise notified.
- If the death date of the author cannot be determined the rights owner will be traced and if found, approached for copyright clearance before scanning takes place.
- Due diligence rules will be applied and recorded to identify a possible current rights owner.
- It will be confirmed whether the traced publisher is the current rights owner and if so, express permission will be sought to scan their material.
- Where due diligence has been applied and recorded, and the rights owner could not be traced, scanning may proceed.
- Works in this Band made available without express permission of right owners should be made available under Creative Commons licence CC by-nc-sa
- The notice and take-down procedure will also apply to this band and be clearly stated with the published material.
- For monographs, copyright duration rules will be applied using the rules below:



### 3.3.3 High risk material (Band 3: published post-1910)

- Works in this band will only be scanned where:
  - the rights owner has been identified and express permission has been obtained to make the material available under terms which are acceptable to both the rights owner and the BHL-Europe project partner AND that the work contains an insubstantial amount of embedded third party material.
  - or, it has been determined that the author died before 1939 AND that the work contains an insubstantial amount of embedded third party material.

The notice and take-down procedure will also apply to this band and be clearly stated with the published material.

## **4 Rights clearance**

Most original works being scanned for BHL-Europe will not be protected by copyright as the protection term will have lapsed. Works published after 1861 *may* still be protected by copyright; rights clearance is necessary for these works in accordance with risk management strategies described above.

The BHL-Europe project has provided template permission request letter and licence for project partners to assist in this endeavour.

### **4.1 General considerations**

#### **4.1.1 Effort**

Allow time to clear permissions. Sending requests may not take very long, but the elapsed time between sending a request and receiving a signed agreement can be many weeks, if indeed a response is received at all.

Many works requiring permission to be scanned and made available online may have the same rights owner. Rights clearance can be a very time consuming process so project partners should consider that effort may be greatly reduced by assessing likely rights owners and grouping permission requests where the rights owner is likely to be a single publisher or individual. This can also benefit rights owners who may begrudge processing many fragmented requests on behalf of one licensee.

### **4.2 Due diligence**

Due diligence is the term used to describe the types of efforts that partners should undertake to trace rights owners in order to fulfil the requirements of a “reasonable” search. This is particularly important in the case of works for which rights owners cannot be traced - so called Orphan Works. Whilst carrying out reasonable efforts to trace rights owners will not eliminate the risk of infringement, keeping paper and digital files of these efforts could be used to try and mitigate the consequences of infringing copyright.

#### **Assessing whether a work requires permission**

##### **Determining copyright duration**

Copyright expires at some point for all works protected by copyright. However, the term of copyright will vary in accordance with a number of factors such as:

- the class of work (artistic work, literary work, etc.)
- when it was created
- if the author is known
- the nationality of the author
- whether the work has been published.

For serials, the country of first publication should be identified where possible and used as the basis of calculating copyright duration.

For monographs, unless they are from the same country as the partner institute, the author's nationality or main place of domicile should be used to calculate duration, the more favourable to the author (i.e. the longer period) of the two places being applied if relevant.

International and EU law will be followed and applied as necessary bearing in mind that the participating countries are signatories of the [Berne Convention](#), an international agreement. This requires signatories to recognise copyright of other signatory countries in the same way as it recognises copyright use nationally. However duration of copyright is based on the nationality of the author or the main place of domicile.

Where a country is not a signatory to the Berne Convention, the local laws of the country where the work is published should be respected instead.

EU copyright law stipulates life plus 70 years of all authors. Other countries may have their own terms.

In all cases, it should be identified whether the country is a signatory to the Berne Convention, and/or a member of the European Union (EU). Signatories to the Berne Convention agree to award at least the same copyright duration as the country of origin, or a minimum of life + 50 years if this is greater. Where the signatory is also a member of the EU, that term is increased to life + 70 years.

### 4.3 Third Party content

Where a work contains embedded third party content (e.g. drawings or photographs supplied from external sources), these may be subject to their own copyright or licensing restrictions. For example, a journal publisher may have had to obtain a licence from a commercial Picture Library to print such material prior to the original print run (and paid specifically for such copyright clearance), but this will not automatically mean that this can be legally reused as part of the digital work being created.

Where the material has an insubstantial amount of third party content, it will be considered that no further action to clear this is required and that the notice and take-down procedure will suffice.

All scanning decisions for Band 3 works must be subject to an assessment of embedded third party content. Where a substantial proportion of work includes embedded third party content, the item will not be scanned or supplied to the project.

#### 4.3.1 Finding rights owners

When seeking rights owners, sources which should be searched include:

- The library catalogue record should be checked for rights owner details
- Physical examination of a sample of volumes from the publication to seek any credit attributions, signatures, marks or signs relating to authorship and/or rights owners details. Additionally, where there appears to be third-party content, this should be noted.
- [Google scholar](#) and [Google \(web\)](#) should be checked for presence of the work in electronic form and evidence of the status of the publisher and current rights owner.
- Copyright specific search engines such as [WATCH File](#) should be searched.
- Checking with collecting societies and other known rights owners, such as the publishing and authors associations and societies.
- Partner institution Accession registers (where they exist) should be checked for rights owner details.

#### 4.3.2 Multiple publishers owning parts of serial runs

- The names of other identified publisher(s) and date ranges will be noted. A date restriction may be imposed to ensure that only relevant volumes are noted as under consideration (unless all the other publishers are known to have been through the due diligence procedure and a successful outcome reached).

#### 4.3.3 Multiple authors (monographs)

- The rights of all authors will be considered when calculating the duration of copyright and seeking permissions.

#### 4.3.4 Difficulties in tracing rights owners and orphan works

The rights for each serial work may or may not be owned by a publisher. If it is a historical serial work, and the rights were originally owned by a publisher, the publisher may have gone into liquidation or gone bankrupt. In the UK, the assets (including the IP) may be Bona Vacantia (i.e. passed to the Crown) and administered by the Treasury Solicitor.

The rights owner for serials material is not always clear and the following guidelines apply:

- If the original contributors to an article assigned their copyright to the publisher, then the publisher is the rights owner, so long as the initial period of assignment (if stated) has not expired.
- The rights owner may be the contributor's employer.
- If the contributor is the owner of the rights, the standard "life plus 70 years of all authors" rule applies.
- Where possible, the last known publisher who was a rights owner should be contacted to ensure that they are in a position to determine the rights of the serial title(s) in question.

#### 4.3.5 Applying for permission

BHL-Europe project partners should apply to suspected rights owners formally in writing for permission to scan and use copyright works.

The preferred method of permission receipt is upon signature from the rights owner on a formal licence including confirmation from purported rights owner that they do indeed own the necessary rights to grant the permission.

A pro forma introductory letter and agreement are provided for this purpose. See [Appendix D](#) and [E](#).

#### 4.3.6 Keeping records

The information which will need to be sought and recorded where possible should include:

- When the work first published
- Whether the publisher can be identified

- The name of the publisher who published the material
- The country of origin (where the work was first published). Where a publication is published in more than one location at a similar time, the most favourable country of origin will be noted.
- The term of copyright duration given the country of origin.
- Whether the publisher still exists.
- Whether the identified owner of the publisher owns the rights to the work.
- Whether there is evidence of embedded third party material (photos etc.) which may have separate rights.
- If scanning serials, is there evidence of more than one publisher during the proposed date range.
- Whether the publisher has been contacted to ask them for the right to scan and use the work.
- Whether the publisher/individual confirms that they are the rights owner
- Whether a legal agreement is in place
- What is the status of this and what level of scanning it allows or otherwise
- Any works excluded from the agreement.
- The date of an agreement and how long it lasts.

BHL-Europe partners should retain paper copies of any agreements with rights owners.

#### **4.3.7 Actions following due diligence work**

- If the presumed current rights owner can be traced, they should be contacted both to get permission to scan and use the work and reduce risk by confirming that they own the necessary rights.
- If the current rights owner cannot be traced, scanning may proceed for works in Band 2, provided the above steps have been conducted and recorded.
- Retain paper records of all attempts made to contact the rights owner (date & action taken)
- Project partners should put money aside for 6 years and one day from the date that any infringement occurred to cover any claims for payment should the rights owner appear.

## 5 Licensing

Licensing is the means by which BHL-partners can make works from their collections available legally online. Clear licensing terms also make users of the BHL-Europe portal aware of the terms under which *they* can further use the works.

Users of the BHL-Europe portal must be made aware of the terms under which each and every work is available to them. Not all works made available will be available under the same license terms. The chosen licence depends partly upon whether or not a work is out of copyright, whether the digitising partner is from a Civil or Common law country and the discretion of the rights owner.

Licensing is also the means by which project partners are likely to be granted permission from third parties for the inclusion of their works in BHL-Europe.

### [Creative Commons Licensing](#)

Creative Commons provides a set of standardised but flexible online licences, by which BHL-Europe content will be made available. The Creative Commons licensing standards are becoming universally recognised and provide a straightforward way for rights owners (and/or those authorised by rights owners) to communicate to users how they can use the content that is made available to them online. These licences communicate to users different conditions of use such as whether work is in the public domain and not restricted by copyright, or that it is in copyright but with restrictions relating to commercial or non commercial reuse and if a derivative work can be created from the content and under what terms.



For copyright works where the rights are owned by a third party, BHL-Europe partners will act as persuasive intermediaries. A Creative Commons licence is not a bi-lateral agreement; rather it is a licence from the rights owner to the world. BHL-Europe partners will need to persuade rights owners to make their work globally available under the least restrictive CC licence, ideally 'CC by' (See Section on Rights Clearance Below)

## 5.1 The Licences

(Taken from <http://creativecommons.org/licenses/>)

This list explains to rights owners the basic terms of each of the main Creative Commons licences.



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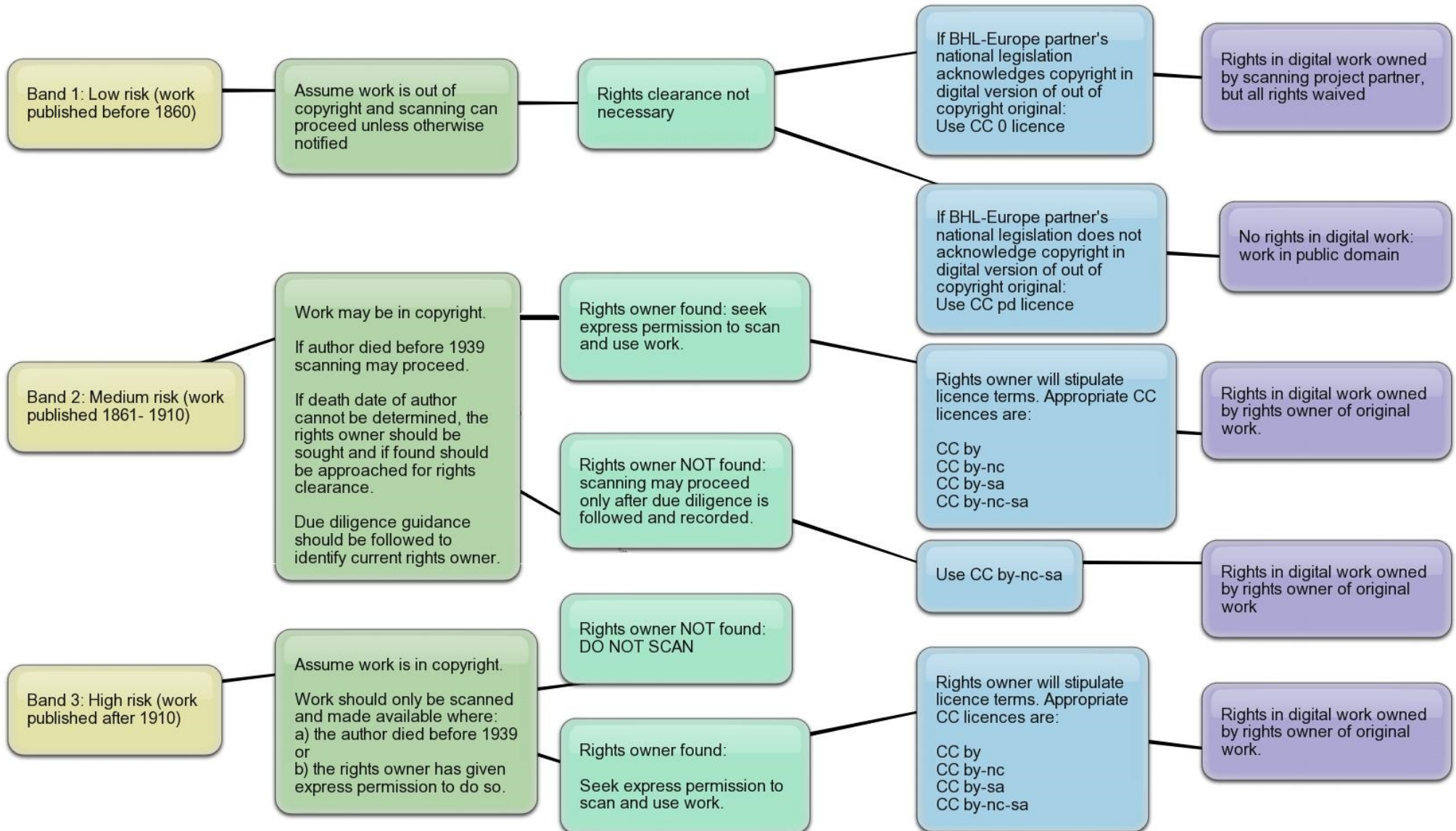
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## Appendix A: Risk band and licensing guide

Use this flow chart to help understand where rights clearance is necessary and licensing implications.



## Appendix B: Notice and take-down procedure

It is recommended that it is the policy of BHL-Europe immediately to suspend access to content that is subject to complaint while that complaint is verified. This is also in accordance with the Electronic Communications Act 2000.

Although all efforts have been made to ensure that material that infringes the law will not be present in content provided to BHL-Europe, the risk cannot be entirely eliminated. A variety of measures should be taken to minimise and manage risk including the publication and implementation of a 'notice and takedown' policy.

The 'notice and takedown' policy will be published prominently on the BHL-Europe portal and service. It will provide clear instructions on how to make a complaint (see below). These instructions will include:

- Contact details for the officer responsible for administering complaints
- A template for notifying BHL-Europe of the complaint and associated guidelines (below)

**This template should be used to document your complaint** which should then be addressed to the Complaints Officer at the following email address: BHL-Europe@mfn-berlin.de. Your complaint will be dealt with in the manner outlined in the 'notice and takedown' policy outlined on the website [\[link\]](#).

*To: XXX (+ email address)*

*From: [Name, address, telephone number and email address of complainant.*

*Reference: [Title and unique identifier to which complaint refers.] (subject of complaint).*

*1) Infringement of copyright/author's rights/related rights.*

*a) The following material is protected in Europe by intellectual property law.*

*i) [Describe the protected material in as much detail as possible so that the specific content, edition and format may be readily identified. Indicate the category for protection under intellectual property law (e.g. original literary, dramatic or musical work, software). Specify exactly the extent of use, e.g. by quoting text that has been reproduced] (The Protected Material).*

*b)*

*i) I/we own or am authorised to represent the owner of intellectual property rights in the protected material.*

*ii) I am the creator of and thus have moral rights in the protected material.*

*c) I/we hereby give notice of:*

*i) Unauthorised use by reason of reproduction and/or making available the protected material; and/or*

*ii) Breach of the moral right of [paternity/integrity/right not to have my work subjected to derogatory treatment].*

*2) A complaint on grounds other than copyright and/or related rights.*

*a) [Specify the nature of the complaint e.g. defamation, breach of confidence, data protection.]*

*b) [Specify the law that is alleged to have been infringed].*

*c) [Describe the infringing content in as much detail as possible e.g. by quoting or otherwise identifying the specific content].*

*d) [Explain the nature of the infringement with regard to the applicable law, e.g. that an individual may reliably be identified and thus data protection legislation has been breached.]*

*3) I/we hereby request, with reference to the subject of this complaint, you:*

*a) Remove it from the website; and*

*i) Cease further use of the material; and*

*ii) Withdraw from circulation any materials that include it.*

*4) I/we request that you notify me/us when you have complied with my/our request in section 3 above.*

*5) I/we attach/direct you to the following additional information which supports my complaint:*

*6) In relation to my/our complaint, I/we also inform you [any other relevant information including e.g. other steps taken to protect my rights].*

*7) The information contained in this notice is accurate and I believe, with good faith, that the publication, distribution and reproduction of the material described in section 1 is not authorised by the rightsholder, the rightsholder's agent or the law and/or infringes the law as described in section 2 above.*

*8) This notice is given to you without prejudice to any other communication or correspondence relating to the protected rights or any other right.*

**CONTACT INFORMATION:**

*Name:*

*Address:*

*Telephone number:*

*Email address:*

- Information about how to obtain help with completion of the template.

Staff will require a description of the content that is subject to complaint.

### Action to be taken on receipt of a complaint

On receipt of a notice of complaint regarding content, the officer responsible for administering complaints will:

1. Acknowledge receipt of the complaint by email:

*Dear X, I am writing to acknowledge receipt of your complaint regarding content of an item on the BHL-Europe portal I have suspended access to the item pending verification of the complaint. In the event that I verify your complaint, I will comply fully with your request.*

2. Remove the item that is subject to complaint

3. Refer the complaint to a Legal Advisor for comment and advice

4. Seek to verify the identity and authority of the complainant (e.g., if this is a complaint regarding infringement of copyright, that the complaint has been made by the person named as complainant and that the named person is either the rights holder or rights holder's agent).

5. When the complaints officer has verified the authenticity of the complaint and authority of the complainant and the Legal Advisor has advised that the complaint is ostensibly legitimate, the complaints officer will:

- Identify the BHL-Europe partner responsible for the alleged infringing material and, using a standard form, advise them of the nature of the complaint;

### **Notification of complaint: advice to depositor**

*To:*

*From: Complaints Officer*

*Reference: {Item details}*

*I am writing to advise you that I have received a complaint regarding content that you supplied to BHL-Europe. The nature of the complaint is detailed below. On receipt of this complaint, I suspended access to the material. Please respond to me regarding this complaint with 30 days of the date of this communication either accepting or refuting the complaint. If the latter, please provide an argument and supporting evidence that the alleged infringing material is legitimate. If you fail to respond to this communication within 30 days, I will assume that you accept the complaint.*

### **THE NATURE OF THE COMPLAINT**

*[information that identifies the alleged infringing content, the nature of the complaint, and the applicable law].*

6. If a depositor fails to refute a complaint within 30 days of notification, the complaint will be taken as upheld.

### **Refuting the complaint**

Content that is subject to complaint will not be made available again until the BHL-Europe partner responsible for supplying it has proven to the satisfaction of the Legal Advisor that it does not breach any law.

**[Notice and take-down procedure based on HCFCE template, © HCFCE 2009]**

## Appendix C: Glossary

### Content

Digitised works

### Copyright

Laws protecting the use of works of creators.

### Country of origin

The country of origin of a work is the country in which the publication was *first published*. If this is in multiple jurisdictions, any of those can apply (provided that they were published in those jurisdictions within thirty days of each other).

### Creative Commons

Creative Commons is an initiative to simplify the licensing of online content. It provides a set of standardised but flexible online licences, by which rights owners can make their content available to users. It is the chosen licensing scheme for BHL-Europe.

### Due Diligence

Due diligence is the term used to describe the types of efforts that you should consider undertaking to trace rights owners in order to fulfil the requirements of a “reasonable” search. This is particularly important in the case of works for which rights owners cannot be traced - so called Orphan Works.

### Embedded third party content

Copyright content within a work for which the rights are likely to belong to third parties (rights owners other than those owning rights in the main work).

### Licence

A licence is the documented terms of permission allowing a copyright work to be used in ways which would otherwise be infringing acts.

### Metadata

Data about content and works

### Orphan Work

An orphan work is a work that is in copyright but where the rights owner cannot be identified or traced.

### **Open Access**

Open Access refers to the terms under which works are made available on the internet, unrestricted by subscription or other fees, where users are free to read, download, copy, re-use works under relatively free terms.

### **Public Domain**

Works in the public domain are those in which no copyright or related rights subsist. Such a status might apply if a copyright duration has expired, or where the work does not qualify for copyright protection at all.

### **Work**

A work is the name given to a standalone item of literary, artistic, dramatic or musical nature; e.g a novel is a literary work, an illustration is an artistic work, a stage play is a dramatic work and a song is a musical work.

A work such as a reference book may contain other works embedded within it (such as illustrations, photographs, maps, diagrams for example). Each of these works may be subject to separate copyright protection and ownership.



## Appendix D: Pro forma cover letter for rights owners

Dear xxxx,

I am writing to you from [insert institution name] to request permission to digitise and use the literature detailed below as part of The Biodiversity Heritage Library for Europe (BHL-Europe) project. BHL-Europe is an alliance of Europe's natural history museums and botanical gardens; we aim to provide free, web-based access to our libraries' collections of biodiversity literature.

BHL-Europe is a non-profit making, open access project; you can find more information at <http://www.bhl-europe.eu/>.

We have identified the following literature which we would like to scan and make available online, for which it is believed that xxxx [insert name of institution/publisher/individual] may be the rights holder:

- [Title of work]
- [Publisher]
- [Author if relevant]
- [Year of publication/period we wish to scan]

If you/your institution/organisation do own the necessary rights and are happy to assent to our request, we would be grateful if you could complete and return the attached licence to formally grant us permission. We hope to hear from all rights holders by xxxx [add date when you hope to hear from rights holder by].

We respectfully ask that you are kind enough to license this/these work/s under the terms of [Creative Commons licence 3.0 Attribution Unported \(CC by\)](#), to maximise their benefit to the scientific community and to the public.

Neither we, nor any BHL-Europe partner will seek to assert any rights over the digitised material.

If you are not the rights holder but know who is, please do let us know as this information will assist us greatly in seeking the necessary permissions.

If you need any further information please do not hesitate to contact us.

D4.1



Yours sincerely

Signature

Name:

Position:

Date:

Contact Information:

## Appendix E: Pro forma agreement for rights owners

# Biodiversity Heritage Library for Europe Licence Agreement

## 1 Parties to this Agreement:

XXX of XXX (the “Licensor”) [*insert name and address of rights holder here*]

And

XXX of XXX (“Participating Institution of BHL-Europe”) [*insert the name and address of your institution here*]

## 2 Preamble

The Biodiversity Heritage Library for Europe (“BHL-Europe”) aims to create a free, globally accessible, searchable digital library of biodiversity literature. This Agreement (the “Agreement”) provides the basis for the Licensor to grant permission to the Participating Institution of BHL-Europe to digitise (“Digitise”) and Use the “Licensed Material” (as further specified in Schedule 1) as part of the BHL-Europe Project.

## 3 Licence Grant

- 3.1 The Licensor grants to the Participating Institution of BHL-Europe a world-wide, non-exclusive, perpetual, irrevocable, royalty-free, licence to Digitise and Use the Licensed Material. “Use” means the right to make reproductions in digital form, store the digital versions of the Licensed Material on servers as necessary for archival, access and preservation purposes, publicly display, disseminate the Licensed Material via the BHL-Europe and related websites, and create Derivative Works. “Derivative Works” means work based upon the Licensed Material to which enough original creative work has been added so that the new work represents an original work of authorship.
- 3.2 The Licensor also grants to the Participating Institution of BHL-Europe a world-wide, non-exclusive, perpetual, irrevocable, royalty-free, licence to grant current and future Participating Institutions of BHL-Europe a sub-licence under the same terms as 3.1 above. Current Participating Institutions of BHL-Europe are listed in Schedule 2 to this agreement.
- 3.3 The Licensor agrees that the Participating Institution of BHL-Europe shall make the Licensed Material available to Users of the BHL-Europe and related websites under the terms of [Creative Commons License 3.0, Attribution Unported \(CC by\) http://creativecommons.org/licenses/by/3.0/legalcode](http://creativecommons.org/licenses/by/3.0/legalcode). “Users” means any user accessing the Licensed Material from anywhere in the world.
- 3.4 Nothing in this Agreement is intended to transfer any rights ownership interest in the

Licensed Material; To the extent that Licensor owns all rights, including copyright, in the Licensed Material, Licensor will continue to own any and all such rights.

- 3.5 Save as provided for under Clause 3.4, any and all Intellectual Property Rights in and relating to any meta data and other works created by the Participating Institutions of BHL-Europe or Users shall be the property of the Participating Institutions of BHL-Europe or such Users absolutely.
- 3.6 Nothing in this Agreement conveys any other ownership right to the Licensor in and in relation to any meta data and other works created by the Participating Institutions of BHL-Europe from the Licensed Material.

#### **4 Warranties and Indemnities**

- 4.1 The Licensor warrants that the Licensor either owns the necessary copyright and related rights in the Licensed Material to assent to this request or has secured all the rights necessary from the copyright owner to grant the licenses granted herein, that no additional permission is required from any third person or entity to exercise the license granted herein, and that the exercise of those licensed rights will not infringe the intellectual property rights or any other right of any third party.
- 4.2 The Licensor agrees to defend, indemnify and hold harmless each of the Participating Institutions of BHL-Europe, their employees, officers, agents and sub-licensees from any third party claims, liabilities, damages, or causes of action, including related costs, legal fees and expenses, that arise in connection with any intellectual property claims arising from the digitisation or use of the Licensed Material by the Participating Institution of the BHL-Europe consistent with the terms of the license granted herein.

#### **5 Commencement and Term**

- 5.1 This Agreement commences on the Effective Date (being the date of signature on this Agreement or other date as indicated) and will remain in full force and effect in perpetuity. For the avoidance of doubt, the Parties agree that the perpetual licences granted by the Licensor to the Participating Institution of BHL-Europe and subsequent sub-licences contained in Clauses 2 are irrevocable and will survive any termination or repudiation of this Agreement.

#### **6 General**

- 6.1 This Agreement is the final Agreement between the Parties with regard to its subject matter, superseding any prior statements or agreements, and may be amended only in a writing signed or otherwise affirmed by representatives of both parties.
- 6.2 The Licensor will be identified as the copyright owner of the Licensed Material on the BHL-Europe portal and all Licensed Material shall have associated metadata showing the copyright status of the object and where it was digitised.
- 6.3 This Agreement shall be governed by the law of XXX [insert legal jurisdiction in which BHL-Europe Partner Institution is based].

**Schedule 1: Licensed Material**

*[Please list details of all Licensed Material you wish to Use]*

Title:

Publisher:

Publication date:

Edition:

Author or editor (if relevant):

## **Schedule 2: Current Participating Institutions of BHL-Europe**

Museum für Naturkunde Leibniz-Institut für Evolutions und Biodiversitätsforschung an der Humboldt-Universität zu Berlin

Narodni museum, Praha

Natural History Museum, London

European Digital Library Foundation

Angewandte Informationstechnik Forschungsgesellschaft mbH

ATOS Origin Integration France

Bibliothèque nationale de France

Consejo Superior de Investigaciones Cientificas

Freie Universität Berlin

Georg-August-Universität Göttingen Stiftung Öffentlichen Rechts

Helsingin yliopisto

Humboldt-Universität zu Berlin

Hungarian Natural History Museum

John Wiley & Sons limited

Land Oberösterreich

Missouri Botanical Garden

Museum and Institute of Zoology, Polish Academy of Sciences

Museum national d'histoire naturelle

National Botanic Garden of Belgium

Naturhistorisches Museum

Royal Belgian Institute of Natural Sciences

Royal Botanic Garden Edinburgh

Royal Museum for Central Africa

Smithsonian Institution

Species 2000

Stichting Nationaal Natuurhistorisch Museum Naturalis

Università degli Studi di Firenze

University of Copenhagen



**Schedule 3: Signatures**

**Licensor:**

**Participating Institution of BHL-Europe:**

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on behalf of Licensor

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on behalf of Participating Institution  
of BHL-Europe

Print Name:

Print Name:

---

Effective Date:

## **Appendix F: Further resources and reading**

**[MILE Project for orphan works](http://orphanworks.ssl.co.uk/indexplus/form/advanced_search.html)** (photographic and artistic works)  
[http://orphanworks.ssl.co.uk/indexplus/form/advanced\\_search.html](http://orphanworks.ssl.co.uk/indexplus/form/advanced_search.html)

**[WATCH File for writers artists and their copyright owners](http://tyler.hrc.utexas.edu/)**

<http://tyler.hrc.utexas.edu/>

**[Creative Commons](http://creativecommons.org/)**

<http://creativecommons.org/>

**Berne Convention Signatories**

[http://www.copyrightaid.co.uk/copyright\\_information/berne\\_convention\\_signatories](http://www.copyrightaid.co.uk/copyright_information/berne_convention_signatories)