



**Response by the
AIE - Associazione Italiana Editori (Italian publishers association)
to the European Commission consultation on
“Europeana next steps”**

Associazione Italiana Editori (AIE) represents Italian publishers – and foreign publishers operating in Italy – producing books, scholarly journals, digital publishing products and, in general, any form of publishing content regardless of its format or distribution channel. AIE currently has 400 members, corresponding to over 90% of the Italian book market. AIE advocates the public policy interests of its members, including the protection of intellectual property rights in all media, the free dissemination of the written word, and the promotion of literacy and reading. At the international level AIE is member of the Federation of European Publishers (FEP-FEE) and the International Publishers Association (IPA).

AIE thanks the European Commission for the opportunity to provide our viewpoint on a subject that is very important for the stakeholders we represent.

AIE fully supports the answer made by the FEP – Federation of European Publishers. However, we want to add some further arguments that come from our experience as coordinator of the Arrow project (www.arrow-net.eu).

Arrow is a project co-funded by the European Commission within the eContentPlus programme, which involves European libraries, publishers, collective societies, and authors, which aims at serving Europeana in dealing with copyrighted material and in particular with out of print and orphan works. We are honoured that Arrow is cited as “an important first step” in approaching those issues of orphan and out of print work by the Communication from the Commission “Copyright in the Knowledge Economy” (10 Oct 2009). We are aware of the importance of sharing the findings of the project.

We started our work one year ago. While designing the Arrow system architecture, we have had the opportunity to study in depth the practical aspects of the implementation of the principles set by the High level expert group on Digital libraries and by the Memorandum of understanding signed by the European stakeholders in June 2008.

We think that our experience is useful to contribute, in particular, to Question 8 of the consultation that calls for “pragmatic” solutions to address the differences in dealing with “older works between the US and Europe”. In fact, Arrow also analysed such differences and established stable contacts with the emerging Book Rights Registry (BRR) in the US, which will set up (after Arrow) a service to manage rights information and rights clearance within the so called “Google Books Settlement”.

The key lesson we learned is that there are not “easy ways” to approach the problem. With some level of simplification, we can say that so far the issue is being addressed in two different ways:

- In Europe the way to deal with the issue, sets from the stakeholders agreement, which includes prior consent before using digital copies, when the rightholder is known, and diligent search before defining a work as orphan.
- In the US, the suggested system stems from a settlement that closes a lawsuit between authors and publishers against one single commercial company, where prior consent is not necessary for works that are not “commercially available”.

At a first glance, the second seems to be the “easy way” that everybody is looking for. One may think: *“There may be some problems with rightholders, in particular with their moral rights, but such a system makes everything easier and effective”*.

However, this is not true. Even to implement such a simplified model, the data management required is huge. The work that the BRR will be asked to do to serve Google Books, and hopefully competing initiatives, is not so different than the work that Arrow is asked to do to serve Europeana. So in the system used in the US: *“There are problems with rightholders, in particular with their moral rights, and such model makes no difference in terms of complexity of data management”*¹. Therefore, the European model allows to respect much more rightholders needs without increasing significantly the level of resources required.

The reasons for such surprising conclusion are many. The most important are two: (i) the difficulty to precisely identify the works that enter the digitisation programme, (ii) the lack of resources where to find the relevant information about those works, once identified.

Ideally, the analysis of books to be scanned in a digitisation programme starts from the records of the library catalogue. For every bibliographic record, it is always necessary to:

1. Identify unambiguously which book any record refers to, in order to *match* with other resources that may contain relevant information about the same book.
2. Identify unambiguously which work(s) is (are) contained in the book, in order to *cluster* all other books containing the same work².
3. Identify, through querying different resources, if any book containing the work is still in print.

All these steps are necessary in both models. In the European case only, there is a further step.

4. Identify the rightholders for every book, prior its use.

Instead, the suggested system in the US is based on the idea that, when books are out of print, rightholders should proactively claim their books to be protected. From the technical viewpoint, this is the only simplification.

¹ A clear signal of the complexity is the amount of resources dedicated to the set up of the BRR: 35 million dollar (by the way, Arrow has an initial budget of 5 million euro).

² Both the definition of “out of print” provided by the Copyright subcommittee of the High level expert group and the definition of “non commercial available” in the Google Settlement, state that such status must be defined at work level, and not at book level. So, if the hardback edition is out of print but a paperback edition is still on trade, that work must be consider “in print”.

The finding of the first phase of the Arrow project demonstrated that steps 1 and 2 are the most difficult. Once the book is correctly identified, the matching with existing resources is working, and the cluster of the different editions has been created, than most of the work is done. The process of *matching* and *clustering* is instead a big challenge, since unprecedented, and thus without standards in place to facilitate correct identification of old books (the ISBN was created only in 1970, so most of the books entering digitisation programme have not an ISBN) or works (the ISTC, the ISO standard for this purpose is still at the very early stages)³.

Any “pragmatic solution” should have, in our opinion, the following characteristics:

- a) *Be based on distributed systems*: information about rights are disseminated in different resources: library catalogues, commercial books in print databases, collective management organisations repertoires. It is important that different players in the book community will continue not to depend on others for such information. Centralisation of rights information risks to undermine this picture and to create dominant positions in the market.
- b) *Be based on open standards*, so to allow different players in the distributed network of resources to communicate one each other and to re-use rights information when created
- c) *Consider linguistic and cultural diversity*: the distributed model is the only one that ensures accuracy in dealing with linguistic and cultural diversity.

These conditions are very important to be set now, when the market for digital books is emerging. The role of Europe is crucial in respect to the rest of the world. And the role of Europeana and related projects can be very important. The collaboration between the stakeholders (from authors to libraries) is the key.

Looking for pragmatic solutions does not mean trying to simplify the complexity. On the contrary, we think that it is important to be aware of such complexity and to invest in new systems. In the knowledge society, no pragmatism is possible without innovation.

AIE supports the appropriate funding of Europeana which comprises funding of European models of clearing the rights.

³ The “Amended Settlement Agreement” (ASA), published on Nov 13th, 2009 seems to partially change the picture. The publication of the ASA was very close to the deadline for this response, so that it was impossible to carry a comprehensive analysis. However, we noted that new provisions are included that oblige the BRR to actively search for rightholders of “unclaimed books”. This seems to be a step toward the European way, which always includes diligent search. In this case the search may be done also *after* the use of books, but in principle, and on large scale, we can expect that the BRR will move toward a model similar to that of Arrow, including diligent search *before* the book scanning. This will be mandatory for European books, which have been excluded from the Settlement scope and may be included in the Google Books only after obtaining prior consent. By the way, additional funds are provided for this function, coming from the revenues generated by unclaimed books, which makes the distance with Arrow even larger on this respect.