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## D3.1 Sector Analysis and User Requirements

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## Table of Contents

<b>1. EXECUTIVE SUMMARY D3.1.</b>	<b>5</b>
<b>2. INTRODUCTION</b>	<b>7</b>
2.1. Structure of this report	7
<b>3. CONTEXT AND BACKGROUND</b>	<b>8</b>
3.1. Legal obstacles regarding AV works	8
3.1.1. EU-level	8
3.1.2. EU cross-border level	8
3.1.3. National level	9
3.2. Orphan Works Directive	9
3.2.1. History	9
3.2.2. The Directive	10
3.3. Pre-existing knowledge and experience	10
3.3.1. The Netherlands: Images for the Future	10
3.3.2. EU: European Film Gateway Project	11
<b>4. ORGANISATIONAL MEASURES</b>	<b>13</b>
4.1. EYE Task Leader WP 3.1.	13
4.2. Data Management	13
4.3. FORWARD Cooperation to complete the Deliverables	14
4.3.1. Participants	14
4.3.2. WP leaders	14
4.3.3. Task Leader 4.3. CINECA	14
4.3.4. OHIM	15
<b>5. ANALYSIS OF LEGAL ENVIRONMENT OF AV WORKS</b>	<b>16</b>
5.1. Working Method	16
5.2. Preliminary questions	16
5.3. Legal Questionnaire	17
5.3.1. Legal Questionnaire draft	17
5.3.2. Request for completion of the Legal Questionnaire	18
5.4. Reference Documents	19
5.5. Legal Decision Tree: Pilot Netherlands	19
5.6. Timeline Legal Questionnaire	20
<b>6. ANALYSIS OF AV RESOURCES</b>	<b>21</b>

6.1.	Background.....	21
6.2.	AV Questionnaire General .....	21
6.3.	AV Questionnaire Content .....	22
6.4.	Processing and Evaluation of the Response .....	22
6.5.	Technical AV Questionnaires General .....	25
6.6.	Timeline.....	25
<b>7.</b>	<b>BUSINESS DEVELOPMENT.....</b>	<b>26</b>
7.1.	Business models analysis .....	26
7.1.1.	ARROW & ARROW plus.....	26
7.1.2.	PrestoCentre .....	27
7.1.3.	European Film Gateway – EFG.....	29
7.1.4.	The European Library – TEL .....	30
7.1.5.	XIMON .....	31
7.1.6.	Overview Table .....	33
7.2.	Towards FORWARD Strategy & Business Plan.....	33
7.2.1.	Stakeholders, Information Day and Advisory Board.....	33
7.2.2.	Towards Products and Services .....	34
<b>8.</b>	<b>CONCLUSIONS AND NEXT STEPS.....</b>	<b>35</b>
8.1.	Conclusions .....	35
8.2.	Next steps .....	36
	<b>ANNEX 1: AV QUESTIONNAIRE.....</b>	<b>38</b>
	<b>ANNEX 2: COLLECTED AV-RESOURCES .....</b>	<b>47</b>
	<b>ANNEX 3: LEGAL QUESTIONNAIRE.....</b>	<b>56</b>
	<b>ANNEX 4: REFERENCE DOCUMENT (FRANCE) .....</b>	<b>61</b>
	<b>ANNEX 5: LEGAL DECISION TREE THE NETHERLANDS (DRAFT) .....</b>	<b>87</b>
	<b>ANNEX 6: PRELIMINARY LIST OF STAKEHOLDERS .....</b>	<b>88</b>
	<b>REFERENCES .....</b>	<b>90</b>

# 1. EXECUTIVE SUMMARY D3.1.

WP3 is the first step towards the design of the full FORWARD system: the foundation for the development of the entire FORWARD system will be executed under WP3.

WP3 consists of two tasks:

- 3.1. Analysis of the sector and User Requirements;
- 3.2. System requirements.

D3.1 provides the basis for D2.3.1 (Design of rights information), D2.3.1 (Exploitation and Long Term Sustainability Plan – Year 1), D4.1 (Analysis of available resources in the AV sector) and D4.2 (Definition of system Workflow). The main objectives of D3.1 are:

- Analyses of legal environment in the different countries;
- Analyses of available information resources within the partnership and outside, including; mechanisms for rights status assessment in national environments;
- Identification of required interactions with external resources (e.g. Arrow, EFG);
- Business models analysis;
- Identifications of users' categories and expectations;
- Specification of User Requirements deriving from the analysis.

In the following we provide an overview of the results we have achieved:

## **Legal environment**

In order to reach the FORWARD targets, an analysis of the legal environment in the participants' countries is required under deliverable 3.1. In practical terms, this required an aggregation of relevant information regarding local law and the development of legal decision trees. The first step in the execution of this task was a comprehensive study of all relevant information already aggregated in the course of previous IPR projects. Also, preliminary questions were addressed to several experts in order to determine the scope of the legal research.

After an extensive review, we concluded that the existing information could not be considered as sufficiently accurate and up-to-date to develop legal decision trees. Therefore, we generated a legal questionnaire (annex 3) to collect the relevant information from the participants. In order to facilitate the completion of the legal questionnaire by participants, we sent "reference documents" (annex 4) containing all pre-existing information regarding applicable legislation. We expect the legal questionnaires to be completed by the end of March 2014/beginning of April 2014.

The results following the review of the legal input provided by participants, as well as the legal decision trees built upon that legal input, will be presented in Deliverable 4.1. After having received the input of the legal questionnaire and having conducted the analyses, we will be able to deliver the requirements for the definition of the system workflow.

## **AV-resources**

An analysis of available information resources is one of the Deliverable 3.1 milestones. In order to

collect the relevant AV-resources of the FORWARD-partners an AV-Questionnaire (annex 1) has been developed that focuses on three categories that are correlated in a diligent search: cinematographic information, Web Identity Search (such as genealogical tools, digitized civil registers) and Collective Rights Management, represented by Collective Management Organisations (CMO's) and professional associations.

The contributions of the FORWARD-partners have led to a collection of AV-resources (annex 2). This domain has been assessed on relevancy and diversity. Relevancy is determined by content (the amount of records) and online data access; it is examined on the presence of an online database, search engine and query possibilities. On the basis of these variables, a quantitative analysis was performed.

A Technical Questionnaire will follow the AV-Questionnaire and will focus on the ICT-infrastructure of the resources, such as format of data, standards of metadata, etc. The investigation of the technical environment will be one of the objectives of WP 4.1.

### **Business Development**

FORWARD is a three-year EU funded project; the heart of its sustainability beyond the project lifecycle resides in the ability for the FORWARD Strategy and Business Plan to be implemented successfully.

The Strategy and Business Plan should deliver appropriate economic viability options, costs and level of investment required from its stakeholders with an agreed income scenario. It will allow FORWARD consortium to test the feasibility of FORWARD business ideas, give selected choices the best possible chance of success, secure funding and ultimately attract stakeholders/investors.

Having that in mind, it is premature to draw a Strategy and Business Plan in the early stage of the project; preliminary discussions within the consortium indicate that once operational, the FORWARD system could benefit from a funding flow deriving from users' fees, enabling long-term sustainability. However, careful scoping of Products and Services as well as network engagement will secure FORWARD's ability to build its long-term sustainability.

The current stage of FORWARD Strategy and Business Plan provides:

- an analysis of existing Business Models set-up by pan-European membership organisations in the cultural sector in Europe;
- an introduction to FORWARD Strategy & Business Plan;
- a roadmap to engage potential stakeholders in the development of FORWARD Strategy & Business Plan.

## 2. INTRODUCTION

### 2.1. *Structure of this report*

This report is divided into the following chapters.

First we will expand on the required tasks under Deliverable 3.1. followed by a “context and background” (Chapter 3) . To contextualise the FORWARD project background, we provide information regarding the legislative framework, followed by a brief description of pre-existing knowledge and experiences regarding European copyright law and rights clearance.

In the following chapter, we introduce the FORWARD contributors that are designated to fulfil the tasks under Deliverable 3.1, and the cooperation with the FORWARD partners is briefly set forth.

The next chapter features the analysis of the legal environment of AV works in various subsections such as working method and draft of legal questionnaire. After that, the analysis of the AV resources will be set forth including draft AV questionnaire, receipt of completed AV questionnaires as well as processing and evaluation of the responses.

In chapter “Business Development”, relevant business models are analysed and a first outline of a Strategy and Business Plan is projected.

Finally, the conclusions summarises the work completed under Deliverable 3.1 and a brief overview of the upcoming FORWARD activities is set forth (Chapter Conclusions and Next Steps).

## 3. CONTEXT AND BACKGROUND

### 3.1. Legal obstacles regarding AV works

In comparison to other creative works (such as books), the assessment of copyright protection applicable to AV works is by far the most complicated (resulting from, for instance, the multitude of rightholders that may be involved in a single AV work). In order to achieve a general understanding we will set forth the main reasons behind its complexities, on an EU level, on an EU cross-border level and on a national level.

#### 3.1.1. EU-level

The EU has adopted various Directives regarding copyright and protection term with the objective of

EU-wide harmonisation. As Directives require implementation in each EU Member States, these are of crucial importance for national legislation. Regarding copyright for AV works the following Directives have made the most impact:

- “Term Directive 1993” (Council Directive 93/98/EEC of 29 October 1993 harmonising the term of protection of copyright and certain related rights): this Directive sets the protection term of cinematographic and audiovisual works at seventy years from the date of death of the last surviving of the principal director, the author of the screenplay, the author of the dialogue and the composer of the music created for use in the work;
- Copyright Directive 2001 (Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society);
- “Term Directive 2006” (Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights);
- “Orphan Works Directive 2013” (Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works): this Directive must be implemented in national law before 29 October 2014.

Although these directives brought some level of harmonisation, to this date substantial discrepancies in copyright protection throughout the EU still exist with regard to the scope of copyright protection, protection term, and designated rightholders. Regarding protection term, major discrepancies result from “transitional law”: according to the “Term Directive 1993” Member States are allowed to introduce transitional rules in their national law, which keeps longer terms in force that were already running in a member state when the “Term Directive 1993” was implemented in national law. In practice that means that despite the introduction of specific legislation under Term Directive 1993 to establish whether an AV work is still copyright protected, additional research must be executed for each jurisdiction in order to investigate if longer protection terms may be applicable.

#### 3.1.2. EU cross-border level

As a general rule it should be noted that rights clearance and assessing the legal status of AV works is performed according to national legislation. In view of the protection discrepancies between national legislation throughout the EU, the term has to be calculated in each jurisdiction in order to verify its legal status throughout the EU. In short: if an AV work has been qualified as public domain under national law in one EU country, it may well still be protected in other EU countries.



However, according to the Orphan Works Directive the qualification as “orphan work” based on a diligent search in one country will have a “cross-border effect”. That means that if an AV work is declared an orphan work in one country, it will be considered an orphan work on Eu-wide level.

### 3.1.3. National level

To achieve a thorough understanding of legislation applicable to AV works under national law, time-consuming research by highly specialised experts is necessary. Even after this research there may be specific areas of AV copyright protections that remain unclear, sometimes simply because no legislation for specific cases exists. The most complicated subjects regarding legislation of AV work on a national level include establishing whether the AV work is still copyright protected or falls into the public domain, whether it can be qualified as an “orphan work” (this will be solved by the implementation of the Orphan Works Directive) and whether the rightholders were identified.

The request for revision of the EU legal framework in order to adapt legislation to the digital age is widely voiced from a variety of stakeholders (including users, archives, industry, collective rights management organisations). New legislative measures on an EU level will most probably not be introduced within the next few years. As the copyright legislation will not be drastically revised within the foreseeable future, the knowledge of applicable copyright legislation under national law is all the more urgent. The project FORWARD is of vital importance in the absence of further harmonisation on an EU level, as it enables easier access to information regarding the legal status (public domain, copyright-protected, orphan) and rightholders information based on a diligent search.

## 3.2. Orphan Works Directive

### 3.2.1. History

According to a survey (2010) conducted by Association des Cinémathèques Européennes (ACE), approximately 225.000 AV orphan works are held by 24 archives and it is estimated that 60% were produced before 1950. According to recent estimations approximately 20% of all AV works held by film heritage archives can be qualified as orphan works. Based on experience under the large-scale rights clearance in the framework of the project “Image for the Future”, we can confirm this percentage. In short: a huge part of European film heritage is locked up behind copyright bars.

Europeana - the EU funded online library that provides access to millions of books, paintings, films, museum objects and archival records through a portal - noted (Collections and Metadata Analysis, Strategy and Plan' 2013) that AV material makes up for less than 3% of the database, while research shows that this material gets most interest from end-users.

It is abundantly clear that one of the major obstacles for film heritage institutions is related to orphan works. We herewith set forth a brief explanation of the orphan works issue under currently applicable law. Orphan works are works whose copyright owner cannot be identified or traced. Prior authorisations are necessary to make copyright protected works available to the public. When the relevant copyright owners cannot be identified or found the works in question are orphan works. Consequently, the necessary authorisations to make these works available (online) cannot be obtained. Therefore, archives that make works available online to the public without prior authorisation face the risk of infringing copyright. The inability of identifying or locating the author of the orphan work normally led to a situation of stall; this is due to the fact that the organisation interested in making use of the work was unable to obtain a license and was consequently unwilling to use the work, due to the fear of being charged with copyright infringement eventually.

In order to provide a solution to the orphan works issue, the EU adopted the Orphan Works Directive in October 2013.

### 3.2.2. The Directive

In October 2013 an important step was taken in revising the legal framework of AV works: the Directive 2012/28/EU of the European Parliament and of the council of 25 October 2012 (hereinafter the Orphan Works Directive) was finally adopted. Although the Orphan Works Directive gave rise to much debate and discussion since its proposal was launched in May 2011, FORWARD welcomes the Orphan Works Directive as a much-needed legislative tool for legally unlocking AV heritage.

When the FORWARD project plan was conceived, the lack of applicable legislation implied that an important FORWARD system task was to build on consensus of all relevant stakeholders. With the introduction of the Orphan Works Directive, the legislative framework has become much clearer. Therefore consensus-building is expected to focus on interpretation and scope of the Orphan Works Directive.

The Directive defines orphan works as the following: “A work or a phonogram shall be considered an orphan work if none of the rightholders in that work or phonogram is identified or even if one or more of them is identified none is located despite a diligent search for the rightholders having been carried out and recorded.”

According to the Directive certain uses of orphan works, including cinematographic or audio-visual works, are allowed for inter alia film heritage institutions in order to achieve aims related to their public-interest missions. Requirement for such use is a diligent search for the purpose of establishing whether a work or phonogram is an orphan work, the relevant organisation shall ensure that a diligent search is carried in good faith by consulting the appropriate resources, and the organisation are required to maintain record of their diligent searches, and to provide listed information regarding the diligent search to the national authorities. Subsequently, the national authorities will forward this information to the Office for Harmonization in the Internal Market (OHIM). OHIM is currently in the process of drafting a model database for orphan works. Below we will expand on the collaboration between FORWARD and OHIM relating to the development of such database.

To summarise the objective of the Orphan Works Directive: film heritage institutions are allowed to use copyright protected works whose rightholder(s) are untraceable or unidentified after they performed a (recorded) diligent search for the rightholders.

As mentioned earlier, FORWARD welcomes the Orphan Works Directive as it facilitates unlocking AV works. In addition, FORWARD acknowledges the fact that the Orphan Works Directive complies with the policy and procedures developed in the framework of the large-scale rights clearance under the project “Images for the Future” (see below).

The Orphan Works Directive has to be implemented into local law before 29 October 2014, at this point in time the Directive has already been implemented in following FORWARD participants: Germany and Finland.

### 3.3. *Pre-existing knowledge and experience*

The project FORWARD builds on the experience gained under the most important and successful national digitisation and access project to date that of “Images for the Future” in the Netherlands. In addition, FORWARD is using extensive skills gained during the EU-wide project regarding copyright law in the course of the European Film Gateway project. In the next two paragraphs we provide a brief overview of these projects.

#### 3.3.1. The Netherlands: Images for the Future

The project “Images for the Future” in the Netherlands is one of the most important national digitisation and access project to date. The project that started in July 2007 had three objectives: safeguarding

heritage for future generations, creating social-economic value, and supporting innovation in cultural infrastructure. This involved the selection, restoration, digitisation, encoding and storage of 91,183 hours of video, 22,086 hours of film, 98,734 hours of audio and 2.5 million photographs. To meet its goals the Dutch Government granted a sum of 115 million Euros, spread over a period of seven years to a consortium of four project partners, among which three were archives (EYE Film Institute Netherlands, Institute for Sound and Vision and National Archives of the Netherlands).

One of the main achievements within the project was the rights clearance performed as part of the development of the VoD platform Ximon, that was set up in 2009 and was launched in April 2011. Ximon was an initiative of the Dutch Film Producers Association, EYE Film Institute Netherlands and the Institute for Sound and Vision. Ximon was a non-profit organisation: the income generated by Ximon was mainly dedicated to the rightholders of the Ximon.<sup>2</sup> catalogue

The rights clearance that was performed under the project was unprecedented and therefore by definition ground-breaking for a number of reasons: its massive scale, its consensus with stakeholders, its diligent search for rightholders (which will be detailed hereinafter). The rights clearance started by thorough examination of the applicable legislation for AV works of all ages and followed by the draft of legal guidelines enabling an effective legal assessment of AV works. In the absence of applicable rules for orphan works the “Diligent Search Guidelines for Orphan Works” drafted by the EC High Level Expert Group were thoroughly examined. Subsequently, based on the policies set forth in those Guidelines, all relevant information resources were harvested and Diligent Search Guidelines were drafted for the Netherlands (see further in this report).

During the four years’ course, the legal status of thousands of films was established (copyright protected, public domain, orphan work) and additionally the rights of in-copyright titles were cleared both for commercial and non-commercial uses.

The innovative feature of rights clearance specifically for VoD platform Ximon was that it was based on a voluntary extended license agreement. With each producer an individual agreement was concluded, while regarding all other rightholders a framework agreement was reached with collective management organisations. [This framework agreement was based on a broad consensus following extensive negotiations between all relevant stakeholders: collective rights management organisations representing directors (VEVAM), producers (SEKAM), writers (LIRA), music composers (BUMA STEMRA) and performers (NORMA).

The rights clearance performed under “Images for the Futures” is widely perceived as highly innovative and successful: it has shown that the large-scale rights clearance of AV works lies within the realm of reality. To a certain extent, it has paved the way for a legislative initiative such as the Directive on Orphan Works, which is based on the same principle as the rights clearance in the framework of the project “Images for the Future”: a diligent search for all rightholders.

### 3.3.2. EU: European Film Gateway Project

EFG was a Best Practice Network funded by the European Commission under the eContentplus programme, as part of the i2010 policy. The European Film Gateway (EFG) was a 3-year project running from September 2008 to August 2011. Involving 22 partners from 16 European countries, EFG developed an online portal that provides direct access to about 600,000 digital objects including films, photos, posters, drawings and text documents.

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<sup>2</sup> Unfortunately Ximon stopped its services on January 29<sup>th</sup> because their revenues were too low to sustain the platform. The initiators including EYE and Sound & Vision are seeking new opportunities to keep the content accessible for the public.

Under the EFG project, EYE was work package leader of WP 5.1 “IPR Management and Administration”. The activities included assessment of copyright regulations and legal framework for on-line use of archival content; consultation events with content owners/copyright stakeholders; clustering with EC-funded projects for enabling access to copyrighted works; compilation of a research report on open content models; gaining experience from other organisations engaged with on-line publishing of copyrighted archival film material.

In order to retrieve relevant information regarding legislation applicable to AV works under local law, three subsequent legal questionnaires were developed and sent to the EFG project partners. After receipt of the legal input from the project partners, the content was thoroughly studied and occasionally additional clarification needed. When a sufficient level of legal input was finally reached, legal decision trees were drafted providing a copyright clearance tool for project partners.

The relevant findings and results were described in Deliverables D5.1 “Report on legal frameworks in European Film Gateway consortium Member states” (March 2009) and D5.3 “Final Guidelines on Copyright Clearance and IPR Management” submitted to the EC in October 2010.

Based on its experience under EFG, extensive knowledge was acquired regarding drafting of legal questionnaires and research of national copyright legislation applicable to AV works in the Member States. Furthermore, broad experience was gained regarding the development of legal decision trees adapted to local law; these decision trees were based on legal input from project partners. This experience will be used in the execution of the FORWARD project.

In addition to this rich experience, EFG also resulted in a tangible instrument that would be of great value: knowledge of local law. For the convenience of the FORWARD participants, so-called reference documents were drafted containing the legal input harvested under EFG. These reference documents serve as an assistance tool for the completion of the FORWARD Legal Questionnaire, which will be discussed in more detail below.

## 4. ORGANISATIONAL MEASURES

### 4.1. EYE Task Leader WP 3.1.

EYE is task leader of 3.1. To execute its task EYE has temporally extended its project staff with the following members:

- Géraldine Vooren (Legal Project Officer),  
Responsible for the legal task;
- Eric Palmen (Project Officer),  
Responsible for the AV-resources and data management;
- Aubéry Escande (Project Officer),  
Responsible for the Business Models & Stakeholders.

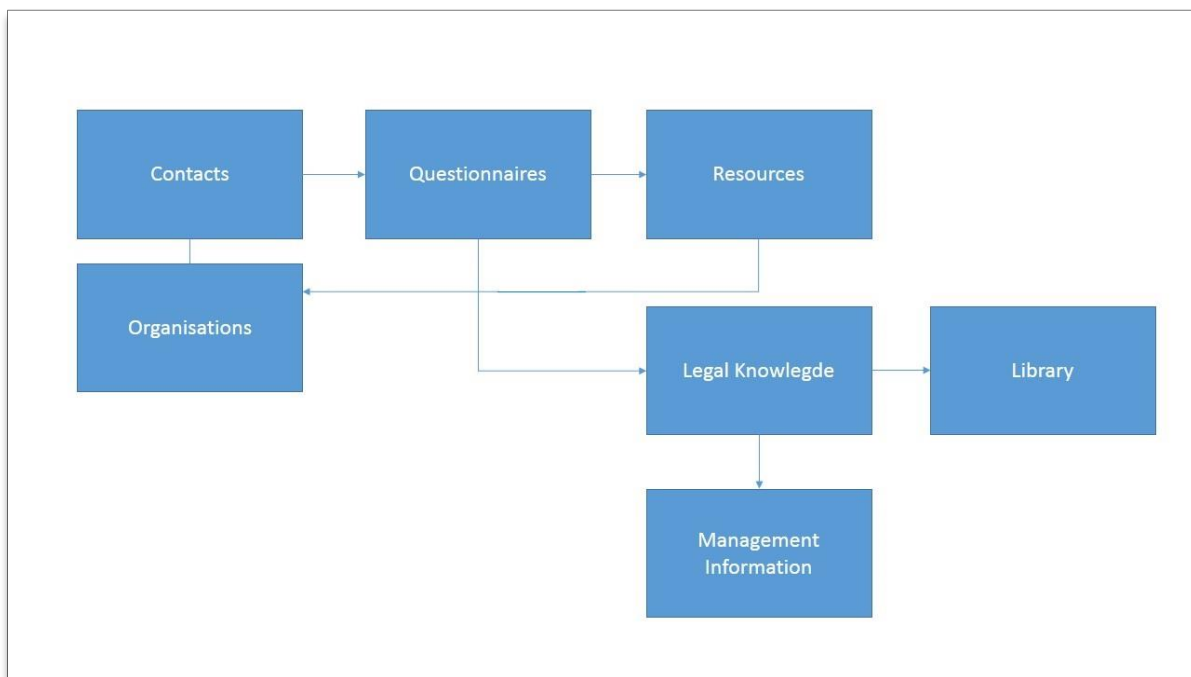
Project management of WP 3.1. is executed by Walter Swagemakers (senior Project Manager Collections).

### 4.2. Data Management

Securing information is an essential part of any project, especially for FORWARD and its international environment. To achieve this goal, we developed a Data Management System (DMS) that allows collecting and analysing all the received data in answer to the questionnaires we distributed among the participants. The DMS consists of a:

- Relation Management System with relevant organisations and contacts;
- Document Management System with all the Q&A's of the questionnaires;
- Library of relevant documentation to copyright law of the participant's countries;
- Management Information that is automatically generated during the processing of the data.

The following scheme provides the functional design of the DMS



### **4.3. FORWARD Cooperation to complete the Deliverables**

#### **4.3.1. Participants**

Following the draft of the AV questionnaires distributed to all participants, adequate feedback was received in accordance with the (extended) deadline for delivery. Legal input is expected to be completed by participants by the end of March / beginning of April.

#### **4.3.2. WP leaders**

The FORWARD project features the following Work Package Leaders: Cinémathèque Royale de Belgique (CRB), Association des Cinémathèques Européennes (ACE), EYE Film Institute Netherlands (EYE), Conzorzio Interuniversitario (CINECA), Det Danske Filminstitut (DFI) and Kansallinen audiovisuaalinen arkisto (KAVA). Together, the WP Leaders form the Steering Council and are in charge of the strategic input to the project. The role of the Steering Council is to anticipate issues likely to determine bottlenecks in the project implementation or in strategic decisions, and suggest ways of solving these.

At the start of WP 3.1 activities, FORWARD sent regular input requests and progress reports regarding “milestone events”, including:

- Request for input from WP Leaders regarding legal questionnaire plus reference documents accompanied by explanatory notes;
- Progress report AV: all AV questionnaires completed and received from participants;
- Progress report Legal: notification for sending all legal questionnaires with reference documents to participants plus timeframe.

#### **4.3.3. Task Leader 4.3. CINECA**

An important part of the FORWARD project regarding the system development will be performed by CINECA as it is the designated task leader for the system workflow definition (D4.2) and the design of rights information infrastructure (D4.3). Additionally, CINECA is WP6 leader (“System set up”), which constitutes the main technical achievement of the project: the creation of a complete automated system operating processes for assessing the rights status of AV Works. As EYE is responsible for the first important step in the design of the full FORWARD system, we believe a strong collaboration between EYE as task leader of 3.1 and CINECA is critical to at an early stage of the project.

We sent explanatory comments to CINECA regarding copyright questions that arose during the FORWARD Meeting in Brussels on December 5, 2013. In addition, we drafted a memorandum explaining the general framework of EU copyright in order for CINECA to achieve a general understanding of copyrights basics. The memorandum sets forth an outline of EU copyright, that is narrowed down to a broad, highly simplified legal framework. Furthermore, in order to provide further understanding of EU copyright, we developed an EU copyright flowchart (attached to the EU copyright memorandum). Finally, to provide CINECA with an example of a copyright flowchart, which had been adapted to national law, we drafted a preliminary version of a flowchart applicable to Dutch law.

In addition, regular communication with CINECA was set-up regarding the development of the AV questionnaire. CINECA provided valuable input regarding the relevant questions that should be inserted in the AV Questionnaire. In mutual agreement, EYE and CINECA came to the conclusion that the required information regarding the AV sources should be addressed in different AV questionnaires. The first questionnaire should provide general requests regarding available resources, the second questionnaires should address technical aspects and investigate the technical specifications of the resources available within the archives and external resources.

In addition, a workflow is currently being set up with CINECA regarding a pilot for an automated legal decision tree for The Netherlands.

#### **4.3.4. OHIM**

OHIM (Office for Harmonization in the Internal Market) is designated by the Orphan Works Directive to establish and manage a single publicly accessible online database. According to the Orphan Works Directive, the database needs to store the following information: results of the diligent searches, use that the organisations make of orphan works, any changes of the orphan works status and relevant contact information of the concerned organisations. It is important that OHIM and FORWARD coordinate their activities considering the fact that both OHIM and FORWARD will develop European databases containing rights information regarding AV works. The OHIM database will focus solely on orphan works according to the Orphan Works Directive while the FORWARD rights management information database will provide a broader range of information regarding the legal status of AV works and its rightholders.

On a number of occasions FORWARD provided input regarding the draft database developed by OHIM. The input delivered by FORWARD targets at two main objectives:

1. To bring the OHIM orphan works database in line with the information requirements as stated in the OW directive;
2. To keep the required information as restricted as possible (in accordance with the Orphan Works Directive) in order to make sure that of the information required from the archives by the OHIM orphan works database does not exceed the required information under the OW directive, as this would impose an unreasonable administrative burden on the archives.

## 5. ANALYSIS OF LEGAL ENVIRONMENT OF AV WORKS

### 5.1. Working Method

According to task 3.1 EYE is required to perform an analysis of the legal environment of AV works in the participants' jurisdictions. It was agreed that the most effective approach in terms of time and resources was to collect all relevant information that was already available. As said, extensive knowledge based on previous large scale IPR project was acquired, both at a local and EU-wide level. In addition we could benefit from the Institute for Information Law (IVIR) Deliverable: "Research document regarding the public domain calculator" (see further in this report). Thus, an extensive review of the existing information was conducted to investigate whether the available information would be sufficient to fulfil the task under 3.1.

We concluded that the available information was not sufficiently solid to serve as basis for the development of our legal analysis and therefore to the entire FORWARD system. The available information was lacking the required level of accuracy and compliance with current applicable legislation. In order to retrieve the required information we needed to ask participants to perform research under local law and return the requested information. The most efficient manner to harvest and manage such information request was to design an additional legal questionnaire. We came to the conclusion that the most cost-effective manner to use the valuable pre-existing information was to insert that information in a reference document for participants. This approach had several benefits: the results of previous (EU funded) projects were to be re-used and participants were provided with an assisting tool for completing the legal questionnaire.

In order to determine the scope of the legal research we first needed input to various preliminary questions regarding crucial legislation: the Orphan Works Directive.

### 5.2. Preliminary questions

In the process of conducting the legal research required for drafting the legal questionnaire, we encountered legal issues that we had not anticipated. In order to retrieve the required legal input from participants, it was critical to have a clear picture of the applicable (EU) legislation. More specifically, various questions came up regarding the interpretation and scope of the Orphan Works Directive, which - as stated previously - has not yet been implemented in national law.

We requested the input regarding the following issues:

- Scope of Orphan Works Directive: to what extent is the Directive applicable to Related Rights?
- Do "embedded or incorporated works" as set forth by the Directive include underlying works?
- Can you describe the process of a search in multiple countries in case of an AV work produced by several producers established in several countries?
- Does the category of copyright protected works without rightholders fall under the scope of the Directive?

We raised these questions at the European Commission, DG MARKT Copyright Unit. In addition, we set up a meeting with Dr. Lucie Guibault - Associate Professor at the Institute for Information Law (IVIR). IVIR – located in Amsterdam – is one of the largest research centres in the field of information law in Europe affiliated with the Faculty of Law of the University of Amsterdam. The institute's mission is to further the development of information law into a balanced framework that accommodates the needs and interests of the information society.

Based on our meeting with IVIR, we received the information that we required to achieve clear



understanding of the legal scope of the OW Directive. Furthermore, the clarification enabled us to perform a risk assessment regarding limitations to our legal research.

### 5.3. Legal Questionnaire

#### 5.3.1. Legal Questionnaire draft

The development of the legal questionnaire was based on three legal questionnaires previously distributed in the framework of the projects EFG and EuropanaConnect (IVIR). As the project FORWARD has its own goals and deliverables, we took great effort in adapting the questionnaire to current and (near) future legislation and in drafting the questionnaire in compliance with the target of FORWARD: an automated copyright clearance tool for the participants' countries. However, the structure of the legal questionnaire was in broad lines similar to the one drafted under EFG. The general outline of the legal questionnaire is in accordance with the steps taken in the legal assessment of AV works and can be summarised as following:

**Step 1) Is the AV work in question still protected under copyright?** If it is established that the AV work is no longer copyright protected, which is a rarity in the legal assessment of AV works, the work can be qualified as public domain. If it has been established that the work is copyright protected, the next question (step 2) in the legal assessment of AV works needs to be addressed: who can be considered as the rightholder to the AV work?

First, we will expand on the question whether an AV work is in-copyright or out-of-copyright. As mentioned previously, establishing the copyright protection of AV works is extremely complicated. The complexity of copyright protection of audiovisual works is in part caused by the fact that the rules that are currently in effect are determined by transition law. Transition law aims at providing legal solutions for the complex situations that may arise from changes in legislation. For instance, when the EU Term Directive of 1993 came into force in Member States, which extended the copyright protection to 70 years, in many Member States a 50 years copyright protection term was in effect. This resulted in the fact that in some Member States the legal phenomenon of “revival” occurred: a title that was previously qualified as public domain under the 50-years protection term, could be “revived” with the implementation of the 70-year protection term.

This step in the legal assessment of AV works is translated in the following questions in the legal questionnaire (not limitative):

- What are the general rules regarding copyright protections term?
- What were these rules previously and what transition law was introduced?
- How has the EU Term Directive been implemented in national law? Was transition law introduced? Were there cases of revival of rights?
- What are the specific protection term rules for unpublished works, joint authorship, collective works, compilations. Pseudonym works?
- What are the specific protection terms rules for AV works? What were the rules previously and was any transition law introduced?
- If a legal entity can be the author, does this affect the protection term of AV works?
- Are there national particularities regarding protections term (such as wartime extensions in France)?

**Step 2) Who can be considered as the rightholder to the AV work?** If the identity of the rightholders has been established AND they were successfully located, then the AV work falls in the category “copyright protected / rightholders known”. If, on the other hand, the search for rightholders turns out to be more complicated the questions described below should be answered.

This step in the legal assessment of AV works is translated in the following questions in the legal

questionnaire (not limitative):

- Who is regarded as rightholder? Is there a legal transfer to the producer?
- Is it possible to transfer copyright?
- Who has been indicated by law to inherit the rights?
- What rules apply in case of bankruptcy of legal entity/rightholder?

**Step 3) What is the applicable legislation for orphan works?** We emphasize that, in contrast to common beliefs, a diligent search cannot be specifically targeted at finding orphan works from the outset as a primary goal. The assessment of legal status of AV works results in (in that order) first category public domain copyright, second protected & rightholders traceable & identified, third copyright protected & rightholders untraceable and / or unidentified. In sum: the category of orphan works is the final step in legal assessment of AV works (in other words: the orphan work qualification is the (end)result of the assessment of the copyright status). The preliminary questions “does a film belong to public domain?” and “can the rightholders of the protected be identified or located?” are essential in the search for orphan works; it is therefore not possible to search exclusively for orphan works

This step in the legal assessment of AV works is translated in the following questions in the legal questionnaire (not limitative):

- What is the existing legislation regarding orphan works?
- What is the status of the implementation of the Orphan Works Directive in your national jurisdiction?

### 5.3.2. Request for completion of the Legal Questionnaire

In order for participants to fully comprehend its content and complexity and to avoid any misunderstanding regarding the completion of the legal questionnaire, the request for completion sent to participants was accompanied by the following explanatory notes and instructions (summarised):

- *Background information*

*One of the main characteristics of the legal questionnaire is its level of detail. This can be explained by the complexity of all aspects of AV rights (such as term protection, transition law and rightholders) in combination with the purpose of EYE to get an overview of local law that is as complete and accurate as possible. At this point, we cannot afford to overlook any legal information that may undermine the accuracy of the legal flowcharts and, subsequently be detrimental to the value and credibility of all FORWARD deliverables.*

- *Instructions for completing the legal questionnaire*

*We have attached the (blank) template of the legal questionnaire with the request to answer all questions as up-to-date, as accurately and completely as possible (if a particular question is not applicable under your local law, please inform us thereof in the legal questionnaire) and insert your answers in the (blank) template of the legal questionnaire.*

- *Instructions for using the reference document*

*In the recent past, several European projects (European Film Gateway by EYE, EuropaConnect by IVIR University of Amsterdam) have been executed with its focus on intellectual property rights. We have collected this information and drafted reference documents for each of the participants' countries. The reference document contains all legal information that was received under those earlier projects in answer to similar questions as those asked in the FORWARD legal questionnaire. We developed this document for your convenience, with the intention to provide you with some assistance with the completion of the legal questionnaire.*

- *Completion of the Legal Questionnaire*

*Please have the questionnaire completed in English and in the adequate legal terminology. Note that EYE Film Institute legal department is available for advise if you have problems with completing the legal Questionnaire. EYE Film Institute legal department conducted copyright comparative research under the EU funded project EFG – European Film Gateway (2008-2011); based on our extensive practises and understanding at a European level, we recognise that the input from legal experts specialised in copyright (i.e. legal counsel/lawyer or a specialised and dedicated member of your staff) guarantees a high quality of work, and therefore effectiveness of your feedback.*

By December 2013 the first draft of the legal questionnaire was sent to the relevant participants with the request for review. After (limited) discussions regarding the content and scope of the legal questionnaire following input from participants, we made a few slight amendments. The Legal Questionnaire was finalised and sent to participants accompanied by reference documents at the beginning of February 2014.

#### **5.4. Reference Documents**

As stated above, the legal analysis was initiated with the investigation of the legal information already was at our disposal. We found that we had two major sources of information: information harvested under the EFG project and legal input retrieved by IVIR in the course of the EuroepannaConnect project. After review, we concluded that this information was unfortunately not sufficient in order to build legal decision trees. However, we did draft reference documents containing the pre-existing information.

This legal information was harvested within the framework of these EU funded projects:

- **European Film Gateway (EYE):**  
We received legal input following two legal questionnaires addressing the following countries also participating in FORWARD: Germany, Italy, France, Denmark, Czech Republic. Most of the respondents provided high quality and substantial legal input drafted by legal experts.
- **EuropeanaConnect (IVIR):**  
Based on the report and documentation to the public domain calculator, we collected relevant legal information regarding all participants. The legal questionnaire was broader than those under EFG, therefore the resulting legal input was less specific for AV works. We selected the information that might be relevant for AV works and inserted it in the reference documents.

#### **5.5. Legal Decision Tree: Pilot Netherlands**

By the time all legal questionnaires had been sent to participants, the legal analysis started for The Netherland. Based on previous research such as those performed under EFG, we collected all available information, then reviewed and revised for required updates to bring it in line with currently applicable legislation. We then completed the legal questionnaire including the orphan works chapter. As EYE takes part of Dutch working group that is consulted by the Dutch Government regarding the implementation of de Orphan Works Directive, we have direct knowledge of the legislative process (at the time of drafting this report the Dutch proposal was published – March 2014).

As a pilot, we then decided to start developing a decision tree based on the available legal information of Dutch law. As mentioned before, the first step was to establish under national law whether the AV work is still protected by copyright. To establish that part of the decision tree, we had to take all legal information into account including current law, previous law, transitional law. Based on that input we developed an algorithm: a step-by-step approach for the calculation of copyright protection. The following questions are included in the algorithm in order to assess the copyright protection term in The Netherlands:

- Was the film produced before or after 1985?

- Was the film produced and made available by a legal entity?
- If so, was the film made available more than 70 years ago?
- If so, was the film made available more than 70 years ago but did the natural makers of the film become known during that 70 years term?
- If the film was produced before 1985, which persons have made creative contributions?
- What are the life data of those persons?
- Did they decease all more than 70 years ago?

After having completed the legal decision tree based on these questions, we can conclude that the film is: copyright protected or public domain.

The second step is to establish the rightholders of the copyright protected AV works. In The Netherlands, we have to take into account that a legal entity can be a maker of a film (The following questions are included in the algorithm in order the rightholder(s) in The Netherlands; (this may be a unique feature of Dutch law).

- Was the film produced after 1985?
- Was the maker a legal entity?
- If the film was produced before 1985 who are the persons who made a creative contribution?
- If the rightholder is deceased, who is designated by law as heir?
- Can the rightholder not be identified or not traced?

Based on these questions the second part of the decision tree was built and it provides two possible outcomes:

1. copyright protected, rightholders known and found
2. copyright protected and rightholders not known or found. The decision tree developed on the basis of the algorithms is attached as Annex 5 to this report.

EYE as task leader of 3.1 will cooperate in the near future with CINECA to develop an automated legal decision tree as pilot. The benefits of this procedure include a solid preparation for building a legal decision tree for each participant in the FORWARD project.

Also, we will have gained valuable expertise regarding the development of automation of decision tree, which will enhance time-saving and therefore cost effective proceedings.

## **5.6. Timeline Legal Questionnaire**

Legal Questionnaire sent to participants: February 2014

Estimated receipt of completed Legal Questionnaires: March / April 2014

Pilot Legal Decision Tree for The Netherlands: March 2014

## 6. ANALYSIS OF AV RESOURCES

### 6.1. Background

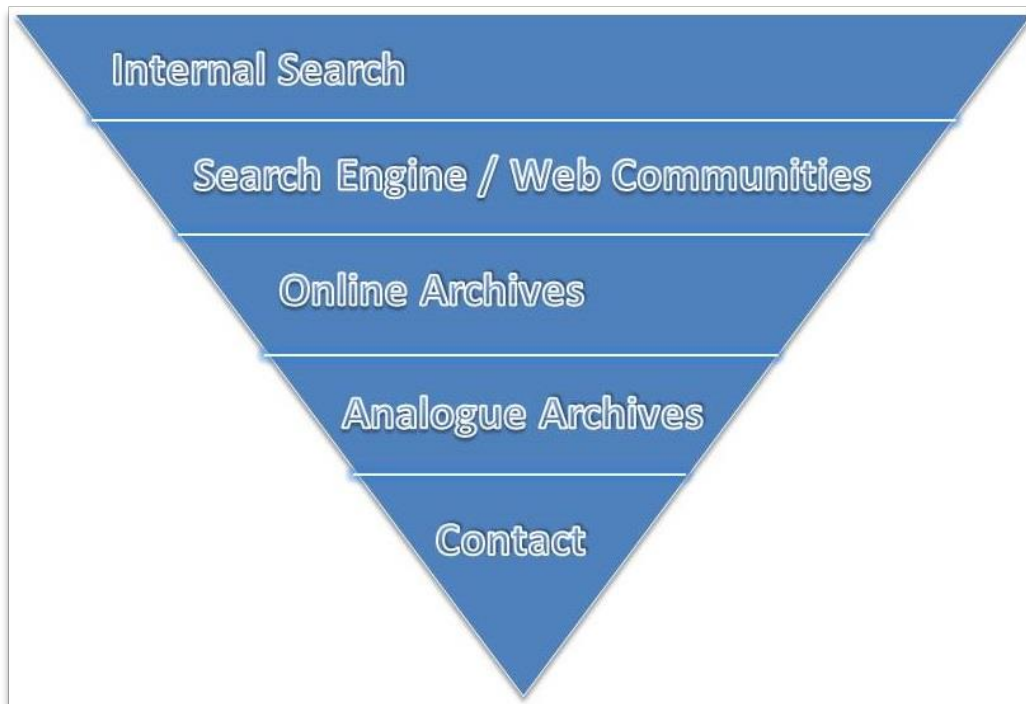
The collection and analysis of the available AV sources is an essential part of the FORWARD project. With these AV resources, a Diligent Search can be arranged for all the participating countries in which the quantity and quality of the resources supports the process of determining if a film work is orphan or not. EYE has developed an AV-Questionnaire (WP 3.1./4.1.) to achieve this milestone of the FORWARD project. All contributors of the FORWARD project successfully completed this Questionnaire.

### 6.2. AV Questionnaire General

In order to determine if a film work is orphan or not, it is necessary to collect a set of metadata. It is essential to realise that a negative result (“makers unknown”) is also a result, especially in case of an orphan work. During the project “Images for the Future” a methodology was constructed for determining the legal status of a film work. This methodology focuses on two levels of the clearance process:

- Cinematographic data: such as year of production, crew members, producers, production company, e.g.;
- Biographical data of the contributors or their heirs.

The methodology consists of an inverted pyramid in which each layer represents a separate phase of the clearance process.



In the first phase (internal search) we collect all the data that is already present in our existing databases. The main question during this phase is the following: what do you already know of the film work at hand?

In the second phase (Search Engine Search / Web Communities) we collect all the external data that is present on the World Wide Web and that is directly accessible by a search engine. What can be known of the film work at hand? During this phase it is also important to investigate if the job is not already done. Web communities where people share their knowledge or passions, such as family history, are often a big help in the performance of a diligent search.

In the third phase, we collect all the data that is not directly accessible by a search engine. The growing number of digitized archives, such as Civil Registers, newspapers including family announcements, notarial deeds, have revolutionised historical research in an unprecedented way. This also applies to the Genealogical communities, such as family search, that provides a lot of information during a diligent search.

Although online archives are a powerful source, most materials are still physical and held at local places. One must visit them in person. Mind that not all resources are publicly available. Dutch law has strict guidelines as to whether resources are publicly available or not.

Last but not least, when a diligent search has yielded some results – for example, we did find ancestors of a deceased movie director – one must verify these results by contacting people.

### **6.3. AV Questionnaire Content**

The methodology of the diligent search was the basis for the development of the AV-Questionnaire.

The aim of this questionnaire was to investigate which resources are available in the participants' country in order for archives to execute a diligent search for rightholders in the AV sector.

The questionnaire started with questions regarding resources specific for AV works, followed by questions regarding the search for natural persons and legal entities in the participants' country. We also investigated whether the collective management organisations and professional associations in each country are able and willing to provide resources for the diligent search.

### **6.4. Processing and Evaluation of the Response**

On January 16<sup>th</sup>, 2014 all participants of the FORWARD-project received our AV-Questionnaire. The quality and quantity of the response were – in general – very thorough, accurate and useful.

In total 367 AV-resources were collected, spread across eleven countries participating in the Questionnaire. According to the methodology of the diligent search, the gathered resources can be divided into three sections: cinematographic sources of knowledge, Web Identity Search and Collective Rights Management in the movie industry. As mentioned earlier, the main purpose of the Questionnaire was to identify the resources that make a Diligent Search possible. Table 2 shows the results

Tab.1 Resources

Category\Country	BE	CZ	DK	FI	FR	DE	IT	NL	PL	ES	UK	SUM
Central Bureau for Genealogy	1	3	1		1			1				7
Chamber of Commerce	4	3	1	1	1		2	1	2	1	1	17
CMO	3	1			1	2		1		2	3	13
Digitized National Newspapers	9	3	3	3	2	4	4	4	7	9	2	50
General Resources	2	20	1			1		1	2	4		31
Governmental Resource		1	1			1	1			1		5
Legal Resources: Bankruptcies		3	2			1			1		1	8
Legal Resources: Notarial Deeds	1	1	1		1	1		2	2	1		10
Local Archives	1	3				1		4				9
National Archives: other resources		5	3			3		1	3	9	1	25
National Archives: Civil Register	1	1	1	1	1			1		1	1	8
National Online Database Film Works		12	2	1	3	3	6		2			29
Non-Governmental Resource of Genealogy	3			3		6		4	4	1	5	26
Organisational Database Film Works: insource	1	1	3					1	2	2		10
Organisational Database Film Works: outsource	11	13	2	2	2	3		1	1	2	1	38
Other recourses			2			2					1	5
Professional Association: European		2										2
Professional Association: national	6	10	4	1	2	7	1	4		1	12	48
Telephonebook	6	3	3	1	2	1	3		3	2	2	26
<b>SUM</b>	<b>49</b>	<b>85</b>	<b>30</b>	<b>13</b>	<b>16</b>	<b>36</b>	<b>17</b>	<b>26</b>	<b>29</b>	<b>36</b>	<b>30</b>	<b>367</b>

All the collected AV-resources are evaluated in a structured manner on the basis of the following criteria:

- Does the resource provide an online database?
- Is a search engine present?
- Is it possible to perform a query?
- Are there more than 100 records present?

Last but not least, is their relevancy to:

- Cinematographically information;
- Web Identity Search (genealogical tools, finding people e.g.);
- Movie industry (CBO, Professional Associations, e.g.).

Table 2 shows a general overview of this analysis. The FORWARD-partners have contributed a substantial amount of resources in the category Web Identity Search (55% of the total amount of collected resources). Based on the criteria mentioned above, 55% of these resources have been considered as highly relevant. 31% of the collected resources consist of cinematographic information, with a high relevancy of 52%. The relevancy of the CMO's and professional associations is moderate, because of the lack of membership overviews. Apart from that, CMO's are focused on contemporary rights management, which in many cases is not that relevant for the clearance of orphan works.

Tab 2. Relevancy of the collected AV resources by category

Category\Relevancy	High	Medium	Low	Sum
Cinematographic	62	49	3	114
Web Identity Search	102	91	10	203
Movie Industry	2	34	14	50
<b>Sum</b>	<b>166</b>	<b>174</b>	<b>27</b>	<b>367</b>

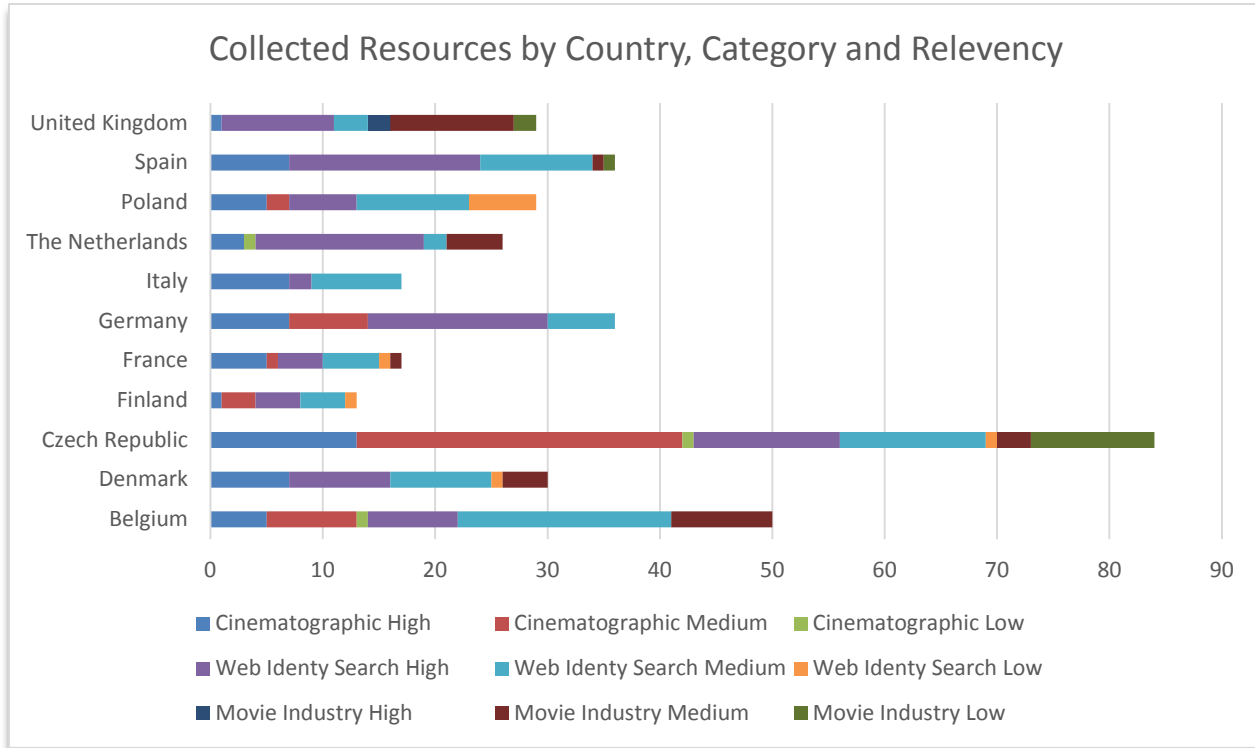
Table 3 shows a specific overview of the collected resources by country and category.

Tab.3 Collected Resources by Category and Country

Country\Category	Cinematographic	Web Identity Search	Movie Business	Sum
Belgium	14	27	9	50
Denmark	7	19	4	30
Czech Republic	43	27	14	84
Finland	4	9	0	13
Frankrijk	6	10	1	17
Germany	14	22	0	36
Italy	7	10	0	17
The Netherlands	4	17	5	26
Poland	7	22	0	29
Spain	7	27	2	36
United Kingdom	1	13	15	29
<b>SUM</b>	<b>114</b>	<b>203</b>	<b>50</b>	<b>367</b>

In graphic 1, we combined the information of the two tables. The graphic shows an overview of the analysis of the collected resources in a three variables criteria: country, category and relevancy (divided into the values high, medium and low).





#### Remarks to this analysis:

1. A resource can still be relevant when there is no online database available. In that case we have to consider other ways of gathering data, such as a hyperlink or deep link. In other words, even resources with a low relevancy can be important for the objectives of the FORWARD-project.
2. The division between cinematographic resources, identity search and cbo's/professional associations is, in general, very satisfactory. Diligent searches can be performed with the current collection of resources.

### 6.5. Technical AV Questionnaires General

Whether or not information coupling is desirable is not only a question of relevancy but also of technology. Therefore we developed a Technical Questionnaire that investigates form, structure and organisation of the collected AV-resources and the ICT infrastructure in which they are presented. This survey will be offered to the participants as an online questionnaire in the password protected area of [www.forward-project.eu](http://www.forward-project.eu) ("the members only" section of the website). The possibility of interoperability will be investigated as one of the objectives of WP 4.1.

### 6.6. Timeline

AV Questionnaire General sent: Jan 2014

AV Questionnaire Received: Jan / Feb 2014

Input (Questionnaires completed by participants) processed in Data Management System: Feb 2014

## 7. BUSINESS DEVELOPMENT

FORWARD project aims at developing an efficient system to assess the rights status for any types of AV works, including orphans. It also aims at providing pan-European information about AV work availability and conditions for non-commercial as well as commercial purposes.

In order to develop a *FORWARD Strategy and Business plan*, we first need to address several steps:

1. Analysis of existing business models and reflecting on their feasibility within FORWARD context;
2. Define the FORWARD strategy through the FORWARD Strategy and Business plan and involve all stakeholders in the FORWARD strategy;
3. Present the Products and Services that will support the FORWARD strategy;
4. Cost the above Products and Services and establish an income scenario.

The current development allows us to address a. and plan towards b., c. and d.

### 7.1. Business models analysis

This section provides a comparative view of Business Models set-up by pan-European membership organisations in the cultural sector in Europe: it covers ARROW & ARROW plus, EFG, PrestoCentre, The European Library and XIMON.

#### 7.1.1. ARROW & ARROW plus

ARROW is a tool that facilitates rights information management in any digitisation project involving text and image based works. ARROW infrastructure allows streamlining the process of identification of authors, publishers and other rightholders of a work, including whether it is orphan, in or out of copyright or if it is still commercially available.

ARROW Plus built on and further implements the ARROW system after the piloting phase in Germany, France, Spain and United Kingdom. The objectives were to increase the number of countries in which ARROW is used, and broadening the types of works for which it is used to include visual material.

#### Value proposition

ARROW services will normally consist of:

- The analysis of the rights information needs of any digitisation programme, together with the stakeholders involved, so as to transform the terms of the agreements into technical requirements for the system. This is key and requires technical communication with stakeholders: it is referred to as the ARROW use cases developed with British Library, Wellcome Trust, BnF, Out-of-commerce project in Germany;
- The implementation of the required customisation so as to serve a specific programme;
- The actual use of the system to query the databases of the network and the manipulation of the data to receive the requested answers.

For Libraries, the benefits of the ARROW System include not digitising books that rightholders will later ask to remove; the possibility to negotiate with rightholders the permission to make their works available; not digitising books already digitised by other libraries; and all the benefits accruing to increased legal certainty.

#### Statutes

The Arrow Association was set up in September 2013 as a membership organisation under the Italian

law

- Open to all stakeholders to continue collaborating for shared purpose;
- Stakeholders, in other words authors, publishers, libraries, RROs/CMOs, Books in Print databases, etc.;
- European stakeholders associations and projects' work-package leaders are entitled to be "charter members".

### **Business model and fees**

The membership fees of the Arrow Association have been set at a level that – given the expressions of interest by many European organisations to join – can basically cover the mere maintenance of the system, both at technical and commercial level, under the hypothesis of not having any customers, so as to ensure the maintenance of the system.

This model allows defining a safe track, flexible enough to be consistent at different levels of demand, which is the most uncertain element of the business landscape. The financial model is thus made up of three elements:

1. Membership;
2. Fees for the use of the system;
3. Sponsorship - Publishers, CMOs, other companies and bodies in the book value chain, technology companies and search engines may want to provide sponsorship. A package will be developed to set out the benefits of becoming an ARROW sponsor.

### **Membership fee details**

All ARROW and ARROW Plus partners have been invited to become members of the Arrow Association. The membership will also be extended to others that have a particular interest in ARROW. The membership is structured as follows:

- Charter members: membership fee of 6,000 € per year
- Ordinary members: membership from 250 to 1,500 € per year according to the country of origin (based on GDP per capita and overall population)
  - 1,500 € Netherlands, Sweden, Austria, Germany, Belgium, UK, France, Italy, Spain, Russia, Switzerland, International Organisations;
  - 1,000 € Luxembourg, Ireland, Finland, Denmark, Portugal, Czech Republic, Slovakia, Norway, Turkey;
  - 500 € Slovenia, Greece, Cyprus, Malta, Estonia, Lithuania, Latvia, Hungary, Bulgaria, Romania, Serbia, Croatia, Macedonia, Montenegro, Poland, Iceland, Andorra, Liechtenstein, Monaco, San Marino, Ukraine;
  - 250 € Bosnia Herzegovina, Georgia, Armenia, Moldova, Albania.

### **7.1.2. PrestoCentre**

PrestoCentre brings together a global community of stakeholders in audiovisual digitisation and digital preservation to share, work and learn. The PrestoCentre Foundation brings together AV archives, research organisations and commercial providers as distinct but interdependent groups of customers. As intermediary, PrestoCentre Foundation offers a valuable platform by connecting and facilitating interactions between these groups.

### **Value proposition**

A primary source of value created by PrestoCentre lies in the member's ability to search, find, connect and interact online with one or more of the other types of members. This is done through:

- Platform: To monetise on the value of its services, PrestoCentre does require integrated membership payment for which it will provide member-only access to its platform and services;
- Editorial products: substantial number of documents, tools and projects accessible through PrestoCentre library;
- Funding registry: PrestoCentre Funding Registry helps organisations identify sources of funding;
- Archive for Archive Mentoring Programme: A4A programme links together archive members with a mentor providing experience in an area of expertise they require, to offer them guidance and advice. PrestoCentre acts as a matchmaker, provides model contracts and learning material, and organises training days and matchmaker events.

PrestoCentre Business objectives during the 1st three years are the following:

- To develop a strong membership base at different levels of donorship to maintain the permanent secretarial function, including the maintenance of PrestoCentre's basic member services (platform maintenance, basic information services etc.);
- To expand the online services helped by the in-kind and monetary donations of appropriate grantors, partners, individuals and businesses;
- To introduce light consulting services and establish a volunteers & experts pool including related fee-structures and contract models;
- To standardise and manage the conference and training programme that started in 2011;
- To become a point of reference and partner for current and future innovation projects to help valorising usable tools and services for the European and international audiovisual sector;
- To engage in new fundraising activities and maintaining large (potential) donor relationships.

## Statutes

PrestoCentre was established as a Stichting under Dutch Law on 29 December 2011 and is registered as a non-profit foundation. As a separate legal entity, PrestoCentre can independently engage in more longer-term responsibilities exceeding project duration. PrestoCentre Foundation will also be capable of entering into new partnerships for generating revenue (donations, fees, dues etc.) to fund its future activities.

## Business model and fees

PrestoCentre's integrated membership programme helps the organisation create a dedicated, engaged cadre of constituents who are willing to speak out and invest time and energy to help make the changes that PrestoCentre is aiming for.

PrestoCentre distinguishes between four membership categories:

- Full Institutional Membership Level 1: Open to institutions whose main purpose is audiovisual archiving, have a national scope and a public responsibility for the digitisation and digital preservation of their collections. The practice of these institutions is dedicated to AV digitisation and digital preservation, R&D activities and national advocacy for AV archiving. Due: €975,-;
- Full Institutional Membership Level 2: Open to institutions that hold or create audiovisual documents as part of a larger responsibility or purpose and have varying degrees of expertise and capability in audiovisual archiving. Including custodians and creators of AV documents, like corporate archives, broadcasters, film and video producers, libraries and museums, government organisations and academic institutions. Due: €500;
- Associate Institutional Membership: Open to research organisations and associations specialised in AV digitisation and digital preservation. Also open to other organisations with an interest in PrestoCentre's work, including standards organisations, funding organisations and projects. Due: €500;

- Commercial Providers: Open to commercial service providers, integrators, manufacturers, vendors, consultants and other organisations that offer commercial services, products and consultancy, and share the necessity of effectively gauging the needs of the audiovisual market. Besides basic membership, providers and suppliers can opt-in for paid premium services. Due: €1450.

Organisational membership runs on a 12-month cycle (not the calendar year), with the due paid once annually. New members receive an introductory discount of 50% for their first subscription year.

Until 2015, PrestoCentre expects to recruit a little over 90 members, equalling to 175,000 Euro Annually.

### 7.1.3. European Film Gateway – EFG

EFG portal is a pan-European, non-profit, free-of-charge access point to the digital collections of Europe's film heritage institutions; it gives access to 660.000 videos, photos, film posters and text materials from 28 film archives in 15 European Countries. EFG is the film archive aggregator for Europeana.

#### Value proposition

EFG provides the following to its stakeholders:

- A robust machine with an operational work process in place;
- A trusted and authorized source for film heritage content;
- A unique service to the user;
- A critical mass of valuable content;
- Semantic interoperability: controlled and enriched metadata, authority file management, vocabularies, stable identifiers necessary to display coherent and to enable data exchange with other Digital Libraries;
- Ease of use;
- A strong network of members;
- Political coverage by the Association des Cinémathèques Européennes and Europeana.

#### Statutes

EFG is not a legal entity. Services are hosted by the Deutsches Filminstitut - DIF e.V. (Frankfurt). The technical infrastructure is hosted by ISTI (Pisa).

#### Business model and fees

EFG is maintained through a membership fee paid by the EFG content providers to the hosting institution responsible for maintaining the service (DIF). The first pillar on which EFG's economic sustainability is based is the EFG1914 project funding (ended in February 2014).

From 2015 onwards, content providers will have to pay to maintain the service. A calculation of costs is integral part of "Terms of Service Agreement" (ToSA), to be concluded between each provider and the host.

Budget and Annual Membership Fee: The EFG consortium members commit to pay an annual fee. The fees is re-assessed annually upon entries of new partners. The calculation of costs is annexed to the ToSA.

The costs for maintaining the portal in 2014/2015 are approximately 25.000 Euro per year, which means an annual fee of 1750 Euro per consortium member.

The annual fee paid by the consortium only covers the basic maintenance of the portal, but no further

technical development of the site. The mixed model of partners' contribution and EU funding enables the EFG portal to be sustained for the coming years even if EU funding ended. Considering that already 19 ACE members are partners in EFG1914, which is nearly half of the ACE membership, EFG portal could potentially become a service of ACE, in a similar way as The European Library service which is ran by the CENL, the Conference of European Librarians. It would considerably strengthen EFG's position and contribute to its sustainability. ACE is member of the Europeana Foundation, but the political impact would be even stronger if EFG becomes a service owned by ACE network

NOTE: Revenue models generated via sales, licensing and video-on-demand are difficult, if not impossible to implement:

- EFG neither stores the content nor holds the rights to the content;
- In many cases the contributing archives don't hold the rights to the content, but third parties;
- Licensing rights via EFG would be complicated since EFG is not a legal entity;
- If revenues are generated via EFG portal, how to share them among the Consortium?
- Members? What would be the appropriate model?
- Revenue per item via EFG licensing would be lower than members could achieve directly.

#### 7.1.4. The European Library – TEL

The European Library portal is a free service for researchers worldwide. It provides access to the resources of the national libraries of the Council for Europe and a growing number of research and university libraries. The service gives access to 200 million bibliographic records, 18 million digital records and 25 million pages of Full Text. TEL is the library aggregator for Europeana.

TEL is owned by CENL (Conference of European National Librarians) and managed by CENL, LIBER (Ligue des Bibliothèques Européennes de Recherche) and CERL (Consortium of European Research Libraries).

##### Value proposition

TEL provides the following to its stakeholders:

- Low-cost aggregation structure for libraries;
- Increased discoverability and usage of content;
- Considerable efficiency gains and economies of scale;
- Access to an innovative best practice network;
- Enhanced international profile and influence;
- Participation in European-funded projects.

Target users' benefits:

Easy access to a wide range of quality library content via a single portal, plus links to resources from other websites;

- An interactive and collaborative space to support interdisciplinary research and discussion;
- The ability to download metadata for data mining;
- Tools and services for researchers, such as advanced searching, citation export and content alerts;
- Access to content from research networks via API feeds, search engines and resource discovery services.

##### Statutes

TEL is not a legal entity. A SLA (Service Level Agreement) between CENL and Europeana Foundation provides the contractual base for the service hosted at the Koninklijk Bibliotheek (National Library of the Netherlands).

### Business model and fees

The European Library's current business model includes income from two main sources:

- Membership fees from libraries, which pay for core operations and matching funding on projects;
- External project funding, mostly from the European Commission. Some of them include ARROW and ARROW Plus.

Each National Library participating in TEL pays a subscription fee, which varies between the different countries. The fees are determined through a calculation that takes into account regional economic differences, size of the institutions etc. Fees vary between 500€ and 40.000€ for full membership;

The following table highlights the fee calculation for TEL members:

Tab.4 Fee calculation for TEL members

Criteria	Weighting
Gross national income per capita \$	15%
Purchasing power parity \$ (a figure similar to GNP but factoring in the cost of living)	50%
Gross national income \$	10%
Gross domestic product \$	10%
Population	5%
Number of full-time equivalent library staff	10%

Discounts are available for libraries joining via library consortia. Discount is determined by the number of libraries joining via the consortium.

- 3-25 libraries: 50%
- 26-50 libraries: 55%
- 51-75 libraries: 60%
- 76-100 libraries: 65%
- >100 libraries: 75%

Research and University libraries as well as consortia are actively approached to join the TEL service and reduce the membership fee. The lower fee band would remain at €500 but the upper limit would drop from €50,000 in 2012 to €25,000 by 2015. By the end of 2015, 40% of income should be from research libraries.

TEL also complements its funding with EU funding through its participation in Europeana Cloud and Europeana Newspapers, ENUMERATE & CENDARI. Projects funding represents 40% of TEL's income.

### 7.1.5. XIMON

XIMON was a Video-On Demand platform developed through the Dutch project "Images for the Future";

the platform was launched in April 2011. XIMON gave Dutch citizens the opportunity to access high quality Dutch and foreign films, documentaries and series on TV, PC, iPad, Playstation or mobile phones.

The main objectives of XIMON were to make Dutch film production broadly available in The Netherlands and to strengthen the position of makers and rightholders.

The rights clearance for XIMON was innovative as it was based on a voluntary extended license agreement. In order to avoid the need for multiple license agreements with rightholder of each title, the following approach was followed for the rights clearance. Individual license agreements were concluded only with the producer of each in-copyright AV work. Regarding all other rightholders an extended voluntary agreement was concluded with the relevant collective managements organisations

### **Value proposition**

Dutch viewers interested in recent films or archival material were to pay a fee and rightholders received a percentage of each view. Public Domain films were made available for a minimum fee that would support digitisation and encoding initially funded through the project "Images for the future".

XIMON was an interesting model insofar as it was an example of successful cooperation on the basis of voluntary licensing agreements between rightholders and audiovisual heritage institutions. These agreements allowed XIMON to offer recent films through its VoD service, which increased its attractiveness and value-added.

### **Statutes**

XIMON was a non-profit legal entity. However, its VoD platform was set-up under a business legal entity entitled Filmotech Nederland BV. The platform was built up in a Public-Private Partnership between EYE Film Institute, Netherlands Institute for Sound & Vision, and the Dutch Society of Feature Film Producers

### **Business model and fees**

The business model of XIMON was based on paid access to Dutch film and international audiovisual heritage. Popular content served as traffic builder to the site.

XIMON's business model was able to guarantee a fair balance between the interests of the distributor and the rightholder (such as the producer). This meant that a relatively high percentage of the gross retail revenues was dedicated to paying the rightholders.

The revenues generated on a movie were distributed up to 65% to the rightholder excluding the payment to the Dutch copyright collecting agencies (10%).

A recent film would cost on average 3.50 to 5 Euros. A monthly membership was 9.50 Euros. In comparison, Netflix currently costs 7.99 Euros a month providing access on the same platforms as XIMON (PC, TV, iPad, Playstation or mobile phones). iTunes provides access to films for rent from 4 Euros in HD format up to 20 Euros for purchase. In other words, XIMON's pricing policy was comparable to the competition available in The Netherlands.

Unfortunately, the VoD XIMON platform suspended its services to end-users on 29 January 2014. The reason is that XIMON was unable to secure the required financial funding for the continuation of its business.



### 7.1.6. Overview Table

Organisations	Legal entity	Consortium base	Portal (search engine)	EU support	Funding	Annual Budget
ARROW	Italian Association	34 partners	No	Yes		Not communicated
PrestoCentre	Dutch Association	?	No	Yes		+/- 700.000
EFG	No	28	Yes	Yes		+/- 25.000 for maintenance only
The European Library	No	58	Yes	Yes		+/- 1.000.000
XIMON	Dutch Association	3	Yes	No		?

## 7.2. Towards FORWARD Strategy & Business Plan

The FORWARD Strategy & Business Plan is currently under development in close collaboration with FORWARD WP2 (ACE).

An important step towards the endorsement of the FORWARD strategic priorities is to establish a representation beyond the existing consortium of FHIs currently supporting the project.

One of WP3 objectives is to identify “users’ categories and expectations”; this task is scoped and integrated in the “Strategy & Business Plan” development. The Products and Services incorporated in the Strategy & Business Plan will specifically address the user’s categories and expectations, the potential costs of these expectations, and the income scenarios projections that will allow to monetise the relevant products and services. The “Identification of users’ categories and expectations” outcome will also be addressed through *D4.1. - Analysis of available resources in the AV sector*.

The product and services are introduced below in 7.2.2. The schedule and development process of the overarching Strategy and Business Plan is later detailed in 8.2 Next Steps.

### 7.2.1. Stakeholders, Information Day and Advisory Board

#### Stakeholders

FORWARD stakeholders represent those affected by the actions of the business as a whole.

This entails organisations and institutions primarily involved in:

- creating a large consensus around definitions of rights statuses (as “public domain”, “orphan work”, “in-copyright”, etc.)
- analysing the current situation in the AV domain regarding existing resources (databases and registries)
- defining ways by which AV resources can be federated so rights status information of a given work can be automatically harvested and processed
- designing and implementing a technical platform to perform the above-mentioned data harvesting and processing
- defining a sustainable business model that will allow the FORWARD platform to operate beyond the project’s timeframe

FORWARD *Description of Work* identified stakeholders as the community that comprises the consortium - FORWARD project participants - and public collections, rightholders, CMOs, societies of authors, trade organisations, etc.

The preliminary list of FORWARD Stakeholders is available in ANNEX 6.

### **Advisory Board and Information Day**

In order for FORWARD to build an efficient consensus among its stakeholders, it must 1<sup>st</sup> identify the key players among those stakeholders and invite them to become Advisory Board representatives. This task was successfully completed at the FORWARD project start. The Advisory Board members are representatives of the following stakeholders:

- CRB - Cinémathèque Royale De Belgique;
- EYE - Stichting Film Instituut Nederland;
- CINECA - Consorzio Interuniversitario Cineca;
- DFI - Det Danske Filminstitut\*Danish Filminstitute;
- KAVA - Kansallinen Audiovisuaalinen Arkisto;
- FOCAL - Focal International Ltd;
- SAA - Society of Audiovisual Authors;
- FIAPF - Internat. Federation of the Associations of Film Producers;
- FIAD - International Federation Of Distributors;
- FERA - Federation Of European Film Directors;
- IVF - International Video Federation.

The Advisory Board is also the main sounding board that will allow us to project how to best evaluate the projected income scenarios.

The Advisory Board first meeting will be organised in close cooperation with CRB and should be scheduled in June / July 2014; this would allow us to investigate several options and present those to the larger community during the Information Day FORWARD should be organising in the fall of 2014. The larger community represents all the People and Organisations FORWARD will serve and identified in Annex 6.

### **7.2.2. Towards Products and Services**

Both commercial entities and cultural institutions in the AV sector want to be able to assess the rights status of AV works with certainty. This requirement does not only arise in each individual country but on a pan-European scale. The purpose lies in the ability to use AV material in the context of commercial exploitation (e.g. new productions or digital distribution, etc.) or cultural representation and wider audience access (e.g. EFG, Europeana, etc.)

FORWARD Products and Service will be providing the following:

- Cost-effective and simple way to address AV rights status;
- Widened access to FHI's resources;
- Networking and knowledge sharing;
- Data management;
- Promotion Of Film Heritage Institutions.

These product and services, as well as the cost impacts will be further developed during the lifecycle of FORWARD project through a close collaboration of WP3 with WP2 (ACE, CRB). The outcome will be integrated in the Strategy & Business Plan. See 8.2 Next steps: Stakeholders / Business Models suggested timeline for the following steps.

## 8. CONCLUSIONS AND NEXT STEPS

### 8.1. Conclusions

#### Legal

FORWARD made extensive efforts to draft the legal questionnaire to ensure maximum relevance and quality of the legal input regarding local legislation applicable to AV works provided by participants. FORWARD is convinced that the legal questionnaire completed by participants will form a solid basis to define user requirements and to prepare the legal decisions trees under national law. Subsequently, fully automated version of these decision trees will be developed in cooperation with CINECA.

#### AV-Resources

Based on the methodology of the diligent search an AV-questionnaire has been developed which focuses on three components: cinematographic information, web identity search and collective rights management. The FORWARD-partners contributed 337 resources, with a rich diversity in all three categories. The relevancy of the resources is also assessed on the presence of an online database, search engine and query possibilities. In regard to this analysis, 45% of the resources has been measured as highly relevant. The amount of AV-resources and their diversity and relevancy makes a diligent search possible. The AV-Questionnaire will be followed by a Technical Questionnaire that focuses on the ICT-environment of the collected resources, such as format of the data, used standards of metadata, database management, e.g. At present, an online questionnaire has been developed that will be offered to the FORWARD-partners in the password protected area of the website of FORWARD.

#### Business Plan Development

The work to date allowed us to review existing membership organisations established on a pan-European scale, and understand their business choices as well as their challenges.

This analysis paved the path towards the development of a Strategy and Business Plan that will be key in FORWARD sustainability objectives. The current development phase will soon be exposed to the various stakeholders' input through the project board and mainly Advisory Board.

By carefully scoping FORWARD Products and Services and engaging its network, WP3 and WP2 will gradually develop the long-term sustainability plan that will lead FORWARD system beyond the project lifecycle.

## 8.2. Next steps

Start	Activity: legal	Responsibility
M7	Analysis of clearance mechanisms in the countries directly involved	WP4
M7	Development of Legal Decision Trees based on analysis legal input participants	WP4
M12	Processing in task 4.2 Definition of system Workflow	WP4

Start	Activity: AV-Resources	Responsibility
M6	Sending AV technical questionnaire	WP3
M7	Analyses of technical AV questionnaire	WP4
M12	Processing in task 4.2 Definition of the system Workflow	WP4

Start	Activity: Stakeholders / Business Models	Responsibility
M6	Strategy & Business Plan DRAFT	WP3 – EYE
M7	Strategy & Business Plan - V1	WP1, WP2, WP3
M8	Strategy & Business Plan - V2	WP1, WP2, WP3, All FORWARD partners
M10/M11	Advisory Board meeting – Terms of Service	WP1 & WP3
M12	Advisory Board – Briefing about Strategy & Business Plan, preparation for the M14 Workshop	WP3 & WP2
M13	Information Day preparation	WP3, All partners

M14	<ul style="list-style-type: none"><li>- Information Day</li><li>- Advisory Board – Workshop addressing:<ul style="list-style-type: none"><li>- Strategy</li><li>- Business model options</li><li>- Governance</li><li>- Income scenarios</li></ul></li></ul>	WP3, WP2, All partners
M15	Strategy & Business Plan – Final recommendations	WP3 & WP2

# ANNEX 1: AV QUESTIONNAIRE

## PROJECT FORWARD WP 3.1 EYE FILM INSTITUTE NETHERLANDS QUESTIONNAIRE: ANALYSIS OF AVAILABLE RESOURCES IN THE AV SECTOR

**Participants' country:** Country  
**Organisation:** Name of the organisation  
**Name:** Name of the contributor  
**Email:** E-mail of the contributor  
**Date:** Date

### Introduction

The aim of this questionnaire is to investigate which resources are available in the Participants' country in order for archives to execute a diligent search for rightsholders in the audio-visual sector.

The questionnaire starts with questions regarding resources specific for audio-visual works, followed by questions regarding the search for natural persons and legal entities in your country. Also, we will investigate if the collective management organisations and professional associations in your country are able and willing to provide resources for the diligent search. If you are currently using other sources for your search that you have not set forth under the previous questions, please inform us about these sources under the final question 'other resources'.

Tick the box if the answer is affirmative.

A time-efficient manner to provide us with the relevant URLs is by copy/paste:

- a. Click with the right button of your mouse on the url in the adress bar of your browser
- b. Click with the right button of your mouse in the relevant text field of this form
- c. Paste

## Part 1: Film work resources

### Sources used to search for cinematographic metadata of a particular audio-visual work in your country

1.1. To what extent do pan-European resources (such as IMDB) provide you with metadata in order to collect the relevant metadata for the identification of an audio-visual work in your country? (On a scale from 1=none to 5=very much):Choose one item

1.2. Which other pan-European resources are relevant for the daily execution of your work:

IMDB

EUROPEANA

OTHER, namely:

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Please, provide us with the relevant URL

1.3. Is a National Online Database of AV-works available in your country (comparable to [Screen Online](#))?

If so, could you provide us with the relevant URL: <http://www.example.com>

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Please, provide us with the relevant URL

1.4. Does your organisation have a database (or more) of film works that is publicly available?

If so, is this database online

If so, could you provide us with the relevant URL: <http://www.example.com>

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Please, provide us with the relevant URL

**1.5.** If this resource is not on line, in which format is your database:

- Desktop database (like Microsoft Access, Filemaker, etc.)
- Database server (oracle, sql server, mysql)
- Dedicated application(s) like Collective Access or in house developed software
- Files (excel, word or otherwise)
- Card catalogue
- Otherwise, namely: Please, describe the format of your database

**1.6.** What is the content of this database

- Title
- Director  With biographical data (date of birth/death)
- Screenwriter  With biographical data (date of birth/death)
- Composer  With biographical data (date of birth/death)
- Producers  With biographical data (date of birth/death)
- Date of production
- Legal entities / Clients
- Right Holders

- 1.7.** Are there any other (audio-visual) organizations in your country that have such online databases?

If so, could you provide us with the relevant URL(s):

Please, provide us with the relevant URL

Please, provide us with the relevant URL



Please, provide us with the relevant URL

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Do you have any further remarks, additions or other complementary information of relevance for this part of the questionnaire (question 1.1.-1.7)?

[Click here to enter your remarks.](#)

## Part 2: Natural persons

### 1. Sources used to search for natural persons

- 2.1.** Do your **National** Archives facilitate an online disclosure of the Civil Register?

If so, could you provide us with the relevant URL: <http://www.example.com>

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Please, provide us with the relevant URL

- 2.2.** Do your **National** Archives facilitate other online resources that are relevant for a diligent search, such as military records, shipping records, Notarial Deeds, etc.

If so, could you provide us with the relevant URL(s):

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Please, provide us with the relevant URL

- 2.3.** Do your **Local** Archives facilitate online disclosure of resources that are relevant for your daily work?

If so, could you provide us with the relevant URL: <http://www.example.com>

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Please, provide us with the relevant URL

- 2.4.** Is there a Central Bureau of Genealogy available in your country?

If so, could you provide us with the relevant URL: <http://www.example.com>

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Please, provide us with the relevant URL

- 2.5.** Are there any commercial or non-governmental Resources of Genealogy (comparable to: [Family Search](#)) available in your country?

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Please, provide us with the relevant URL

- 2.6.** Are the national newspapers digitized in your country (comparable to [Delpher](#))?

If so, could you provide us with the relevant URL: <http://www.example.com>

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Please, provide us with the relevant URL

- 2.7.** Do your national newspapers offer online access to their archives?

If so, could you provide us with the relevant URL(s):

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Please, provide us with the relevant URL

- 2.8.** Does your country provide an online publicly available service to the yellow pages, white pages or telephone book?

If so, could you provide us with the relevant URL: <http://www.example.com>

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Please, provide us with the relevant URL

- 2.9.** Is there a Public Register of Wills or Notarial Deeds otherwise available in your country?

If so, could you provide us with the relevant URL: <http://www.example.com>

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Do you have any further remarks, additions or other complementary information of relevance for this part of the questionnaire (question 2.1.-2.9)?

[Click here to enter your remarks.](#)

## Part 3 Legal entity

### Sources used to search for legal entities

- 3.1.** Is there a public registry of legal entities (Chamber of Commerce) available in your country?

If so, could you provide us with the URL(s):

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Please, provide us with the relevant URL

- 3.2.** Is there a public registry of bankruptcies available in your country?

If so, could you provide us with the URL(s):

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Do you have any further remarks, additions or other complementary information of relevance for this part of the questionnaire (question 3.1.-3.2.)?

[Click here to enter your remarks.](#)

## Part 4: CMO's and Professional Associations

Collective management organisations (CMOs) and Professional Associations keep records of their members (for instance: producers, directors, (film)music composers, writers).

- 4.1.** Are CMOs records publicly available?

If so, could you provide us with the relevant URL(s):

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Please, provide us with the relevant URL

- 4.2.** Are Professional Associations records publicly available?

If so, could you provide us with the relevant URL(s):

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Do you have any further remarks, additions or other complementary information of relevance for this part of the questionnaire (question 4.1.-4.2.)?

[Click here to enter your remarks.](#)

## Part 5: Other Resources

- 5.1.** Are there any other resources that weren't mentioned in previous sections of this questionnaire that are relevant for the execution of your daily work. By daily work, we mean both the:

- general search for relevant metadata of audio-visual works
- specific search for rightsholders of audio-visual works?

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Please, provide us with the relevant URL

Do you have any further remarks, additions or other complementary information of relevance for this part of the questionnaire (question 5.1.)?

[Click here to enter your remarks.](#)

Do you have any further remarks, additions or other complementary information of relevance for the questionnaire in general?

[Click here to enter your remarks](#)

## ANNEX 2: COLLECTED AV-RESOURCES

Country	Name of Database	Category
Belgium	CineEuropa	General Resources
Belgium	American Film Institute	General Resources
Belgium	Collections Search	Organisational Database Film Works: outsource
Belgium	FTVB	Organisational Database Film Works: outsource
Belgium	Gaumont Pathé Archives	Organisational Database Film Works: outsource
Belgium	Filmographie Pathé	Organisational Database Film Works: outsource
Belgium	Bibliothèque Catalogue	Organisational Database Film Works: insource
Belgium	Flanders	Organisational Database Film Works: outsource
Belgium	Wallone Bruxelles Images	Organisational Database Film Works: outsource
Belgium	Cinergie.be	Organisational Database Film Works: outsource
Belgium	LE FILM DOCUMENTAIRE A LA PORTEE D'UN CLIC	Organisational Database Film Works: outsource
Belgium	La filmothèque de Média	Organisational Database Film Works: outsource
Belgium	Kortfilmdatabank	Organisational Database Film Works: outsource
Belgium	Kortfilm	Organisational Database Film Works: outsource
Belgium	Burgerlijke stand	National Archives: Civil Register
Belgium	Parochieregisters	Local Archives
Belgium	Association Royale Office Généalogy et Héraldique de Belgique	Central Bureau for Genealogy
Belgium	Familiekunde Vlaanderen	Non-Governmental Resource of Genealogy
Belgium	Geneanet	Non-Governmental Resource of Genealogy
Belgium	Ancestry	Non-Governmental Resource of Genealogy
Belgium	Koninklijke Bibliotheek van België	Digitized National Newspapers
Belgium	ABRAHAM	Digitized National Newspapers
Belgium	De Standaard	Digitized National Newspapers
Belgium	De Morgen	Digitized National Newspapers
Belgium	Nieuwsblad	Digitized National Newspapers
Belgium	Le Soir	Digitized National Newspapers
Belgium	La Libre	Digitized National Newspapers
Belgium	HLNE	Digitized National Newspapers
Belgium	De Tijd	Digitized National Newspapers
Belgium	Gouden Gids België	Telephonebook
Belgium	Pages dor	Telephonebook
Belgium	Witte gids	Telephonebook
Belgium	Pages blanches	Telephonebook
Belgium	1307	Telephonebook
Belgium	1207	Telephonebook

Belgium	Centraal Register van Testamenten (CRT)	Legal Resources: Notarial Deeds
Belgium	Welkom	Chamber of Commerce
Belgium	Belgisch Staatsblad	Chamber of Commerce
Belgium	KBO Public Search	Chamber of Commerce
Belgium	Belgisch staatsblad	Chamber of Commerce
Belgium	De auteurs	CMO
Belgium	Société Belge de Auteurs, Compositeurs et Editeurs	CMO
Belgium	Maison des Auteurs / Huis van de Auteurs	CMO
Belgium	Ledenlijst	Professional Association: national
Belgium	Membres	Professional Association: national
Belgium	Screen Flanders	Professional Association: national
Belgium	Scenaristengilde vzw	Professional Association: national
Belgium	liste de membres	Professional Association: national
Belgium	Vlaams Audiovisueel Fonds	Professional Association: national
Czech Republic	Badatelna.cz	National Archives: other resources
Czech Republic	Archivy a archiválie	National Archives: other resources
Czech Republic	Seznamy archivních pomůcek	National Archives: Civil Register
Czech Republic	Archivní fondy a sbírky v České republice	Local Archives
Czech Republic	Katalogy a databáze Národní knihovny ČR	Local Archives
Czech Republic	Portál elektronických informačních zdrojů MU	Local Archives
Czech Republic	Genealogický výzkum v ČR	Central Bureau for Genealogy
Czech Republic	Acta publica	Central Bureau for Genealogy
Czech Republic	ČGHSP	Central Bureau for Genealogy
Czech Republic	Anopress IT	Digitized National Newspapers
Czech Republic	Kramerius	Digitized National Newspapers
Czech Republic	Digitalizovaný archiv časopisů	Digitized National Newspapers
Czech Republic	Zlaté stránky	Telephonebook
Czech Republic	Telefonní seznam	Telephonebook
Czech Republic	Seznam	Telephonebook
Czech Republic	Centrální evidence závětí	Legal Resources: Notarial Deeds
Czech Republic	Virtual International Authority File	General Resources
Czech Republic	Databáze národních autorit NK ČR	National Archives: other resources
Czech Republic	Library of Congress Authorities	General Resources
Czech Republic	Informační systém abART	National Archives: other resources
Czech Republic	Veřejný rejstřík a Sběrka listin	Chamber of Commerce
Czech Republic	Rejstřík evidovaných právnických osob	Chamber of Commerce
Czech Republic	Živnostenský rejstřík	Chamber of Commerce
Czech Republic	Evidence úpadců	Legal Resources: Bankruptcies
Czech Republic	Centrální registr dlužníků ČR	Legal Resources: Bankruptcies
Czech Republic	Insolvenční rejstřík	Legal Resources: Bankruptcies
Czech Republic	Rychlé hledání v obchodním rejstříku	Governmental Resource
Czech Republic	Repertoár OSA	CMO
Czech Republic	KZastupování autofi	Professional Association: national



Czech Republic	Asociace televizních organizací	Professional Association: national
Czech Republic	nezávislá společnost výkonných umělců a výrobců zvukových a zvukově obrazových záznamů	Professional Association: national
Czech Republic	Ochranná organizace autorská	Professional Association: national
Czech Republic	Aura-Pont: agentura ve službách kultury	Professional Association: national
Czech Republic	Unie digitálních kin	Professional Association: national
Czech Republic	Asociace producentů v audiovizí	Professional Association: national
Czech Republic	Adresář UFD	Professional Association: European
Czech Republic	Česká filmová komora	Professional Association: national
Czech Republic	Asociace provozovatelů kin	Professional Association: European
Czech Republic	Asociace filmových střihačů a střihaček o.s.	Professional Association: national
Czech Republic	Komory a profesní organizace	Professional Association: national
Czech Republic	European Audiovisual Observatory	General Resources
Czech Republic	Filmové databázi	Organisational Database Film Works: outsource
Czech Republic	Czech Docs	Organisational Database Film Works: outsource
Czech Republic	Data o vysílání	Organisational Database Film Works: outsource
Czech Republic	Your online documentary cinema	General Resources
Czech Republic	Virtuální studovna	Organisational Database Film Works: outsource
Czech Republic	Slovenskej filmovej databázi	National Online Database Film Works
Czech Republic	British Board of Film Classification	General Resources
Czech Republic	International federation of film critics	General Resources
Czech Republic	Norwegian Film Institute	National Online Database Film Works
Czech Republic	Film.sk	National Online Database Film Works
Czech Republic	Cinemagia	Organisational Database Film Works: outsource
Czech Republic	Georgian National Filmography	National Online Database Film Works
Czech Republic	BG Movies	National Online Database Film Works
Czech Republic	Russian Cinema	National Online Database Film Works
Czech Republic	Cineresources	National Online Database Film Works
Czech Republic	Animator Ru	National Online Database Film Works
Czech Republic	Big Cartoon Database	General Resources
Czech Republic	National Film Board of Canada	General Resources
Czech Republic	Eesti filmi andmebaas	General Resources
Czech Republic	Golden Age of Cartoons	General Resources
Czech Republic	Documentary.org	General Resources
Czech Republic	EUROPEAN DOCUMENTARY NETWORK	General Resources
Czech Republic	Documentary net	General Resources
Czech Republic	Classic early and contemporary documentary works	General Resources
Czech Republic	All Documentaries	General Resources
Czech Republic	Culture.PL	General Resources
Czech Republic	Ebsco Host	General Resources
Czech Republic	Film Indexes Online	General Resources
Czech Republic	Kino Teatp	General Resources
Czech Republic	Kinobox	National Online Database Film Works

Czech Republic	Czech Film Center	National Online Database Film Works
Czech Republic	Český hraný film 1898-1970	Organisational Database Film Works: insource
Czech Republic	Česke Filmové Nebe	National Online Database Film Works
Czech Republic	Česko-Slovenská databáze	National Online Database Film Works
Czech Republic	Media Film Database	General Resources
Czech Republic	České dokumenty	Organisational Database Film Works: outsource
Czech Republic	Filmové Brno	Organisational Database Film Works: outsource
Czech Republic	Digital Library of the National Film Archive in Prague	Organisational Database Film Works: outsource
Czech Republic	UFD	Organisational Database Film Works: outsource
Czech Republic	Databáze a online služby Divadelního ústavu	Organisational Database Film Works: outsource
Czech Republic	Data o vysílání	Organisational Database Film Works: outsource
Czech Republic	Filmdat (Nadnárodní registr neprofesionálního filmu)	Organisational Database Film Works: outsource
Czech Republic	Filmová databáze	Organisational Database Film Works: outsource
Czech Republic	Nahlížení do katastru nemovitostí	National Archives: other resources
Denmark	BFI	General Resources
Denmark	Dansk Film	Organisational Database Film Works: outsource
Denmark	DFI	Organisational Database Film Works: insource
Denmark	Statsbibliothek	National Online Database Film Works
Denmark	DR DK	Organisational Database Film Works: outsource
Denmark	CypyDan	Governmental Resource
Denmark	Fimret	Professional Association: national
Denmark	Copydan Arkiv	National Online Database Film Works
Denmark	CVR	Chamber of Commerce
Denmark	Arkivalieronline	National Archives: other resources
Denmark	Dansk Demografisk Database	National Archives: other resources
Denmark	Sådan bruger du	National Archives: other resources
Denmark	Fotorama	Organisational Database Film Works: insource
Denmark	Daisy	National Archives: Civil Register
Denmark	Startsiden	Digitized National Newspapers
Denmark	Slægtsforskning	Central Bureau for Genealogy
Denmark	Infomedia	Other recourses
Denmark	Politiken Arkiv	Digitized National Newspapers
Denmark	Kristeligt	Digitized National Newspapers
Denmark	Krak	Telephonebook
Denmark	DET DANSKE FILMINSTITUT	Organisational Database Film Works: insource
Denmark	De Gule Sider	Telephonebook
Denmark	118	Telephonebook
Denmark	sa dk	Legal Resources: Notarial Deeds
Denmark	Konkurser	Legal Resources: Bankruptcies
Denmark	Statisbank	Legal Resources: Bankruptcies
Denmark	Producent Fereningen	Professional Association: national
Denmark	Filmtv	Professional Association: national

Denmark	Skuespillerforeningen	Professional Association: national
Denmark	Kongelige Bibliotek	Other recourses
Finland	Elonet	National Online Database Film Works
Finland	Tervetuloa Arkistolaitoksen Digitaaliarkistoon	National Archives: Civil Register
Finland	SSHY	Non-Governmental Resource of Genealogy
Finland	Karjalatk	Non-Governmental Resource of Genealogy
Finland	Suomen Sukututkimusseura	Non-Governmental Resource of Genealogy
Finland	Histortiallinen sanomacehtikirjasto	Digitized National Newspapers
Finland	Turun Sanomat	Digitized National Newspapers
Finland	Helsingin Sanomat	Digitized National Newspapers
Finland	Fonecta	Telephonebook
Finland	Tervetuloa YTJ-palveluun	Chamber of Commerce
Finland	Filmikamari	Professional Association: national
Finland	Elokuvauutiset	Organisational Database Film Works: outsource
Finland	Tampere Filmfestival	Organisational Database Film Works: outsource
France	Ina	National Online Database Film Works
France	Cine-Ressources	Organisational Database Film Works: outsource
France	Gaumont Pathé Archives	Organisational Database Film Works: outsource
France	Consultation des bases de données des Archives nationales	National Archives: Civil Register
France	Généalogie	Central Bureau for Genealogy
France	Recherchez un article ou une information multimédia	Digitized National Newspapers
France	Libération Archives	Digitized National Newspapers
France	Pages Jaunes	Telephonebook
France	Pages Blanches	Telephonebook
France	Notaires de France	Legal Resources: Notarial Deeds
France	Registre du Commerce et des Sociétés	Chamber of Commerce
France	Société des auteurs dans les arts graphiques et plastiques	CMO
France	Les Gens du Cinema	National Online Database Film Works
France	ADAGP	Professional Association: national
France	SACD	Professional Association: national
France	Registres de la Cinématographie et de l'Audiovisuel	National Online Database Film Works
Germany	Insolvenz bekanntmachungen	Legal Resources: Bankruptcies
Germany	Gemeinsames Registerportal der Länder	Governmental Resource
Germany	The German Early Cinema Database	National Online Database Film Works
Germany	Cinematographie des Holocaust	National Online Database Film Works
Germany	Filmarchives Online	General Resources
Germany	Filmportal DE	National Online Database Film Works
Germany	Murnau Stiftung	Organisational Database Film Works: outsource
Germany	Filmdatenbank	Organisational Database Film Works: outsource
Germany	Online Lexikon der DDR-Fernsehfirme	Organisational Database Film Works: outsource
Germany	Nachlässe und Autographen in Deutschland	National Archives: other resources
Germany	Zentrale Datenbank Nachlässe	National Archives: other resources
Germany	Recherche im Archivgut	National Archives: other resources

Germany	Bremer Passagierlisten	Local Archives
Germany	Hamburger Passagierlisten, 1850-1934	Non-Governmental Resource of Genealogy
Germany	Auswanderung Linkliste	Non-Governmental Resource of Genealogy
Germany	Kriegsgräber	Non-Governmental Resource of Genealogy
Germany	Genealogienetz	Non-Governmental Resource of Genealogy
Germany	German Records and Research	Non-Governmental Resource of Genealogy
Germany	Ahnenforschung	Non-Governmental Resource of Genealogy
Germany	Zeitungen (no online access)	Digitized National Newspapers
Germany	Zeitschriftendatenbank	Digitized National Newspapers
Germany	Digitale historische Tageszeitungen	Digitized National Newspapers
Germany	Süddeutsche Zeitung Archiv	Digitized National Newspapers
Germany	Gelbe Seiten	Telephonebook
Germany	Zentrales Testamentregister	Legal Resources: Notarial Deeds
Germany	Tonträgerlizenzierung und Recherche	CMO
Germany	Reproduktionsrechte	CMO
Germany	Autorensuche	Professional Association: national
Germany	Mitgliedersuche	Professional Association: national
Germany	Katalog des Deutschen Komponistenarchivs	Professional Association: national
Germany	Mitglieder	Professional Association: national
Germany	Die Mitglieder der Allianz Deutscher Produzenten – Film & Fernsehen	Professional Association: national
Germany	Mitgliedersuche	Professional Association: national
Germany	SPIO Titelregister	Professional Association: national
Germany	Gemeinsame Normdatei	Other recourses
Germany	OGND	Other recourses
Italy	La Sezione Cinema	Governmental Resource
Italy	Catalogo dei film per la circolazione culturale	National Online Database Film Works
Italy	Camera di commercio	Chamber of Commerce
Italy	CINECA	National Online Database Film Works
Italy	ANICA	National Online Database Film Works
Italy	Cinestore	National Online Database Film Works
Italy	Archivio Storico Luce	National Online Database Film Works
Italy	Archivio Audiovisivo	National Online Database Film Works
Italy	La Stampa Archivio Storico	Digitized National Newspapers
Italy	L'Archivio storico del Corriere della Sera	Digitized National Newspapers
Italy	La Repubblica	Digitized National Newspapers
Italy	l'Unita	Digitized National Newspapers
Italy	Pagina Gialle	Telephonebook
Italy	Pagina Bianche	Telephonebook
Italy	Comuni	Telephonebook
Italy	Registro Impresse	Chamber of Commerce
Italy	Public Register for Cinematographic Works	Professional Association: national
Netherlands	Familieberichten Online	Non-Governmental Resource of Genealogy
Netherlands	Digitaal Joods Monument	Non-Governmental Resource of Genealogy

Netherlands	Online Begraafplaatsen	Non-Governmental Resource of Genealogy
Netherlands	Film in Nederland	Organisational Database Film Works: insource
Netherlands	Film Producenten Nederland	Professional Association: national
Netherlands	Wie was wie	National Archives: Civil Register
Netherlands	Historische kranten	Digitized National Newspapers
Netherlands	Centraal Bureau voor de Genealogie	Central Bureau for Genealogy
Netherlands	Filmfestival Nederland	Organisational Database Film Works: outsource
Netherlands	Dutch Directors Guild	Professional Association: national
Netherlands	NBF	Professional Association: national
Netherlands	Genealogie online	Non-Governmental Resource of Genealogy
Netherlands	Stadsarchief Amsterdam	Local Archives
Netherlands	IMDB	General Resources
Netherlands	Delpher	Digitized National Newspapers
Netherlands	Virtuele studiezaal Den Haag	Local Archives
Netherlands	Digitale stamboom Rotterdam	Local Archives
Netherlands	Archief Burgerlijke Stand	Local Archives
Netherlands	Wetten	Legal Resources: Notarial Deeds
Netherlands	IVIR	Legal Resources: Notarial Deeds
Netherlands	Handelsregister	Chamber of Commerce
Netherlands	Collecties	National Archives: other resources
Netherlands	Archief Leeuwarder Courant	Digitized National Newspapers
Netherlands	Landelijke Kranten Bank	Digitized National Newspapers
Netherlands	Netwerk Scenarioschrijvers	Professional Association: national
Netherlands	Vevam	CMO
Poland	All Movie	General Resources
Poland	Silent Era	General Resources
Poland	Film Polski	National Online Database Film Works
Poland	Filmoteka Narodowa	Organisational Database Film Works: insource
Poland	Nitrofilm	Organisational Database Film Works: insource
Poland	Skota Filmowa w Lodzi	Organisational Database Film Works: outsource
Poland	Filmpolski.pl	National Online Database Film Works
Poland	Rejestr Notarialne	National Archives: other resources
Poland	Krajow rada notarialna	National Archives: other resources
Poland	Notarialny Rejestr Testamentów	National Archives: other resources
Poland	Yellow Pages	Telephonebook
Poland	Ksiazka telefoniczna	Telephonebook
Poland	Panoramafirm	Telephonebook
Poland	Testamenty	Legal Resources: Notarial Deeds
Poland	REJESTRY TRANSPLANTACYJNE MINISTERSTWA ZDROWIA	Legal Resources: Notarial Deeds
Poland	Chamber of Commerce	Chamber of Commerce
Poland	Potal.Bankrut.pl	Legal Resources: Bankruptcies
Poland	Genealogie.com	Non-Governmental Resource of Genealogy
Poland	Genealogia dla wszystkich	Non-Governmental Resource of Genealogy

Poland	Genealodzy.pl	Non-Governmental Resource of Genealogy
Poland	Genealogia Polska	Non-Governmental Resource of Genealogy
Poland	KRS-Online.pl	Chamber of Commerce
Poland	Gazeta Wyborcza	Digitized National Newspapers
Poland	Rzeczpospolita	Digitized National Newspapers
Poland	Gazeta Polska Codziennie	Digitized National Newspapers
Poland	Super Express	Digitized National Newspapers
Poland	Dziennik	Digitized National Newspapers
Poland	Gazeta Prawna	Digitized National Newspapers
Poland	Archiwum	Digitized National Newspapers
Spain	EGEDA	CMO
Spain	Los Productores Audiovisuales Espanolas	Professional Association: national
Spain	Registro de la Propiedad Intelectual	Governmental Resource
Spain	Catalogue BNE	National Archives: other resources
Spain	Worldcat	General Resources
Spain	Cine y Audiovisuales	Organisational Database Film Works: insource
Spain	Fondos audiovisuales IVAC	Organisational Database Film Works: outsource
Spain	Trámites y gestiones personales	National Archives: Civil Register
Spain	Movimientos Migratorios Iberoamericanos	National Archives: other resources
Spain	Desaparecidos del ejército de tierra de la República Española (1936-1939)	National Archives: other resources
Spain	Base de datos de militares republicanos con graduación	National Archives: other resources
Spain	y Represaliados del Franquismo	National Archives: other resources
Spain	World Biographical Information System	General Resources
Spain	Genealogía Española	Non-Governmental Resource of Genealogy
Spain	Biblioteca Digital Hispánica	Digitized National Newspapers
Spain	La Biblioteca Virtual del Español	National Archives: other resources
Spain	Biblioteca Virtual de Prensa Histórica	National Archives: other resources
Spain	Hispana	Digitized National Newspapers
Spain	ABC	Digitized National Newspapers
Spain	La Vanguardia	Digitized National Newspapers
Spain	El Pais	Digitized National Newspapers
Spain	El Periódico	Digitized National Newspapers
Spain	El Mundo	Digitized National Newspapers
Spain	Gazeta	Digitized National Newspapers
Spain	Google: All Newspapers	General Resources
Spain	Páginas blancas	Telephonebook
Spain	Páginas amarillas	Digitized National Newspapers
Spain	Infobel	Telephonebook
Spain	Certificado de Actos de Última Voluntad	Legal Resources: Notarial Deeds
Spain	PARES	National Archives: other resources
Spain	Badator	National Archives: other resources
Spain	Registro Mercantil Central	Chamber of Commerce

Spain	Infoaudiovisuales	CMO
Spain	Film Index International	General Resources
Spain	Base de datos de películas calificadas	Organisational Database Film Works: insource
Spain	Fondos audiovisuales IVAC	Organisational Database Film Works: outsource
United Kingdom	Arts Council collections	Other recourses
United Kingdom	Find My Past	National Archives: other resources
United Kingdom	National Archives	Non-Governmental Resource of Genealogy
United Kingdom	Film Archives UK	Organisational Database Film Works: outsource
United Kingdom	England Vital Records	Non-Governmental Resource of Genealogy
United Kingdom	Family Tree	Non-Governmental Resource of Genealogy
United Kingdom	Ancestry UK Boards	Non-Governmental Resource of Genealogy
United Kingdom	Ancestry UK	Non-Governmental Resource of Genealogy
United Kingdom	British Newspaper Archive	Digitized National Newspapers
United Kingdom	Newspaper Archive	Digitized National Newspapers
United Kingdom	Yellow Pages	Telephonebook
United Kingdom	UK Local Search	Telephonebook
United Kingdom	The Insolvency Service	Legal Resources: Bankruptcies
United Kingdom	PRS for Music	CMO
United Kingdom	ALCS	Professional Association: national
United Kingdom	The British Recorded Music Industry	CMO
United Kingdom	Compact Media Group	Professional Association: national
United Kingdom	Directors UK	Professional Association: national
United Kingdom	Equity	Professional Association: national
United Kingdom	Incorporared Society of Musicians	Professional Association: national
United Kingdom	Musicians Union	Professional Association: national
United Kingdom	Standin Up for Music Rights	Professional Association: national
United Kingdom	Protecting Creativity	CMO
United Kingdom	Federation of Commercial Audiovisual Libraries	Professional Association: national
United Kingdom	UK Independent Content	Professional Association: national
United Kingdom	Music Producers Guild	Professional Association: national
United Kingdom	Advertising Producers Association	Professional Association: national
United Kingdom	The Media and Entertainment Union	Professional Association: national
United Kingdom	British Chamber of Commerce	Chamber of Commerce
United Kingdom	Search Your Ancestors	National Archives: Civil Register

## ANNEX 3: LEGAL QUESTIONNAIRE

### PROJECT FORWARD WP 3.1:

### EYE FILM INSTITUTE NETHERLANDS

### QUESTIONNAIRE:

### LEGAL ANALYSIS OF THE AUDIO-VISUAL SECTOR

**Participants' country:** Country  
**Organisation:** Name of the organisation  
**Name:** Name of the contributor  
**Email:** E-mail of the contributor  
**Date:** Date

#### Introduction

This questionnaire aims to investigate the legal framework of the audio-visual sector in the Participants' countries. Based on the legal input of the Participants EYE will aggregate all information as complete and accurate as possible in order to assess the rights status and identify the rightsholders of audio-visual works in each jurisdiction.

The first part of the questionnaire will investigate in detail how the term of copyright protection for audio-visual works is implemented. In the second part the rightsholder will be identified under local law. In the final part, the legal framework of orphan works will be reviewed.

## PART I: TERM OF COPYRIGHT PROTECTION

### A. National Copyright Law & Transitional Provisions

- I. A. 01. What part(s) of your national legislation deals with copyright? Please provide us with the relevant URL (preferably in your language and in English).

Please, insert your answer:



- I. A. 02. When did it / will it come into force?

Please, insert your answer:

- I. A. 03. Please cite the provisions which govern the term of protection of copyright in your country.

Please, insert your answer:

- I. A. 04. What are the current general rules concerning protection periods under the copyright legislation?

Please, insert your answer:

- I. A. 05. What were the general rules concerning protection periods previously?

Please, insert your answer:

- I. A. 06. If the protection period has been changed more than once in the past, please list these changes and the transitional rules pertaining to such changes.

Please, insert your answer:

- I. A. 07. Please give the dates at which your national copyright act was changed so as to bring it into conformity with the Term Directive ("Council Directive 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights").

Please, insert your answer:

- I. A. 08. Were any transitional provisions introduced?

Please, insert your answer:

- I. A. 09. Were there any cases of previously expired rights being resuscitated?

Please, insert your answer:

- I. A. 10. If so, for how long?

Please, insert your answer:

- I. A. 11. Did your national act specify whose rights were being revived?

Please, insert your answer:

- I. A. 12. Please cite the relevant provisions of your national act.

Please, insert your answer:

- I. A. 13. Has Article 4 of the Term Directive on the protection of previously unpublished works been implemented in your national legislation?

Please, insert your answer:

- I. A. 14. If so, what is the term of protection?

Please, insert your answer:

- I. A. 15. Could you please cite the relevant provisions of your national act?

Please, insert your answer:

- I. A. 16. Does your national legislation contain specific provisions for joint authorship, collective works and compilations?

Please, insert your answer:

- I. A. 17. If so, what is the term of protection of each of these categories?

Please, insert your answer:

- I. A. 18. Could you please cite the relevant provisions of your national act?

Please, insert your answer:

## B. Specific rules vis-à-vis films

- I. B. 01. Are there any current specific rules concerning the protection period of films?

Please, insert your answer:

- I. B. 02. What were the general rules concerning the protection period of films previously?

Please, insert your answer:

- I. B. 03. If the protection period has been changed (more than once) in the past, please list these changes and the transitional rules pertaining to such changes.

Please, insert your answer:

- I. B. 04. If and insofar as the protection period relates to the ‘makers’ of a film, please provide a list of those who are considered as ‘maker’ of a film. (for instance those persons listed in Article 2.2 of the Term Directive: ‘the principal director, the author of the screenplay, the author of the dialogue and the composer of music specifically created for use in the cinematographic or audio-visual work’).

Please, insert your answer:

- I. B. 05. If and insofar as the protection period relates to the makers of a film and such makers remain unknown following a diligent search, please indicate the general rules which will apply to the protection period.

Please, insert your answer:

- I. B. 06. Does any other legislation apply that is relevant to the protection period of films (for instance transition law)?

Please, insert your answer:

- I. B. 07. Original / non-original films: was there at any time during the copyright protection of films a distinction made between original and non-original films?

Please, insert your answer:

- I. B. 08. If some other distinction relevant to copyright protection applied, please provide a description thereof.

Please, insert your answer:

- I. B. 09. How have the exceptions of Article 1 of the Term Directive in relation to works of joint authorship, collective works, anonymous and pseudonymous works and works published in parts, instalments, issues or episodes been implemented in your national legislation?

Please, insert your answer:

- I. B. 10. Could you please cite the relevant provisions of your national act?

Please, insert your answer:

## C. Protection Term & Legal Entities

- I. C. 01. Regarding protection period with respect to employees / commissions / legal entities as makers: can a legal person be the original author of a work of copyright in your country?

Please, insert your answer:

- I. C. 02. If so, does this affect the term of protection of such works?

Please, insert your answer:

- I. C. 03. What rules regarding protection period apply if the maker was acting as an employee of his employer (also known as work “made for hire” or corporate authorship)?

Please, insert your answer:

- I. C. 04. Are there any specific rules that apply if the film was made following a third party commission?

Please, insert your answer:

#### D. Other: National Divergences

- I. D. 01. Does your national law provide for a Domaine Public Payant or an equivalent regime?

Please, insert your answer:

- I. D. 02. If so, please briefly describe the main features and functioning of the system.

Please, insert your answer:

- I. D. 03. Can you think of any other noteworthy divergence of your national act involving the term of protection of works of copyright and related rights from the standards set out in the Term Directive?

Please, insert your answer:

- I. D. 04. If so, please elaborate, citing the relevant provisions of your national act.

Please, insert your answer:

- I. D. 05. Are certain categories of film from the outset in the public domain?

Please, insert your answer:

# ANNEX 4: REFERENCE DOCUMENT (FRANCE)

## PROJECT FORWARD WP 3.1:

### EYE FILM INSTITUTE NETHERLANDS

#### QUESTIONNAIRE:

#### LEGAL ANALYSIS OF THE AUDIO-VISUAL SECTOR

#### REFERENCE DOCUMENT FRANCE

#### INTRODUCTION

The purpose of this reference document is to provide assistance in the completion of the Legal Questionnaire sent to Participants within the framework of the FORWARD project.

In the recent past, several European projects have been executed with its focus on intellectual property rights. EYE has collected this information and drafted reference documents for each of the Participants' countries.

The reference document contains all legal information that was received under those earlier projects in answer to similar questions as those asked in the FORWARD legal questionnaire. We developed this document for your convenience, with the intention to provide you with some assistance with the completion of the legal questionnaire. Please note however that the legal information may not be up-to-date as the legal information was drafted in 2008 to 2011. Therefore, the legal information in the reference document should be precisely checked for accurateness and completeness as well as compliance with current law. In short: the legal information should be regarded as an assistance tool for answering the questions, not as a copy-paste tool for completing the legal questionnaire.

The legal information inserted in this reference documents originates from the following sources:

- **EFG:** The European Film Gateway funded by the European Commission under the eContentplus programme was a 3-year project running from September 2008 to August 2011. Involving 22 partners from 16 European countries, EFG developed an online portal, which provides direct access to about 600,000 digital objects including films. Leader of 'Recommendations and Guidelines document for IPR and copyright management for film archives' under the EFG project was EYE Film Institute Netherlands. The legal information originating from this project will be referred to as 'EFG'.
- **IViR:** EuropeanaConnect was a Best Practice Network funded by the European Commission within the area of Digital Libraries of the eContentplus Programme (2009-2011). As part of Work Package 4, IViR conducted research into the question of the duration of the protection of subject matter in which copyright or neighbouring rights subsist across Europe. The legal information originating from this

project will be referred to as 'IVIR', (for further information see:  
<http://outofcopyright.eu/methodology.html>).

## PART I: TERM OF COPYRIGHT PROTECTION

### A. National Copyright Law & Transitional Provisions

- I. A. 01. What part(s) of your national legislation deals with copyright? Please provide us with the relevant URL (preferably in your language and in English).

1. Article L 111-1 of the French Intellectual Property Code defines copyright as follows: “The author of a work of the mind shall enjoy in that work, by the mere fact of its creation, an intangible property right, which shall be enforceable against all persons.

This right includes attributes of an intellectual and moral nature, as well as attributes of an economic nature.”

Four rights constitute the attributes of an intellectual and moral nature:

- The right of disclosure;
- The right of paternity or to have the author’s name associated with his work;
- The right of respect for the work or for the integrity of the work;
- The right of withdrawal or retraction.

The economic attributes of copyright include:

- The right to present the work: communication of the work to the public by any means whatsoever;
- The right to reproduce the work: physical fixation of the work by any process that enables the work to be communicated to the public indirectly.

The author, who must be an individual, holds these rights, and they can be transferred only if certain rules are followed. These rules are discussed below in the body of the questionnaire.

By exercising his moral rights, an author may decide to disclose his work and the terms and conditions applicable thereto. In such case, the author may exercise his financial rights, i.e., the right to receive remuneration for the use of his work.

The author can also enforce his rights by initiating an action for infringement.

*This copyright legislation is applicable as following:*

The Intellectual Property Code applies to “works of the mind”, regardless of the kind, form of expression, merit or purpose thereof (Article L 112-1), provided they meet the requirements of form and originality (i.e., an expression of the author’s personality).

Article L 112-2 of the Intellectual Property Code contains a non-exhaustive list of works of the mind:

- A) Literary works: literary, journalistic and scientific writings; brochures and other pamphlets; books; letters and other correspondence; lectures, speeches, sermons, pleadings and other works of a similar nature; interviews;
- B) Dramatic or dramatico-musical works;
- C) Choreographies, circus acts and stunts, and pantomimes if the staging thereof is set down in writing or in another manner;
- D) Musical compositions with or without lyrics;

- E) Cinematographic works and other works consisting of sequences of moving images, with or without sound, which are collectively referred to as “audiovisual works”;
- F) Drawings, paintings, architecture, sculptures, engravings, lithographs;
- G) Graphic and typographic works;
- H) Photographic works and works produced using techniques similar to photography;
- I) Works of applied art;
- J) Illustrations, maps;
- K) Plans and three-dimensional works in the fields of geography, topography, architecture and the sciences;
- L) Software, including preparatory design materials;
- M) Creations of the seasonal apparel and fashion accessories industries

**Source: EFG**

I. A. 02. When did it / will it come into force?

The concepts of creation and rights appeared in French law in 1791, but it was not until 1957 that the copyright laws were clearly codified.

**Source: EFG**

I. A. 03. Please cite the provisions which govern the term of protection of copyright in your Country.

I. A. 04. What are the current general rules concerning protection periods under the copyright legislation?

The principle:

Article L 123-1 of the Intellectual Property Code provides the basic principle regarding protection periods: “The author shall enjoy, during his lifetime, the exclusive right to exploit his work in any form whatsoever and to derive a financial benefit therefrom. On the death of the author, this right survives for the benefit of his successors in interest during the calendar year in progress and for a period of 70 years thereafter.”

At the end of this period, the work falls into the public domain. This means that the work can be exploited without restriction and free of charge, provided the author’s moral rights are respected. Moral rights are perpetual, inalienable and are never barred by statutes of limitations. Furthermore, moral rights can be bequeathed.

Exceptions to the foregoing principle:

a) It is not always possible to calculate the protection period as of the date of the author’s death. Certain adjustments required by the specificities of certain types of works (anonymous or pseudonymous works, works of joint authorship, etc.) are discussed below.

- In the case of works of joint authorship (a work created as a result of the contributions of more than one individual), Article L 123-2 of the Intellectual Property Code provides that the protection period covers the lives of all joint authors and the 70-year period following the year in which the last of the joint authors dies.

- In the case of pseudonymous, anonymous and collective works:

Article L 123-3, para. 1, of the Intellectual Property Code provides that the duration of the exclusive rights is 70 years as from 1 January of the calendar year following the year in which the work was published.

(Collective works are created at the initiative of an individual or legal entity who edits, publishes and makes the work public under his direction or in his name.)

- In the case of posthumous works, i.e., works that are not made public during the author's lifetime, Article L 123-4 of the Intellectual Property Code states that the protection period that applies to such works is the protection period applicable to all of the author's works. For example, if a posthumous work is published 50 years after the author's death, it will be protected for a period of 20 years after the author's death.

If the author's works have fallen into the public domain at the time the work is made public, the protection period for posthumous works is 25 years as from 1 January of the calendar year following the year in which the work was published.

In the case of anonymous, pseudonymous or collective works that are made public more than 70 years after they are created, Article L 123-3 provides a protection period that is also 25 years in length.

**Source: EFG**

The exceptions of Article 1 of the Term Directive have been implemented in the code de la propriété intellectuelle (CPI). As a preliminary remark, it should be mentioned that all the terms are calculated as from the 1st January of the year following the event which give rise to them (as provided by Article 8 of the Term Directive)

According to Article L. 123-1, 2nd indent, of the CPI, the authors' rights shall run for the author's life and for 70 years after his death or 70 years post mortem auctoris (p.m.a.).

In case of a work of joint authorship, under Article L. 123-2, 1st indent, of the CPI, the term is calculated from the death of the last surviving author.

In case of pseudonymous, anonymous and collective works, under Article L. 123-3, 1st indent of the CPI, the term shall run for 70 years after the publication of the work.

\*When the pseudonymous, anonymous or collective works is published in instalments, the term shall run for 70 years following the date on which each instalment was published (Article L. 123-3, 2nd indent of the CPI). N.B.: The CPI only provides for publication in instalments. It does not refer to publication in parts, issues or episodes.

\*When the author of an anonymous or pseudonymous work discloses his identity, the term of protection shall run for 70 years after the author's death or the death of the last surviving author (in case of joint authorship), as provided by Article L. 123-3, 3rd indent of the CPI).

\*Under Article L. 123-3, 4th indent of the CPI, pseudonymous, anonymous and collective works, will be protected for a period of 70 years following the year of their creation.

However, according Article L. 123-3, 5th indent of the CPI, when the pseudonymous, anonymous or collective work is disclosed to the public after this period, it shall benefit from a protection of 25 years from the date of publication.

**Source: IVIR**

I. A. 05. What were the general rules concerning protection periods previously?



Previously applicable laws

The Act of 13 and 19 January 1791 granted dramatic authors the exclusive right to exploit the presentation of their works during their lifetimes, and extended that right to their heirs and assignees for an additional five years after the author's death.

The Act of 19 and 24 July 1793 granted writers, musicians, painters, etc. the exclusive right to exploit the reproduction of their works during their lifetimes, and extended that right to their heirs and assignees for an additional five years after the author's death. These laws remained in force for nearly 170 years and were interpreted by the courts, resulting in an excellent body of case law. During the 19th Century, certain provisions of these laws were amended, in particular by the Act of 14 July 1866, which extended the protection period in favour of the author's successors in interest to 50 years post-mortem for all types of works. In addition, the case law created new rights. The Act of 11 March 1957 maintained the protection period at 50 years and the Act on rights neighbouring to copyright extended the duration of the rights in musical works to 70 years.

Directive no. 93/98 CEE of 29 October 1993 harmonising the term of protection of copyright increased the protection period to 70 years after the death of the author. Act no. 97-283 of 27 March 1997 transposed this period into domestic law as Article L 123-1, para. 2, of the Intellectual Property Code.

Transitional rules

- Uncodified Article 16 of the Act of 27 March 1997 provided that the protection of a work that had fallen into the public domain in France as of July 1995, but that was still protected in at least one other Member State, should be revived subject to certain conditions.

- Statutory provisions were adopted to take into account the two world wars and to compensate the premature death of authors who gave their lives for France. (These measures are discussed later in this questionnaire).

**Source: EFG**

- I. A. 06. If the protection period has been changed more than once in the past, please list these changes and the transitional rules pertaining to such changes.
  
- I. A. 07. Please give the dates at which your national copyright act was changed so as to bring it into conformity with the Term Directive ("Council Directive 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights").

The Term Directive has not been implemented as French law was already in compliance with the Directive

**Source: IVIR**

- I. A. 08. Were any transitional provisions introduced?

- I. A. 09. Were there any cases of previously expired rights being resuscitated?
- I. A. 10. If so, for how long?
- I. A. 11. Did your national act specify whose rights were being revived?
- I. A. 12. Please cite the relevant provisions of your national act.
- I. A. 13. Has Article 4 of the Term Directive on the protection of previously unpublished works been implemented in your national legislation?

Article 4 of the Term Directive has been implemented in Article L. 123-4 of the CPI.  
Under this article, posthumous works disclosed after the expiration of the term protection (70 years after the author's death) shall benefit from a protection of 25 years from the date of the publication.

**Source: IVIR**

- I. A. 14. If so, what is the term of protection?
- I. A. 15. Could you please cite the relevant provisions of your national act?
- I. A. 16. Does your national legislation contain specific provisions for joint authorship, collective works and compilations?

In the CPI, there is a distinction between works of joint authorship and collective works.

Article L.113-2, 1st indent of the CPI, defines a work of joint authorship as a work in the creation of which more than one natural persons has participated. The term shall run from the death of the last surviving author and lasts for 70 years (under Article L. 123-2, 1st indent of the CPI).

Article L. 113-2, 3rd indent of the CPI, defines a collective work as a work created at the initiative of a natural or legal person who edits, publishes and discloses it under his direction and name and in which the personal contributions of the various authors who participated in its production are merged in the overall work for which they were conceived, without being able to attribute to each author a separate right in the work as created. The term of protection shall run from the date of publication and lasts for 70 years (under Article L. 123-3 of the CPI).

The CPI does not provide for the example of co-written musical works but provides for specific rules regarding audiovisual works (including cinematographic works) and radio works (oeuvre radiophonique).

Under Article L. 112-2 (6°) of the CPI, audiovisual works are defined as cinematographic works and other works consisting of sequences of moving images, with or without sounds. Audiovisual works are considered as works of joint authorship (Article L. 113-7 of the CPI). Under Article L.123-2, 2nd indent, the term of protection shall run for 70 years after the death of the last surviving joint author: author of the screenplay, author of the written text, author of musical compositions with or without text specifically created for the audiovisual work and the principal director.

Under Article L. 113-8 of the CPI, authorship of a radio work shall belong to the natural person or persons who carried out the intellectual creation of the work. As a consequence, the general rules applicable to a work of joint authorship should apply to radio works (Article L.113-2, 1st indent of the CPI).

**Source: IVIR**

I. A. 17. If so, what is the term of protection of each of these categories?

I. A. 18. Could you please cite the relevant provisions of your national act?

## B. Specific rules vis-à-vis films

I. B. 01. Are there any current specific rules concerning the protection period of films?

Article L 112-2 of the Intellectual Property Code deems “cinematographic works and other works consisting of sequences of moving images, with or without sound, collectively referred to as audiovisual works” to be works of the mind.

The law deems films to be a collaborative work. The protection period applicable to audiovisual works is 70 years post-mortem.

The protection period for films is, therefore, the protection period applicable to works of the mind in general.

However, a particularity should be noted: the protection period begins to run as from the death of the last of the surviving joint authors of the film.

**Source: EFG**

I. B. 02. What were the general rules concerning the protection period of films previously?

Article 1 of the Act of 11 March 1957 acknowledged films to be works of the mind. Special rules were adopted to clearly spell out what persons were granted authorship and the rights pertaining to such status vis-à-vis the producer. The protection period was 50 years from the death of the last of the presumed joint authors, including the author of an adaptation.

**Source: EFG**

I. B. 03. If the protection period has been changed (more than once) in the past, please list these changes and the transitional rules pertaining to such changes.

I. B. 04. If and insofar as the protection period relates to the ‘makers’ of a film, please provide a list of those who are considered as ‘maker’ of a film. (for instance those persons listed in Article 2.2 of the Term Directive: ‘the principal director, the author of the screenplay, the author of the dialogue and the composer of music specifically created for use in the cinematographic or audio-visual work’).

Article L 113-7, para. 2, of the Intellectual Property Code states: “Unless proved otherwise, the following individuals who make a creative contribution shall be presumed to be the joint authors of a collaboratively produced audiovisual work:

- The director;
- The author of the screenplay (the story);
- The author of the adaptation (pre-existing literary text);
- The author of spoken text (dialogue);
- The composer of musical compositions;
- The author of the pre-existing work.”

Each joint author is entitled to enforce not only his rights in his own contribution, but also his rights in the entire work, which is the joint property of the joint authors. The joint authors exercise their rights by mutual agreement.

The list of joint authors is not exhaustive. Other joint authors may be recognised, provided the claimant proves his participation in the intellectual creation of the work

**Source: EFG**

I. B. 05. If and insofar as the protection period relates to the makers of a film and such makers remain unknown following a diligent search, please indicate the general rules which will apply to the protection period.

In such case, the general rule will apply; the duration of the protection period begins to run upon the death of the last joint author.

If information concerning an author is not known (unknown identity), Article L 122-9 of the Intellectual

Property Code concerning estates without heirs applies: “In the event of manifest abuse in the exercise or non-exercise of the rights of exploitation by any of the deceased author’s representatives referred to in Article L 121-2, the Tribunal de Grande Instance (court of first instance) may order any appropriate measure. The foregoing shall also apply in the event of a dispute between such representatives or if there are no known successors in interest or heirs entitled to inherit.”

The mechanism for applying the legal procedure used to obtain the rights in films when there are no heirs is discussed in greater detail in the body of this review.

**Source: EFG**

- I. B. 06. Does any other legislation apply that is relevant to the protection period of films (for instance transition law)?

No.

**Source: EFG**

- I. B. 07. Original / non-original films: was there at any time during the copyright protection of films a distinction made between original and non-original films?

French law does not consider a film that is not original to be a work (for example, holiday or family films, location snapshots, etc.).

Copyright protection is afforded only to films that are original and that are a creative expression of their author or authors.

Since 1957 and the drafting of the Intellectual Property Code, the requirement of the work’s originality is applied to implement the protection afforded by copyright.

Therefore, a true and original creative contribution by the authors must be found. Without such creative contribution, a “film” will not have the benefit of the statutory protection.

Furthermore, the protection period for a film is calculated with reference to the author himself if the author is known, or to the date the work was first made public if the identity of the author or authors is unknown.

**Source: EFG**

- I. B. 08. If some other distinction relevant to copyright protection applied, please provide a description thereof.

- I. B. 09. How have the exceptions of Article 1 of the Term Directive in relation to works of joint authorship, collective works, anonymous and pseudonymous works and works published in parts, instalments, issues or episodes been implemented in your national legislation?

- I. B. 10. Could you please cite the relevant provisions of your national act?

### C. Protection Term & Legal Entities

- I. C. 01. Regarding protection period with respect to employees / commissions / legal entities as makers: can a legal person be the original author of a work of copyright in your country?
- I. C. 02. If so, does this affect the term of protection of such works?

Under French law, the author of a film must be an individual. Article L 113-7 of the Intellectual Property Code provides: “Authorship of an audiovisual work shall belong to the natural person or persons who have carried out the intellectual creation of the work. (...)”  
However, Article L 132-23 of the Intellectual Property Code specifies: “The producer of an audiovisual work is the individual or legal entity who takes the initiative and responsibility for making the work.”

In practice, the producer enters into agreements whereby the authors of the film assign their rights to it (see the list of persons presumed to be the authors of a film in Article L 113-7 of the Intellectual Property Code).

The author transfers all or some of his economic rights to the production company (the legal entity in question), but retains his moral rights and his authorship.

It should be noted that an assignment of rights by the author to the producer in no way modifies the statutory protection period.

A film is considered to be a collaborative work, i.e., a work in which several authors have collaborated (Article L 113-2, para. 1).

In summary, a legal entity must prove that there has been an assignment of rights in its favour or the existence of a collective work.

**Source: EFG**

- I. C. 03. What rules regarding protection period apply if the maker was acting as an employee of his employer (also known as work “made for hire” or corporate authorship)?

An author who is an employee acts on behalf of a third party, i.e., his employer. Although he is remunerated for his creation, an author who is an employee does not lose authorship due to the fact that he is an employee.

An author can never lose authorship, which is a public policy principle in French law.

Article L 111-1 of the Intellectual Property Code states: “The author of a work of the mind shall enjoy in

that work, by the mere fact of its creation, an intangible property right, which shall be enforceable against all persons.

This right includes attributes of an intellectual and moral nature, as well as attributes of an economic nature, as determined by Books I and III of this Code.

The existence or conclusion of a contract for hire or of service by the author of a work of the mind shall in no way limit the enjoyment of the right afforded by the first paragraph above, subject to the exceptions specified in this Code. Subject to the same exceptions, the fact that the author of a work of the mind is an employee of the State, a local government, an administrative public institution, an independent administrative authority with legal personality or the Banque de France shall also not limit the enjoyment of this same right.”

This article provides that the person who commissions a work from an author will receive the work under the contract but will not, as a result, acquire authorship.

The existence of an employment or service contract does not transfer authorship. Only the economic rights (i.e., the right to present and reproduce the work) can be totally or partially assigned to the employer pursuant to contractual provisions. The author’s moral rights cannot be assigned and can never be claimed by the employer.

The protection period continues to be 70 years after the author’s death, except if the work includes the collaboration of more than one author (in which case the work is a collaborative work). In such case, the protection period is 70 years after the death of the last surviving joint author.

If the foregoing principles are applied to films, the producer (the employer) is not an author. The director, the author of the screenplay, etc. (the employee-authors) retain authorship, but transfer all or part of their economic rights to the producer pursuant to an agreement that expressly defines the scope of the rights assigned to the producer, the duration of the assignment of rights, the territories and the physical media on which the work can be exploited.

An assignment of rights to the employer is not automatic and is not presumed.

In any event, this assignment of rights to the producer cannot exceed the statutory protection period.

However, if the author is a civil servant, French law considers that public service considerations require that the government or State be granted the copyright in all works whose creation is the object of the public service itself. By accepting their positions, civil servants and government employees are deemed to agree to place their creations and their rights therein at the disposal of the government department for which they work. One exception: university professors retain their rights in their courses.

**Source: EFG**

- I. C. 04. Are there any specific rules that apply if the film was made following a third party commission?

The same rules apply as in the foregoing situation; there are no specific rules in this area. An assignment of rights to a third party must be express and cannot be presumed.

**Source: EFG**

## D. Other: National Divergences

- I. D. 01. Does your national law provide for a *Domaine Public Payant* or an equivalent regime?

- I. D. 02. If so, please briefly describe the main features and functioning of the system.
- I. D. 03. Can you think of any other noteworthy divergence of your national act involving the term of protection of works of copyright and related rights from the standards set out in the Term Directive?

There is a specificity regarding the right to disclose post-mortem works. Under Article L.121-2 of the CPI, the right of disclosure is vested into the executor(s) designated by the author. If none, or after their death, and unless the author has expressed a different will, the right shall be granted in the following order to: the descendants, the spouse, the heirs other than descendants and the universal legatees. This right can be exercised after the expiration of the authors' right protection (i.e.70 years p.m.a.).

The CPI contains three provisions extending the term of protection for works published during WWI /WWII or whose authors died for France during the wars.

To compensate the loss and difficulties of commercial exploitation of the works during WWI and WWII, the Parliament added in 1919 (introduced by the Law of 3 February 1919) and in 1951 (introduced by Law of 21 September 1951) two extensions of term of protection:

- Under Article L. 123-8 of the CPI, the rights vested in the heirs and successors of authors, composers and artists shall be extended for a period of 6 years and 152 days for works published before the Signature of the Versailles Treaty and which did not fall into the public domain on 3 February 1919.
- Under Article L. 123-9 of the CPI, the rights vested in the heirs and successors of authors, composers and artists shall be extended for a period of 8 years and 120 days for works published before 1 January 1948 and which did not fall into the public domain on 13 August 1941.

The starting point of these extensions is not the author's death but the publication of his work. It should be noted that the two extensions can be added for a work published during WWI, which can benefit then of an extension up to 14 years and 272 days.

To compensate the 'premature' death of an author who died for France, the Parliament also added in 1951 (introduced by Law of 21 September 1951) a third extension of term of protection:

- Under Article L. 123-10 of the CPI, works of authors, composers and artists who died for France during WWI or WWII should benefit from an extra protection of 30 years.

These articles were not repealed by the Parliament when it implemented Directive 93/98/EEC into French law. However, in two decisions of 27 February 2007 concerning non-musical works, the Court of Cassation excluded the application of Article L. 123-8 and Article L. 123-9 by interpreting them in the light of Directive 93/98/EEC. The Court ruled that the new harmonised term (70 years p.m.a. instead of 50 years p.m.a.) absorbed the 'extensions due to wars', without shortening longer terms of protection that would have started before 1 July 1995. The Court of Cassation applied Article 10 (1) of the Directive providing the respect of established rights ("Where a term of protection which is longer than the corresponding term provided for by this Directive was already running in a Member State on 1 July 1995, this Directive shall not have the effect of shortening that term of protection in that Member



State”).

Taking into account the fact that musical works benefitted from a term of protection of 70 years p.m.a. and non-musical works from a term of protection of 50 years p.m.a. before 1 July 1995, commentators have concluded that:

- extensions due to wars are absorbed in the longer term of protection for non-musical works:  
Under the previous regime, a work published during WWI would benefit from a term of protection of 64 years and 272 days (50 years p.m.a. + 14 years and 272 days); a work published during WWII would benefit from a term of protection of 58 years and 120 days (50 years p.m.a. + 8 years and 120 days).  
→These two terms of protection are lower than the new harmonised term (70 years p.m.a). Therefore, only the term of 70 years p.m.a. will apply.

- extensions due to wars subsist for musical works since they were benefitting from a longer term of protection before 1 July 1995:  
Under the previous regime, a work published during WWI would benefit from a term of protection of 84 years and 272 days (70 years p.m.a. + 14 years and 272 days); a work published during WWII, would benefit from a term of protection of 78 years and 120 days (70 years p.m.a + 8 years and 120 days).  
→These terms of protection are higher than the new harmonised term (70 years p.m.a) and should subsist.

In the two decisions of 27 February 2007, the Court of Cassation did not have to rule the fate of Article L. 123-10 of the CPI, which provides for an extra extension of term of 30 years if the author died for France during WWI or WWII. A legal uncertainty regarding the application and interpretation of Article L.123-10 remains:

- In case of musical works whose authors died for France, the term of protection should be 70 years p.m.a + 30 years i.e. 100 years. In the event the musical work was published during WWI, an extra extension of 14 years and 272 days should be added. The term of protection of a musical work published during WWI and whose author died for France is therefore 114 years and 272 days. It should be noted that if the musical work has been published during WWII, the extra extension is 8 years and 120 days and the total term of protection 108 years and 120 days.  
This interpretation is in line with Article 10(1) of Directive 93/98/EEC and the ruling of the Court of Cassation on the longer term of protection existing before 1 July 1995.

- In case of non-musical works whose authors died for France, commentators are divided on how to calculate the term of protection:

(a) Some consider that the extensions due to wars are not applicable as they are absorbed in the new harmonised term of protection. As a consequence, only the extension due to the circumstance of the death of the author (30 years) should apply.

Therefore, a non-musical work, whether published or not during WWI or WWII, and whose author died for France will benefit from a term of protection of 70 years p.m.a. + 30 years i.e. 100 years.

(b) Whereas others consider that the calculation should be made as if the situation occurred on 1 July 1995 i.e. under the previous regime since the total term of protection would be higher than 70 years p.m.a.

As a consequence, a non-musical work whose author died for France would benefit from a term of protection of 80 years (i.e. 50 years p.m.a. + 30 years); for a work published during WWI, 14 years and 272 days are added (i.e. 94 days and 272 days) and for a work published during WWII, 8 years and 120 days are added (i.e. 88 years and 120 days).

→As a precautionary measure, we have opted in the flowchart for a term of protection of 100 years for non-musical works whose authors died for France, whether the works were published during WWI/WWII or not.

The case of a non-musical work published during WWI or WWII and written by an author who died for France is not hypothetical. Several famous authors belong to this category (e.g. Antoine de Saint-Exupéry, Guillaume Appolinaire, Charles Péguy).

The exceptions set up in Article L. 123-8, L. 123-9 and L. 123-10 of the CPI are not consistent with the Term Directive. Although the Court of Cassation ruled that the term of protection of 70 years covers the ‘extensions due to wars’, the Court did not take any position on the application of Article L. 123-10 and on the application of ‘extensions due to wars’ to musical works.

**Source: IVIR**

The wartime extensions:

In the case of wartime extensions, the objective of the French law is to extend the protection period for works whose exploitation was disrupted or prevented due to the wars by a period more or less equal to the length of the wars:

In the case of World War I (Article L 123-8 of the Intellectual Property Code): an extension of six years and 152 days;

In the case of World War II (Article L 123-9 of the Intellectual Property Code): an extension of eight years and 120 days.

However, these extensions have a limited future. The French Parliament did not repeal these provisions at the time it transposed the Community Directive of 29 October 1993 into domestic law, despite the intent of the Community authorities that the protection period be harmonised at 70 years.

The French case law has fluctuated, but recently application of these extensions was denied in a case decided by the Cour de Cassation [the French supreme court in civil and criminal matters] on 27 February 2007, Editions Hazan v. ADAGP.

In books that it published, Editions Hazan had reproduced without authorisation the works of Claude Monet, considering that they had fallen into the public domain. ADAGP brought an action for infringement, claiming that the works of Claude Monet were still protected by combining the 70-year protection period and the wartime extensions (six years and 88 days during World War I and eight years and 120 during World War II).

The decision rendered on 27 February 2007 settled the issue: the wartime extensions cannot be applied to extend the 70-year protection period.

Authors who gave their lives for France:

Parliament extended the protection period for authors who gave their lives for France for 30 years in addition to the statutory protection period, i.e., a total protection period of 100 years as from 1 January of the calendar year following the year in which the author died.

Article L 123-10 of the Intellectual Property Code: “The rights referred to in the preceding Article shall be further extended for a term of 30 years if the author, the composer or the artist has given his life for France, as recorded in the death certificate.”

**Source: EFG**

I. D. 04. If so, please elaborate, citing the relevant provisions of your national act.

I. D. 05. Are certain categories of film from the outset in the public domain?

Under French law, the public domain is a status that applies to intellectual property (works, inventions, etc.) for which, at the expiry of the protection periods applicable thereto, it is no longer necessary to request authorisation for any type of exploitation. In such case, it is considered that such intellectual property “has fallen into the public domain”.

In France, the protection period for a film is calculated from the death of the author or the death of the last of the joint authors. Therefore, no category of film can be, due to its nature or provenance, in the public domain from the outset.

Only non-original films (which cannot be considered to be works) are not protected by copyright.

The following types of films can be considered to be in the public domain:

- The author or the last of the surviving joint authors has been dead for more than 70 years. The protection period runs as from 1 January following the date of death.
- Anonymous works or pseudonymous works: the film falls into the public domain 70 years as from 1 January following the date the work is first made public.
- Posthumous works, i.e., works that were not made public during the author’s lifetime: such works fall into the public domain 70 years post-mortem. However, if the author’s works had already fallen into the public domain at the time the posthumous work was first made public, the protection period for these works is extended by 25 years as from 1 January following the date the work is first made public.

**Source: EFG**

## PART II: IDENTIFYING RIGHTSHOLDERS

### A. Rightsholders

#### II. A. 01. Who is regarded as rightsholder of a film?

##### The authors of a film

Article L 113-7 of the Intellectual Property Code presumes that certain individuals listed therein are the authors of an audiovisual work. These include the author of the screenplay, the author of the adaptation, the author of the dialogue, the director and the composer of musical compositions, with or without lyrics, specifically created for use in the audiovisual work. This is a mere presumption which can be overcome by evidence to the contrary.

The list in Article L 113-7 of the Intellectual Property Code is not exhaustive. Nothing prevents a person who is not on this list to claim authorship, provided such person proves that he performed a creative act and contributed that creation to the film. However, although this is possible in theory, in practice, the French courts rarely grant authorship to persons who are not specified in Article L 113-7 of the Intellectual Property Code

**Source: EFG**

Audiovisual works (including cinematographic works) are defined in French law. Under Article L.113-7 of the CPI, are presumed co-authors of an audiovisual work the following persons:

- author of the screenplay;
- author of the adaptation;
- author of the written text;
- author of the musical composition
- principle director

**Source: IVIR**

#### II. A. 02. Does national law include a law of ‘assumed transfer’ of rights to the producer (for instance: producer designated as maker, legal transfer of exploitation rights to producer or legal assumption of transfer of exploitation rights to producer?)

##### The presumption of an assignment of rights by the authors to the producer

Under the French law, the producer is not considered a joint author. In fact, the producer has a financing and coordination role, but he does not create.

Article L 132-23 of the Intellectual Property Code defines the producer as follows: “The producer of an audiovisual work is the individual or legal entity who takes the initiative and responsibility for making the work.” The status of producer is legally tied to taking the initiative to produce a film and taking a financial risk, and assumes that the producer provides financing and has a certain amount of control over the film in consideration for a financial contribution towards exploitation of the film and the risks related thereto.

Article L 132-24, para. 1, of the Intellectual Property Code provides: “Contracts binding the producer and the authors of an audiovisual work, other than the author of a musical composition with or without words, shall imply, unless otherwise stipulated and notwithstanding the rights afforded to the author ..., assignment to the producer of the exclusive exploitation rights in the audiovisual work. (...)” Under this law, therefore, merely by entering into a production agreement with the authors, the producer is presumed to be the assignee of the exploitation rights.

Manner in which the presumption of an assignment of rights to the producer applies

First, a written audiovisual production contract is required.

Second, it is a mere presumption. A contrary provision in the contract is permissible. Such provisions may be included to enable one or more authors to retain the exclusive right to exploit the work in a particular manner.

Third, Article L 132-24, para. 2, of the Intellectual Property Code provides that “Audiovisual production contracts shall not imply assignment to the producer of the graphic rights and theatrical rights in the work.” Therefore, the producer acquires only the audiovisual exploitation rights.

**Source: EFG**

Right of economic exploitation is vested in the producer of the audiovisual work

**Source: IVIR**

The producer, defined in Article L 132-23 of the Intellectual Property Code as “the individual or legal entity who takes the initiative and responsibility for making the work”, is presumed to be the assignee of the exploitation rights in the film. In addition, the Act of 1985 granted the producer neighbouring rights for a period of 50 years from the first communication of the videogram to the public. However, the producer is not considered to be an author.

**Source: EFG**

- II. A. 03. Please provide a summary of the relevant legislation (if the legislation has at any time been changed, please indicate who would be considered a rightsholder of a film before and after such change).
- II. A. 04. Is otherwise prior permission required for use of audio-visual works?  
For instance, if ‘the producer of the first fixation of the film’ has exclusive rights based on related rights please provide us with an overview of the relevant legislation (see Article 3.3 of the Term Directive).

Article L. 113-7, para. 2, of the Intellectual Property Code presumes that the joint authors of an audiovisual work are the author of the screenplay, the author of the adaptation, the author of spoken text, the composer of musical compositions, with or without lyrics, specifically created for use in the work and the director. However other joint authors are possible, such as the editor, the director of photography, the scriptwriter, a choreographer, a chef, etc., provided their contribution is original. If this

is the case, the statutory protection period applies to these authors.

However, other rights, with different provisions, may supplement copyright, such as neighbouring rights, the right to control the use of one's likeness, the right to privacy, trade mark law, etc.

To enable exploitation of a film, in general, all of the rights described in this paragraph are assigned to the producer of the film. These rights may be transferred to third parties pursuant to agreements assigning the rights.

The assignment of these rights to the producer or to third parties in no way modifies the protection period that such rights afforded at the outset.

**Source: EFG**

The duration of related rights has been implemented in Article L. 211-4 of the CPI.

Under this article, the term of protection of related rights shall expire 50 years after the date of performance (performers), first fixation of a sequence of sounds (phonogram producer), first fixation of images with or without sound (videogram producer) and first communication to the public of a program (audiovisual communication companies).

However, if a fixation of a performance, a phonogram or a videogram, is made available or communicated to the public within the period, the rights shall expire 50 years from the date of the first communication or availability to the public, whichever is the earlier.

**Source: IVIR**

Article L. 113-7, para. 2, of the Intellectual Property Code provides that the author of the screenplay, the author of the adaptation, the author of the dialogue, the composer of music with or without lyrics specifically created for use in the work and the director are presumed to be joint authors of an audiovisual work.

Other joint authors are possible, such as the editor, the director of photography, the scriptwriter, a choreographer, a chef, etc., provided their contribution is original. If this is the case, the statutory protection period applies to these authors.

However, although this is possible in theory, in practice, the French courts rarely grant authorship to persons who are not specified in Article L 113-7 of the Intellectual Property Code.

Therefore, a film falls into the public domain 70 years after the death of the last of these joint authors.

However, other rights, with different provisions, may supplement copyright, such as neighbouring rights, the right to control use of one's likeness and the right to privacy.

Therefore, it is important to compare the protection periods under copyright law with those afforded by other rights that may apply to cinematographic works and consider if they differ and if the rights afforded under these other theories can expire.

#### 1. Music:

There are two possibilities:

- Music that is specifically created to score a film. In such case, the composer is considered by Article L 113-7 of the Intellectual Property Code to be one of the film's joint authors.
- So-called "commercial" music, i.e., music already in existence that is chosen to score a film. The composer is also considered to be an author.

Authors, composers, publishers and producers, as well as performers (singers and musicians), are deemed creators, regardless of whether they are artists or professionals, and they have rights in their creations or performances (either copyright or neighbouring rights – see below).

Music for a film is a creation protected by copyright and, therefore, falls into the public domain 70 years after the death of the composer thereof or of the last of the joint composers thereof.

In general, the exploitation rights in the music and the performers' performances are assigned to the film's producer.

## 2. Adaptation

This describes the situation where a pre-existing work is used to produce another work (for example, a book can be adapted into a film). Article L. 113-7, para. 3, of the Intellectual Property Code provides that the author of a "pre-existing" work is to be considered a joint author of the second work. Therefore, the author of a work that is adapted is considered to be a joint author and is afforded copyright protection for a period of 70 years after the death of the author.

→ In the case of music and adaptations, the duration of the protection period is 70 years after the death of the author. Therefore, the music or the adapted work may have fallen into the public domain if they were exploited before the film. However, the film is not considered to be in the public domain if only the music or adapted work are in the public domain.

## 3. Neighbouring rights:

Before 1985, artists, performers and lead actors received no remuneration for the broadcasting or rebroadcasting of the works in which they appeared. Only the author of the lyrics, the composer of the music and the record publisher were remunerated. In 1985, neighbouring rights were created for the benefit of performing artistes, phonogram and videogram producers and audiovisual communication companies.

Currently, these parties have an exclusive right to authorise or prohibit the use and exploitation of their performances and to claim remuneration in consideration for their authorisation. Performing artists also have moral rights in their names and concerning any changes [to their performances]. The protection provided by neighbouring rights is different from that afforded by copyright and applies separately and without prejudice to the rights held by authors (Article L 211-1 of the Intellectual Property Code). The protection period for neighbouring rights is 50 years as from 1 January of the calendar year in which:

- The work was performed (in the case of performing artists);
- The first fixation of the phonogram or videogram took place (in the case of phonogram and videogram producers);
- The programmes were first communicated to the public (in the case of audiovisual communication companies).

However, if the fixation of the performance, phonogram or videogram is communicated to the public during the aforementioned period, the 50-year period begins to run as from the date of such communication. The signature of a contract between a performing artist and a producer covering the production of an audiovisual work constitutes authorisation to fix, reproduce and communicate the performing artist's performance to the public.

→ The protection period that neighbouring rights afford performing artists is therefore 50 years from the fixation of the performance or from the time the performance is communicated to the public. However, even if the actor's performance is no longer protected by neighbouring rights, it cannot be exploited separately from the film as a whole.

## 4. Right to privacy:

To determine if the laws intended to protect the right to privacy apply, a distinction must be made between a work of fiction and news images or images of current events.

Fiction films raise no privacy issues. The actors follow a script and are directed by the director. The film does not implicate their right to privacy.

If news images or images of current events are used, the persons in such images must authorise the director and producer to film them and exploit their individual performances. The right to privacy

expires at the time of the person's death. Images of current events do not fall into the public domain, even if the persons pictured therein are deceased.

5. The right to control use of one's likeness:

If a person is filmed without his consent, this may be considered an infringement of the person's right to control the use of his likeness. The right to control the use of one's likeness is included in the broader right to privacy. Although all persons are entitled to freedom of expression, this does not exempt cinema or television producers from the requirement of obtaining authorisation.

A producer must obtain authorisation from actors or other persons filmed to use their likenesses in order to exploit the images shot, and such authorisation must be granted for the entire time that such images will be exploited. This right expires upon the death of the person filmed.

6. Trade mark law:

The title of a film can be registered as a trade mark with the Institut National de la Propriété Intellectuelle (National Intellectual Property Institute). This practice is common but not systematic. Registering the title as a trade mark protects the producer from any person who may wish to use the title and compete with or parasitise the film, thereby negatively affecting the exploitation of the film. To be registered, the trade mark must be original and distinctive.

The producer's logo (which is a trade mark) can also be included in advertisements for the film. As a trade mark, a logo benefits from the protection afforded to trade marks.

This protection is valid for ten years as of the date the trade mark is registered and registration can be renewed indefinitely.

7. Ownership of physical media:

French law makes a clear distinction between the rights in a work and the ownership rights in the physical media containing the work (for example, exploitation copy, brown print, internegative, etc.). If the owner of a physical medium is not the author of the work fixed on such medium or the successor in interest thereof, he cannot claim copyright protection. He must comply with the relevant laws and may not distribute the work fixed on the physical medium to the public without the authorisation of the rightholders.

These varying protection periods are of relevance only if it is possible to exploit separately each party's contribution. Although this is possible for the music, screenplay or original dialogue, it is difficult to exploit an actor's performance or likeness alone (without the film).

**Source: EFG**

- II. A. 05. What is the protection period for such rights and do these rights transfer to heirs / successors in title (and if so, for what period) third party / transfer to the legal entity. Please provide a brief overview of the relevant legislation.
- II. A. 06. Are there any specific rules that are exceptions to the general rules concerning the rightholder of a film?

The French law does not have any true exceptions to the rights of authors of a film, but certain adjustments have been made to the moral rights and economic rights thereof.

Adjustments made to the exercise of moral rights



The French Parliament wanted to prevent the situation where the completion of an audiovisual work could be paralysed by the will of one of the joint authors. For this reason, each of the joint authors is presumed to temporarily agree to limit his moral rights in order to facilitate completion of the common work.

For this reason, Article L 121-5 of the Intellectual Property provides: “An author’s individual rights, as defined in Article L 121-1, may be exercised by those authors only in respect of a completed audiovisual work.” The effect of this provision is that the moral rights of each of the joint authors are, to a certain extent, suspended so long as the audiovisual work has not been completed. However, when the work is completed, the authors’ moral rights are fully restored.

Stated otherwise, during the time the work is being completed, a joint author cannot assert his right of disclosure or his right of respect for his contribution.

The second adjustment made by the French Parliament applies in the situation where an author cannot or does not want to complete his performance. In such case only (refusal of the author or a force majeure event), the producer is entitled to use the portions of the film already created and can engage other persons to complete the film. However, in doing so, the right of paternity of the non-participating author must nevertheless be respected.

Adjustments made to the exercise of economic rights: the presumed assignment of exploitation rights to the producer.

The economic rights of joint authors of an audiovisual work are reduced by the presumption that they assign their rights to the producer. In fact, the mere fact that an audiovisual production agreement is entered into between the authors and the producer may result in an assignment of the authors’ rights to the producer.

**Source: EFG**

## B. Transfer / Inheritance / Bankruptcy

### II. B. 01. Is it possible to transfer copyright under national law? Please explain the relevant rules.

#### Agreement assigning exploitation rights:

An author has the right to authorise or forbid the use of his work. If he decides to exploit his work, he can do so personally or allow one or more parties to exploit it, in which case the author will assign such parties all or a part of his economic rights pursuant to an agreement assigning his exploitation rights. The exploitation agreement must be in writing, and a writing is required to prove the assignment. Requiring a writing as proof of the assignment is intended to protect the author.

#### The scope of the exploitation agreement

French law interprets copyright assignments strictly, which means that the list and scope of rights assigned are interpreted narrowly and restrictively. In other words, it is assumed that the author has retained everything that he has not expressly assigned. For example, an assignment of the right to reproduce a work in the form of a cinematographic film does not automatically authorise reproduction of the work in the form of commercial videograms.

Article L 131-3 of the Intellectual Property Code provides that a transfer of copyright requires that each of the rights assigned be separately mentioned in the instrument of assignment. The parties to the agreement must clearly specify which rights are being assigned. Article L 131-3 of the Intellectual Property Code requires that “the field of exploitation of the rights assigned be defined as to scope, purpose, place and duration.” This provision is a public policy principle and the failure to comply with this obligation to define the field of exploitation of the rights assigned renders the agreement null and void. As a result of this article, it follows that a general assignment, using imprecise terms such as “including all rights”, is not enforceable.

To be more specific, Article L 131-3 of the Intellectual Property Code therefore requires that four essential points be covered; otherwise, the agreement will be null and void.

First, the agreement must specify the scope of the rights assigned. For example, the agreement may state that it is permissible to reproduce a particular photograph in a certain form and in a specified number of copies.

If audiovisual adaptation rights are assigned, Article L 131-3 of the Intellectual Property Code lays down a specific rule, i.e., an assignment of audiovisual adaptation rights must be made in an agreement that is not only required to be in writing, but that must be a document that is separate from the agreement for the publication of the work itself. The intention is to make the author aware that he is assigning this right and to prevent such assignment from being “hidden” among the secondary clauses of an agreement whose main purpose may be quite different.

Second, Article L 131-3 of the Intellectual Property Code requires that the intended use of the assigned rights be specified, i.e., the purpose of the authorised reproduction or presentation. For example, allowing the reproduction of photographs for posters, which would exclude using the photographs for advertising inserts.

Third, the agreement must specify the duration of the exploitation authorisation and, in particular, indicate if the authorisation is valid for the entire duration of the exclusive exploitation rights or for a more limited period.

Fourth, the contract must specify the place for which the authorisation to exploit the work is granted. Accordingly, the parties must specify the countries in which the assignment of rights is effective. This enables the author to divide the right to exploit his work geographically, and to choose for each territory

the partner that he deems best able to exploit his work, and to decide whether or not to grant such partner exclusive rights.

**Source: EFG**

- II. B. 02. If a natural person is deemed to be the rightsholder, please indicate what persons are indicated by law to inherit his rights.

Article L 123-1 of the Intellectual Property Code provides that, after the author's death, the right to exploit the work is retained by his successors in interest during the calendar year in progress and for the 70-year period thereafter. The term "successor in interest" includes both the author's legatees and heirs and persons to whom he may have assigned a right for a period that extends beyond his own lifetime (for example, the producer).

In the absence of contrary provisions, the Intellectual Property Code implicitly draws on ordinary inheritance principles to settle issues of inheritance concerning the right of reproduction and the right of presentation. On the other hand, Article L 123-7 of the Intellectual Property Code provides specific rules regarding inheritance of the right to resale royalties: "After the author's death, the right to resale royalties referred to in Article L 122-8 of the Intellectual Property Code shall survive to the benefit of the author's heirs and, with respect to the usufruct right referred to in Article L 123-6, to the benefit of the author's spouse, to the exclusion of all legatees and successors in interest, for the calendar year then in progress and for 70 years thereafter." Parliament therefore has forbidden gifts and bequests of the right to resale royalties. This prohibition applies not only to the author, but also to his heirs, who may not assign, give or bequeath any right to resale royalties that they have received.

#### The usufruct of the surviving spouse

Parliament has granted the surviving spouse a special usufruct right in the author's exploitation rights, including the right to resale royalties, but not in physical media, in particular, visual arts works.

Article L 123-6 of the Intellectual Property Code provides: "During the period specified in Article L. 123-1, the surviving spouse, provided no final judgment of separation has been entered against him/her, shall enjoy the usufruct of any exploitation rights that the author has not assigned, irrespective of the type of matrimonial property regime and of any rights of usufruct he/she holds pursuant to Article 767 of the Civil Code with respect to other assets of the decedent's estate. Such right shall lapse in the event the spouse remarries."

This special usufruct right is distinct from the ordinary usufruct rights granted by the ordinary inheritance principles laid down in the Civil Code. Therefore, the surviving spouse of an author may combine the two types of usufruct rights or waive one and retain the other.

This usufruct right is valid for the entire life of the surviving spouse, but is limited to the statutory copyright protection period.

Although Parliament privileged the surviving spouse by granting such spouse a special usufruct right and by allowing the spouse to combine it with ordinary usufruct rights or property owned outright, Parliament nevertheless took into account the need to protect the forced heirs.

To this end, Article L 123-6 provides: "However, if the author is survived by forced heirs, this usufruct right shall be reduced to the benefit of such heirs, in the proportions and in accordance with the distinctions laid down in the Civil Code." Therefore, the special usufruct right cannot exceed the

disposable share of the author's estate.

**Source: EFG**

II. B. 03. What rules apply if a legal entity rightsholder has been declared bankrupt (what happens to the rights to a film)?

Article L 132-30 of the Intellectual Property Code deals with the insolvency of a producer, who is placed in administration or court-ordered liquidation. Article L 132-30 provides that the fact that the producer is placed in administration does not terminate the audiovisual production contract. Therefore, the fact that bankruptcy proceedings may have been initiated against the producer has no effect on the audiovisual production contract. These proceedings do not terminate the audiovisual production contract and, if the exploitation of the work is continued, the court-appointed administrator is required to fulfil all of the producer's obligations.

However, if the production company has ceased doing business for more than three months or if the court orders liquidation, the joint authors (acting jointly or separately) may request that the audiovisual production contract be terminated in order that they regain control over their rights. However, an author that exercises this right to terminate the audiovisual production contract recovers only those rights that he personally assigned to the producer, and the rights of the other joint authors cannot be affected thereby.

In the event the production company is sold, in whole or in part, or if it is liquidated, each audiovisual work that can be sold must be handled separately. This avoids a mass sale of the portfolio of films held by the producer in difficulty. Therefore, the French law requires that the works be sold separately, title by title, and forbids a mass sale. This procedure facilitates a purchase of the works by the co-producers or facilitates finding separate buyers for works whose differences justify different manners of exploitation.

This is a public policy principle, meaning that even if the judge were to authorise a mass sale, such sale would be nullified.

One month before any decision concerning a sale, the administrator is required to inform each of the work's joint authors and co-producers thereof in a letter sent recorded delivery. Failure to do so renders any sale null and void. Each author has a pre-emptive right in the work, except if a co-producer chooses to purchase the exploitation rights therein. Therefore, if the co-producers do not exercise their pre-emptive rights, the author or the joint authors may themselves exercise their pre-emptive rights and obtain all exploitation rights in the work that the producer in difficulty held, not only the rights that the authors had assigned to the producer

**Source: EFG**

## PART III: ORPHAN WORKS

On 4 October 2012 the Orphan Works Directive (“Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works”) was adopted. Member States will have two years to transpose it into national law, which means that the Orphan Works Directive must be implemented before 29th October 2014.

### A. Pre-existing Law

- III. A. 01. Are there any specific or general rules (legislation and / or case law) regarding orphan works that are currently applicable to orphan works under national law?

If the author or authors of a work remain unknown after a diligent search, the work is said to be an “orphan work”. A diligent search means that all measures consistent with an in-depth search have been taken: consultation of royalty collection societies to see if they have any particular information, consultation of court registries for clues concerning the original production company, consultation of the cinematographic register to check if any contracts were registered for this film, etc.

Copyright nevertheless applies. The work cannot be exploited without the authorisation of the author or his successors in interest.

The result is a blocked situation because the work cannot be exploited, except if the proceedings referred to in Article L 122-9 of the Intellectual Property Code are initiated.

In the absence of these rules reliance can be placed on the EC guidelines governing the use of Orphan Works.

Only the legal proceedings known as an “action in the case of a work for which there are no heirs” can resolve the situation. The Tribunal de Grande Instance (court of first instance) can designate as court-appointed agent a person who has so petitioned the court and who has a legitimate interest in bringing such action.

Article L. 122-9 of the Intellectual Property Code provides the sole mechanism for exploiting an orphan work: “In the event of manifest abuse in the exercise or non-exercise of the rights of exploitation by any of the deceased author’s representatives referred to in Article L 121-2, the Tribunal de Grande Instance (court of first instance) may order any appropriate measure. The foregoing shall also apply in the event of a dispute between such representatives or if there are no known successors in interest or heirs entitled to inherit.”

Therefore, it is possible to file a petition with the Tribunal de Grande Instance requesting authorisation to exploit a film.

Under Article L. 211-2 of the Intellectual Property Code, to obtain such authorisation, the petitioner must prove that he has a legitimate in bringing the action: “In addition to any person who proves a legitimate interest in acting, the Minister responsible for culture shall be entitled to take legal action, particularly where there is no known successor in interest or where there are no heirs entitled to inherit.” Furthermore, the petitioner must present proof (a body of evidence) in support of the conclusion that there are no longer any successors in interest in a position to exploit the work: certificates attesting that the production company has been expunged from the Trade and Companies Register, letters from archives documenting searches carried out, etc.

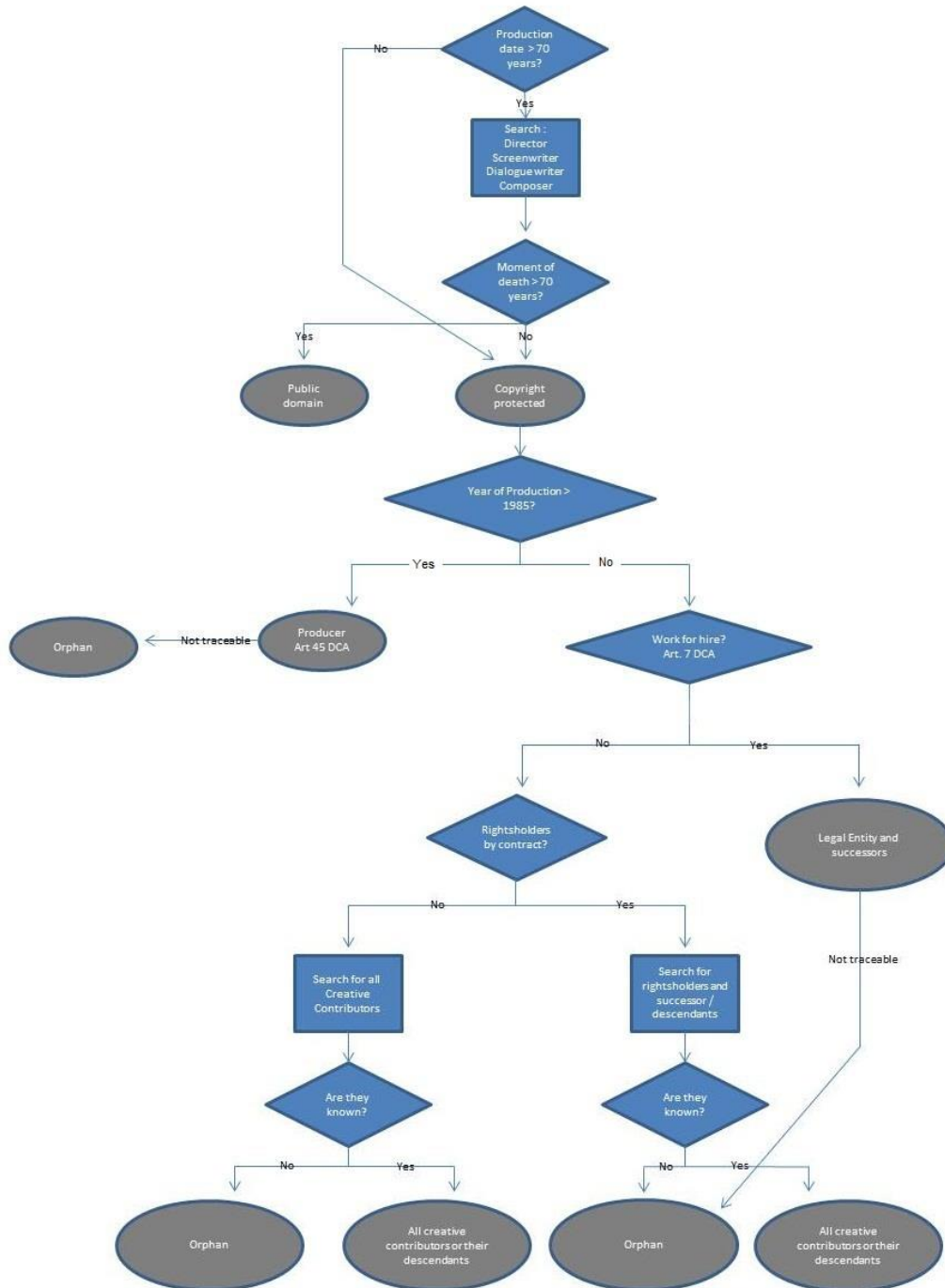
Based on the evidence presented, the Presiding Judge of the Tribunal de Grande Instance will take a decision. If the judge designates the petitioner to act as “court-appointed agent” for the purposes of exploiting the film, the agent will be able to enter into copyright licence agreements with heirs or royalty collection societies, which can also be designated as court-appointed agents.

**Source: EFG**

## B. Implementation of Orphan Works Directive

- III. B. 01. Please provide us with information on the implementation of the Orphan Works Directive under national Law. What is the current status of the implementation?
  
- III. B. 02. If the proposal on implementation of the Orphan Works Directive is publicly available (or if the Orphan Works Directive has already been implemented into national law), explain how its main articles relevant for cinematographic or audio-visual works are transposed into national law. Please provide us with the relevant URL (preferably also in English).
  
- III. B. 03. If the proposal on implementation of the Orphan Works Directive is publicly available (or if the Orphan Works Directive has already been implemented into national law), could you please inform us what sources are set forth in order to perform a diligent search (as mentioned in Article 3.2 ‘Diligent Search’).

# ANNEX 5: LEGAL DECISION TREE THE NETHERLANDS (DRAFT)



## ANNEX 6: PRELIMINARY LIST OF STAKEHOLDERS

FORWARD project partners and <u>Advisory Board</u> members	Wider consortium identified in DoW (page 19/20-80 Pilot B) and <u>Advisory Board</u> members	ARROW & ARROW partners w. AV material	Broader network
<u>CRB - Cinematheque Royale De Belgique</u>	<u>SAA - Society of Audiovisual Authors</u>	AIE - Associazione Italiana Editori	MPLC - Motion Picture Licensing Corporation Switzerland
ACE - Association des Cinematheques Europeennes	<u>FIAPF - Internat. Federation of the Associations of Film Producers</u>	EDItEUR (international group coordinating development of the standards infrastructure for electronic commerce in the book, e-book and serials sectors)	Audiovisual and Media policies (DG INFSO)
<u>EYE - Stichting Film Instituut Nederland</u>	<u>FIAD - International Federation Of Distributors</u>	Federation of European Publishers / Fédération des éditeurs européens	European Audiovisual Observatory World Intellectual Property Organisation
<u>CINECA - Consorzio Interuniversitario Cineca</u>	<u>FERA - Federation Of European Film Directors</u>	British Library (Sound and Moving image archives)	Eurimages (Council of Europe, not EU)
<u>DFI - Det Danske Filminstitut*Danish Filminstitute</u>	<u>IVF - Internatinoal Video Federation</u>	French National Library (AV department)	Eblida
<u>KAVA - Kansallinen Audiovisuaalinen Arkisto</u>	Ximon	Wellcome Trust (medical AV material)	Europeana
FE - Instituto de la Cinematografia y Artes Audiovisuales		VIAF - The Virtual International Authority File	COMMUNIA
CINEBO - Fondazione Cineteca di Bologna		National Library of Norway (acting as Cinémathèque)	FPN - Filmproducenten Nederland Beeld & Geluid - EU Screen
DIF - Deutsches Filminstitut - Dif Ev			AIDAA (International Association of Audiovisual Writers and Directors)
<u>FOCAL - Focal International Ltd</u>			FIAF - International Federation of Film Archives)
FN - Filmoteka Narodowa			UNIC (Union internationale des cinémas)
NFA - Narodni Filmovy Archiv			BECT (Bureau européen du cinéma et de la télévision)



CNC - Centre National Du Cinema et de L'image Anime			CICCE (Comité des industries cinématographiques)
			CPE (Club des producteurs européens)
			EFCA (European Film Companies Alliance)
			Eurocinéma (Association de producteurs de cinéma et de télévision)
			EuroFIA (Groupe européen de la fédération internationale des acteurs)
			FEITIS (Fédération européenne des industries de l'image et du son)
			FSE (Fédération des scénaristes d'Europe)
			EBU - European Broadcasting Union
			FIAT - International Federation of TV archives
			DG Connect DG Market Cinema Expert Group
			Licenses fo Europe AV
			OHIM
			iRights Info
			Kennisland
			IViR Institute for Information Law

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