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MILE

**Metadata and Intellectual Property Rights Seminar 1 &
Report**

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eContentplus

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¹ OJ L 79, 24.3.2005, p. 1.

MILE Metadata and Intellectual Property Rights Seminar 1 and Report

9.30am – 5.30pm, Friday 26th October 2007

Hotel Prestige Congress, Carrer de José Agustí Goytisolo, 9-11 08908 Hospitalet de Llobregat, Barcelona, Spain

Present:

Delegates present				
Aisa	AIS	Xavier Castell	XC	Director
Alinari	ALI	Sam Minelli	SM	R&D Engineer
		Andrea de Polo	AdP	Manager
BAPLA	BAP	Sarah Saunders	SS	Chair, Metadata Committee
Bildombudsmannen AB	STA	Staffan Teste	ST	Legal Advisor
Bridgeman Art Library	BAL	Harriet Bridgeman	HB	Chair
	BAL	Jessica Tier	JT	MILE Project Manager
	BAL	Lucy Geering	LG	MILE Project Assistant
	BAL	Steffen Wedepohl	SW	Berlin Liaison / Sales
MDA	MDA	Nick Poole	NP	Chief Executive Officer
System Simulation	SSL	Graham Howard	MC	Design Director
Trinity College Dublin	TCD	Niamh Brennan	NB	Programme Manager
Wardynski & Partners	WAR	Ewelina Sliwinska	ES	Lawyer
		Janusz Kolczynski	JK	Lawyer
External attendees				
5 Raymond Buildings	5RB	Christina Michalos	CM	Barrister
The Israel Museum	TIM	Amalyah Keshet	AK	
MDA	MDA	Naomi Korn	NK	Copyright Consultant
Architectural Schools Libraries	ASL	Remei Garcia	RG	
Architectural Schools Libraries	ASL	Neus Vilaplana	NV	
PLUS	PLS	Jeff Sedlik	JS	President & CEO
Policy Bandwidth	PBW	Jonathan Band	JB	Lawyer
SILVER	SIL	Pandora Mather-Lees	RB	Project Leader
The British Museum Company	BMC	Beatriz Waters	BW	Picture Library Manager
Paco Elvira	PEV	Paco Elvira	PE	Photographer
API Vision	APV	Michael Sliwinski	MS	CEO
Index	IND	Santiago Orteje	SO	Director
	IND	Carmen Hernis	CH	Administrator

Absent:

Archetypon	ARC	George Kordelis	GK	Managing Director
Citypassenger	CTP	Bruno Duval	BD	Managing Director
		Abdelghani Chibani	AC	Technical Director
Fotofinder	FOT	Ali Paczensky	AP	Managing Director
		Agnes Folaji	AF	Collections Manager
Stiftung Preussischer Kulturbesitz	SPK	Monika Hagedorn-Saupe	MHS	Deputy Director
		Axel Ermert	AE	Scientist



	WELCOME
0.0	JT welcomes delegates and speakers, introducing each speaker in turn.
1.0	Amalyah Keshet, The Israel Museum, Israel; <i>Tales from the Public Domain – Bound by Law?</i>
AK	<p><i>Amalyah Keshet is Head of Image Resources & Copyright Management for the Israel Museum, Amalyah oversees intellectual property policy, digital imaging, image archive management and copyright licensing. Current project include image access and copyright management in the creation of the Israel Museum’s collections database, and digital image delivery and licensing in museums and other cultural heritage institutions. She is also Chair of the MCN’s Intellectual Property Special Interest Group.</i></p> <p>AK’s talk focuses specifically on the difficulties of Copyright issues from the perspective of the Museums’ community.</p> <p>How is copyright protection dealt with? Copyright needs to reflect how we use the culture we live in. Images are increasingly part of cultural language – images are language, a visual language that is used both by artists and the public. When images enter the cultural collective as linguistic currency, becoming instantly recognisable signs for expression and communication in a variety of industries and fields, how should Copyright protection be dealt with? Should it be dealt with in such cases? In the art world, artists constantly refer to and often directly address other artworks as inspiration, interpretation or continuation within their own work – a practising intertextuality of artworks.</p> <p>“Once it’s in my mind, it’s part of me.” Judge Kozinski</p> <p>The idea of the intellectual misery caused by lack of access to information in society, and the need to open up this access to everyone is affecting the image licensing of museums. How do they protect their IP, and make a profit?</p> <p>The idea of the ‘public’ as co-author. In this way, the ‘author’ of a book or work of art is not the only author. Culture and public culture has invested in this work, therefore making it the joint authorship, a type of collaboration. But should the author’s rights be curtailed if the public is deemed to be the co-author of certain content? This idea of public right to fair use is a Right under Canadian law, but is an Exception in U.S. legislation.</p> <p>As an example, see the new concept of ‘recipe copyright’, which is apparently a big problem online. Chefs want to have copyright protection not only on their food, but on the design of their restaurants, ‘signature’ dishes, etc. But recipe copying is also equally rampant offline, and has been for centuries! Copyright protection is being picked up in places where it hasn’t previously existed, and creeping into areas where it should not exist.</p> <p>“Fair Use is angels dancing on the head of a doctrine.” Professor Wendy Gordon, Boston University School of Law.</p> <p>The Fair Use economy is 1/6 of the U.S.’s Gross Domestic Product. 11 million jobs are dependent on this part of the economy, and since 2001 there has been a 31% increase. But are museums part of the fair use economy, or the commercial economy, or both? They do benefit from Fair Use, via manufacturers of consumer devices and software developers that allow copying of items.</p> <p>The attitude of the artists impacts on Copyright too, e.g. the Magritte estate would not allow The Israel Museum to reproduce one work on a t-shirt to promote membership of the museum, but Nic de StPhalle allowed this. Copyright obligates the Israel Museum not to show the full image or picture.</p> <p><i>The WIPO Guide to Managing IP for Museums</i>, by Rina Ester Pantalony, 2007, tries to address these issues. REP claims that no-one profits from individual image licensing anymore, and also posits that co-branding is the way forward. AK disagrees – this is evidentially not true, and co-branding is not profitable. The report reads theoretically, and seems not to have been created by museum workers. It also details new emerging business models, particularly Knowledge Transfer Partnerships with students. AK cannot envisage this working, as museums need to function profitably to continue, and rely largely on specialist knowledge and trained workers. She believes that if museums can leverage their authenticity and uniqueness to generate profit, this would be an ideal</p>

strategy to combine profitability with the maintenance of museum ethos. Contextualised knowledge is the most valuable content; Google and Yahoo will target museums knowledge as authenticated content. But first this knowledge has to be digitalized! However, not all governments will fund this digitization, so fund-raising has to happen, but the idea that Google is offering to pay for this in some instances seems absurd.

Copyright Term and the Public Domain in the U.S. states what can and cannot be done. In Israel a new Copyright law is in the process of being drafted. This will update legislation which was nearly 100 years old (*British Copyright Law, 1911*). Originally photo protection was 50 years from the creation of the photograph, NOT 70 years after the death of the artist. This is being changed to extend Copyright protection. However, still problematic – how to distinguish between artistic photographs and historic or journalistic photographs?

Examples of the opacity of Copyright in practice

For a Dada & Surrealism exhibition at The Israel Museum, one of the pieces was a picture drawn in pencil collaboratively by 6 different artists (rather like a game of consequences, with pictures instead of words). The Copyright for each individual artist had to be cleared for this one piece. The total production cost for the exhibition catalogue was \$100,000; \$60,000 of this cost was clearing Copyright.

The Israel Museum commissioned a local artist to produce an artwork which was a mosaic copy of a painting by another artist. The mosaic was made by local children, under the supervision of the local artist. This involved a risk of breach of Copyright

An artist dubbed Walt Disney's *The Jungle Book* cartoon so that each character spoke a different language. Disney own the Copyright for the original film, so again this involved a risk of breach of Copyright.

"Unless there is a serious updating of Copyright Law to recognise the changing technological environment, the law becomes an ass." Lynne Brindley, CEO of The British Library, 2006.

'Free' content is another growing issue – it's free to download, but not to produce – so how will this work?

Conclusion is, we need more access to our culture and history.

2.0 Jeff Sedlik, The PLUS Coalition, USA; PLUS and MILE

Jeff Sedlik is President and CEO of the PLUS Coalition, a global non-profit association for image creators, image distributors, image users and cultural heritage institutions. These diverse stakeholders have collaboratively developed PLUS (Picture Licensing Universal System), an integrated system of international standards for expressing image IPR metadata.

JS MILE = European scope. PLUS = global scope. The fundamental principles of PLUS are

- Intellectual property rights
- Metadata standardization
- The language barrier
- Preservation of culture

We must build bridges, not silos, between;

- Bridges between stakeholders
- Bridges between industries
- Bridges between countries.

Wants to build bridges between communities so we have a common language with which to understand what rights associated with images are.

PLUS is built to work in any language. MILE is specifically targeted at European cultural heritage. Search and Retrieval as IPR.

A need for interoperability between technical and commercial and educational usages, which PLUS addresses. Cross-industry collaboration is needed to aid leverage of available and future technologies to increase

- Multi-lingual communications
- International commerce
- Global cultural exchange
- Search, retrieval and usage
- Long-term preservation strategies
- Economic growth

PLUS's aims coincide with MILE's, that content must be made more accessible, usable, and exploitable. Therefore,

- Metadata standards are key
- Interoperability is essential
- Rights metadata is of critical importance
- Avoid duplication of effort
- Collaboration over competition

PLUS is an apolitical, neutral organization. It has a seat at MCN now, and representatives from all industries. It works to create a global solution.

PLUS is made up of the following industry members;

- **Creators:** photographers, illustrators.
- **Distributors:** stock agencies
- **Users:** book publishers, newspaper publishers, magazine publishers, web publishers, ad agencies, designers, end users.
- **Cultural Heritage:** Museums, libraries, researchers, educational institutions
- **Other:** software developers, attorneys, picture researchers, artist reps, manufacturers, standards bodies, etc.

Rights cannot be mapped for crosswalking. PLUS has created a standardised set of fields to cover all types of licenses. It is agnostic as to the value or price associated with a licence!

It is currently represented in the following 26 countries - Australia, Austria, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Liechtenstein, Netherlands, New Zealand, Poland, Portugal, Romania, Russia, Scotland, Singapore, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Thailand, Turkey, United Arab Emirates, USA – using a system of national working groups who work collaboratively on translation and hold meetings.

PLUS aims at trying to remove subjectivity from rights communication; IPTC is a good example of this subjectivity. Therefore, a broad, almost blanket benefit is the aim; no restrictions regarding languages, national legislation, value of licence, type of artwork, etc. PLUS's standards are

- Narrow scope: image rights
- Drafted by collaboration
- Approved by consensus
- ID structure supports multi-lingual communication of complex rights concepts
- Facilitates access and understanding
- Supports increased automation
- A free resource for use.

PLUS is used at the following stages; image capture, image editing, image management, rights management, preservation, e-commerce, image display, image search, business processes. PLUS places equal emphasis on improving image licensing both BEFORE and AFTER the transaction – but it does not get involved in the actual transaction process or pricing. Codes: IDs to identify the rights they need to clear. IPTC – will embed plus codes in its template.

Used for:

Image capture (programme plus into capture software – eg cameras)

Image editing (Adobe – underwriter of PLUS – building into its applications)

Image management (Proprietary and commercial DAMs)

Rights Management (pricelists – plus has a standard using standard terminology with a code)

Preservation

Ecommerce

Display (can see rights associated with a file – see rights info)

Image search (can search by image rights – eg take out restrictions)

Business processes (eg in analogue world)

Key elements of PLUS's areas of operation are;

- Words
- Media
- License Summary (standardised)
- Identification (for people, images, and licences).

The PLUS Glossary is produced by a hug number of global stakeholders. It contains;

- 1500 terms
- PLUS ID for every word
- Free online lookup
- Printed version also available
- Facility to link to it or add it to your site.

Individuals and companies using the PLUS Media Matrix will have a Unique ID, facilitating immediate communication with them. It currently has 1500 terms with definitions, with another 1000 terms waiting to be approved. There is an ID for every word, free online lookup & printed version. All definitions have a number/code so that if you look up a code in English you can find the equivalent in Japanese. Glossary has a hierarchy – e.g. billboards as part of outdoor advertising.

Licensing packages: standard ones you can buy – each pack has an ID no – order plus pack no 54 (same in every language) You can create your own packs.

Licensing statement: summary of a license (parties, permissions, restrictions, conditions, image id no etc)

Also available: plug ins and other apps.

PLUS has devised its own solution to the Orphan Works challenge – a Registry of artists or licensors. It is free, and not for profit. Harvesting of images will not be possible, as the information exchange and verification process can only be done by permission. It will reflect the dynamic nature of Rights.

Rights registry: There is a registry whereby you can put in codes and find the rights associated with it and get up to date info (rights are dynamic and can change over time)

Image registry: you would upload a low res thumbnail – even with no info in the file – through image recognition you would be able to see the rights associated with an image (how if lots of rights associated with an image)

Tools: Licence Generator and License embedder and reader are being tested now, and FLASH File Info panels are also coming soon.

3.0 Jonathan Band, *policybandwidth*, USA: *Digitization and the Limits of Fair Use*

Jonathan Band helps shape the laws governing intellectual property and the Internet through a combination of legislative and appellate advocacy. Jonathan's clients include internet companies, providers of information technology, universities, and library associations.

JB Digitization as seen from a US legislative perspective. The Fair Use Exception colours everything which JB talks about.

Four factors come into play in deciding if an 'infringement' is fair use –

- 1) purpose and character of use,
- 2) nature of the work
- 3) amount/substance of the work copied
- 4) market effect of this use.

An example of Fair Use is the concept of 'parody' – in the US this is considered a fair use because it is a transformative use, creating something new and different. Courts focus on this issue of transformation, trying to define if the maker is simply free-riding, or actually creating? There is a First Amendment element to Fair Use to consider too – the aspect of free speech. Fair Use is the bridge between Copyright and First Amendment legislations.

"Responsive thumbnail images."

Transformative can also mean 'repurposed' – transcribed, recontexting – which merits fair use consideration.

Kelly v. Arriba Soft (USA 2003)

Search engines displayed tiny thumbnail copies of images from the original website - infringement or fair use?

The Court ruled Fair Use because;

- 1) Purpose/Character: Because the use did not replace the original use (was transformative as part of search engine's service to help find work on the internet)
- 2) Transformative is misleading as it was repurposed and recontexted.
- 3) Effect on market: Kelly's market was not harmed, in fact helped by pointing viewers back to their website.

Perfect 10 vs Google (USA 2007)

Not a clear-cut case. Google included Perfect 10 (publisher's) images but via other sites who had copied the images. The difference between this case and that of Arriba Soft was that Google is much more commercial, with ads on its site – therefore the display of these images would lead to more ad revenue for Google. Ruling was that use was more likely to harm than benefit Perfect 10. However, this was reversed on appeal.

So initially this case swung in favour of Perfect 10, but then when the case reached 9th Circuit, swung towards Google.

The Google Library Project is scanning 30 million books from major research libraries in the US, Europe and Japan. For books in Copyright, 'snippets' will be shown. A snippet is 10-15 sentences, so the full text is NOT shown – although this is copied and stored by Google. Also, Copyright owners can opt-out of this process. A negative process of 'no you can't' rather than 'yes you can'. So Copyright owners have to be vigilant about this. Do Google contact every Copyright owner to warn them of this?

This practice is a breach of legislation – copying is copying. By law Google should contact Copyright owners for permission. Legally it is an opt-in regime. The only way that Google can circumnavigate this is by considering such usage as Fair Use.

The main difference here is that the books are in libraries and not already digitized and therefore available on the internet. So Court may well find this a useful and socially valuable service. But it could also harm the market for books. And is display considered to be Fair Use?

The Curious Case of Field vs. Google.

Google carries links to original website, displaying full copies of text – NOT full images, just full text. However, a Copyright owner can change their settings to 'do not cache' to avoid this.

Field, a lawyer, set up a deliberate trap to catch Google out. He wrote short stories, posted them on the internet, without setting the 'do not cache' option, and so they were 'sucked up' by Google's search engine and copied. Field's motives were transparently aimed at entrapping Google. Ruling was in favour of Google, as the cache was deemed to be valuable.

4.0 **Christina Michalos, 5 Raymond Buildings, UK; Corel v. Bridgeman & Beoynd: Photographs, Copyright and Originality**

Christina Michalos is a barrister who specialises in copyright, trade marks and IP (non-patent), privacy, media & entertainment law, and sports law. She is particularly known for her image rights work and is the author of *The Law of Photography and Digital Images* (Sweet & Maxwell, 2004). Earlier this year Christina delivered a talk on photographs and originality for the seminar, *Bridgeman v. Corel: Copyrighted Creativity or Commerce?*

CM

In the UK, Copyright is assessed in original artistic works. General Principles of Copyright Law – originality within the original work and in copies of that work; a work must be the result of the author's skill and judgement.

A photograph is defined as a

"recording of light or other radiation on any medium on which an image is produced or from which an image may be produced and which is not part of a film," s.4(2) CDPA 1988.

This covers digital images including X-rays, MRI scans and photocopies, although the latter are now not Copyrightable. An example of this is the work of artist Doreen Lindsay, who makes works using photocopies. This is creativity because of the use of light and the author's choice about how to lay materials on the photocopier.

A very low level of originality is required for Copyright to subsist. Expression – a seemingly subjective term – is very important = independent creation.

"No photograph, however simple, can be unaffected by the personal influence of the author." Judge Learned Hand.

Bridgeman v. Corel, USA (1997)

The first judgement was reconsidered, but BAL still lost the case the second time round. BAL asked for the case to be considered on an English law basis, yet no real English texts were referred to. The judge discounted the transformation of medium because of the need to produce an accurate reproduction.

There was an unsolicited letter from a professor of international law, saying that the judge reached the wrong decision, and asking the court to reconsider.

But is further harmonisation necessary, or even desirable? Difference between countries which have Common Law in place – UK and Ireland – and those which operate under Civil Law legislation. Some countries have a dual regime for protection of photographs depending on nature of photo and whether 'artistic' or documentary.

There is also a problem with the 'de facto' lock-up of public domain artworks and privacy laws.

What about the interpretation of the work – not always about slavish copying – it is bringing out the essence of it (esp with sculpture)

Question RE Harmonising the laws in Europe –

Lots of examples of this – droit de suite and extension of terms etc.

Moral rights - these are still not harmonised but generally there is much more harmonisation especially with the EU and Berne convention.

Question and Answer Session

JB

The decision in the Bridgeman v. Corel case was initially made on US law – was the second on UK and US law?

CM

Yes, and the same decision was reached in both. But different issues were at play here, a question of someone being in the right place at the right time. The question of 'what is original' divides people strongly. And the granting of a thin Copyright undermines the whole of Copyright legislation.

NK

A lot of the photography of artworks usually aims to provide an exact copy, I think you said – but that's not always the case. Sometimes an interpretative element is intended, therefore an intellectual investment is incorporated, and therefore the work is made original.

CM

Yes, true. But, as in catalogues, or for record keeping, an exact, flat-on copy is needed sometimes. But yes, that is very true in photographs of sculpture, and three dimensional works, that a slavish copy is not always the intention.

NK

Auerbach is a good example or two dimensional work which is also difficult to represent.

- JK** You suggested that there is a movement towards the philosophy of Civil Law. Poland operates under Civil Law, and I believe it is actually the reverse movement. Rights have been moralised, but not harmonised, within the EU.
- CM** This draws from The Berne Convention, which has contributed to more harmonisation of moral rights within the EU. We have basic moral rights. The best example of this is artist's Droit de Suite. And a database is a good example of common law protection working.
- ST** If I scan a Copyrighted picture, what are the implications inherent in scanning?
- CM** That would qualify as a mechanical copy. Dorian Lindsay is a good example of this. As a scanner is very close to a photocopier by definition – a recording of light – originality would have to be shown to protect a scan or photocopy.

5.0 **Janusz Kolczynski and Ewelina Śliwińska, Wardyński & Partners: IPR in Poland, Trade in a Digital Environment**

Janusz Kolczynski is a legal adviser for Wardyński & Partners' Intellectual Property and Media Practice. Ewelina Śliwińska works in Wardyński's Copyrights and Media Law Department, and holds degrees from the Universities of Gdansk and Dusseldorf.

**JK
&
ES**

Introduction to Polish legislation;

- Copyright and Neighbouring Rights Act
- Electronic Services Act
- Civil Law, Consumer Protection Legislation

The legal definition of a 'work' is the individuality of any creative work in ANY material form. Copyright applies to any expression of creative activity that is individual, and which appears in any material form, regardless of the value, intended purpose, or manner of expression. It is the form, not the content, which is protected under Polish law.

There are no prerequisites for legal protection, e.g. registration is not required, or indeed possible.

Ideas, concepts, methods and processes are NOT protected by Copyright. Although clients believe that their ideas are protectable, this is not the case under Copyright law in Poland. Patent Law protects these processes.

Copyright belongs to the 'author' of a work – the person whose name appears on the work, or whose authorship is announced in any other manner – and 'author's rights' exist. These are moral and commercial rights. The moral right to be recognized as the author of a work, control over the first dissemination of a work, control over how the work is used, and supervision as to how it is used in industry. Moral rights are NOT transferable.

Commercial rights are transferable – they are purchasable and licensable, therefore there is a dualism in this Copyright. The author always has moral rights, but not necessarily commercial rights. Exceptions to this are Fair Use, and Orphan Works. In this way, the consent of the author is not always needed for commercial exploitation.

Fair Use does not really exist as such in Poland. This would fall under either 'private' use, or 'public' use.

Public Use = mostly educational usage, i.e. for teaching or scientific purposes in libraries, museums, archives, schools.

Private Use = used for private and personal purposes.

Fair Use means lawful use, in that

- i) the identification of the author of the work and the source
- ii) non-infringement of the normal use of the work, or infringement of the rightful interests of the author.

Polish Law on Orphan Works

There is no specific law or regulation concerning Orphan Works. Generally, Polish Copyright Act law applies. For example, this is the action process when an author is unknown;

- Search for a publisher or producer
- In absence of these, search for collective organisations for management of the Copyright.

Copyright expires 70 years after

- the death of the author,
- the death of the last author in a group of co-authors
- the day of the 1st publication of an Orphan Work, if known.

Domain public payments

Producers and publishers must pay into a specific fund between 5%-8% of the total price for works that are not longer protected under the Copyright Act.

Examples of digital image trade in Poland

Public sector;

The National Museum in Warsaw

The National Museum in Cracow

The images of collections are available for remuneration.

Private sector

Digital Television Platform of the New Generation – “n” platform

Question and Answer

JB Regarding collective rights organisations license, is there a collective licence available?
JK No.

ES As very often, authorities overlap in this area.

JB Are rates set by the Government?

JK Yes, tables set by the Ministry of Culture. These can be negotiated though.

NK Regarding the exceptions for museums – where did these originate?

JK Museums are treated as archives, and therefore not named.

SS If someone wants to use a work, and pay a fee, do they approach a collecting society?

JK Collecting societies can clear rights even if the author is not represented by them. This means that the Collecting Societies claim most of these rights, and who knows where the money goes!

SS Is any Due Diligence done before going to the Collecting Societies?

ES Yes, a publisher or producer must be sought for in the first instance. However, Due Diligence is not regulated, it is more like a practical process.

6.0 Naomi Korn, MDA, UK; IP Enlightenment

Naomi Korn is a freelance Consultant specialising in copyright, licensing, Intellectual Property Rights and other related rights. She has worked closely with cultural heritage organisations, the public sector, educational institutions, commercial companies and private individuals. Her clients include MDA, British Library, JSC and King's College London.

NK There are many issues surrounding Intellectual Property. There is a vast range of media to which copyright applies. Everyone is a creator of copyright material but also we are all becoming publishers too.

To start, what is the definition of a museum? There are 2,500+ museums in the UK, and these are very varied, ranging from institutions like TATE, to one-man-band collections displayed in a private dwelling. Images only consist of one aspect of museum collections. Aural, text-based documents and user-generated content are others. Museums are guardians for the past and for defining what we want to collect in the future. There is a range of expertise, attitudes and personalities.

Orphan Works

Definition of an Orphan Work – a work where the OWNER cannot be found.

The Owner can be the author, or the owner of the Copyright (not necessarily the same thing). This includes unknown rights holders and untraceable rights holders.

The Copyright Group within the EC's i2010 Initiative has picked up on the subject of Orphan Works. Part of the work is to ensure that Orphan Works are not generated from now on. Digitisation could be its own worst enemy. Organisations such as MILE and PLUS are to be encouraged, to ensure this does not happen.

Copyright is about balance. An example of this is recent brief from The British Library on Orphan Works. The British Library estimates that about 40% of all creative works are orphans. NK estimates that currently about 85% of works are orphans– this is a big problem. How can it be addressed?

Due Diligence depends on the type of media, the purpose of use, the level of risk which the organisation is prepared to take, resources, etc, etc. Risk can be mitigated, but not eliminated, and this highlights the need to keep records carefully. Orphans are a symptom of a locked-up culture - ! Most organisations are prepared to take an informed risk after carrying out Due Diligence.

The Gowers Review of Intellectual Property (originally submitted by HMS Treasury) specifies against IP crime. The current system is too complex, and there is currently a move towards reforming Copyright law. The UK's Intellectual Property Office will be releasing a consultation document in November 2007. regarding Orphan Works, it recommends

- Proposing a provision to EC (13)
- Suggesting parameters of "reasonable search" (14a)
- Voluntary register of Copyright by 2008 (14b).

But NK believes that different solutions are also needed, in the face of New Generation technologies. New solutions such as special licensing schemes are needed, with the possibility for exceptions, and these need to be preventative. Web 2.0 presents opportunities to handle this.

Some sort of application could work from a web browser

Architecture of participation (wiki, block)

Data consumption and mash ups

Rich and interactive, user friendly interface

Elements of social networking.

Web2.0 applications are likely to include

- The web as a platform
- Things that think
- An architecture of participation
- Data consumption and remixing from other sources
- A rich, interactive, user-friendly interface
- Elements of social networking.

MDA's IP Manifesto for Museums aims to

- Increase understanding of relationship between IP issues and management and use of museum collections
- Set out MDA's priorities for delivering services to support commercial, creative and educational opportunities presented by effective management of museum's IP.
- Define MDA's role in IP leadership for the sector

Challenges

How to deal with

- Collaborative works?
- Virtual worlds?

Creative Commons

Easy access to provision of licences to reduce complexity of licensing. Available in 3 forms, irrevocable, world wide and for duration of copyright. They are restricted to copyright.

CC Licences have been tested in UK courts, and are good for making content available to third parties. There is also a strong ideological movement associated with it. But CC sometimes give away too much, as the user has irrevocable global rights. Do those granting the rights realise that they may be hindering their future ability to get an income from the work at a later date?

The road to IP Enlightenment is a long journey, but it is vital to be joined up about what to do, the necessity of taking proportionate risks, and to keep focused on interoperability.

7.0 Staffan Teste, Bildombudsmannen AB, Sweden: IP Situation (Copyright) Overview in Sweden

Staffan Teste works as juridical advisor for BLF (Bildleverantörernas Förening), the second largest picture agency organisation in Europe after BAPLA. Staffan is a board member of Cepic, the European picture agency organisation and also represents Cepic within IPTC, working in IPTC to create new photo metadata standards.

ST Copyright in Sweden has largely been harmonised. It currently stands as 70 years after the creator's death.

A picture of a work of art is protected as a photograph, but not as the work of art. Discussion of art pictures and copyright protection. Example is cited of the case of a museum with pictures of historical paintings – a warehouse took the picture and changed the characters. There was only copyright protection of the image had been taken in last 50 years.

Public art is free of copyright and can be used in advertising in Sweden – though not in Denmark or Finland. A new legislation in Sweden protects buildings and statues under copyright, preventing their free use on the internet. This is permissible in Germany, however. So these examples show that harmonisation within the EU is in fact poor. Trademarks can be created from a picture without the author's permission, and trademarks can be used more freely in Sweden than anywhere else. Copyright is stronger than defence, so if someone uses your trademark, you have to take them to court. Ideas are not protected.

The manipulation of images is possible if the images involved are paid for. But for journalistic purposes, this is dangerous, as an accurate record of a place is not being produced. In other areas, such as advertising, this is acceptable. From 1994, drawing could be made from photographs without infringing Copyright, but not before this date.

Archives are not always trustworthy sources! Model release is another issue – if you are in the background of a photograph which is reproduced publicly, the law is not too clear. However, people represented in the foreground of photographs are protected. This makes the law seem subjective.

There are exceptions with regard to personalities. For example, you can't use politicians in advertising images etc in Sweden, but you can in the rest of Europe. And you also have to be careful with new media such as photos taken on mobile phones as the same rules apply. Destroying photographs can be an infringement of Copyright if you don't own them. Sometimes it pays to steal a picture – e.g. for a newspaper – as paying the fine is cheaper than buying the licence! And increasingly in Sweden, image cases are appearing in courts, e.g. the Girl of God.

Moral Rights

Manipulating images can also lead to court, as distortion of images through manipulation is illegal. Restrictions of location also apply when suing for legislation.

Rights owners have flexible rights regarding their personal resources. If the claimant is poor and cannot afford to travel, under Swedish law, they can take people to court in other countries – at a distance. It is easier to do in the territory in which they live.

Circuit court of appeal will now make a decision about Norway. How can you set a price and establish damages and a penalty?

Databases, who have been borrowing images from newspaper databases for newspaper reproduction online, argue that there were not many hits and so did not want to pay any damages. How much should be charged for a thumbnail? This is about to be tested in a case.

Television Companies

TV companies can steal pictures for free in Nordic countries. Some have special licences relating to the days when there was a government channel and just one channel. Two companies have asked the government position to take pictures from say the morning newspapers for hardly any amount of money. Swedish TV wants the whole EU to be harmonised on this issue, but the EU government say it is not going to happen. This would mean rights could be granted even where an image has been licensed exclusively. Also want to get access to their entire database and re-use images with only clearing with the collecting societies and not clearing again with the picture libraries. A photographer won a case where a TV company had licensed part of an image.

Orphan Works

If the metadata is lacking, the person responsible for providing it is responsible as a whole. Metadata must be either unable to be removed, or at least not able to be manipulated, or show if it has been manipulated. A Unique ID number is required. Discussion of the EU laws which prevent you from removing copyright protection devices.

8.0 Sarah Saunders, BAPLA, UK: *Get the Label on the Picture!*

Sarah Saunders is director of Electric Lane, a consultancy and training company for image archiving, digital quality and workflow. As Chair of BAPLA's Metadata Group she produced the BAPLA/Pic4Press metadata guidelines with the PPA, and is part of the IPTC Photo Metadata Working Group.

SS The Pic4Press Panel works on the 3 Cs – Caption, Credit, Copyright.

Metadata is important for

Copyright protection

Identifying picture/author/source

Currently the picture is chaotic.

Pic4Press uses existing fields. IPTC is logically set out, it just uses more fields than are necessary for this particular purpose. Progress on the Pass4Press standard the picture library industry is developing for facilitating the delivery of images to the creative industries. SS gives a demonstration of the Pic4Press file.

Explanation of the XMP structure in Adobe Photoshop. The need for compatibility with other protocols such as IPTC and xml. There is a panel for image libraries under the BAPLA Pic4press tab where picture libraries can fill in data such as

title,

author,

description,

keywords,

copyright status,

copyright notice,

copyright info, and various other fields such as source.

IPTC – White Paper

There are now a number of new fields to be incorporated hopefully in Adobe CS4 which will come out next summer. Process of discussion is happening now so that we are ready for the event.

16 New fields proposed

Person in picture

Additional model information and model age

Emotion

Model release

Property release

Other third party rights

Colour space

License contact

Event

Location created

Specifically for the cultural heritage sector:

Title

Artist/creator

Artist nationality

Birth/death

Date (VRA)

Medium

Dimensions

This is information which needs to travel with the image where cultural heritage institutions are concerned.

Discussed the need to separate out as much information as you can because if you separate it all out at the outset – it is easier to combine it later than try and separate it out later.

See www.pass4press.co.uk for full details of this.

Question and Answer

- NB** What are your thoughts regarding collections management and the recording of standards?
- SS** I don't work in museums – but we can share knowledge and find consistency of mapping data. Take info needed from the museum's image database system.
- ST** What about IPTC and translation?
- SS** There's a need for standards and controlled vocabularies to make this easier.
- CM** What about problem of lazy people? Most creators really don't care about the legalities – they want to make money and they want to create.
- SS** Problematic – almost have to sort it out for people. Also costs money for staff to fill out all the data. Educating creators is important.

9.0 Jessica Tier, MILE PM, UK: Summary

JT I think that what the presentations of today have shown us is beautifully illustrated by the image behind me – that the subject of IPR is a very prickly issue! So thank you to all our speakers for providing so much food for thought.

I would just like to bring us back to the aims and objectives of MILE. MILE is a project which is a product of the EC's i2010 Digital Libraries Initiative which was mentioned earlier by Naomi Korn. The eContentplus programme, under which MILE is funded, aims to increase the trade and use of the digital content which represents our cultural heritage.

I think that what both the EC's Digital Libraries Initiative, the eContentplus programme and the MILE project are reacting to is, as Amalyah quoted this morning, this "misery caused by a lack of access to information". To refer to a phrase coined by Walter Benjamin in the early Twentieth Century, we are living in an "age of mechanical reproduction" with our cameras, photocopiers and x-ray machines all producing images – so to are we living in an age of digital reproduction. What has been reiterated here today is a point which was highlighted in my rationale for MILE – that technology is far far ahead of both legislation and business processes in terms of increasing the potential for trade and accessibility to our digital content.

We have the technology to as Amalyah said "who the whole picture" but we are hampered by unresolved complexities within our various legislative provisions and working methods. With IPR, we have a conflict of interests. On the one hand we have a duty to protect the rights holders of the images we hold in our archives, but on the other, we need to create a revenue from the trade of image licenses. Indeed, many cultural institutions rely upon this income for survival. It is this proof of return on investment which is necessary to justify digitisation projects.

MILE's job is to use the expertise we have been lucky enough to bring on board to assess the complexities which have been illustrated here today and enlighten the EC. And we have to look outside the EU to the United States for working examples such as Fair Use so that we can make recommendations for future legislations.

MILE is that public/ private partnership which was stated as so important by Naomi. It presents an opportunity for everyone here, who has the knowledge, the experience, and a vested interested in image IPR, to shape and influence both future legislations which caters for areas which have previously been neglected such as Orphan Works. Also, we have an opportunity to highlight the necessity to the EC, a real and justified necessity for rights licensing models such as PLUS and Pic4Press, which are mapped out, using practicable methods, based on real experiences, rather than abstract and academic models. If we can agree on these rights licensing models and methods, we have a duty under the auspices of this project to recommend such models for standardisation.

Before we get to this point, we need to develop our working group. Xavier Castell and Niamh Brennan suggested during the break that we create a summary of the different legislative provisions or lack of provisions in the EU. Lucy and I will create a template for this work and we will be looking to you in each of your representative countries to document the situation in your area. We will issue this template probably at the beginning of December, after our annual review, for your input which is inherently necessary for the development of the MILE and for the development of the digital library industry.

Thank you very much.



eContentplus



IPR Frameworks

Metadata and Intellectual Property Rights Seminar 1, 9.30am – 17.30pm, Friday 26th October 2007

Hotel Prestige Congress, C. de José Agustí Goytisolo 9-11, 08908 Hospitalet de Llobregat, Barcelona, Spain

MORNING PROGRAMME

- 09.30am **COFFEE and Introduction: Jessica Tier, MILE Project Manager (BAL)**
10.00am **Speaker 1: Amalyah Keshet (The Israel Museum), *Introduction to IPR in Image Libraries***
10.40am **Speaker 2: Jeff Sedlik (PLUS Coalition), *PLUS Case Study***
11.20am **COFFEE**
11.40am **Speaker 3: Jonathan Band (policybandwidth), *Digitization and the Limits of Fair Use***
12.20pm **Speaker 4: Christina Michalos (5 Raymond Buildings), *Corel vs. Bridgeman Case Study***
13.00pm **LUNCH**

AFTERNOON SESSION

- 14.00pm **Speaker 5: Janusz Kolczynski & Ewelina Śliwińska (Wardynski & Partners), *IP Situation Overview in Poland***
14.40pm **Speaker 6: Naomi Korn (Naomi Korn Copyright Consultancy), *IP Enlightenment***
15.20pm **Speaker 7: Staffan Teste (Bildombudsmannen AB), *IP Situation Overview in Sweden***
16.00pm **TEA & CAKE**
16.20pm **Speaker 8: Sarah Saunders (BAPLA), *Pic4Press***
17.20pm **Summing-up**
17.30pm **CLOSE**