

# DELIVERABLE

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## Best practices on user engagement with epigraphic content, including IPR requirements - first release

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## LIST OF ABBREVIATIONS

**BSR** - British School at Rome

**CC** - Creative Commons

**CP** - Content Provider

**CYI** - The Cyprus Institute

**DAI** - Deutsches Archäologisches Institut

**DEA** - Data Exchange Agreement

**DOW** - Description of Work

**FSA** - Flagship Storytelling Application

**IPR** - Intellectual Property Rights

**MIBAC** - Ministero per i Beni e le Attività Culturali

**PCAS** - Pontificia Commissione di Archeologia Sacra

**PLUS** - Paris Lodron University, Salzburg, Austria

**UE** - User Engagement

**UHEI** - University of Heidelberg

**UNIBA** - Università degli studi di Bari Aldo Moro

**UNIROMA** - Sapienza - Università di Roma

**WG** - Working Group

**WP** - Work Package



## TERMS AND DEFINITIONS

**Creative Commons** - is a non-profit organisation located in California, United States, devoted to expanding the range of creative works available for others to build upon legally and to share.

**Due Diligence** - documented efforts towards tracing rights holders/owners.

**Gazetteer** - listing alphabetically or hierarchically the names of places, political divisions, and physical features of the earth and giving additional information like geographic coordinates.

**IPR** - Intellectual Property Rights are a form of property and like physical property they can be sold, bought, inherited or transferred.

**Metadata** - data describing an information resource - can be understood as data about data.

**Orphan Work** - work still under copyright protection for which the rights holder/owner is unknown or cannot be traced.

**Public Domain** - the legal term Public Domain is used in Anglo-Saxon Common Law<sup>1</sup> for items free of intellectual property rights. The meaning, legal and otherwise, of English terms like "Copyright" and "Public Domain" can not be transferred readily to other languages.

**Rights owner/holder** - a person or organisation which owns the rights of a work or holds the rights on an object whose permission is required for use.

**Wikimedia Foundation** - WMF is a non-profit and charitable organization headquartered in San Francisco, California that operates several websites and projects. The foundation is best known for operating Wikipedia.

**Wikimedia Commons** - is a media file repository that makes available public domain and freely-licensed educational media content to the general public and acts as common repository for the various projects of the Wikimedia Foundation.

**Wikipedia** - a free encyclopedia built collaboratively using wiki software, originally in English, by now there are version of Wikipedia in 287 languages.

**MediaWiki** - is the software that runs Wikipedia. It is open source. It is now also used by several other projects of the non-profit Wikimedia Foundation and by many other wikis.

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<sup>1</sup> [http://en.wikipedia.org/wiki/Common\\_Law](http://en.wikipedia.org/wiki/Common_Law). website accessed on 02/02/2014

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## LIST OF EXTERNAL CONTRIBUTORS

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## EXECUTIVE SUMMARY

The aim of this deliverable is giving an introduction to general IPR questions and legal terms, including a short review of results from comparable BPN-projects. It presents a best practice proposal for IPR management by the EAGLE BPN content providers. This includes a methodology for approaching copyright owners in order to accomplish a transfer of rights to the content providers (making uploads to EUROPEANA and Wikimedia possible).

The introduction gives an overview of the following topics:

1. the methodology used to raise awareness of the importance of copyright issues within the EAGLE consortium
2. a short review of the results of comparable BPN-projects, Europeana workshop on IPR, overview of national legislation and discusses the relevance of existing tools for the project.

The main report first shows that there can be no one-for-all solution to IPR issues. This is due to various factors that are discussed, most prominently among them national legislation differing widely. Even the language in which the problem is expressed matters, e.g. Anglo-Saxon “copyright” is not the same as the German “Urheberrecht”.

Nevertheless, a **best practice 2-step-solution** to IPR problems is developed and presented to the EAGLE BPN partners. This will be the basis for individual consultations with the content providers in the second phase.

**Step one** is determining the rights owned in any given object (including the possibility of re-negotiating with owners).

**Step two** is the decision which rights can then be passed on to the recipients of the objects, i.e. the EAGLE portal, EUROPEANA and Wikimedia Commons. This includes a complete discussion of all the available license statements.



## 1. INTRODUCTION

### 1.1 AIMS OF THE DELIVERABLE WITHIN EAGLE

The IPR and user engagement task (T2.4) is part of the networking and best practices work package (WP2). An analysis and identification of requirements should be conducted to establish standards in solving IPR questions for the project partners and to establish best practices in user engagement beyond the scientific epigraphic community.

Regarding user engagement, user groups and their behaviour should be identified and concepts for specific services to enhance their active participation need to be developed. The results of this task will affect the design of the end-user dedicated services (WP5) and project dissemination (WP6).

Before the working group deals with the questions regarding user engagement, however, the question of intellectual property rights needs to be addressed. User engagement can only happen in an orderly (and legal) way once content that is to be provided has been properly labelled.

Despite efforts to disseminate awareness of and facts about questions regarding intellectual property rights, we became aware that there was still a need for more comprehensive information among the content providers. This was quite evident at and after the workshop in Ljubljana (February 2014), where various questions regarding the topic arose.

Since the question of clearing rights for material that is to be included in the EAGLE portal and subsequent uses is paramount, this range of topics needs to be addressed first.

For this reason, the first deliverable will deal with IPR questions only, the second deliverable will be mostly about best practices in user engagement.

For the rights management issue, an analysis of the actual IPR situation of each content provider is crucial to accomplishing the tasks of the project. In particular for WP3 (Metadata model, mapping and ingestion), rights statements need to be included within the metadata model to meet the requirements of the DEA signed by each content provider. Also, EAGLE aggregation (WP4) needs a template for a rights statement for the content provided (photos, scans, transcriptions and translations) which corresponds with those outlined by EUROPEANA. Rights declarations based on this template will be included in the metadata.

A guideline (in the form of a letter template) for establishing Creative Commons rights (see [Chapter 2.4.2](#) and [Annex B](#)) for content that is still to be produced has been developed. Content providers can use this to enter negotiations with museums et al. The end-user dedicated services (WP5) like mobile and storytelling applications and the EAGLE Wiki (WP 2) require a well defined rights statement for the used and presented material. Successful dissemination of images to Wikimedia Commons via Wikimedia's Italian chapter (WP6) also requires a defined set of Creative Commons licenses (see also WP2, T2.2).

**The 'Best Practices in Intellectual Property Rights' have been developed with consultation from project partners and external contributors/consultants. The aim of the document is to provide guidance to project partners on how to best manage rights in content being supplied to Europeana and the EAGLE Portal. The target readers of this document are EAGLE BPN content providers and all those which develop information resources with cultural heritage content.**

## 1.2 DESCRIPTION OF THE IPR - WORKING GROUP

The Working Group 3 - IPR and User Engagement is directly coordinated by PLUS. Further participants are members from most content providers and technical partners. Communication, document sharing and surveys among the partners are organized via Skype (meetings) and Google Drive (for details see Definition of Methodologies document). The WG leader is in intense cooperation with related WPs of the EAGLE BPN and contributes to their decision finding process regarding IPR questions. Based on the best practice recommendations of this report, individual IPR clearing processes for CPs will be developed within the second year of the project.

## 1.3 METHODOLOGY ON SOLVING IPR QUESTIONS

In order to reach a better understanding of the current practices in solving IPR questions we conducted a desk research on the following topics: **Principles on IPR, International contracts and practical recommendations**. These topics were addressed with interviews that allowed us to focus on the critical questions. Finally the analysis presented at EAGLE Working Group workshops has been augmented by initiatives of the project partners (see Annex).

**Realistic Expectations:** The EAGLE BPN is composed mainly of scientific institutions dealing with epigraphy, whose staff normally are not aware of nor trained in dealing with Intellectual Property Rights questions.

Therefore the EAGLE workshop presentations (Rome 02-03/04/2013, Pisa 23-24/10/2013 and Ljubljana 18-20/02/2014) were focused on an introduction to general IPR principles (and national deviations), followed by a summary of IPR questions.

The IPR statements of the content providers formulated within the DOW were quite heterogeneous. This needed clarification to make sure that they are correct and compliant with requirements for a legally meaningful statement, an online IPR survey was conducted to get more detailed information on the following topics (Results see 3.2.1):

1. The amount of pictures CPs plan to submit
2. The source and/or owner of the pictures
3. Involvement of an expert in local copyright law
4. Renegotiations with rights owners

The content of this deliverable should clear general IPR questions in detail and will be the basis for individual negotiations with the content providers in the second phase. A **best practice** methodology for approaching copyright owners for the transfer of rights to the content providers respectively Europeana and Wikimedia is presented.



## 1.4 REVIEW OF RESULTS FROM COMPARABLE EU PROJECTS

### 1.4.1 General Remark

Each EU-financed project which is to deliver content to Europeana is faced with solving (similar) IPR-questions within a legal landscape of 27 different national copyright laws in Europe<sup>2</sup>. The following IPR related project reports were reviewed:

- **Europeana Connect BPN** - Cross-border extended collective licensing: a solution to online dissemination of Europe's cultural heritage?
- **Europeana Photography BPN** - IPR Guidebook, D6.2
- **Europeana Fashion BPN** - Fashion and Intellectual Property 'Best Practice Guidelines'
- **3D-ICONS BPN** - Report on IPR Scheme, D7.2
- **Europeana Inside BPN** - Legal, Licensing and Policy Constraints Inhibiting Organisations across Europe from Contributing their Previews and Metadata to Europeana
- **MinervaEC Thematic Network** - Intellectual Property Guidelines
- **Europeana Hope BPN** - IPR Best Practice Guidelines, D1.3
- **Europeana ATHENA BPN** - Overview of IPR legislation in relation to the objectives of Europeana, D6.1
- **Europeana ATHENA BPN** - Step-by-step guide on IPR issues: methodology, D6.2
- **Europeana Eclap BPN** - IPR and Business Models for Performing Arts Content. Best Practice Recommendations, D 5.2.3
- **Europeana Inside BPN** - Legal, Licensing and Policy Constraints Inhibiting Organisations across Europe from Contributing their Previews and Metadata to Europeana
- **Europeana CARARE BPN** - Report and recommendations on IPR, D2.4

The projects' practical approaches and results, supported by national copyright experts, are outlined in their deliverables and are accessible via the respective project homepages. Reviewing those deliverables, one cannot help but notice that this amounts to reinventing the wheel.

Furthermore, there is a real problem regarding the accessibility of material cited (by use of URLs) in those deliverables, as most of the referenced documents are stored on web pages which were shut down at or after the end of the project - they are not accessible any more.

**Recommendation:** The projects' platform within EUROPEANA professional (<http://pro.europeana.eu/web/guest/projects>) needs to be able to store and make available individual project's results regarding IPR - most importantly *after* the project itself has run its course.

### 1.4.2 Results of Europeana Workshops on IPR:

The report on the Europeana IPR – Cluster group meeting Prague 2009 presents some results on the barriers to the adoption of the Europeana Data Exchange Agreements by content providers:

<sup>2</sup> Christina Angelopoulos, 2012: The Myth of European Term Harmonisation, 27 Public Domains for the 27 Member States. International Review of Intellectual Property and Competition Law (2012) Vol. 43, No.5, p. 567-594. <http://ssrn.com/abstract=2145862>



- **Rights issue:** *Anyone might commercialise the use of the metadata after it's been openly published on the web.*
- **Funding issue:** *A lot of the aggregators have received (European) funding to deal with rights issues under the current agreement but don't have the resources to respond to the needs of the new agreement.*
- **License problem:** *Many aggregators don't have the rights to allow re-use of the data. On the other hand, commercial providers in particular would feel more safe with a proper license than an agreement in place.”<sup>3</sup>*

### 1.4.3 Overview of National Legislation

The ATHENA project<sup>4</sup> presented a comprehensive discussion of international treaties, European Union directives and national legislation.

Outline on the author's rights: economic rights, reproduction rights, right of communication to the public, moral rights and the terms of protection, including national variations.

Overview of national copyright legislation, limitations to the copyright, freedom of panorama, and database rights for the following countries: Azerbaijan, Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Israel, Italy, Latvia, Luxembourg, Malta, Poland, Romania, Russia, Slovakia, Slovenia, Sweden, Netherlands, United Kingdom.

### 1.4.4 Online Tools Clearing Copyright Issues Created by Europeana Projects

Existing online tools (like the one developed by the ATHENA project, on which the Europeana Photography Guidebook is based) are aimed at determining the public domain status of media (author is dead a certain number of years, etc.) and are practical only for a very limited range of files. Only very few files from the EAGLE project will be in the public domain due to their age. The online tools also do not support automated queries from databases.

#### Europeana Photography Guidebook

*The Online Guidebook is a tool with which the content providers are able to explore the main aspects of IPR legislation and get support through a step based guide, a Library on IPR, a database of who is who in IPR in several countries and a direct link to the IPR blog. The Online Guidebook is a complete help tool but, as it is built for continuous support, its contents and functionality are very flexible and can always be updated, in order to maximize the tool's impact.<sup>5</sup>*

The initial page of the Online Guidebook can be accessed from the address: <http://europeana-photography.iprguide.org>

<sup>3</sup> Davies R. & Bergheim R. (2011): Report and recommendations on IPR. Carare project, Deliverable 2.4, 18 p.

[http://www.carare.eu/eng/content/download/1696/12251/version/1/file/D2.4\\_IPR.pdf](http://www.carare.eu/eng/content/download/1696/12251/version/1/file/D2.4_IPR.pdf)

<sup>4</sup> Dierickx B. & Vissers R., 2009: Overview of IPR legislation in relation to the objectives of Europeana, Athena project, deliverable 6.1, 184 p.

<http://www.athenaeurope.org/getFile.php?id=335>

<sup>5</sup> Tsolis D., 2013: IPR Guidebook. European photography, Deliverable Number D6.2, 95p. <http://www.europeana-photography.eu/getFile.php?id=298>

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### **Europeana Public Domain Calculator**

The public domain calculator has been developed as part of an [Europeana Connect](#) project coordinated by the [Österreichische Nationalbibliothek](#) (Austrian National Library). It is based on a review of national legislations and is intended to assist data providers for Europeana with this problem through a simple interface between the user and the often complex set of national rules governing the term of protection.

The initial page of the Online Guidebook can be accessed from the address: <http://outofcopyright.eu>

**Both online tools can be used as an initial check when investigating IPR questions, but they cannot replace a case-by-case assessment by experts.**

## 2. IPR - LEGAL BACKGROUND AND BEST PRACTICE RECOMMENDATIONS

### Important Notes:

- Each provider of cultural heritage data to Europeana or Wikimedia Commons (or any aggregator) should always **obtain legal certainty of the rights** status of a work, and/or advice on how to best proceed with clearing rights from a local legal professional with expertise in the field.
- 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 local legal professional.
- Furthermore, even the term “copyright” itself is not easily translated into other European languages, it comes from Anglo-Saxon law. As an example, the German term *Urheberrecht* is not identical with the term copyright as defined by common law in Anglo-Saxon countries.
- You should remember that as copyright is an automatic right, **there are no registers** that can be checked to locate the creator or rights holder in a work.
- Intellectual Property Rights (IPR) legislation and regulations on copyright are part of respective national legislation systems and therefore different in each European country. One of the major challenges in online publication of digital content is to ensure compliance with all of these regulations, therefore **partners should have some understanding of their own national law**.

Broadly speaking, rights vary from the most restrictive (all rights reserved) to the very open (Creative Commons, Public Domain). In the case of the images provided by the EAGLE BPN, the rights are passed on from the owner of the physical object carrying an inscription to contributing institutes, via the photographer on to EAGLE (and Europeana etc.).

Metadata on the other hand are typically authored work with a general license, in the case of the EAGLE BPN a CC0 license, as required by EUROPEANA. It needs to be pointed out that the three copyrightable elements contained in the EAGLE metadata - picture, transcription, translation - were defined to be in the form of links only. Each referrer has a license statement attached. This was the outcome of long interaction between WP2 and WP3. (See D 3.1)

### 2.1 IMPORTANT LEGAL TERMS

#### The Principles of Copyright

*“Copyright (the right to copy) refers to the exclusive rights granted to the author or creator of an original work, including the right to copy, distribute and adapt the work. It is an intellectual property right – the author has both economic and moral rights over his/her creations.”*<sup>6</sup>

#### Types of Rights

*“Moral rights are rights within copyright that protect the personal link between the work and its maker. Moral rights describe certain elements of author’s rights that are non-transferable. It concerns personal rights of the author.*

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<sup>6</sup> Caldeira A. &, Lobato A., (2012): IPR Best Practice Guidelines. HOPE Project, Deliverable D1.3, 37 p. <http://www.peoplesheritage.eu/pdf/D1-3-Grant250549-HOPE-IPRGuidelines1-0.pdf>

The **right of communication** to the public (see paragraph 4.2.1.2.) is a part of the moral rights of the author. The author can decide whether or not he wants to bring his work to the market or make it available to the public. No one else can take this decision for him.

**Economic rights** guarantee creative makers a financial return for the investment in the creation of their work. In contrast to moral rights, a right holder can transfer his economic rights; the receiving party may then exploit the work commercially. However, he could also choose to have his work used for free, or under a specified license such as Creative Commons.

The creation of reproductions, including digital ones, and successive availability of the material online is an infringement of the economic rights of the author.

**Term of Protection:** An author (or his heirs) can not call on copyright forever. The term of protection is limited and is determined by law. In Europe the general rule is that copyright lasts for the lifetime of the author plus 70 years after his death. After the death of the creator, copyright automatically transfers to his heirs.”<sup>7</sup>

One must take into consideration that there are national deviations as to the term of protection including anonymous work, joint authorship, orphan work and out of print works.<sup>8</sup> (See [Chapter 1.4.3](#))

There are **copyright exceptions** with significant national deviations for education, closed network display, preservation purpose and technological protection measures. National examples are outlined in the ATHENA projects report.<sup>9</sup>

After the expiration of rights protection, the work enters the ‘public domain’. This means that it can be used by anyone and for any purpose, without remuneration.

**Owner Rights:** Within the scope of the project, images of objects (inscriptions, monuments, etc.) are not only protected by the author’s copyright. Owners of the objects (and/or owners of locations that house objects) can also limit and/or grant rights to use images even when the object itself is already in the public domain because of its age. There are national rights related to the content of an image, National Monument Boards or similar institutions can hold the rights on cultural objects.

Therefore, the photographer needs to obtain a permission from the owner of the object.

An important exceptions to owners’ rights is the ‘**freedom of panorama**’ right (see Fig. 1), which allows a photographer to take images of objects located in public spaces. An overview of national legislation can be found at:

[http://commons.wikimedia.org/wiki/Commons:Freedom\\_of\\_panorama](http://commons.wikimedia.org/wiki/Commons:Freedom_of_panorama)

<http://de.wikipedia.org/wiki/Panoramafreiheit> (in German, providing links to other Wikipedia language pages).

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<sup>7</sup> Dierickx B. & Vissers R., 2009: Overview of IPR legislation in relation to the objectives of Europeana, Athena project, deliverable 6.1, 184 p. <http://www.athenaeurope.org/getFile.php?id=335>

<sup>8</sup> Federation of European Publishers, 2010: ARROW Project Deliverable 3.5, Report on legal framework Edition 2, 31 p. [http://www.arrow-net.eu/sites/default/files/D3.5\\_report\\_on\\_legal\\_framework\\_Ed2.pdf](http://www.arrow-net.eu/sites/default/files/D3.5_report_on_legal_framework_Ed2.pdf)

<sup>9</sup> Dierickx B. & Vissers R., 2009: Overview of IPR legislation in relation to the objectives of Europeana, Athena project, deliverable 6.1, 184 p. <http://www.athenaeurope.org/getFile.php?id=335>

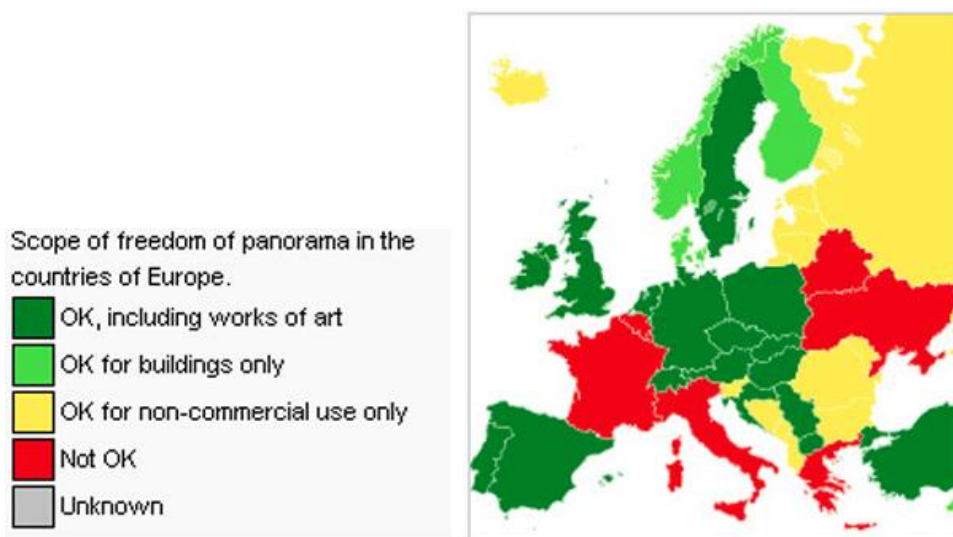


Fig. 1: Overview of national legislation on freedom of panorama within Europe. <sup>10</sup>

#### Principle of *lex loci protectionis*:

*The principle of territoriality is mainly derived from article 5 of the Berne Convention. This provision holds that the effects of national copyright legislation are limited to the territory of the legislating state, i.e. national copyright laws do not have extraterritorial effect. As a consequence, an author does not enjoy a uniform, worldwide copyright, but rather a bundle of national, independent rights, for which the conditions for protection, contents, and effects are governed by each of the relevant legislations within their territories. The principle of territoriality is justified by state sovereignty: states have an interest in regulating copyright protection for all works in their territory.*

***To a large extent, the principle of territoriality has not been affected by the harmonization of copyright in the EU.***

#### The principle of country of reception:

*The principles of territoriality and *lex loci protectionis* do not provide a final answer to the question whether making content available online constitutes infringement in every country where the work can be accessed. Rather, it is the law of the place where the right is invoked that determines whether the right exists and what its scope is. Although the issue is not yet entirely settled, the predominant view is that the right of making available to the public online not only encompasses the act of initiating the “transmission” of content online, but also the act of providing access/reception of the content – i.e. a principle of country of reception applies. This principle means that the act of making available copyright protected content via the Internet occurs not only in the country of transmission, but also in every country where it can be accessed, or in other words received.*

***From this also follows that “anyone making content available online without the permission of the right holder(s) can be held liable for copyright infringement in every country where the content can be received!”*** <sup>11</sup>

<sup>10</sup> [http://en.wikipedia.org/w/index.php?title=Freedom\\_of\\_panorama&oldid=598241384](http://en.wikipedia.org/w/index.php?title=Freedom_of_panorama&oldid=598241384)



## 2.2 THE EUROPEANA DATA EXCHANGE AGREEMENT (DEA)

DEA sets out two simple principles:<sup>12</sup>

1. For all descriptive metadata provided to Europeana, data providers grant Europeana the right to publish the metadata under the terms of the Creative Commons CC0 1.0 Universal Public Domain Dedication. This means that all metadata provided to Europeana can be re-used by third parties without any restrictions.  
Article 6 requires data providers to make best efforts to ensure that Europeana can use the metadata and previews provided by them without infringing on third parties' intellectual property rights. Data providers must ensure that they own any relevant intellectual property rights in the metadata and previews, or that the metadata and previews are not protected by intellectual property rights, or that permission has been obtained for publication on Europeana under the terms outlined above.
2. Each digital object (and the associated preview) that is available via Europeana needs to carry a rights label that describes its copyright status. Data providers grant Europeana the right to publish previews provided to Europeana. Previews may not be re-used by third parties unless the rights label related to the object allows such re-use. Rights statements are outlined in the next section. Article 2 of the DEA also requires that data providers must make best efforts to provide the correct metadata concerning the intellectual property rights of the content (digital objects), including the identification of content that is public domain. This requirement is important for several reasons:
  - a. It allows Europeana to properly communicate what users can do with the content.
  - b. Europeana uses this information to display icons with rights information alongside the search results. In order to do so, the information has to be supplied and must be correct (see 'Available Rights Statements' for more information on this).
  - c. This information is also used to communicate rights information about the previews that are displayed on Europeana. Without this information, Europeana cannot provide end-users with information about the rights status of the previews.

## 2.3 LICENSE MODELS FOR EUROPEANA AND WIKIMEDIA

The requirements of the two destinations for dissemination (other than the EAGLE website) are different. Europeana requires proper labeling just like the Wikimedia Foundation's sites, but Wikimedia Commons is much more restrictive regarding licensing. The two sites use different definitions, requirements and specifications, as described in the following paragraphs.

It is to be noted that key to all is correct labeling. To get to know the rights, and find out answers where no information is available, there is no requirement to force, change or alter existing licenses neither from Europeana nor from Wikimedia.

Note: all metadata is licensed CC0.

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<sup>11</sup> Axhamn J. & Guibault L. 2011: Cross-border extended collective licensing: a solution to online dissemination of Europe's cultural heritage? Europeana Connect, Final report, 91 p. [http://www.ivir.nl/publicaties/guibault/ECL\\_Europeana\\_final\\_report092011.pdf](http://www.ivir.nl/publicaties/guibault/ECL_Europeana_final_report092011.pdf)

<sup>12</sup> <http://pro.europeana.eu/web/guest/data-exchange-agreement>, website accessed on 15/01/2014.

### 2.3.1 Licenses That Can Be Used for Europeana and Wikimedia Commons

“Wikimedia Commons only accepts free content, that is, images and other media files that are not subject to copyright restrictions which would prevent them being used by anyone, anytime, for any purpose.”

#### **Creative Commons CC0 1.0 Universal Public Domain Dedication (CC0)**

All rights in the content are waived and the objects can be used by anyone without any restrictions.

#### **Creative Commons - Attribution (BY)**

This licence lets others distribute, remix, tweak, and build upon your work, even commercially, as long as they credit you for the original creation.

#### **Creative Commons - Attribution, ShareAlike (BY-SA)**

This licence lets others remix, tweak, and build upon your work even for commercial purposes, as long as they credit you and licence their new creations under the identical terms.

The full text of the licenses can be found at:

<http://creativecommons.org/publicdomain/>

and <http://creativecommons.org/licenses/>

*“It should be kept in mind that CC-licenses are often difficult to implement (even if the will is there) because they require that the licensor, e.g. the museum, has the (full) copyright of the object(s). This implies that the knowledge and awareness about what rights are applicable to the collection, who the right holder is, and which exploitation rights the institution holds, are crucial for the application of open content licenses.”<sup>13</sup>*

### 2.3.2 Licenses That Can Only Be Used for Europeana

The full text of the licenses can be found at <http://creativecommons.org/licenses/> further information is provided by

<http://pro.europeana.eu/web/guest/available-rights-statements>

The Public Domain Mark (1.0) statement is discussed in the next Chapter.

#### **Out of copyright - non commercial re-use (OOC-NC)**

This rights statements is intended for use with digital representations of public domain objects that have been digitized in a public-private partnership wherein the partners have agreed to **contractual limitations** to take reasonable steps to limit or discourage commercial reuses.

#### **Creative Commons - Attribution, No Derivatives (BY-ND)**

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<sup>13</sup> Dierickx B. & Tsolis D., 2009: Overview of collective licensing models and of DRM systems and technologies used for IPR protection and management. Athena project, Deliverable 6.2, 125 p. <http://www.athenaeurope.org/getFile.php?id=665>



This licence allows for redistribution, commercial and non-commercial, as long as it is passed along unchanged and in whole, with credit to you.

#### **Creative Commons - Attribution, Non-Commercial (BY-NC)**

This licence lets others remix, tweak, and build upon your work non-commercially, and although their new works must also acknowledge you and be non-commercial, they don't have to licence their derivative works on the same terms.

#### **Creative Commons - Attribution, Non-Commercial, ShareAlike (BY-NC-SA)**

This licence lets others remix, tweak, and build upon your work non-commercially, as long as they credit you and licence their new creations under the identical terms.

#### **Creative Commons - Attribution, Non-Commercial, No Derivatives (BY-NC-ND)**

This licence only allows others to download your works and share them with others as long as they credit you, but they can't change them in any way or use them commercially.

**The options for “Rights Reserved” have been changed recently by Europeana, the currently possible statements are the following<sup>14</sup>:**

#### **New Rights Reserved Statements:**

For data providers who do not want to or cannot allow object re-use, Europeana has developed two standard rights statements. These statements express the conditions under which objects can be accessed on the data provider's website. Use of these statements means the data provider is reserving the rights in the digital object and that the object may not be used without additional permissions.

#### **Free access - no re-use**

This rights statement is applicable when users have free (as in gratis), direct and full access to the digitised object on the data provider's website.

#### **Paid Access - no re-use**

This rights statement is applicable when users need to pay data providers to gain access to the digitised work on the data provider's website. This may be the case if only a preview is accessible through the data provider's portal, and registration and payment is required to gain access to the digitised object itself. In this case, the link from Europeana should give access to the metadata and (ideally) a low-resolution preview.

#### **Orphan work**

The Orphan works statement can be applied to objects that have been identified as orphan works in the country of first publication and in line with the requirements of the national law implementing Directive

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<sup>14</sup> The change of the Rights Reserved statement have been announced by Europeana during February 2014 and is effective since March 2014. <http://pro.europeana.eu/web/guest/available-rights-statements>, website accessed on 18/02/2014

2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works.

## Unknown

The Unknown rights statement can be applied to objects for which the data provider does not have conclusive information pertaining to the rights status of the digital object (e.g. orphan works). This value is only to be used when the copyright status of the work described is unknown. This statement may be used by Europeana to exclude items from display and should therefore not be used without consultation with the Europeana Ingestion team.

### 2.3.3 The Public Domain Mark Rights Statement

Europeana lists PD Mark 1.0 as an available rights statement, but does not call it a license, which it isn't, see <http://pro.europeana.eu/web/guest/available-rights-statements>.

"The PDM is not a legal instrument like **CC0 or our licenses**; there is no accompanying legal code or agreement - it is not a legally meaningful statement.." see: [http://wiki.creativecommons.org/PDM\\_FAQ](http://wiki.creativecommons.org/PDM_FAQ)

The **Public Domain Mark** 1.0 indicates that a work is free of *known* copyrights. The definition of the PD Mark states that "the person who identified the work makes no warranties about the work, and disclaims liability for all uses of the work, to the fullest extent permitted by applicable law."

The Public Domain Mark 1.0 option can be used for content where the provider is unsure of copyright, but assumes the content to be in the public domain. Using the PD Mark license for uploads to the EAGLE site (and Europeana) may be prudent for some of the content (especially scans).

### 2.3.4 Documentation of Rights Owned

Ideally, content providers should not only know the copyright status of all objects they contribute, but also be able to provide documentation where possible, such as a **release note (preferably in the form of an email)** from a publishing company or a photographer, documenting that rights have been granted.

Wikimedia Commons may demand such release notes for submitted pictures that are not the uploader's intellectual property.

#### The principle of due diligence:

*"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"*<sup>15</sup>

*"What is due diligence?"*

*Due diligence describes the efforts that should be taken to trace rights holders in Order to complete a 'reasonable search'. This is particularly important in situations where rights holders cannot be traced or found and works are known as 'orphan works'. In all cases, keeping paper and digital records of all correspondence and logging phone calls will help reduce any risk an die project partner in infringing*

<sup>15</sup> Schuurman J., Guha S. & Nesi P., 2013: IPR and Business Models for Performing Arts Content. Best Practice Recommendations. ECLAP project, Deliverable 5.2.3, 62 p. <http://www.eclap.eu/136200>

*Copyright. It is important to record the date any decisions were made so that any changes made in law can be reflected. Moreover, any diligent search carried out within the context of the Orphan Works Directive will need to be documented and recorded so that it can be produced as evidence if required.”<sup>16</sup>*

## 2.4 IPR AND EAGLE CONTENT PROVIDERS' MATERIALS

### 2.4.1 Types of Content EAGLE Provides to Europeana

There are two types of objects that content providers will have to deal with:

- Texts
- Images<sup>17</sup>

Texts split into two categories

1. Transcriptions
2. Translations

Images split into more, including but not limited to:

- ✓ Photographs (digitized)
- ✓ Original Drawings (scanned)
- ✓ Images (photos, drawings, etc) from books (scanned)
- ✓ Index cards (scanned)

#### 2.4.1.1 Texts

##### Transcriptions

###### Copyright status

A purely descriptive transcription of a latin/greek text found on a monument is free of any copyright restrictions. In case of an interpretation and/or reconstruction of a fragmented ancient text, it should be assumed that an author's copyright exists.

###### Requirements

Europeana demands that metadata is released under the CC0 license. Transcriptions are linked to in the metadata, a licence statement for the transcription is compulsory, CC-BY-SA is recommended.

Wikimedia Commons requires one of the usual CC licenses (CC0, CC-BY & CC-BY-SA).

##### Translations

###### Copyright status

For the purposes of EAGLE, we have to assume that translations are copyrighted.

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<sup>16</sup> Peters, R. 2013: Fashion and Intellectual Property 'Best Practice' Guidelines. Europeana Fashion project, 51 p.

<http://blog.europeanafashion.eu/download/Europeana%20Fashion%20IPR%20Guidelines.pdf>

<sup>17</sup> Some partners will provide also 3D objects.

Copyright in translations is held by the translator if there is originality involved in the creation of the translation. Originality (in German law) is defined as literary work with a “significant leeway” in phrasing a translation, as opposed to technical translations. Anglo-Saxon law generally tends to see translations of ancient texts as original.

### Requirements

Europeana demands that metadata is released under the CC0 license. Translations are linked to in the metadata, a licence statement for the translation is compulsory, CC-BY-SA is recommended.

Wikimedia Commons requires one of the usual CC licenses (CC0, CC-BY & CC-BY-SA).

## 2.4.1.2 Images

### Photographs

This only includes original photographs, no reproductions.

### Copyright status

The photographer (or his employer) owns the copyright to his pictures. In addition, local law may impose additional rights (Freedom of Panorama laws, owner rights, see above), like Italy’s *Ministero per i Beni e le Attività Culturali - MiBAC*, which owns many of the monuments depicted and has reserved rights (see Fig. 2).

### Requirements

Europeana lets you release digital files with one of 13 rights statements (see above)

Wikimedia Commons requires one of the usual CC licenses (CC0, CC-BY & CC-BY-SA).

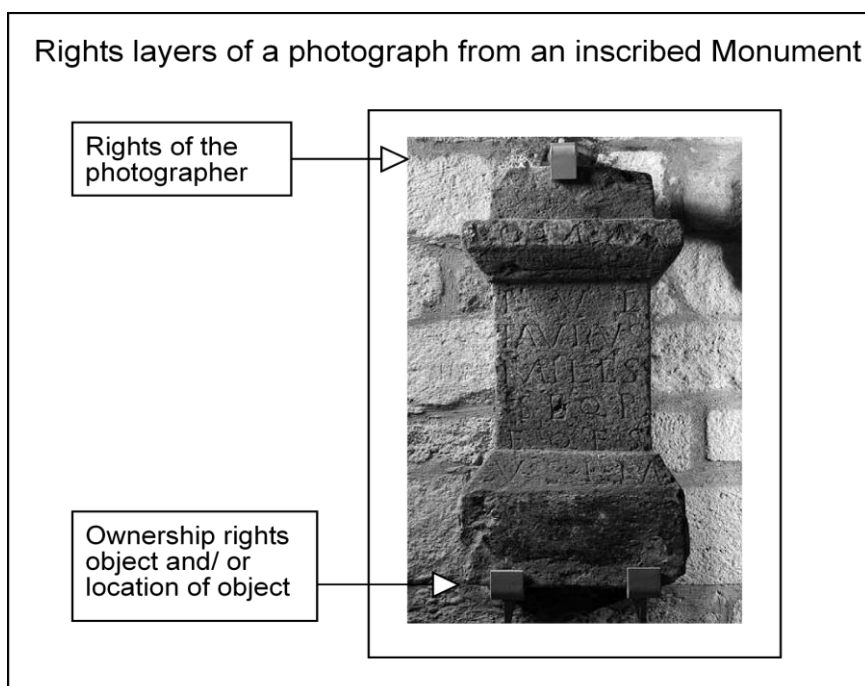


Fig. 2: Displays the rights which are relevant to pictures used in EAGLE



## Original Drawings (scanned)

### Copyright status

The artist owns the copyright to his works.

### Requirements

Europeana lets you release digital files with one of 13 rights statements (see above)

Wikimedia Commons requires one of the usual CC licenses (CC0, CC-BY & CC-BY-SA).

## Images (photos, drawings, etc) from books (scanned)

### Copyright status

Either the publisher owns the copyright to those images, or the photographer retained some or all rights. This must be stated in the publication in question.

**As with any material that is not your own, please make sure that you have documentation for the release of rights to you.**

## 2.4.2 Best Practice for Negotiations with Rights Owners

Several content providers declared in the online survey (see the following Chapter) that they will renegotiate rights questions pictures.

In the course of the discussions with Wikimedia Germany in Berlin (15-17/05/2013) the general question of acquiring image rights for Wikimedia Commons (and by extension other projects that aim at free licenses) the following recommendation was given by Mathias Schindler:

“The single most important thing is that it is a tactical mistake to approach a rights holder (museum etc.) from the standpoint of a petitioner pleading with the rights holder. Instead, one should make clear that a release under a free license offers the rights holder a unique chance to distribute his objects to a broader audience than he could ever expect to reach otherwise”.

Beside that basic principle, a single approach to contact rights holders of pictures using a predefined contact letter as it was presented by the eclap-project<sup>18</sup> is not feasible due to the following reasons:

- Different IPR legislation within Europe
- Varying national customs and etiquette
- Unclear political situation (Libya, Syria,...)

Several BP networks developed sample courtesy letters to approach content owners asking for the transfer of rights to use material for Europeana. The most simple and best structured ones were

<sup>18</sup>Baltussen L. B., Brinkerink M., Oomen J., van den Heuvel W., Schuurman J., Guha S., Nesi P., Bellini P., Paolucci M., 2013: IPR and Business Models for Performing Arts Content. Best Practice Recommendations. eclap project, Deliverable 5.2.3, 62 p.  
[http://www.eclap.eu/drupal/?q=nl/home#axoid=urn:axmedis:00000:obj:8f3eddd4-e03d-4805-863b-dc11b478a13a&section=search\\_base\\_result&cd=2&qid=099c53cb6584a5aaf0462ecf371b1382&n=444](http://www.eclap.eu/drupal/?q=nl/home#axoid=urn:axmedis:00000:obj:8f3eddd4-e03d-4805-863b-dc11b478a13a&section=search_base_result&cd=2&qid=099c53cb6584a5aaf0462ecf371b1382&n=444)

developed by the Europeana Fashion BPN in Appendix G of their deliverable “Fashion and Intellectual Property ‘Best Practice’ Guidelines”<sup>19</sup>.

**Proposed solution:** In the course of the second project year, PLUS will start direct discussions with content providers who plan to renegotiate rights questions to develop individual, national approaches. A first draft of this effort can be found in [Annex B](#).

### 2.4.3 Examples of Content Providers’ Endeavors to Clear Copyright Issues

As a best practice example for a possible methodology solving IPR questions, the BSR did detailed research regarding their photos from the South Etruria collection - inscriptions located in Italy - and images from their Libyan collection - inscriptions located in Libya - as well as their translations. (see [Annex A.1](#)).

For images of inscriptions and related monuments located in Italy UNIROMA negotiated an agreement between the Italian Ministry of Cultural Heritage and Activities (*Ministero per i Beni e le Attività Culturali - MiBAC*) and the EAGLE Consortium for the use of photographs and the license which has to be used. (See [Annex A.2](#), includes contract).

In the case of objects belonging to the *Pontificia Commissione di Archeologia Sacra* (PCAS Roma) the PCAS has become a member of the EAGLE BPN and granted rights similar to those granted by MiBAC (see [Annex A.3](#))

## 2.5 IPR-SURVEY OF CONTENT PROVIDER: A SUMMARY

### 2.5.1 Online Survey

An online survey has been done among content providers. The purpose of the survey was to get an overview on the IPR status. The following questions have been addressed:

1. Approximately, how many pictures do you plan to submit to EAGLE?
2. Do the pictures exist already?
3. Do your pictures include: Pictures taken by your organization, Pictures taken by a known photographer, Pictures taken by an unknown, Scans from books, Scans of original drawings, Scans of archived drawings
4. Have you talked to an expert in local copyright law?
5. Is your organization the owner of the pictures to be shared with EAGLE?
6. Approximately how many of the pictures are your organization's?
7. For the pictures belonging to a third party, which rights were granted to you?
8. For the pictures you own, which license do you plan to use on EAGLE?
9. Which license do you plan to use on EAGLE?
10. Do you plan to renegotiate rights questions for 3rd party pictures?
11. If you renegotiate, approximately when do you expect a result?

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<sup>19</sup> Peters, R. 2013: Fashion and Intellectual Property ‘Best Practice’ Guidelines. Europeana Fashion project, 51 p.

<http://blog.europeanafashion.eu/download/Europeana%20Fashion%20IPR%20Guidelines.pdf>



## 2.5.2 Summary of the Survey

Starting with what is probably the most pertinent result from our survey, here is the number of pictures we can expect to accumulate: 233.900 - 285.900. The main providers for contextual information are: PLUS (UBI-ERAT-LUPA database) and the German Archaeological Institute (Arachne Database).

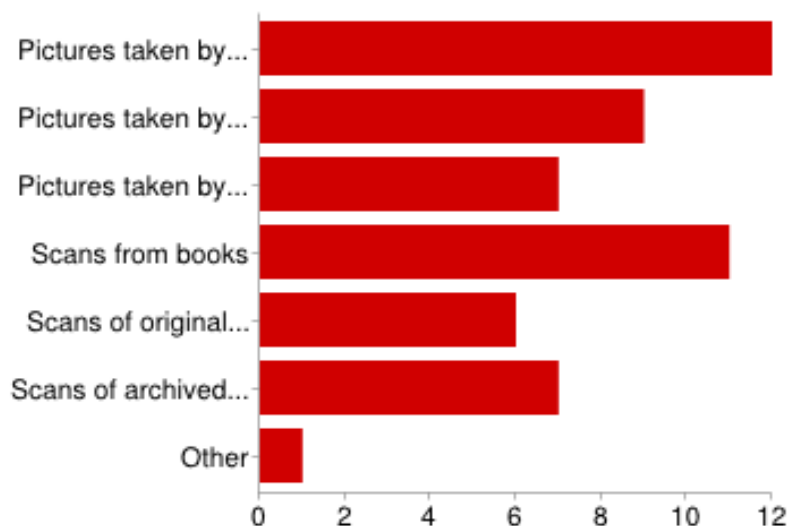
Of those pictures mentioned above, only 21,025 - 36,025 are actually owned by the contributors. Only one contributor (Eötvös Loránd University) owns all of their pictures.

All other contributors have a mixture of sources, including 7 contributors that have pictures taken by unknown photographers. All of the contributors save one also plan to incorporate scans from books and/or illustrations.

For most content providers, copyright issues are therefore quite complex and specific investigations have to be carried out in each country in order to be in compliance with national laws.

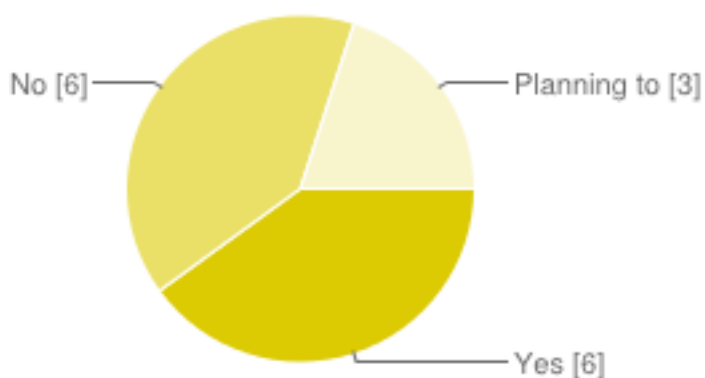
### Do your pictures include?

Pictures taken by your organization	12	23%
Pictures taken by a known photographer	9	17%
Pictures taken by an unknown photographer	7	13%
Scans from books	11	21%
Scans of original drawings	6	11%
Scans of archived drawings	7	13%
Other	1	2%



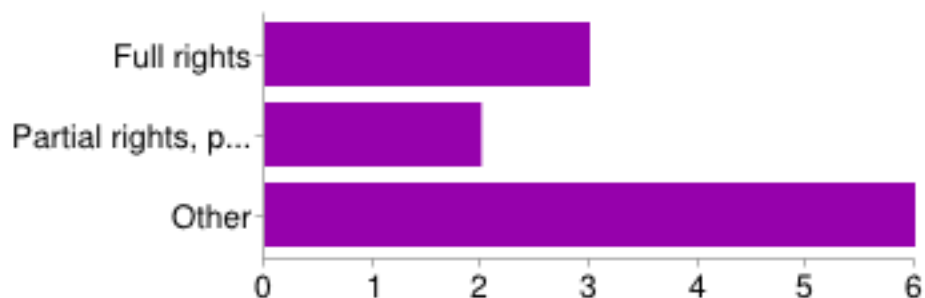
**Have you talked to an expert in local copyright law?**

Yes	6	40%
No	6	40%
Planning to	3	20%



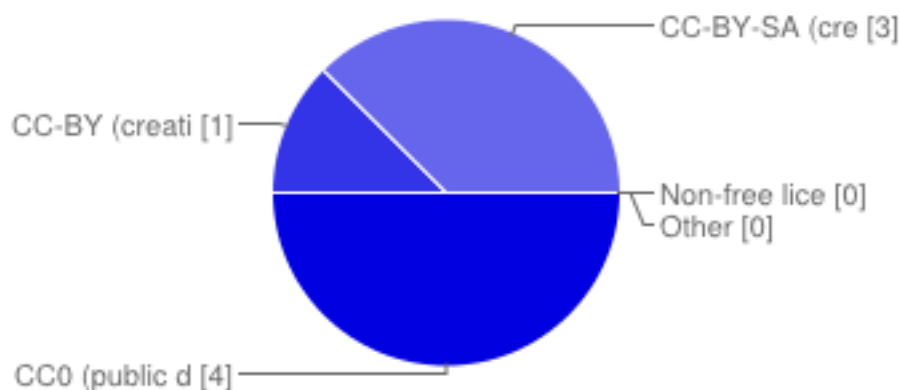
**For the pictures belonging to a third party, which rights were granted to you?**

Full rights	3	27%
Partial rights, please specify below	2	18%
Other	6	55%



**For the pictures you own, which license do you plan to use on EAGLE?**

CC0 (public domain)	4	50%
CC-BY (creative commons, name attribution required)	1	13%
CC-BY-SA (creative commons, name attribution required, share-alike)	3	38%
Non-free license	0	0%
Other	0	0%



It should be noted that the numbers given differ from the DOW because the structure of the survey prompted partial answers, this was found out in separate discussions with each provider afterwards. The survey therefore gave an idea of the complexity involved.

A later survey done by Valentina Vassallo (Archaia Kipriaki Grammateia Digital Corpus, The Cyprus Institute - Cyprus) shows a quite different result regarding the licences they plan to provide:

Epigraphic Database Roma	Rights Reserved–Free Access
Epigraphic Database Bari	Rights Reserved–Free Access; Creative Commons - Attribution, Non-Commercial
Epigraphic Database Heidelberg	Creative Commons - Attribution, Non-Commercial, ShareAlike
Last statues of Antiquity	CC-BY or CC-BY-SA
Hispania Epigraphica	Creative Commons - Attribution, ShareAlike; Unknown

Ubi Erat Lupa	CC-BY or Rights reserved – Free Access
Babes-Bolyai University Romania	Public Domain
Roman Inscriptions from Brigetio/Hungary	CC0
Latin inscriptions from Colonia Iulia Pola and Colonia Iulia Parentium - Croatia	Rights Reserved–Free Access
Epigraphic Archives of Slovenia	Rights Reserved – Free Access ?
Petrae - France	Creative Commons - Attribution, Non-Commercial, ShareAlike (BY-NC-SA)
Arachne	Creative Commons BY-NC-ND
Archaia Kipriaki Grammateia Digital Corpus - Cyprus	Rights Reserved–Free Access
Inscriptions of Roman Tripolitania - BSR	CC-BY-SA; Rights Reserved - Free Access
Inscriptions from South Etruria - BSR	Rights Reserved – Free Access
Inscriptions of Cyrenaica - BSR	CC-BY-SA; Rights Reserved - Free Access

## 2.6 APPROACH TO RIGHTS MANAGEMENT

### 2.6.1 Metadata

The metadata, following the minimum requirement of Europeana (see D3.1 EAGLE Metadata Model Scheme), are required to be licensed under CC0. The location of objects will be referenced from the Trismegistos database. For the use of Geospatial Data the following has to be taken into consideration:

**IPR and Geospatial Data (part of the metadata):** Coordinates or geographical names are considered to be part of the metadata itself – and as such not to require any additional or different licenses or IPR regimes (they need to be delivered in CC0).

**If data from a commercial gazetteer is used in databases:**

*“The resulting dataset would inherit the full licensing restrictions of the originating dataset and any fees required for the originating dataset may incur for its use.”<sup>20</sup>*

No such commercial gazetteer is in use in EAGLE and we believe best practice in this context would be to avoid those and contribute instead to open data efforts.

### 2.6.2 Metadata and IPR

The content providers’ IPR statements regarding visual representations (pictures, scans, etc), transcriptions and translations are embedded within the EAGLE metadata (the metadata model is described in Deliverable 3.1).

The metadata contain a link to the resources (images, transcription, translation) and a rights statement for each of them. **Therefore the metadata itself contain no copyrighted material.** The metadata are published under a CC0 license.

## 2.7 BEST PRACTICE RIGHTS MANAGEMENT GUIDELINES: A 2-STEP GUIDE

***Best practice recommendations regarding IPR: Each of the Content Providers needs to assess the provenance of their images, transcriptions, translations, etc. - they need to determine the status of all the material in their collection.***

***Any further steps (negotiations with rights owners, which licenses to use for EUROPEANA etc.) in the process of getting material ready for ingestions are entirely dependent on step one - if the CP doesn’t know what rights it has been granted (which rights it owns) there is no step 2 to be taken.***

### 2.7.1 Step 1 - Assessment of Rights Owners

The following figure gives an overview of the materials of the EAGLE BPN and their possible rights owners.

Who Owns Which Rights to	
Texts (Transcriptions, Translations)	Images (Photos, Scans, Drawings)
<b>Possible Rights Owners</b>	
<ul style="list-style-type: none"> <li>• Author</li> <li>• University (may own rights to author’s work)</li> <li>• Publisher (may own rights to author’s work)</li> </ul>	<ul style="list-style-type: none"> <li>• Photographer (and/or his employer)</li> <li>• Owner of object (building or site owner, museum, archive, state, ministry, university, possibly others)</li> <li>• Owner of the scanned object (archive card, book, photograph, etc.)</li> <li>• Artist (and/or his employer)</li> </ul>

<sup>20</sup> Davies R. & Bergheim R. (2011): Report and recommendations on IPR. Carare project, Deliverable 2.4, 18 p.

[http://www.carare.eu/eng/content/download/1696/12251/version/1/file/D2.4\\_IPR.pdf](http://www.carare.eu/eng/content/download/1696/12251/version/1/file/D2.4_IPR.pdf)



## Rights Owners of Texts

**Authors** are usually the copyright holders for the texts they create. However, the author's employer or publisher may also own rights to the work in question.

A university's legal department should be able to tell you whether creations by its employees are subject to rights owned by the university itself.

In the case of published texts, the publisher may own some or all rights to said texts.

## Rights Owners of Images

**Photographers** are usually the copyright holders for the pictures they create. However, the photographer's employer (university or other) may also own rights to the work in question.

Note: in some jurisdictions, photographers may NOT have a copyright in certain works (example: in Germany, reproductions of two-dimensional objects are not considered to be creations and therefore no copyright by the photographer exists).

**Object owners** are a more complicated subject matter. Their rights are in most cases determined by local laws. Content providers should contact legal experts from their respective countries to determine if restrictions are imposed by national laws. In some cases, experts from the country of origin of depicted objects may also have to be consulted. Examples: Italy with owner's rights of historical artefacts belonging to MiBAC, freedom of panorama rights in various countries.

**Artists** are usually the copyright holders for the works they create. However, the artist's employer or publisher may also own rights to the work in question.

### 2.7.2 Step 2 - Rights Statements for Material Transfer

If you own all the rights in an object, you can choose any license mentioned in the figure below. Please take into consideration that Wikimedia Commons accepts only the first three licenses - therefore it is best practice to use CC-BY or CC-BY-SA.

If material is granted to you under a certain license, you are bound to the legal limits of that license when passing on the material.

Rights status	Recommended Rights Statements	
Free license	PD – CC0	Public Domain – Creative Commons CC0 1.0
Some rights reserved	CC-BY	Creative Commons – Attribution (CC-BY 4.0)
	CC-BY-SA	Creative Commons – Attribution, ShareAlike (CC-BY-SA 4.0)
	CC-BY-ND – CC-BY-NC	Creative Commons – Attribution, No Derivatives (CC-BY-ND 4.0)
		Creative Commons – Attribution, Non-Commercial (CC-BY-NC 4.0)
	CC-BY-NC-SA	Creative Commons – Attribution, Non-Commercial, ShareAlike (CC-BY-NC-SA 4.0)
CC-BY-NC-ND	Creative Commons – Attribution, Non-Commercial, No Derivatives (CC-BY-NC-ND 4.0)	
Rights reserved	Free access – no re-use	Free access on provider's website Rights reserved – no re-use
	Paid access – no re-use	Paid access on provider's website Rights reserved – no re-use

Fig. 3: Recommended rights statements

**Notes:**

- Creative Commons Licenses require a reference to their legal text where possible (on the internet, the best option is to insert a link to their site (<http://creativecommons.org/licenses/by/4.0/>))
- Creative Commons Licenses need a version number (e.g. CC-BY 4.0), the 4.0 international version which includes most national legislations is recommended.
- The following EUROPEANA rights statements are not appropriate for the EAGLE BPN and not mentioned in the list above:
  - **Out of copyright** – non commercial re-use (OOC-NC) is a license statement developed by Europeana for large archives which cooperate with private enterprises for document scanning
  - **Public Domain Mark** (PDM) is not a legally meaningful license (see 2.3.3)
  - **Orphan work** – is difficult to argue legally, should be avoided.
  - **Unknown** - The Unknown Rights statement should not be used without consultations with the Europeana ingestion team.



## 2.8 POSITION STATEMENTS ON IPR

During the project workshop in Pisa (24-25th Oct. 2013) the dissatisfying IPR situation throughout Europe was discussed. As a possible reaction of the EAGLE project group, a position statement to the Commission was proposed.

During Autumn of 2013, the Commission started a “Public consultation on the review of the EU copyright rules” (deadline 5th of February 2014), including a questionnaire. Europeana as partner organisation of EAGLE drew up an extensive response and asked for institutional support. Europeana’s response paper (see [link here](#))<sup>21</sup>

According to the review results of the EAGLE IPR Working Group, the Europeana response entirely reflects the position of the EAGLE Project members. As a consequence, full support was for Europeana’s statement to the commission by the EAGLE project leader.

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<sup>21</sup> Europeana’s response paper:

<http://pro.europeana.eu/documents/900548/f633a395-4d4e-4951-a0f1-cdddbee32598>, website accessed on 10.



## ANNEX A: EXAMPLES OF CONTENT PROVIDERS' ENDEAVOURS TO CLEAR COPYRIGHT ISSUES

### A.1 THE BRITISH SCHOOL OF ROME: A CASE STUDY

by **Alessandra Giovenco (BSR)**

#### A.1.1 An Overview of Intellectual Property, Copyright and Copyleft

Intellectual Property refers to creations of minds, whether they are inventions, literary or artistic works – such as photographs, paintings, etc. - designs, symbols, names. Consequently, Intellectual Property rights (IPRs) are the rights given to individuals for the creations and/or expressions of their minds. These rights are protected by IP laws in each country, although international conventions have been put in place to protect authors or rights owners across the world. IPRs include different types of rights, such as patents, trademarks and copyrights.

In this section, the type of rights protection we will examine is **copyright** as this is a pivotal concept all the EAGLE project contributors should fully understand before publishing on the Internet any type of content (images, translations and other metadata). **So, what is copyright?**

Copyright is a legal term used to describe the rights that creators have over their literary and artistic works. Copyright arises as soon as a work is created and, according to the Berne Convention<sup>22</sup>, copyright protection is obtained automatically without the need for registration or other formalities. Works covered by copyright range from:

1. Literary works such as novels, poems, plays, reference works, newspapers and computer programs, **databases**
2. films, musical compositions, and choreography
3. artistic works such as paintings, drawings, **photographs** and sculpture
4. architecture
5. advertisements, maps and technical drawings

Copyright does not continue indefinitely. The law provides for a period of time during which the rights of the copyright owner exist. The period or duration of copyright begins from the moment when the work has been created, or, under some national laws, when it has been expressed in a tangible form. It continues, in general, until some time after the death of the author.

In many countries, the duration of copyright provided for by national law is as a general rule the life of the author plus not less than 50 years after his death. Nevertheless, the European Union, the United States of America and several others have extended the term of copyright to **70 years** after the death of the author. A work falls into the **public domain** once copyright is expired.

Making a work publicly available on the Internet does not imply that this is in the public domain. For this reason, it is very important to define a copyright license for each type of content (images, transcriptions, translations and other type of metadata) at the beginning of any project that will use the web as its primary source of communication and distribution.

A rights owner may also **abandon the exercise of his/her rights**, wholly or partially. The owner may, for example, publish copyright protected material on the Internet and leave it free for anybody to use, or may restrict the abandonment to non commercial use.

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<sup>22</sup> [http://en.wikipedia.org/wiki/Berne\\_Convention](http://en.wikipedia.org/wiki/Berne_Convention), website accessed on 13/01/2014.

A new approach to copyright issues is the concept of Copyleft (which has no meaning apart from a play on words). A clear description can be found at [http://www.copyrightservice.co.uk/copyright/p20\\_copyleft](http://www.copyrightservice.co.uk/copyright/p20_copyleft), quote: '**Copyleft** describes a copyright licencing scheme where the author surrenders some of his rights. Typically a Copyleft licence will allow a work to be freely copied, distributed or adapted, provided that all copies or modified versions are also freely available under the same licence. Copyleft is not the opposite of copyright, merely a way of describing a more 'liberal' copyright licensing policy. The most well known example is the General Public License (GPL).'<sup>23</sup>

### A.1.2 Are All Works Protected by Copyright? Some Thoughts on the Italian IP Law

In some national legislations, not all works can be considered 'creative' and are therefore not protected by copyright. This is a conceptual approach to the definition of 'artistic creation' that varies from country to country. For example, according to the Italian IP law (Legge sul Diritto d'autore del 22 aprile 1941 n.633)<sup>24</sup>, to include a photograph under the definition of 'artistic creation', it is essential to look not at its content but at the purpose for which the photograph is taken. If the purpose of the photographer is only to document or reproduce an object, the photographs get less protection in terms of copyright (*fotografia semplice*) or can also be considered as not protected at all if they fit into the category of a mere 'descriptive work' (*riproduzione fotografica*)<sup>25</sup>.

The Italian law states that there is a difference between artistic creation and simple photographic reproduction. This is critical to define if a group of images is fully, less or not protected by copyright and may help sort out the first question: **are these image protected by copyright or not?** This question leads to other ones, which are important in order to define a suitable copyright pattern for different types of resources (images, translations, other metadata) to publish on the Web. **If so, who is the author/creator or the rights owner of the image?**

Once you have answered this question and discovered that the image is protected, then you have to ask the author or rights owner permission to use that image for your specific purposes. BSR will contribute to the EAGLE project some images of inscriptions. Content curation, translation (WP2) and metadata enrichment (WP3) will also be carried out to make records more accurate. Before publishing this material on the Web, the BSR will have to clarify some crucial copyright issues in order to provide the images and their relevant metadata with a transparent and clear copyright statement. The BSR will contribute to the project images and translations from two collections: South Etruria and Libya.

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<sup>23</sup> < [http://www.copyrightservice.co.uk/copyright/p20\\_copyleft](http://www.copyrightservice.co.uk/copyright/p20_copyleft) >, website accessed on 13/07/2014.

<sup>24</sup> < [http://www.interlex.it/testi/l41\\_633.htm#87](http://www.interlex.it/testi/l41_633.htm#87) >, website accessed on 13/01/2014.

<sup>25</sup> *Le riproduzioni fotografiche, previste dall'articolo 87 della legge sul diritto d'autore, sono fotografie "di scritti, documenti, carte di affari, oggetti materiali, disegni tecnici e prodotti simili", ovvero opere meramente descrittive della realtà che difettano del requisito della creatività e pertanto sono sprovviste di qualsiasi tutela giuridica. Per poter inserire una fotografia nella categoria delle riproduzioni fotografiche deve guardarsi non tanto al contenuto raffigurato (fotografie di scritti, documenti, carte di affari, oggetti materiali, disegni tecnici e prodotti simili), bensì allo scopo in vista del quale la fotografia è stata realizzata. Solo qualora essa fosse stata realizzata con finalità esclusivamente riproduttive o documentali essa non sarebbe ammessa a godere di alcuna tutela. Si tratta di foto aventi mera finalità riproduttiva dell'oggetto materiale, e quindi non destinate a funzioni ulteriori quali la commercializzazione o promozione di un prodotto.*

<<http://brunosaetta.it/diritto-autore/tutela-delle-fotografie-in-rete.html>>, website accessed on 13/01/2014.

### A.1.3 Images from the South Etruria Collection - Inscriptions Located in Italy

Copyright issues are more complex when it comes to inscriptions located in Italy as there is also the overlapping question of the Codice dei Beni Culturali (Decreto legislativo 22 gennaio 2004 n. 42)<sup>26</sup>. Once the rights of the owner of the image have been determined, there are still other rights to be considered. In fact, the work/object depicted in the image, i.e. the inscription, is under the protection of the Ministero dei Beni Culturali (MiBac) and therefore permission is required for its reproduction<sup>27</sup>.

As the owner of the objects, the Ministry manages the photographic reproductions of objects that fall under its protection and requires permission from anyone wishing to use them for any purposes (personal use, study, commercial use, etc.), no matter who is the author/creator of the photograph/image. For this reason, an agreement between the EAGLE consortium and the MiBac was signed in 2005<sup>28</sup> to obtain a license for the images of inscriptions on the EAGLE DB, only for study purposes and not commercial use. We can therefore conclude that the license granted to EAGLE is very similar to Rights Reserved – Free Access licence<sup>29</sup> and is not considered a free cultural license, which is required by Wikimedia Commons<sup>30</sup> when contributing to their portal.

I would also like to add that former Italian Minister, Massimo Bray, has raised the social media issues and pointed out that the reproduction and distribution on the web of images relating to Italian cultural heritage, is currently blocked by the Codice dei Beni Culturali. In his opinion, social media will have to be seen as an opportunity and not as an obstacle, and he has suggested the law should be changed in some of its provisions<sup>31</sup>.

<sup>26</sup> <[<sup>27</sup> \*I beni culturali, anche se entrati nel pubblico dominio, comunque non sono riproducibili liberamente. Il diritto di riproduzione è attribuito, infatti, all'ente titolare della tutela del bene culturale, così come stabilito dal codice dei beni culturali \(Decreto legislativo 22 gennaio 2004 n. 42\). In ogni caso non possono essere considerati beni culturali le opere create da autore vivente o la cui esecuzione non risalga a oltre 50 anni.\*](http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2004-01-22:42!vig=>, website accessed on 13/01/2014.</a></p>
</div>
<div data-bbox=)

*Gli enti che hanno in consegna i beni culturali possono consentirne la riproduzione nonché l'uso strumentale, a titolo oneroso. Nessun canone è invece dovuto per le riproduzioni richieste da privati per uso personale o per motivi di studio.* <[>, website accessed on 13/01/2014.](http://brunosaetta.it/diritto-autore/diritto-dautore.html)

**Fotografie di beni culturali.** *Le fotografie di beni culturali pubblici sono pienamente legittime per uso personale. Si tratta di riproduzioni non destinate al commercio, e quindi non costituiscono utilizzo concorrenziale che danneggia il titolare dei diritti sull'opera protetta, cioè il Ministero dei Beni Culturali. Nel caso di opere d'arte private l'uso delle foto, cioè la riproducibilità, dipende dall'autorizzazione del titolare dei diritti. Se la pubblicazione online delle foto è tale da non arrecare danno al titolare dei diritti (perché in bassa risoluzione, e di piccole dimensioni), e non è finalizzata al guadagno economico (perché diffusa con finalità didattiche o critiche) può ritenersi lecita.* <[>, website accessed on 13/01/2014.](http://brunosaetta.it/diritto-autore/tutela-delle-fotografie-in-rete.html)

<sup>28</sup> <[>, website accessed on 13/01/2014.](http://www.beniculturali.it/mibac/export/MiBAC/sito-MiBAC/Contenuti/MibacUnif/Comunicati/visualizza_asset.html_1524219572.html)

<sup>29</sup> < <http://www.europeana.eu/portal/rights/rr-f.html> >, website accessed on 18/03/2014.

<sup>30</sup> < [>, website accessed on 13/01/2014.](http://commons.wikimedia.org/wiki/Commons:Licensing#)

<sup>31</sup> <[>, website accessed on 13/01/2014.](http://documenti.camera.it/leg17/resoconti/commissioni/stenografici/html/07c07/audiz2/audizione/2013/05/23/indice_stenografico.0001.html)



#### **A.1.4 Images from Libya Collection - Inscriptions Located in Libya**

The issues concerning the images of inscriptions located in Libya seem to be easier to sort out, provided there is not a Libyan law that protects the reproduction and distribution of images of Libyan monuments and archaeological sites. So, once the rights owner has been identified – this applies to the majority of the photographs in the BSR - the process of getting permission from the author or owner (whether a person or institution) and choosing an appropriate license will be more straightforward.

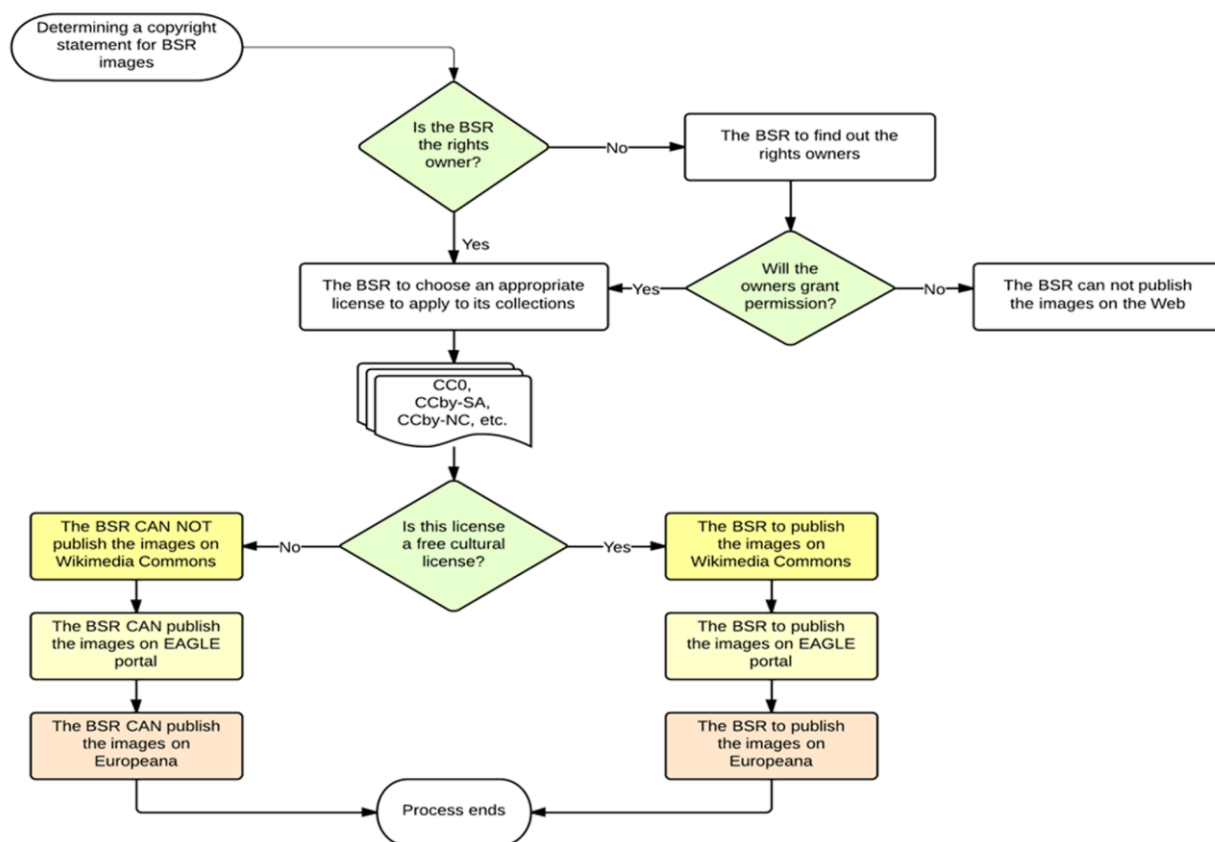
The BSR has a collection of nearly 1,000 photographs of inscriptions from Tripolitania, which has already been published on the web by King's College, London in 2009<sup>32</sup>. A free cultural license has been applied to the whole publication, including transcriptions and translations in English, but should not, in theory, be extended to the images, which should have a different copyright statement. In effect, not all the images in the collection are owned by the BSR as there are several photographs taken by the Department of Antiquities in Tripoli and consequently are owned by the Libyan Ministry of Culture.

Given the very critical political situation in Libya, the BSR thinks it would not be appropriate to address this issue now, although new contacts recently established by the BSR with the Department of Antiquities could gradually help smooth the situation. For this reason, the BSR has decided to apply two types of licenses to the Libyan images in its collection. One is the free cultural license (CC-BY-SA), which will be released to the images owned by the BSR, the other is the Rights Reserved – Free Access license, which will be used for the images owned by the Libyan Department of Antiquities. This means that not all of these images will be sent to Wikimedia Commons, but all of them will enrich the EAGLE and EUROPEANA portals.

The pattern we have followed to define a copyright statement for our images can be represented as follows:

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<sup>32</sup> < <http://inslib.kcl.ac.uk/irt2009/index.html> >, website accessed on 13/01/2014.



### A.1.5 Translations from Libyan Collections

Translations of Libyan inscriptions will be mainly based on those from the online publication of King's College London.

As the license on this publication is a CC-BY-SA, the same license will have to be applied to any derivative work – including the Italian translations, some of which have already been edited and posted on Wikipedia by Dr. Francesca Bigi. Other translations will be based on the work published by the University of Cassino in 2010 and permission is therefore needed for their publication on the Web.

### A.1.6 Technical Requirements Chosen by the BSR for the Publication of Digitized Images on the Web

The BSR has also established some technical requirements for the images that are going to be published on the Web, especially on Wikimedia Commons. This format is not suitable for professional printing but allows web users to discover images that interest them. Therefore it is a type of advertising that attracts a broader audience than would otherwise occur. If users then want a high quality copy, they can contact the BSR for a suitable format.

The technical requirements are the following:

- File Format: JPEG
- Image Resolution: 72 ppi
- Image Size: Between 800 and 1000 pixels on the long border

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### **A.1.7 Conclusions**

From the analysis above, it is clear that copyright issues on content to provide to the EAGLE project are quite complex and specific investigations have to be carried out in each country in order to be compliant with national laws. If the research is not conclusive because of the complexity of the situation it will be essential to seek professional advice from experts or specialist lawyers.



## **A.2 CONTRACT BETWEEN THE ITALIAN MINISTRY OF CULTURAL HERITAGE ACTIVITIES (MIBAC) AND THE EAGLE CONSORTIUM**

It is a rule for every EAGLE member to apply an “all rights reserved” licence to objects belonging to the Italian Ministry of Culture Heritage Activities (*Ministero per i Beni e le Attività Culturali - MiBAC*), which is the owner of the objects and has given permission to the all EAGLE consortium to publish them online but with all rights reserved: Ministero per i Beni e le Attivita' Culturali (MiBAC), Italy and a watermark. This applies to most of the photos of inscription which are currently located in Italy (see the following Agreement).



*Ministero per i Beni e le Attività Culturali*  
Dipartimento per la Ricerca, l'Innovazione e  
l'Organizzazione  
Direzione Generale per l'Innovazione  
Tecnologica e la Promozione  
—  
Servizio II  
Comunicazione, promozione e marketing

Roma, 25-11-2005

Alla EAGLE – Electronic Archive of  
Greek and Latin Epigraphy  
P.le Aldo Moro, 5  
ROMA

e, p.c., Al Direttore Generale per l'innovazione  
tecnologica e la promozione  
SEDE

Prot. n. 5882 Allegati .....

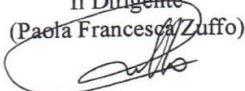
OGGETTO: Invio accordo Mibac – EAGLE.

Illustre Professore,

come d'accordo Le invio l'originale della convenzione firmata il 21 novembre scorso presso la sede del Ministero.

Sarà cura di questo Servizio diffonderne la conoscenza presso le Soprintendenze di settore.

Nel ringraziarLa per la collaborazione e cortese disponibilità Le porgo i miei più cordiali saluti.

Il Dirigente  
(Paola Francesca Zuffo)  


SM

via del Collegio Romano, 27 - 00186 ROMA  
tel. 06.67232441 - 2491 fax 06.67232917 e mail promozione@beniculturali.it



### ACCORDO SPECIFICO

Il Ministero per i beni e le attività culturali - Direzione generale per l'innovazione tecnologica e la promozione, in persona del Direttore generale Arch. Antonia Pasqua Recchia con sede in Roma in Via del Collegio Romano, n. 27, - e Direzione generale per i beni archeologici - in persona del Direttore generale Dott.ssa Anna Maria Reggiani con sede in Roma, Via di San Michele, n.22, in seguito il "Ministero".

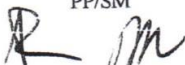
e  
la EAGLE Electronic Archive of Greek and Latin Epigraphy con sede in Roma presso la sede dell'Istituto di Epigrafia Latina, Facoltà di Scienze Umanistiche, P.le Aldo Moro n.5, in seguito "EAGLE", in persona del suo Presidente e legale rappresentante Prof. Silvio Panciera dall'altra parte

premesso che

- EAGLE è una federazione internazionale di banche dati epigrafiche creata dalla Commissione epigrafia e informatica dell'Association internazionale d'epigraphie grecque et latine il cui fine è la promozione e la realizzazione di un archivio virtuale generale di tutte le iscrizioni greche e latine conosciute anteriori al VII secolo d.C. del mondo antico a disposizione della comunità scientifica internazionale;
- l'attività di EAGLE ha carattere e finalità rigorosamente scientifiche senza scopo di lucro, coinvolge università statali italiane e straniere, l'archivio digitale è di libera consultazione;
- EAGLE contribuisce, mediante la schedatura sistematica di tutte le iscrizioni, anche di proprietà privata o di altri enti, alla conoscenza ed alla tutela del patrimonio archeologico nazionale;
- è interesse del Ministero assicurare la tutela del patrimonio archeologico nazionale e promuovere gli studi scientifici dei beni in consegna, in questo caso di una categoria di materiale poco conosciuto dal grande pubblico;

si conviene:

- Il Ministero concede a EAGLE l'autorizzazione a pubblicare sul proprio sito internet le riproduzioni fotografiche delle iscrizioni latine e greche anteriori al VII sec. d.C. edite rientranti fra i beni di sua pertinenza e ad effettuare nuove campagne fotografiche, fatti salvi eventuali diritti scientifici degli studiosi che hanno rinvenuto i manufatti epigrafici e previo consenso delle Soprintendenze interessate relativamente a materiali inediti oggetto di studio.
- EAGLE pubblicherà le immagini con sistemi avanzati di protezione legale e tecnologica contro la pirateria; le immagini digitali saranno immesse in rete a bassa risoluzione e con marchiatura digitale visibile e invisibile con le seguenti indicazioni per ogni immagine nel data-base elettronico: denominazione dell'istituto di conservazione degli originali, su concessione del Ministero per i beni e le attività culturali, divieto di riproduzione;
- EAGLE è responsabile dell'uso delle immagini medesime, concesse esclusivamente per la banca dati a soli fini divulgativi e di studio, senza scopo di lucro;
- le Parti consentono l'attivazione nei propri siti web di un link di rimando secondo modalità da concordare;

PP/SM  




- in considerazione dei fini dichiarati dalla EAGLE il Ministero concede l'esonero dal pagamento dei canoni e corrispettivi di cui al D.M. 8 aprile 1994 (Tariffario) e al Dlgs 22 gennaio 2004 n° 42 (Codice dei beni culturali e del paesaggio), salvo il rimborso delle eventuali spese che l'Amministrazione dovesse affrontare in occasione delle nuove riproduzioni;
- EAGLE, nel caso di nuove campagne fotografiche eseguite dalla stessa, consegna all'Istituto di appartenenza copia, libera da diritti, dei relativi negativi o files su supporto magnetico;
- EAGLE consente al Ministero l'utilizzazione senza oneri di tutto il materiale del proprio archivio per fini di consultazione o istituzionali;
- EAGLE sarà responsabile di qualsiasi danno a persone o cose nel corso delle riprese curate dalla Federazione medesima;
- la presente autorizzazione è inderogabile e non trasferibile, viene rilasciata in via non esclusiva ed è valida per un periodo di venti anni dalla sottoscrizione;
- il presente accordo potrà essere rinnovato, salvo espressa volontà di recesso di una delle Parti da comunicare con raccomandata con ricevuta di ritorno;
- ogni eventuale utilizzazione diversa da quella regolamentata dal presente atto dovrà essere oggetto, di volta in volta, di specifico accordo fra l'utilizzatore ed i capi degli Istituti che hanno in consegna i beni;
- ogni comunicazione, modifica o integrazione, del presente accordo dovrà essere fatta per iscritto e sarà valida ed efficace se indirizzata presso la sede di ciascuna Parte come indicato in epigrafe;
- le Parti convengono che ogni possibile controversia relativa alla interpretazione o esecuzione del presente accordo, se non risolta in via stragiudiziale, sarà assoggettata alla giurisdizione del Foro di Roma.

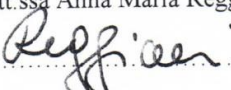
Roma, 21 NOV. 2005

Per il Ministero

Il Direttore Generale per l'innovazione tecnologica e la promozione  
Arch. Antonia Pasqua Recchia

  
.....

Il Direttore Generale per i beni archeologici  
Dott.ssa Anna Maria Reggiani

  
.....

Per la EAGLE Electronic Archive of Greek and Latin Epigraphy  
Il Presidente e legale rappresentante Prof. Silvio Panciera

  
.....



### **A.3 AFFILIATION AGREEMENT WITH THE PONTIFICIA COMMISSIONE DI ARCHAEOLOGICA SACRA**

In the framework of general agreements which benefit the whole partnership, EAGLE BPN started a procedure for an Affiliation Agreement signed by the Pontificia Commissione di Archeologia Sacra (PCAS). PCAS has become a member of the EAGLE BPN and granted rights similar to those granted by MiBAC. The agreement says:

*PCAS holds all rights on the items provided. Under the present agreements it grants the other EAGLE BPN Consortium Members rights for digital publication and metadata enrichment of:*

- photos from its archive
- photos taken by other Consortium Members of objects under the jurisdiction of PCAS according to existing agreements provided that:
  - a link is always provided to PCAS for guidelines on obtaining reproduction rights (as by DEA)
  - the labelling is evident in order to multiply the clarity and visibility of internal policies.

The correct license among those offered by Europeana is therefore “Free access - no re-use”.



## ANNEX B: SAMPLE LETTER TO A RIGHTS HOLDER SEEKING PERMISSION

### B.1 APPLICATION LETTER FOR NEW CONTENT

Date:



Dear [add name and title]

EAGLE - Europeana network of Ancient Greek and Latin Epigraphy - is a European project comprised of 19 partners from 12 countries. The Best Practice Network bring together the most prominent European institutions and archives in the field of Classical Latin and Greek epigraphy. The aim of the network is to provide online access and encourage user engagement with inscriptions of antique monuments. You can find more information about the project at <http://www.eagle-network.eu/>, and Europeana at: <http://www.europeana.eu/>.

We understand that you are the copyright holder or represent the copyright holder of the following object (S):

[insert a full description of the objects (s)]

We would like to be able to publish [photos/scans] of the object (s) on the Europeana and the project EAGLE portal using a [Creative Commons license XX], which will maximise the benefit for the classics community.

We also intend to use [photos/scans] for the following purpose: [Upload to Wikimedia Commons, storytelling application, etc. - if applicable]

We would be grateful for any permission your are prepared to grant to us. Neither we, nor any EAGLE partner will seek to assert any rights over the digitized material. If you are willing to grant permissions, please confirm how you wish to be credited:

© .....

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We would appreciate a response at your earliest convenience. Please confirm any permission granted by countersigning both copies of this letter and returning one copy to the following address:

[insert your name and address]

Thank you in advance for considering our request.

Yours sincerely,

Signed by [name of project partner]: ..... Date: .....

Signed by [name of rights holder]: ..... Date: .....

EAGLE

Deliverable D2.3.1

Best practices on user engagement with epigraphic content, including IPR requirements - first release



## B.2 APPLICATION LETTER FOR PHOTOGRAPHERS/AUTHORS

Date:



Dear [add name and title]

EAGLE - Europeana network of Ancient Greek and Latin Epigraphy - is a European project comprised of 19 partners from 12 countries. The Best Practice Network bring together the most prominent European institutions and archives in the field of Classical Latin and Greek epigraphy. The aim of the network is to provide online access and encourage user engagement with inscriptions of antique monuments. You can find more information about the project at <http://www.eagle-network.eu/>, and Europeana at: <http://www.europeana.eu/>

We are writing to inform you that we have selected the following [photos/scans/transcriptions/translations] of Roman inscriptions/monuments. We are intending to publish those on the Europeana and the EAGLE portal using a [Creative Commons license XX], which will maximise the benefit for the classics community.

We also intend to use [photos/scans] for the following purpose: [Upload to Wikimedia Commons, storytelling application, etc. - if applicable]

We would be delighted to be including your work. Neither we, nor any EAGLE partner will seek to assert any rights over the digitized material. We will credit the [photographer/author] of the work.

Yours sincerely



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