

Crowdsourcing diligent search: a solution for the orphan works problem?

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The EnDOW project



Arts & Humanities
Research Council

EnDOW: Enhancing access to 20th Century cultural heritage through Distributed Orphan Works clearance

- 3-years collaborative project funded under Heritage Plus, a programme launched by agencies of 18 European countries and the European Commission as part of the Joint Programming Initiative in Cultural Heritage and Global Change.
- A partnership of four European research centres led by CIPPM, Bournemouth University

www.cippm.org.uk/endow

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The EnDOW project – Associate Partners (9.2015)



MUSEO NAZIONALE
DELLE ARTI
DEL XXI SECOLO



The orphan works problem: regulatory options

- ❑ Limited liability (limitations on monetary and injunctive relief against good faith infringers)
- ❑ Permitted / licensed use with 'opt-outs' (→ Google Book Search SA, Extended Collective Licensing)
- ❑ Permitted / licensed use upon unsuccessful 'diligent search' of the rightholder

The EU orphan works regime – Dir. 2012/28/EU

1. Permitted use

- Limitations as to the user (art. 1), the use (art. 6) and the subject matter
- ‘Diligent search’ of the rightholder required (art. 3) (mutual recognition, art. 4)
- ‘Reappearing authors’ entitled to fair compensation (art. 6.5)

2. Specific national solutions – (Rec. 4 / MoU 20.09.2011) – e.g.

- ✓ Hungarian compulsory licence system (Act CXII of 2008)
- ✓ UK IPO licensing scheme (CDPA, s. 116A – ERR Act 2013)
- ✓ Danish ECL system (DK Copyright Act, s. 50.2 - 2008)
- ✓ French law on digital exploitation of unavailable 20th Century books (2012/287)
- ✓ ...

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- Premised upon diligent search*

Diligent search

- Expensive and time-consuming (est. € 50 to € 150 per item for books; 3.¼ to 6.5 hours per hour of TV/radio broadcasting material*; *6.5M days to clear the rights of all UK orphans*** – other costs? Fair compensation, Art. 6(5)?)
- It can be outsourced (Rec. 13: “MS should be permitted to provide that such diligent search may be carried out by organisations referred to in this Directive or by other organisations.”)
- CHIs are ultimately responsible for DS on items in their collections (Art. 3(1): “...the organization ... shall ensure that a diligent search is carried out in good faith ... by consulting the appropriate sources...etc.”)

* UKIPO, Orphan Works Impact Assessment, 2012

** JISC, Assessment of the scope of OW, 2009

Crowdsourcing

“Online, distributed problem-solving and production model that leverages the collective intelligence of online communities to serve specific organizational goals” (Brabham, 2013)

- Successfully experimented for ‘information gathering’ tasks (e.g. [‘Peer-to-patent’ project](#)) (Noveck 2006)
- CHIs are well positioned to encourage public participation in projects related to their mission (e.g. [Europeana 1914-1918](#), untold stories & official stories of WWI; [Mechanical Curator project](#) of British Library)
- *Problem*: information coming from the crowd might be inaccurate, incomplete or mistaken

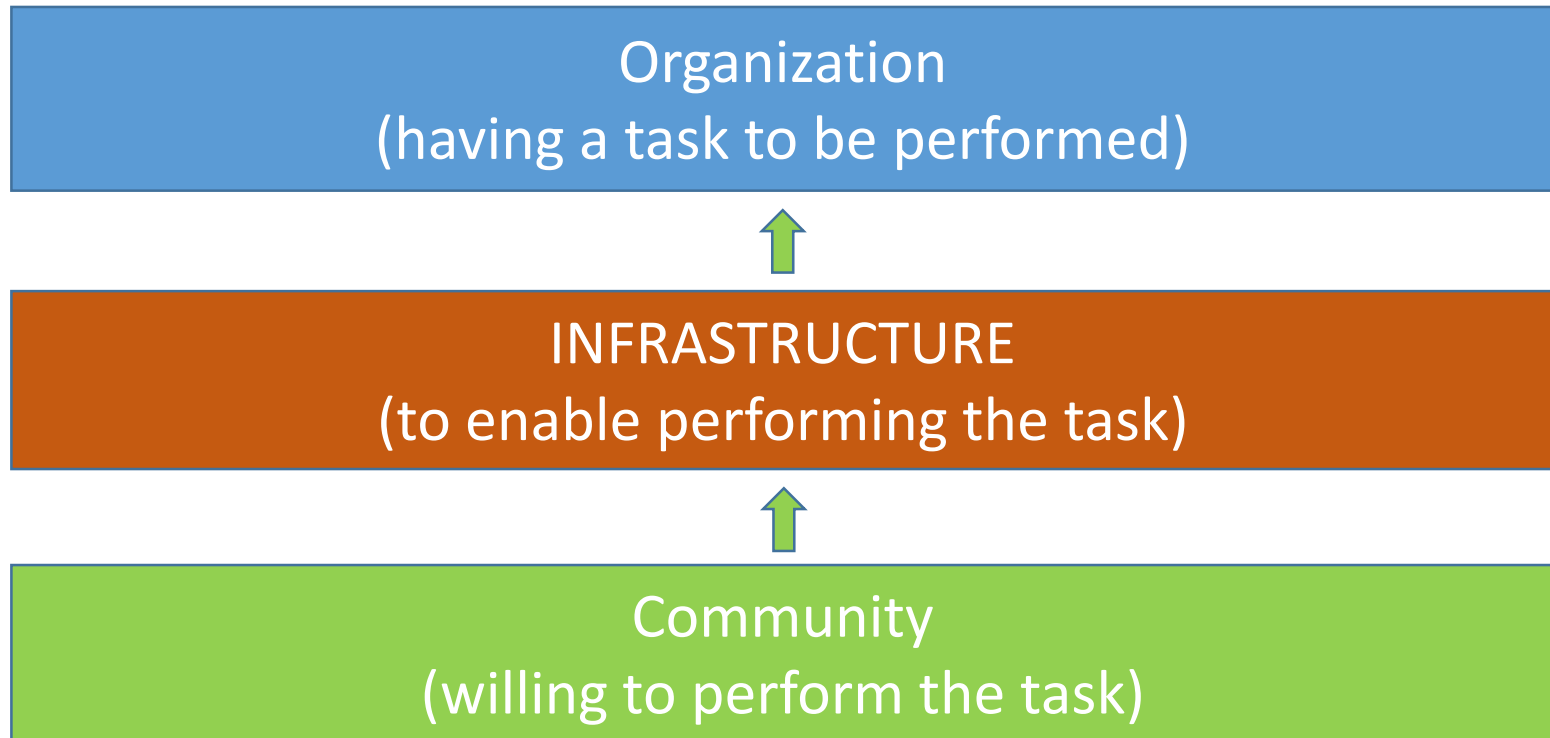
Crowdsourcing

Organization
(having a task to be performed)

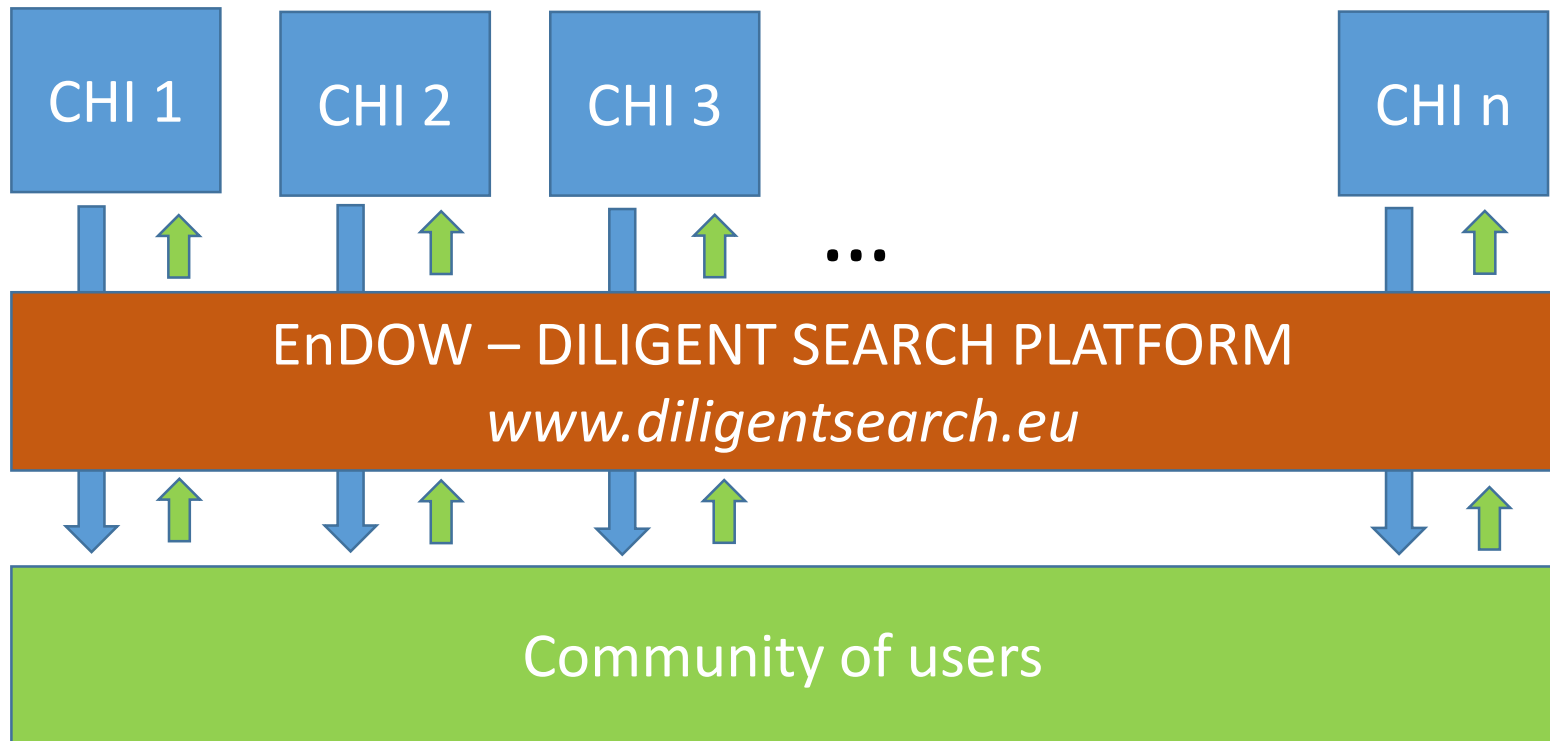


Community
(willing to perform the task)

Crowdsourcing



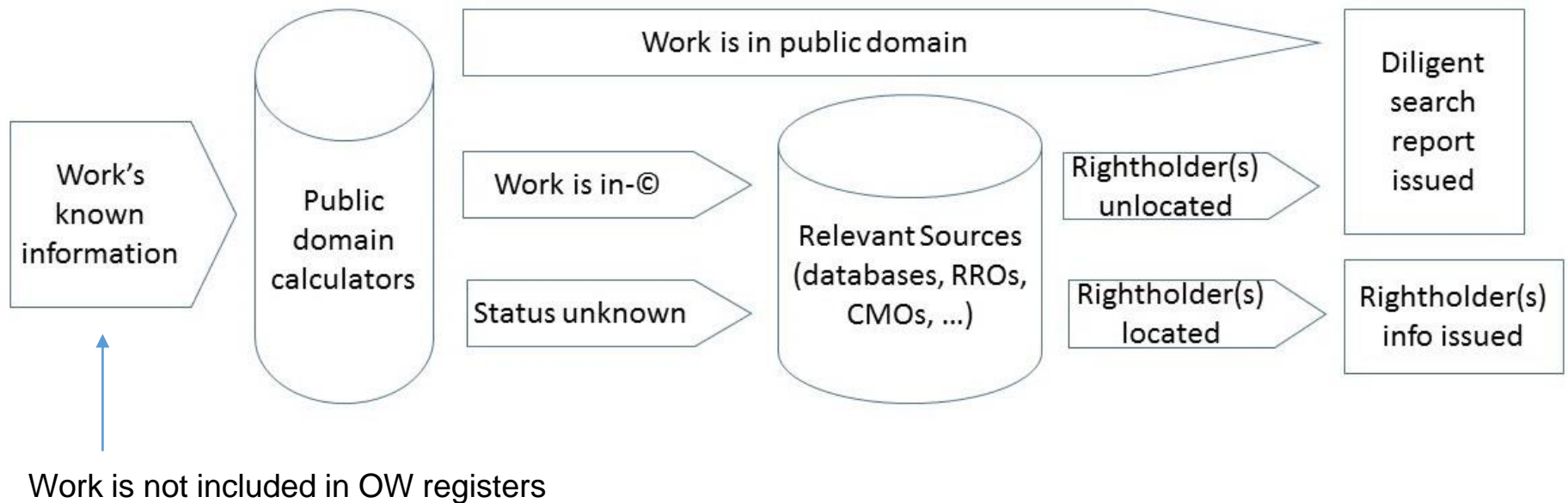
Crowdsourcing Diligent Searches



The Diligent Search Platform

- Online publicly accessible platform that enables end users to perform “guided diligent searches” on items contained in CHI collections

Summary flowchart of the operations



Scenario 1 – ‘Top-down’ use of the platform

- CHI to issue lists of works to be cleared and to solicit contribution by communities of users
- Registered users to submit results of their searches to the CHI for validation

Scenario 2 – ‘Bottom-up’ (unsolicited) use of the platform

- The user searching a specific resource online is unable to access the content (legally);
- User to access the EnDOW platform and to perform a diligent search;
- The result of the search is passed on to the CHI that possesses the item.

Scenario 3 – CHI use

- Institutional users engaged in small-scale digitization projects (e.g. small- and medium-size CHI, public authorities or educational establishments operating research and scientific libraries/archives, ...)
- Use of the platform to clear rights on items in their own collections

Open (legal) issues

- Legal responsibility for false or inaccurate information / bad faith use of the platform
- ‘Infringing by searching’: Is it an infringement to see/hear a work for purposes of clearance? Or to access a protected database for the same purpose?
- Digitization for indexing and search (w/o making available) – fair use in the US, but in EU? (example: <https://www.orphanworkslicensing.service.gov.uk/view-register>)

Thank you!

More on EnDOW on the CIPPM website:

www.cippm.org.uk

...or on www.diligentsearch.eu (online soon)

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