

Grant Agreement ECP-2007-DILI-527003

ARROW

Report on legal framework - Edition 1 addendum

Deliverable number	<i>D-3.1</i>
Dissemination level	<i>Public</i>
Delivery date	<i>26 April 2010</i>
Status	<i>Final</i>
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eContentplus

This project is funded under the *eContentplus* programme¹,
a multiannual Community programme to make digital content in Europe more accessible, usable and exploitable.

¹ OJ L 79, 24.3.2005, p. 1.

General legal framework for the Arrow project.

The purpose of this part of the report is to provide an adequate starting point for the legal analysis, outside of copyright issues, of the actual use of the systems in the different countries where it will operate.

For the purpose of this document we refer to a “Foundation” as a legal entity representing ARROW although the consortium as such has not yet recommended any specific form of legal entity.

Issues to consider:

1. Liabilities that may arise from the running of the system and accuracy of the information

Arrow will deliver a rights information infrastructure or network of databases provided by third party sources to facilitate identification of rights holders and the IPR status of works. In some cases, depending on a country by country basis, other sources of information not covered by Arrow could exist. Thus, even if Arrow is accepted as a sound starting point to do a search, it should not be considered as the only source of information unless otherwise agreed.

The level of liability of Arrow will depend on whether the error arises from the information provided by the third party databases or whether the error can be directly attributed to the Arrow project during the running of the project. The following limitation of liability will apply in each case:

The Arrow (Foundation) shall not be responsible when the error is due to any circumstances beyond its reasonable control (“force majeure”).

The Arrow (Foundation) shall not be responsible for the topicality, correctness, accuracy, completeness or quality of the information provided by the different information sources, or that the information is free from error. In no event shall the Arrow (Foundation) be liable for any damages, including, without limitation, any lost profits, lost savings or other incidental or consequential damages, regardless of whether such damages are foreseeable or whether such damages are deemed to result from the failure or inadequacy of any exclusive or other remedy. Liability claims regarding damage caused by the use of any information provided, including any kind of information which is incomplete or incorrect, will therefore be rejected. However, upon receipt of actual knowledge, Arrow will ask the organisation at the origin of that information to amend it.

If errors can be directly attributed to the Arrow (Foundation) during the running of the system, such as the functioning of the Arrow software, it will try to correct them as diligently and rapidly as possible once brought to the attention of the Arrow Foundation. In order for Arrow to benefit from a limitation of liability, it must act expeditiously and in full transparency upon receipt of actual knowledge correcting the erroneous information as soon as possible.

In regards of any uses made of the works, Arrow does not accept any responsibility and users should therefore take all necessary precautions before using those works. Several scenarios could be envisaged depending on the relevant legislation:

License provided by a third party (e.g. RRO) – liability for the use of the work will fall on the third party.

Exemption or limitation of liability - liability for the use of the work will fall on the user.

Exception to copyright (only for the use of orphan works) - liability for the use of the work will fall on the user.

2. Data protection implications

The Arrow project is committed to user privacy and any law related to.

Data protection legislation has been harmonised in the European Union with a series of rules. The applicable legal framework includes Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, Directive 2002/58/EC on privacy and electronic communications and Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on data retention¹.

Depending on the final structure and ownership of Arrow, Regulation (EC) N 45/2001 on “protection of individuals with regard to the processing of personal data by the Community institutions” could also apply.

Directive 95/46 establishes in Article 2 (a) that 'personal data' shall mean any information relating to an identified or identifiable natural person ('data subject'); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity.

For the purposes of the Arrow project, it is relevant to note that the information at stake will be usually publicly available information depending on the data provider and the status of the book involved. In case of data concerning books in print, the books in print data providers will mostly handle bibliographic information which is publicly available. If a book is orphan, there will be no information whatsoever or information which does not permit to locate the right holder. When out of print books are at stake, the possibility is that the provider of information is the library (which will also deliver bibliographic information, so no personal data involved) or Reprographic Rights Organisation. The latter could identify information both from the publisher or the author. If the author decides that he or she wants to be asked permission for the use of their works individually, then there will have to be a transfer of personal data and the RRO will have to comply with data protection rules.

¹ For more information on the legal framework see :
http://ec.europa.eu/justice_home/fsj/privacy/law/index_en.htm

It is important to stress that Arrow will only deliver rights information from existing third party sources and delivered by its providers. Therefore, Arrow can not take any responsibility concerning privacy practices or rules applied by the organisations or institutions providing those sources of information.

3. Data transfers across EU borders

Due to the fact that the objective of Arrow is to deliver a rights information infrastructure operable within and across borders, data transfer of personal data can take place occasionally (as mentioned above, in case of information provided by an RRO about an author).

Data transfer within the EU is also governed by the framework Directive 95/46/EC relating to the processing of personal data and on the free movement of data. This Directive makes sure that personal data can be transferred without restrictions within the European Union. In cases of transfer of data to non EU countries, the Directive establishes that personal data can only be transferred if the country in question guarantees an “adequate” level of protection (cf. Recital 57).

4. Ownership of the data, database and software

The copyright or any other rights, such as the sui generis right for non-original databases, for any works or metadata newly created within the Arrow process is reserved. Any duplication or use of such works is not permitted without the Arrow (Foundation’s) agreement.

Arrow will not hold ownership of the databases or data used either during or after the project. These databases and data will remain as property of the information providers and they will only be used, both by the Arrow partners and the end users, for the exclusive purposes of the Arrow project.

5. Legal relationship between the different stakeholders

The legal relationship between the different stakeholders will depend on the nature of the actors involved. Several possibilities arise (within the framework of the governing law):

If the stakeholders are partners of the Arrow project, the legal relationship will be governed, including termination, by the statutes of the Arrow (Foundation).

If the stakeholders are providers of information or metadata, the legal relationship will be governed, including termination, by a specific contract with the Arrow (Foundation).

If the stakeholders are the end users, the legal relationship will be governed, including termination, by a specific contract with the Arrow (Foundation).