



D2 - Intellectual Property Rights Report

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I. WHY IPR MATTERS

Intellectual property rights are rights granted to persons that aim at protecting and monopolising their intellectual creations, whether technical, scientific or artistic. One key intellectual property right is copyright that vests in literary and artistic works, i.e. in texts, images, films, music, graphical works, paintings, databases, etc... Copyright grants to the author of such material a right to control the exploitation of his/her works, namely the right to authorise or prohibit the reproduction and public communication thereof.

That means that any use of a copyrighted work in a e-content project, including e-learning project, begs for a proper consideration of copyright issues at two levels, upstream and downstream. At upstream level, the re-use of copyrighted material and its inclusion in e-learning courses and in the overall EUREA database requires the authorisation of its copyright owner. Copyright clearance is therefore a key and intricate task to be ensured by any e-learning project. At downstream level, the mutualisation of e-content, i.e. the aggregation of content in a common database and its publication under EUREA banner, requires to develop a commonly-agreed copyright policy in order to devise the conditions for access and re-use of EUREA database and content, both for the EUREA partners and for external parties.

The objective of this IPR report is to set up the foundations for a discussion amongst partners on copyright issues. This report will however be limited in the following ways:

- the report only addresses copyright issues and not other legal issues that might be relevant in the EUREA project, such as liability, privacy, contracts, etc...
- the report will address only issues that are relevant and could be considered in the frame of the feasibility stage of the EUREA project, while underlining nevertheless the issues to be considered at the implementation phase.
- The report will address only the European legal framework and will not carry out a country-by-country analysis. However, one should note that, as far as copyright is concerned, the legal framework is largely harmonised amongst the Member States of the European Union and the basic principles of copyright are similar.

II. WHAT IS COPYRIGHT ?

Copyright is a right in literary and artistic works to legally protect the work and control its exploitation. It is an exclusive right granted to the creator of a work that acts as a monopoly over the copyrighted content and has some commercial value since the copyright can be waived or licensed against remuneration.

Copyright protects any type of literary and artistic work. That can be text, music, images, photographs, films, graphical works, logos, websites, maps, tables, software, etc... The only

condition for protection is that the work has to be original, meaning that the work has to bear the imprint of its creator and not be exclusively determined by technical or material constraints. In all EU member states, that originality criterion is actually a very low threshold and many works, including informational or utilitarian ones, have been protected. Conversely, ideas, facts, raw information are not copyrightable.

There is no other condition or formalities to enjoy copyright protection. Hence, there is no need to register or deposit the work or to affix a copyright notice, such as a ©, to the work. The purpose of the work does not matter: scientific, educational or informational works can be protected.

Copyright lasts for 70 years after the death of the author.

There are other rights that are pretty similar to copyright and should also be taken into account when re-using literary and artistic works. Neighbouring or related rights are rights granted to performers, film or phonogram producers, broadcasters in their performances, phonograms, films or broadcasts. Database enjoys a twofold protection: its structure can be protected by copyright while its contents can be protected by a specific right, called a *sui generis* right. Without going into too much detail, it suffices to say that neighbouring rights and *sui generis* rights imply, as in copyright, that the digital reproduction and the online posting of material protected by such rights require the authorisation of the proper rightholders.

As a principle, the physical creator (i.e. the writer of the text, the composer of the music, the director of the film, the graphist who designed the website, ...) is the author and originally owns the copyright. The copyright can eventually be owned by another person than the physical creator since the copyright can be waived to a third party such as a publisher, a producer or the person who has commissioned the work. Copyright can also be owned by a collecting copyright society which authors have entrusted with the management of their rights.

Works created in the course of an employment contract are normally owned by the creator in default of a specific clause in the employment contract or any other contract waiving the right to the employer. In some countries, the employer owns the copyright in works created by the employees without the need for an explicit waiver. In Europe, rights in software are also deemed to be waived to the employer and the same rule can apply to databases, depending on the country.

Works created by many persons are jointly owned and exercised by all these persons.

In many countries, the copyright law states that the copyright is deemed to be owned by the person whose name appears on the work, which can help identify the copyright holder in many cases.

The above mentioned rules of copyright ownership equally applies to works created in universities. The copyright holder is the researcher, student, administrative staff, teacher who has created the work, but the employment contract can provide for a waiver of the right to the university or the research contract can provide for a waiver of the right to the funding institution.

The rights granted by copyright are of two kinds:

- **Moral rights** are rights that protect the personality of the creator as embodied in his/her work. Moral rights differ from one country to another but usually consist of the right of attribution (i.e. the right to be recognised as the author of the work), the right of divulgation (i.e. the right to decide whether and how to make the work known to the public) and the right of integrity (i.e. the right to oppose to any modification of the work or, at least, to any modification or use of the work that could prejudice the honour or reputation of the author). Generally, moral rights are unwaivable.
- **Economic rights** are rights that enable the control of the creator on the exploitation and use of the work. Generally, the copyright owner enjoys the right of reproduction (i.e. the right to authorise or prohibit the reproduction, incl. the adaptation and translation, of the work), the right of public communication (i.e. the right to authorise or prohibit the public communication, incl. The making available through the internet, of the work) and the right of distribution (i.e. the right to authorise or prohibit the distribution of tangible copies of the work). Consequently, the digitisation, uploading, downloading, hard disk storage, RAM-copy, printing, online transmission, posting on the internet, email transmission to a newsgroup, public display, public performance, broadcasting, of a copyrighted work requires the prior authorisation of the copyright owner. Thus, using a work in a e-learning course, without due authorisation, would normally infringe copyright.

Those economic rights are somewhat limited in some cases where the lawmaker has intended to promote the free use of the works. Those cases are the copyright exceptions or, as sometimes called in common language, *fair use*. Those exceptions are legally determined, which means that what is not provided by the law is not allowed. Exceptions also differ from a country to another. The 2001 EU Directive on copyright in the information society has however tried to achieve a limited harmonisation by providing for a list of admissible exceptions that Member States should comply with. Actually, member States can choose their copyright exceptions in that list, without being entitled to provide for supplementary exceptions, but are not obliged to implement the whole list of exceptions laid down in the directive. As a consequence, the regime for copyright exceptions is still rather diverse in the EU.

Amongst that list of exceptions, here are some that might be relevant in e-learning activities:

- **private copy**: the directive allows for “reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation”. The copy has to be made solely for private use, hence cannot be posted online nor shared within a classroom (physical or online).
- **quotation right**: the directive allows for “quotations for purposes such as criticism or review, provided that they relate to a work or other subject-matter which has already

been lawfully made available to the public, that, unless this turns out to be impossible, the source, including the author's name, is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purpose”.

- ***Illustration for teaching:*** the directive allows for the use of works for the sole purpose of illustration for teaching or scientific research. That use is limited to the extent justified by the non-commercial purpose to be achieved and the source, including the author's name, should be mentioned. In some countries, the exception applies only to reproduction and not to communication to the public, which means that it could not apply to the internet and to e-teaching.
- ***Library privileges:*** the directive provides for two exceptions in favour of publicly accessible libraries, educational establishments or museums, or archives. The first one allows specific acts of reproduction which are not for direct or indirect economic or commercial advantage, which aims at enabling the archiving or restoration of some works or the copy of the works in some media such as microfilms. The second exception entitles the same establishments to use by communication or making available, for the purpose of research or private study, to individual members of the public by dedicated terminals on the premises of publicly accessible libraries, educational establishments or museums of works and other subject-matter not subject to purchase or licensing terms which are contained in their collections. The online application in the framework of a virtual library, is not certain under those two exceptions.

Getting copyright clearance for re-using copyrighted works requires to identify the copyright owner and to get a contractual authorisation to use the work. This process is called copyright licensing. In some countries, the contract need to include some precisions.

III. IPR ISSUES TO BE CONSIDERED IN EUREA

Copyright issues differ along the development of the EUREA project. 3 stages of the project development should be distinguished here:

- As to the content used by university staff to create their teaching resources
- As to the e-content provided by each partner to the EUREA database
- As to the exploitation of the common database

Each stage will raise different issues that should be dealt with differently by the EUREA project, specially in its implementation phase. In order to assess the relevance of some hurdles in the development of the EUREA project, that could be resulting from IPR questions, a questionnaire has been sent to each partner. Such questionnaire is purported to analyse the IPR situation of the e-learning material that partners intend to provide for the EUREA database. In doing so, the consortium might have a better view of the intricacy of the IPR questions that ought to arise in the forthcoming implementation project. The answers to the questionnaire (see annex 1) also help conclude the feasibility study, as far as IPR issues are concerned. Such conclusion is provided here for each phase of development and permits to decide what should be done next on IPR issues.

§1. Copyright situation of content used by universities

A. Issues to be considered

The content created by universities might include text, images, music that the teachers have found in books, on the Internet or anywhere else. Usually they reproduced such material in their course packs or for use in their classroom without asking for permission. Such use might in some cases and under some conditions be legally allowed by the law under a copyright exception (see above). In other cases, they might have obtained the authorisation from the rightholder but this authorisation was limited to a traditional education environment. The authorisation can also be given under a copyleft or free licence. Some material can be not protected by copyright due to its lack of originality, e.g. scientific raw data, mathematical or physics rules or exercise, etc.

Converting the teaching activities into distance education or putting research papers or other material on the Internet requires to get proper authorisation from the copyright owners of the elements included in those material. Consequently, copyright clearance should be made on each material. If the use of some copyrighted works has been carried out under a copyright exception or with an authorisation given by the copyright owner, the scope of this exception or authorisation and its possible application to the Internet and to e-learning in EUREA should be addressed. It might also happen that universities have negotiated a global authorisation to use copyrighted material in their classrooms or within their intranet, but such authorisation rarely extends to the internet.

B. Results of the IPR questionnaire

A great majority of the e-learning material that could be brought to EUREA includes some content found in books, on the Internet or anywhere else. Such content comprises texts, images, logos or graphical elements, tables, maps or statistics, and, less frequently, audiovisual works, music or databases.

As to the content used as samples to answer the questionnaire, it appears that an authorisation to re-use such content has been given 1 times out of 4.

When an authorisation has been given, it appears from the answers to the questionnaire that such authorisation has been always given in a written form, which helps evidence. Nevertheless, the validity of such authorisation might be subject to some further conditions, depending on the law applicable in each country. ***Such formal conditions should be analysed and the validity of the authorisation given should be assessed.***

It will be equally important to verify whether the given authorisation covers the on-line use of the material. In 3 cases, the authorisation is valid for e-learning contexts, either for an Intranet use (1) or for an Internet use (2). In 3 cases, the authorisation does not include the Internet use but is limited to the use within the classroom. As to such partial authorisation, there will be a ***need to renegotiate the authorisation to extend it to on-line activities.***

Only one partner, and for only one e-learning resource, indicates that the re-use of the material could be covered by a legal copyright exception for education activities. This single answer seems to underline either the fact that copyright exceptions for education are ill-founded or too restricted to allow for the making of e-learning material or that the teachers do not know about their existence and scope. There is thus a ***need for a study of such copyright exceptions.***

It is interesting to note that in two cases, the authorisation referred to in the answers to the questionnaire has been given by a Creative Commons licence or a similar one. Not so many teachers are thus using creative commons or other copyleft material to include in the courses they are creating. ***Information and promotion of the use of copyleft resources could be delivered to the universities.***

When no authorisation has been given by the law, a creative commons license or by the copyright owners, it is reassuring to note that, in most cases, the source or the author of the reproduced material can still be identified or retraced which will help ***to get the proper copyright clearance*** for such material before including it in the EUREA database. When the author or source are not retraceable, that is putting the EUREA database at risk of an IPR infringement.

C. Proposal for the implementation phase

That issue of copyright clearance used by universities in the e-learning material they will eventually bring to the EUREA database, should be considered as follows:

- An inventory of any content, and its source, included in the e-learning material should be carried out, with the help of the universities.
- An inventory of any copyright authorisation already obtained should be carried out, detailing the scope and conditions of such an authorisation.

- A survey of the copyright regulations in each country concerned with the EUREA project should be carried out. The key questions that such a study should address are the requirement for protection of scientific and teaching material, the scope of the copyright exceptions for educational uses, the provisions related to copyright contracts.
- Based on this twofold inventory and its regulatory survey, the status of material used in e-resources to be included in the EUREA database could be assessed.
- A report on IPR issues in e-learning should be drafted so as to act as a practical guide to help EUREA partners to be aware of copyright regulatory framework and to be able of assessing by themselves the copyright status of each material used in their education activities.
- Some standard legal agreements, compliant with the laws of the concerned countries, could be drafted and provided to the partners so as to help them to legally obtain the needed copyright clearance when using works created by third parties. Those standard documents should be discussed with and approved by the people in charge of IPR questions within each university.
- The use of free, copyleft or creative commons content should be promoted amongst the teachers of the universities partners. A due information could be given to them about such type of content.
- A research paper could be drafted to consider some specific points related to copyright in scientific and educational material, such as the extent of the originality criterion for protecting scientific material, the scope of the exceptions relevant to distance education, etc.

§2. E-content provided by each university

A. Issues to be considered

Course pack, texts, documents, web sites, research reports, scientific publications, might be brought to the EUREA project by the partner universities. Copyright rules can differ from one type to another. Therefore, it will be useful to establish an inventory of the type of e-content coming from partners, according to their purpose (used for presence teaching / used for distance teaching / research outcomes and papers / event recording) and to the type of resource (text, image, video, sound, dataset, software, etc.)

In many cases, such content has been created by university staff or will be specifically created for the EUREA project. Such material could be also protected by copyright and their posting on the EUREA database requires the authorisation from the copyright owners. Such authorisation will require the consideration of many factors, such as :

- the ownership of content created in the course of an employment contract with the university (legal provisions about such ownership might change from a country to another).
- The ownership and exercise of rights of content that might have been created by many persons (legal provisions about such joint works might differ from a country to another)
- The rights in the content created on commission might have been waived to the university or person who has commissioned the work;
- the rights in the content created in a research project funded by EU or some other public body might have been waived to that body under the research contract;
- the rights in some content might have been waived to any other person, such as a publisher of scientific books or journals;

B. Results of the IPR questionnaire

The answers to the IPR questionnaire have highlighted the great complexity of the IPR situations of the content created by the universities and indicates that much work will need to be done on that question in the implementation phase. E-learning resources provided by partners to EUREA are courses units, databases or collections of content useful for the teaching, or even repositories of many courses available on-line. That means that multiple rights can be enjoyed in such multimedia contents, including rights in the databases. ***A study of the legal provisions applicable to such different contents and resources should be carried out.***

The key issue concerns the ownership of the created material.

An equal number of resources have been created either exclusively by members of the university or with the collaboration of persons external to the university.

In the first case (e-learning resources created exclusively by members of the university), the IPR questions that arise are the following:

- when a team of persons have created the material (that is the case for most of the material concerned), the ownership of the IPR in the material might be jointly owned and exercised. Therefore, there will be a need for ***entering an agreement between those persons to determine what the exercise of the joint copyright will be.***
- IPR in material created by university members can, depending on the country, be enjoyed by the university, as an employer of such persons. It can be the case where the law provides for an automatic waiver of IPR to the employer (it is rather rare, except for software and databases) or where the university has entered a waiver agreement with their employees. Some answered questionnaires are aware of the lack of some rule in the copyright law or of its non application to teachers for other types of works

than for software and databases. Other questionnaires show a lack of awareness of such legal waiver. In any case, one should *assess the legal treatment of IPR in works created under an employment contract and the existence, in each university, of a IPR waiver in the employment contract or any other contract*. In no waiver has taken place, either legally or contractually, one should *consider the drafting of such a waiver that could be applicable in an employment framework*.

- In many cases, e-learning material that is created by members of universities are created by persons employed by universities, such as teachers, assistants, researchers or administrative staff. However, some material has been also created with the aid of students who are normally not under an employment contract with the university. Some questionnaire also indicate that, in their country, the rights of teachers and other persons employed by the university are not automatically waived to the university. Therefore, the legal or contractual waiver provisions applicable to employment situations might be not applicable. *Specific waiver of rights should be envisaged for all persons who are not in an employment situation*.
- Most of the e-learning material created exclusively by members of the university have been created in the preparation of courses. However, in some cases, the material has been created in the frame of a project funded by a public body or in the frame of a commission for a person or legal entity external to the university. A waiver of IPR might have been included in such funding or commission in favour of the funding body or the person having commissioned the work. One will have to *assess the possible rights of funding bodies or persons having commissioned the making of e-learning material*.

In the second case (e-learning resources not created exclusively by members of the university), other universities have collaborated in the making of the resources within a common project or, more rarely, a company has provided some material on commission from the university. Other persons such as a publishing house, a cultural body, professional doctors and nurses, have sometimes been involved.

- The involvement of other persons or partners raise the question of the joint ownership of the material thus created. *The legal provisions applicable to the ownership of such joint works and to the exercise of the joint copyright in such works should be further analysed*.

C. Proposal for the implementation phase

A standard IPR policy could be drafted and proposed to the partner universities to make clear that they own the rights in the content specifically created for EUREA in situations of employment, research contracts or for works created under a commission contract.

The provision of e-content to EUREA will also require the entering of a licensing agreement between partner universities and EUREA, determining the conditions for use, which could be different according to the envisaged use (re-use by another partner, re-use by another university, re-use by a commercial entity, etc.) of e-resources posted in the EUREA database. It is essential to develop a pragmatic and user-friendly approach which would allow content creators and partners universities to upload their content into the EUREA database with a clear definition of their digital rights and which would facilitate for content from different sources to be combined in a legal manner. Such document will be discussed with the universities staff responsible for IPR questions.

Those issues should be considered by the EUREA project as follows:

- The IPR policy internal to each university should be collected in order to determine whether the rights in content created by internal staff are owned by university or not.
- A discussion about a licensing form between partner universities and EUREA should be carried out in order to have a commonly-agreed and standard form for IPR licensing in e-resources brought by partners to EUREA.
- A research paper and a practical guide related to the issues of authorship of content created in universities and academia could be drafted.
- An upload system of e-resources in the EUREA database should be set up and include IPR conditions. Therefore each partner or each person working in a partner university will be able to determine upon which conditions his/her content could be re-used (within a general framework to be determined by EUREA). The system should be simple enough for content creators (teachers, researchers, university staff) to understand and use while providing a solid protection of digital content, both legally and technically. A limited list of questions will ensure that each person uploading e-learning content in the EUREA database has the rights in the material to be uploaded and determines the conditions upon which her/his content is diffused by the EUREA platform.

§3. Exploitation of the EUREA database

A. Issues to be considered

The copyright protection of the database resulting from the EUREA project and of its content should be equally addressed.

In order to design an appropriate model for the protection and exploitation of the EUREA database and its contents, one should first ***assess what is protected and what is the scope of that protection***. That should enable partners and the consortium itself to be aware of the IPR assets

they have developed in the frame of the project. Another key issue is the protection of the metadata themselves and not only of e-content they relate to.

A second stage is to determine in which ways those IPR assets will be exploited, i.e. what will be the conditions for access and re-use of the database. That means that an ***IPR policy for the EUREA database should be devised.***

The collection of different e-learning resources in an overall EUREA database will be an intellectual asset in which multiple IP rights can be attached. Partners will enjoy rights in the content they provided, and they might enjoy a joint ownership right in the database itself or in the content specifically created for EUREA. When exploiting such database, the question of the IP rights therein might be an intricate one. Choices for the desired model of exploitation, including deciding about the conditions for getting access and use of the IP content, should be exercised in common by all partners. ***Licensing agreements directed both to the other partners, to other universities or to other parties, should lay down the conditions for using copyrighted works contained in the database.***

That IPR policy and the conditions for access and re-use will depend on several factors such as the type of user (EUREA partner, university, individual, student, business, ...), the type of e-content (distance learning course, scientific paper, ...), conditions set by the copyright owner of the e-content or any other criteria. Defining the conditions for access and re-use of the database and of its content imply to exercise copyright in such content. Exercising copyright can be done in many ways, as the copyright is fundamentally a right to authorise or to prohibit, allowing a broad range of possibilities between these two extremities:

- EUREA could prohibit all reproduction, access and re-use of its database. This prohibition could also be applied only to some contents or depend on the type of user or on the type of re-use.
- Remuneration schemes could be put in place, aided by a licensing system and a technical infrastructure that permits such a licensing. Remuneration should depend on the type of user, of the type of content requested or on the type of re-use. If a remuneration and licensing system is put in place, a due return of such remuneration to the university that owns the content should be provided. That would probably require the setting-up of a Digital Rights Management (DRM) system within the EUREA project.
- Free access and re-use could also be promoted by universities for all or some contents or types of users or uses. There are licensing models that enables such free access and re-use while protecting the copyright of such contents against undue appropriation or re-use (for instance use for commercial purposes remains restricted). The possible application of such licensing models (*Creative Commons*, copyleft, free and open source software, etc.) should be considered in the EUREA project. A DRM system can also manage such free access conditions.

That range of options might be constrained by the fact that some elements used by universities in the e-resources they will bring to EUREA are copylefted or licensed in a “free” scheme”. In such a case, the conditions for re-using such content might be a prohibition to make a commercial use thereof or of derivative works, e.g. distance education course integrating images license under a “Creative Commons attribution – share alike” license.

More generally, the choice for an IPR policy will have to be determined along the business model to be put forward for the EUREA project. During the Helsinki meeting, partners have discussed about a business model where educational institutions could be members of the EUREA, by paying a membership fee. Any EUREA member will get access to EUREA content for free and will be entitled to use it for education and academic purposes. For any use beyond these conditions, e.g. for non-educational users or for commercial use, an individual agreement will have to be entered into with the copyright owners in the concerned content. The EUREA database will just refer the potential user to those copyright owners. The conditions for such exploitation will thus be negotiated outside of the EUREA frame. Other possible business models (access for non-members according to a license to be entered with EUREA; provision of additional services or support to members or non-members upon entering a license) have also been discussed. Those could entail a more complex licensing model and IPR scheme. Once the business model will be definitively decided, ***the adopted model should be translated into a legal model and a licensing agreement.***

Existing models of e-learning materials (EducaNext, LOREnet) could also be analysed for inspiration.

B. Proposal for the implementation phase

The drafting of an IPR policy should be considered by the EUREA project as follows:

- A typical usage scenario could be created so as to develop a scheme for management of rights in EUREA contents.
- IPR components and templates, such as licensing schemes and copyright notices, specially related to the re-use of content and based on the business model to be devised, should be developed. Such IPR components might be helped by DRM (Digital Rights Management) tools or standards.
- A research paper on the management and licensing of IPR in online education projects should be drafted. It will address issues such as the protection of database, created by the aggregation of multiple contents coming from different partners, the protection of metadata, the use of copyleft licensing and DRM schemes in e-education projects, the adequate balance to be achieved between the legal and technical protection of education assets and the need for a free access to and use of educational and knowledge resources.

IV. OUTCOME OF THE IPR FEASIBILITY STUDY

At the end of the feasibility study, EUREA has achieved the following outcome as far as IPR issues are concerned:

- Awareness about the IPR and copyright issues has been created amongst the EUREA partners, through the explanation of IPR issues delivered at the kick-off meeting of this project, through the IPR questionnaire answered to by the partners and by this paper;
- The main IPR questions that will certainly arise in the development and implementation of the EUREA project have been delineated in the present report. That could help the partners to assess the importance of such questions and to conceive the actions to be carried out in the next phase of the project;
- The present paper, based on the answers provided by the partners to the IPR questionnaire, offers a report on the needs and demands for IPR protection that will be useful in the next stages of the project.

V. CONCLUSION – THE FEASIBILITY OF THE EUREA PROJECT IN TERMS OF IPR AND THE PLAN FOR ACTION

As in any multimedia project involving the collaboration of many partners in different EU countries and consisting of bringing together different and multiple content, the IPR issues raised by the EUREA project are many and complex.

Developing the EUREA database in compliance with the copyright law and with the needs and demands of the partners for an adequate IPR policy will require to enhance the awareness of the IPR questions amongst the partners and the teachers, researchers or staff employed by them. Such awareness has been partially gained during this first phase of the project, but it could be made even better in the next phase, so as to empower the members of the concerned universities to deal with the IPR questions by themselves.

The analysis carried out so far demonstrates that the IPR situation of material used e-learning materials is not always clear. Sometimes, no authorisation has been given by the rights owners in the material used by the universities. Therefore, a claim from such rights owners against content that will be eventually included in the EUREA database, could put at risk the whole project. It is thus essential to thoroughly assess the IPR situation and to get a proper copyright clearance for each content provided by any partner to EUREA.

As a conclusion, I could say that the EUREA project is not unfeasible, from an IPR point of view, but would require that a due attention should be paid to IPR issues in the implementation phase of the project.

The CRID would suggest to adopt the following plan of action for IPR issues:

- The ***IPR situation of any contents brought by a partner to the EUREA database should be assessed***, which will include an inventory of any content and of its source, an inventory of any copyright authorisation already obtained, the possible rules of each university for IPR ownership in situations of employment or research contracts.
- A ***practical guide on the IPR issues*** in education should be drafted so as to enhance the IPR awareness amongst partners and to help teachers and researchers to be able to deal with IPR questions themselves. Such practical guide will explain and promote the use of free, copyleft or creative commons content.
- A ***research paper related to copyright in scientific and educational material*** should be drafted in order to enhance the legal knowledge of those particular issues. This paper should cover the copyright regulations in each country concerned with the EUREA project.
- ***Standard legal agreements and documents*** should be provided to partners, namely in order to get a copyright clearance for material used in courses, to ensure that the IPR in courses created by persons employed by the university can be used by the university in the EUREA project, to conclude a licensing agreement between partner universities and EUREA, determining the conditions for use of IPR material, to upload system of e-resources in the EUREA database.
- ***The IPR policy of the EUREA database***, including a scheme for management of rights in EUREA contents, will be designed, based on a typical usage scenario and in collaboration with all partners. Such policy will include the drafting of licensing schemes and copyright notices and could be put in place by having recourse to Digital Rights Management (DRM) if needed.
- ***An upload system*** should be devised, embedding the standard licenses and IPR policy determined by the partner. Such an upload system should enable each teacher or provider of e-learning content in EUREA to check whether s/he has the required rights to reproduce and communicate the material possibly included in his/her content, as well as to determine the conditions upon which his/her content will be disseminated within EUREA. The system should be simple and composed of a limited list of questions, with possible hyperlinks to further documentation, such as the practical guide referred to above or a check list for copyright clearance.

The actions to be taken can be gathered in four clusters, to answer questions at each stage of development:

1. Research to be carried out about the following themes :

At the stage of the creation of e-learning resources within the universities:

- Protection of educational and scientific works ;
- Conditions for getting a valid copyright clearance ;
- Conditions of copyright exceptions for education.

At the stage of providing e-learning resources to EUREA :

- Protection of educational and scientific works ;
- Ownership of works in universities ;
- Joint works.

At the stage of the exploitation of the EUREA database :

- Copyright protection of the database and its content
- Management and licensing of IPR in education

2. IPR practical guide to be drafted, that will cover the following themes

At the stage of the creation of e-learning resources within the universities:

- Protection of educational and scientific works
- How to obtain copyright clearance
- Conditions of education copyright exceptions
- Use of copyleft material

At the stage of providing e-learning resources to EUREA :

- Copyright ownership of works in universities
- Joint works

At the stage of the exploitation of the EUREA database :

- Management and licensing of IPR in education, incl. copyleft licenses

3. IPR policy

At the stage of the creation of e-learning resources within the universities:

- Inventory of IP in contents

At the stage of providing e-learning resources to EUREA :

- IPR authorisation and conditions for the provision of content to EUREA
- Conditions of the upload system to be offered to the creators/providers of content
- Collection of IPR policy of each university

At the stage of the exploitation of the EUREA database :

- Conditions for access to and use of the database

4. Drafting of legal standard documents

At the stage of the creation of e-learning resources within the universities:

- Getting the authorisation from the copyright owners

At the stage of providing e-learning resources to EUREA :

- Standard waiver or licensing forms to get the autorisation or rights from the creators
- Licensing forms between partners and universities
- Translation of the IPR policy in the upload system

At the stage of the exploitation of the EUREA database :

- Licenses for the use of the database
- Copyright notices and link to the copyright owner in case of commercial exploitation
- Liability and warranty notices

In comparison to what has been achieved during the feasibility study, the study should be enlarged so as to cover the IPR regulation of all the Member States where partners of the EUREA project are established. Any other relevant legal issue will also be addressed, such as:

- liability of the EUREA or of any of its partners for hosting, in the database, infringing material;
- liability for hyperlinks;
- liability for the use of information contained in the database (e.g. if a user makes a surgical operation that leads to corporal damages, on the basis of a surgery e-learning module);
- privacy and right in the image of persons;
- protection of metadata and of the database;
- protection of the brand of EUREA by trademark law.

The EUREA project, in its implementation phase, should ensure that the resources and support needed to carry out such an IPR program will be made available.

IPR Questions

The questionnaire has been answered about 29 different e-learning resources that could be provided by the partners to the EUREA database.

1.a. What type is the e-learning resource considered here ?

10 Units (see definition in e-resources grid):

15 Collections

4 Repositories

13 (collection) 9 (unit) 3 (repository) pedagogical material

1 (collection) research material

1 (unit) 3 (repository) : research / pedagogical

1.b. Please describe the e-learning resource :

Some examples taken from the given answers:

- CAMPUS-Pediatrics is an interactive, multimedia-assisted, web-based educational computer program, which uses authentic pediatric case presentations in a virtual Children's Hospital to test and improve the case-solving competence of medical students and residents.
- Nine seminars on American Cultural Studies taught online with participation of students from various universities (Heidelberg, Stuttgart, St. Petersburg, Adelaide, Padua, Geneva).
- A course in the foundations of statistical language processing, including source code, exercises and solutions.
- KELDAmed – commented e-Learning database medicine – collects free e-learning resources plus e-learning resources with free registration available on the WWW. The database stores hyperlinks to English and German offers along with short also bilingual comments, names the medical field as well as used media types. It indexed with MeSH as well as with a German Thesaurus (SWD). Search interface includes keyword or author and as well as browsed by the medical area.

- Tutorial made of a photogallery, video and self assessment texts that show step by step an experiment in a research laboratory. All the video are produced by Ctu of University of Milan and all the materials belong to teachers.
- A lot of the collections listed consist of web site dedicated for a teaching unit (typically 1 month of teaching). For example the teaching unit “Reproduction” is a one month teaching on the human reproductive system. Those web sites contain PowerPoint slides, scientific articles, links to other web sites, hypertexts, illustrations (images, movies) and some multiple choice questions. A few of them contain interactive learning resources.
- online literacy training french economy.
- “uni-deutsch”: uni-deutsch.de aims to prepare foreign students for university studies in Germany (intermediate level), assist in research projects (advanced level), offer research guidance and provide knowledge transfer.
- Learning material unit for women studies (www-pages), individual entity (i.e. Not part of specified repository).
- Learning material unit for respiratory infection (medicine, www-pages), a part of ApuMatti elearning repository.
- Oppix elearning resource database consisting mainly of articles for arts, theology, law, behavioural sciences and social sciences
- Digital course library is an elearning resource database consisting mainly of medical pedagogical material created by teachers
- Collection consisting of a set of video introduced and explained by text resources. Some of videos belong to the course teacher, other belong to persons external to the university.
- A self assessment text full of images that belong to the course teacher.
- This web package is a collection of activities about health service at home (the aim is to realize an individual health assistance plan). It consists of a path through individual and collaborative activities (forum based), self assessment tests, text materials produced by university teachers and by VIDAS (an association for free home care for terminal cancer patients) professionals, links to interesting websites and a bibliography.
- This resource is a collection of different kind of photogalleries: all the pictures and their captations belong to the course teacher.
- Medical database called LRS.net. In this database all courses are described by their metadata. Via this application students and teachers have an overview of all the collections and units (courses, cases, simulations, tests, games, etc.) that are available

to them (number of units is about 450). Via this overview they can also see the content of all collections and units and play them.

- Collection of linguistic exercises in a lot of different languages (Arabic, Chinese, English, German, French, Italian, Classic Greek, Latin, Dutch, Portuguese, Russian, Spanish, Turkish).
- Collection of images (surgery-nephrology).
- Online course ("le risque cardiovasculaire absolu"), E-Learning site "DU Hypertension".
- Module "Pathologie digestive medico-chirurgicale" - "Cirrhose et Complexions" (Tutorial - Powerpoint).
- Interactive resource (multiple choice questionnaires). E-Learning site "DU Hypertension" (Nephrology).
- Online course in pharmacology, 2nd cycle.
- Video registration of multipoint videoconference on medical subjects, showing speakers and slides, for interactive postgraduate education.

2. Has the e-learning resource / material been created exclusively by members of the university (teachers, administrative staff, assistants, ...)

15 YES

14 NO

I DON'T KNOW

2.a. If YES,

Do you know whether there is in your country any legislation transferring rights to copyright material to the employer and whether such a legislation apply to a teacher or researcher in favour of the university ?

7 + 5 (it depends) YES

3 (does not apply to teachers or not to works other than SF and DB) + 3 NO

I DON'T KNOW

Has the e-learning resource been made by one person or by a team ?

5 θ One person (only one university and often pedagogical unit)

10 θ A team of persons

Which were the persons involved in that creation

15 θ Teachers

8 θ Researchers

5 θ Assistants

3 θ Students

5 θ Administrative staff

Did this creation take place

6 θ in the preparation of courses

4 θ in the frame of a project funded by a public body

2 θ in the frame of a commission for a person or legal entity external to the university

2.b. If NO (e-learning resources not created exclusively by members of the university), what type of persons external to the university have collaborated to the creation of the e-learning university ?

3 θ Other universities within a common project

2 θ Business companies, on contract

1 (publication) ; 1 (software bought by individual teachers) 1 (publishing house + cultural body) 1 (professionals doctors and nurses) + 4 (unspecified) θ Others

3. Does the e-learning resource include some material found in books, on the Internet or anywhere else, such as texts, images, etc...

21 θ YES

7 θ NO

1 θ I DON'T KNOW

3.a. If YES,

Which type of material is it ?

14 Text

16 Image

5 Audiovisual works

10 Logo or graphical elements

10 Tables, maps or statistics

3 sound or music

4 databases

Has an authorisation been given to reproduce and use such material ?

4 YES

14 NO (1 : exception for education))

I DON'T KNOW

1. Most of it YES; some NO

If YES,

Has the authorisation been given

Orally

4 In a written form

1. Oral / written

Which type of uses does this authorisation cover ?

2 use in the classroom

1 reproduction in a book or a CD ROM

1 use on the Intranet of the university

2 use on the Internet

2 authorisation given under a creative commons license or a similar license

1 Modification of the work

not specified

If NO authorisation has been given, can you identify the source or the author of the material you reproduced and used ?

10 0 YES (for some material only : 2)

4 0 NO