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Challenges in management and Knowledge Organization of documental heritage: key factors in the methodology of diligent search for orphan works

1. Introduction and objectives

The UK Intellectual Property Office (2015) defines orphan works as “copyright works where one or more of the right holders are unknown or cannot be located”. In the same line, the European Directive 2012/28/EU (2012) indicates that “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”. In this context it must be clarified that “before a work or phonogram can be considered an orphan work, a diligent search for the rightholders in the work or phonogram, including rightholders in works and other protected subject-matter that are embedded or incorporated in the work or phonogram, should be carried out in good faith” (European Directive 2012/28/EU).

The following specific objectives are indicated for the project:

- To present the reference context of orphan works as elements making up documental heritage.
- To define and delimit the concept of diligent search processes for orphan works from the perspective of the “Library and Information Science” domain.
- To identify and define the elements and key terms related to the management and organization of the knowledge involved in a diligent search process.
- To analyse the core components serving as the basis for the systematization and generation of record files for the said diligent searches for the declaration of works in this category.

2. Methods

The key elements defining the methodology on which our paper is based are as follows:

- **Scope**: analysis of the diligent search process for orphan works and the delimitation and study of its components for normalization and systematization.
- **Research techniques used**: content analysis for data sources and specialized documentation; benchmarking or examination of the best institutional practices related to the subject of our research; normalization techniques for procedures and the process management approach for organizing knowledge applied to the
management of orphan works.

— **Data sources:** key documentation and legislative provisions in this matter, technical standards and reports, specialist databases and web sites of the leading institutions in this area, scientific and technical reports generated by research teams currently working directly on this subject and other supplementary data sources such as specialist articles in the matter under study.

3. Main results and conclusions

The study starts by delimiting the concept of orphan works as a set of document types (printed works, such as books or periodicals, cinematographic or audio-visual works and phonograms, as well as works incorporated into another work or in a phonogram, such as images or photographs, for example) forming part of the documental heritage preserved in libraries, archives, film or audio institutions or other bodies for the conservation of cinematographic or audio-visual heritage, public-service broadcasting organisations, among others. The fact that these are copyrighted works whose rightsholders have not been located, poses a series of challenges and difficulties about how to approach the search for information about the work as well as the identification and location of the rightsholders of the works in question.

Starting from this conceptual delimitation, this study presents a list of member states in which we have identified the existence of best practices related to diligent search procedures which have to be carried out before a work can be declared orphan in the countries of the European Union where Directive 2012/28/EU has been implemented. In line with this analysis, a methodological and conceptual proposal is set out for a normalized diligent search process so that this can be applied and adapted by any documental heritage institution proposing to embark on a process of this type. Regarding this methodological proposal, we present an identification and definition of the elements and terms related to the management and organization of the knowledge involved in a diligent search process. These include, on the one hand, those related to the identification, description and systematization of the data sources and reference documentation, as well as, on the other hand, those related to the existence of databases for the registration of orphan works.

Finally, with respect to what could be defined as a process of documentation for this diligent search, we present a proposal for the identification of the basic informative/descriptive elements that must be reflected on what could be called the search record of the diligent search performed as evidence of the process carried out.

In short, the goal of this proposal focuses on responding to the aim of any documental heritage institution being able to count on practical guidelines to be able to cope, on the one hand, with the challenge of conducting a diligent search and, on the other, with the challenge of recording its results. It should be recalled that, in accordance with current
legislation, these records must be completed and kept by the said cultural institutions so that this information can be validated by the competent national authority in each member state as the prior step before declaring the work as an orphan on the database created and managed for this purpose by the European Union Intellectual Property Office (EUIPO).

As a preliminary conclusion, it is possible to advance that we have detected the existence of a relationship between the de facto declaration of orphan works on the EUIPO database and the degree of development of instruments, procedures and soft-law tools available to documental heritage institutions. In this line, we feel that our paper can be viewed as a contribution for the support of orphan work diligent search methodologies and their registration. In consequence, the management and organization of knowledge around the normalization of the diligent search process for orphan works is viewed as a key success factor that can help to resolve the challenges posed to documental heritage institutions relating to this research subject.

References
