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Archaeology and Intellectual Property Rights

CARARE

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Glossary

Commercial	Actions related to a profit-making enterprise.
Copyright	A legal right created by the law of a country that grants the creator of an original work rights for its use and distribution. This is usually only for a limited time. The rights are not absolute, but framed by limitations and exceptions to copyright law, including fair use. A major limitation on copyright is that copyright only protects the original expression of ideas, and not the underlying ideas themselves.
Database rights	A legal right pertaining to the protection of databases, as discussed in Directive 96/9/EC of the European Parliament, stipulating their use only being restricted for 15 years after a database is created (or substantially updated).
Exploitation rights	Legal rights that can be transferred and licenced, and constitute the economic value of the copyright.
Intellectual property	Intellectual creations which are under the sole control of a particular person or entity, assigned as owners by law.
Intellectual property Rights	Protections granted to intellectual property creators, including, but not limited to, copyright, trademarks and patents.
Moral rights	Legal rights that are non-transferrable and in some European jurisdictions perpetual. They protect the creator against slander, and guarantee that attribution must be given.
Non-commercial	Actions related to an enterprise that is not profit-making.
Public domain	Creative materials that are not protected by intellectual property laws such as copyright, trademark, or patent laws.
Related rights (also referred to as neighbouring rights)	Rights associated with an intellectual creation not connected with the author of the creation. This largely refers to the rights related to audio and video recording, where the subject of the recording retains separate rights.



1 Introduction

The CARARE network represents an on-going collaboration of partners previously involved in the CARARE project, along with other organisations, funded by the Europeana Digital Service Infrastructure (DSI), through the Connecting Europe Facility (CEF) Trans-European Telecommunications Networks Work Programme. The CARARE network aims to support and involve its members in:

- making the digital content for the archaeology and architecture heritage that they hold available online for education, research, public enjoyment and to support tourism and other uses; and
- making their digital content available to the users of Europeana by providing aggregation services.

The network offers its members access to expertise, technical support and advice.

Many of the CARARE partners have a long history of working with archaeological data, and are well-placed to contribute their expertise and experience. The archaeological domain is one of the more complex within the cultural heritage sector with regard to intellectual property rights (IPR). This complexity stems from the diversity of content associated with archaeological research, and the overlap between the commercial and non-commercial sectors. Archaeologists are always quick to employ any technology or methodology to advance their research questions, which can range from using drones to document or discover archaeological resources, to the simple adoption of the trowel from the builder's toolbox. This means digital archaeological resources, whether born digital or translated from an analogue original, can take almost any format in current use. They can also be transformed from one digital format to another for reasons of analysis, preservation or dissemination, and these transformations can have implications for ownership and re-use.

The overlap (or some would say division) between the commercial and non-commercial sectors in archaeology further complicates the diversity of data generated by archaeological research with regard to IPR. In many countries, the majority of archaeological fieldwork is now carried out by commercial companies or organisations which bid competitively to do the archaeological work. This is driven by development, rather than a particular research agenda, and often has local and national governmental criteria to satisfy, in addition to their own intellectual property needs. This is not to say that academic research projects do not have to consider governmental intellectual property needs, but more often expectations come from funders, publishers, and their own research institutions.

This report aims to set out the complexities surrounding the use and re-use of archaeological data with regard to IPR, and provide best practice guidance on managing rights for archaeological content supplied to Europeana. This guidance has been developed in consultation with the CARARE network partners, and is meant to familiarise potential Europeana contributors with common scenarios, but cannot be considered legal advice.

2 General Principles: Intellectual Property, Cultural Heritage and Europeana

With regard to IPR and Europeana, considerable foundational work has been carried out in partnership with the Kennisland think tank. Kennisland began partnering with Europeana in 2009, focussing on policy and tool creation, to make resources more widely available and re-usable.¹ In addition to partnering directly with Europeana, Kennisland has partnered with a variety of Europeana projects, including Europeana Connect, Europeana Awareness, Europeana Sounds, Europeana Creative and Europeana Cloud. The collective experience of working with these projects has informed their recent publication, *IPR guides for Europeana Food and Drink*.² This report was created in partnership with the Collections Trust, and while designed to meet the needs of the Europeana Food and Drink project (which included the CARARE partners: Hellenic Ministry of Culture and Tourism, National Technical University of Athens and Vilnius University), the report sets out the general IPR principles for content which can be applied to cultural heritage data generally.³ CARARE partners were also involved in the 3D ICONS project (Athena Research and Innovation Center in Information Communication and Knowledge Technologies, National Technical University of Athens, Universidad de Jaen, Visual Dimension bvba and The Cyprus Research and Educational Foundation), which analysed IPR requirements associated with 3D data. In addition to further general information about IPR with regard to cultural heritage, the 3D ICONS *Report on IPR Scheme* is useful for archaeology, as the archaeological domain makes increasing use of 3D data, which has specific requirements with regard to IPR.⁴

As such, the following is a short summary of the main tenets of these reports, including updates made after consultation with the CARARE network and the recently prepared training materials created by Kennisland, in collaboration with the Europeana Copyright Community, as part of their work with the Europeana Aggregator Forum. The intention is to provide sufficient background for the domain-specific discussion to follow, but for a fuller discussion on the topic, please refer to the more comprehensive tools and guidance in these reports.

2.1 Copyright

Archaeology is a part of our shared cultural heritage, and the data created within the archaeology domain results in a wide variety of cultural works, and "...all cultural works are in the public domain, except for the limited time period when they are restricted by Intellectual Property Rights. Works

¹ Kennisland website: <https://www.kl.nl/en/cases/europeana-making-europes-cultural-heritage-available-reuse/> (viewed

² Lisette Kalshoven & Maarten Zeinstra (Kennisland), *IPR guides for Europeana Food and Drink* (Amsterdam 2015), <https://creativecommons.org/licenses/by/4.0/> (CC BY 4.0).

³ Kennisland website: <https://www.kl.nl/en/publicaties/cultural-heritage-data-usage-ipr-guide/> (viewed on April 20th, 2016).

⁴ 3D-ICONS website: <http://3dicons-project.eu/eng/Resources/D7.2-Report-on-IPR-Scheme> (viewed on April 22nd, 2016).



that are in the public domain can be used and reused as seen fit by users...IPR are intended to give the creator of a work an exclusive right to exploit (copy, distribute, publish, use or reuse) his or her work for a limited period of time.”⁵ The way IPR are implemented is through the use of copyright. Kalshoven and Zeinstra describe the key aspects of copyright as:

- “...an exclusive and assignable right that exists in creative works that have enough originality (individual character) to warrant such a right. Copyright exists in literary and artistic works in the literary, scientific and artistic domains. The type of expression makes no difference in the protection, and the right is given automatically to the creator when the work is created...;
- Copyright restrictions have a time limit: in Europe the rule of thumb is 70 years after the death of the latest creator of a published work. In some countries, when the author is not a natural person (e.g. an institution) or the author is anonymous/pseudonymous the term of protection is 70 years after first publication. When restrictions based on copyright end, a work enters the public domain...;
- Copyright can be subdivided into two rights: exploitation rights and moral rights. As the name suggests, exploitation rights are those that can be transferred and licenced. This is the economic value of the copyright. Moral rights are non-transferrable and in some European jurisdictions perpetual. They protect the creator against slander, and guarantee that attribution must be given”.⁶

2.2 Related Rights

Kalshoven and Zeinstra also discuss Related Rights (also referred to as Neighbouring Rights⁷) which may additionally apply to (most typically) audio (visual) material. While this may not apply to most traditional archaeological data, archaeologists use many avenues for documenting and communicating their work and it could apply. An example would be the video diaries created as part of the reflexive workflow at Çatalhöyük.⁸ The subjects of the video diaries, or the Çatalhöyük project may hold the rights to the diaries, but if a video producer were hired to create a promotional video for the Çatalhöyük visitor centre using footage from the video diaries, the editor would then hold related rights associated with the promotional video as it represents a new intellectual output, but remains dependent on the original rights. The producer would have to comply with the IPR associated with the diaries when creating the promotional video, and the project would have to comply with IPR of the video producer when using the promotional video (as set out in whatever agreement is made between the two parties). This would not apply however if the agreement stated that the project will also retain the related rights.

⁵ Lisette Kalshoven & Maarten Zeinstra (Kennisland), IPR guides for Europeana Food and Drink (Amsterdam 2015), <https://creativecommons.org/licenses/by/4.0/> (CC BY 4.0).

⁶ Lisette Kalshoven & Maarten Zeinstra (Kennisland), IPR guides for Europeana Food and Drink (Amsterdam 2015), <https://creativecommons.org/licenses/by/4.0/> (CC BY 4.0).

⁷ Kennisland 2016, *Copyright & Digitisation of Cultural Heritage*, PowerPoint presentation, Kennisland, Amsterdam.

⁸ Çatalhöyük website: <http://www.catalhoyuk.com/research/videos> (viewed on April 20th, 2016).

2.3 Database Rights

Kalshoven and Zeinstra additionally discuss Database Rights, which they describe as “an almost solely European phenomenon”. While they urge caution around a database related to a collection received from another institution, as its structure could be subject to these rights, for archaeologists, databases are a fundamental scholarly output. However, the guidance given from Directive 96/9/EC of the European Parliament on the legal protection of databases is that use is only restricted for 15 years after a database is created (or substantially updated). Most archaeologists would likely be surprised to discover that their data becomes part of the public domain after 15 years.⁹ There is apparently no such restriction outside of Europe, which means Europe grants copyright for databases, but the rest of the world does not. Importantly for Europeana, as a metadata aggregation platform, this legal protection is understood to grant copyright for metadata, allowing for unambiguous use and re-use¹⁰, but Directive 96/9/EC uses the term data throughout, and does not differentiate between data (the content of a database which may be the result of scholarly output) and metadata (the descriptive and structural elements of the database) the way that archaeologists would. The key issue here is that only original expressions of ideas are protected by copyright, not facts or the ideas themselves¹¹, so if an archaeologist wants to hold copyright, it is in their interest not to differentiate, and invoke at least the 15 year IPR protection for their database as a whole.

2.4 Stacked IPR

IPR can also be stacked, and a single digital object can be subject to multiple layers of IPR protection. As an example, for a 3D object derived from laser scanning, it is typical to have three ‘generations’ of IPR for a single output. The initial IPR belongs to the content partner (who provides access to the asset to be scanned), the 1st generation of IPR belongs to the imaging partner (who carries out the scanning, photography, and creates supporting materials) and the 2nd generation of IPR belongs to the development partner (who processes the 3D data and creates texture maps and any digital or physical outputs, etc.). Each of these layers will typically require a different kind of agreement between partners to allow re-use.¹²

⁹ EUR-Lex website: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996L0009:EN:HTML> (viewed on April 22nd, 2016).

¹⁰ 3D-ICONS website: <http://3dicons-project.eu/eng/Resources/D7.2-Report-on-IPR-Scheme> (viewed on April 22nd, 2016).

¹¹ Kennisland 2016, *Copyright & Digitisation of Cultural Heritage*, PowerPoint presentation, Kennisland, Amsterdam.

¹² 3D-ICONS website: <http://3dicons-project.eu/eng/Resources/D7.2-Report-on-IPR-Scheme> (viewed on April 22nd, 2016).

2.5 The Europeana Licensing Framework

In order to allow the use of cultural heritage resources in Europeana, the Europeana Licensing Framework (ELF) was established in 2011 to allow the relationships between data providers, Europeana and data users to be clearly defined. The ELF consists of four elements:¹³

1. **The Europeana Data Exchange Agreement:** the agreement that sets out the relationship between Europeana and its data providers and how metadata can be used by Europeana and third parties;
2. **The Creative Commons Zero Universal Public Domain Dedication (CC0 waiver) and Europeana Data Use Guidelines:** The Creative Commons licence stipulating there are no restrictions on re-use of data. This is the licence used by Europeana to publish metadata from data providers (as agreed to in the ELF). The Data Use Guidelines accompany the metadata with best practice re-use guidance;
3. **The Europeana terms for user contributions:** These terms are designed to meet the needs of Community Collection projects; to provide integration with existing Europeana content;
4. **The edm: rights field of the European Data Model:** This field allows content providers to specify the terms of use of their content to Europeana, and for Europeana to specify these terms to end-users.

2.6 Content and Metadata

Use of the terms content and metadata can often be quite confusing, but it is important to understand the difference with regard to IPR, especially when disseminating content through an aggregator like Europeana. Metadata is often described simply as ‘data about data’, but this can also be confusing. An easier way to think about it might be ‘metadata describes content’ so that users can find and understand the data. For example: you are pursuing research on the Mesolithic period, and you consult the *Star Carr Archives Project* archive.¹⁴ The archive includes a variety of images of Mesolithic artefacts, held in different museums in the UK. When browsing the different images, there is descriptive text to tell the user what the images are (Figure 1). The images are the content and the descriptive text is the metadata. Metadata is what allows users to find content and know what that content is. Without metadata, content has no context. When exploring IPR, it is important to understand that metadata and content for a single resource usually requires different licences. Content is nearly always subject to copyright, but metadata will often be placed in the public domain. This allows aggregators like Europeana to freely hold metadata so that users can find and understand their resources, but the content itself continues to be held by individuals or organisations which retain copyright.

¹³ Europeana Pro website:

http://pro.europeana.eu/files/Europeana_Professional/Publications/Europeana%20Licensing%20Framework.pdf (viewed April 22nd, 2016).

¹⁴ Nicky Milner, Hayley Saul, Ben Elliott (2013) *Star Carr Archives Project* [data-set]. York: Archaeology Data Service [distributor] (doi:10.5284/1019856).

Star Carr Archives Project

Nicky Milner, Hayley Saul, Ben Elliott, 2013

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Results

Click on the image or artefact code to view the detailed record.

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Photo	Artefact Code	Artefact type	Artefact Material	Accession	Museum
	P181	Barbed Point	Red Deer Antler	2052.51	Yorkshire Museum, York
	EM4	Antler Mattock	Elk Antler replica?	No accession code	Yorkshire Museum, York
	Birch Bark Rolls	Birch Bark Roll	Birch Bark	1917.51	Yorkshire Museum, York
	Birch Bark Rolls	Birch Bark Roll	Birch Bark	1930.51	Yorkshire Museum, York
	Birch Bark Rolls	Birch Bark Roll	Birch Bark	1927.51	Yorkshire Museum, York

Figure 1: Screenshot of the *Star Carr Archives Project* archive. Each of the images (the content) has information associated with it that gives information about the image (the metadata). Within Europeana, these images have a different right statement than their associated metadata.

Organisations holding content which is subject to copyright, who wish to disseminate that content, must do so with a licence. To make licencing easier to understand and enable greater re-use, content providers are increasingly moving towards using standard licences, rather than bespoke terms of use and access that need interpretation. The more recognisable and standardised a licence is, the more likely content will be re-used, and re-used correctly. Without clear governance with regard to licencing, it would be impossible for Europeana to make resources available and impossible for users to know whether resources may be re-used or not. Currently, the licencing framework allows the use of 13 different rights statements, six of which are Creative Commons licences and two which are public domain tools.

Logo

Description

	<p>Attribution (CC BY): The most accommodating of licenses offered. It is recommended for ease of use and has very few requirements. This license lets others distribute, remix, tweak, and build upon licensed work, even commercially, as long as you credit the original creator(s) for their work.</p>
	<p>Attribution-ShareAlike (CC BY-SA): Often called a copyleft license. It is recommended if your product allows reuse of offered material. The license lets others remix, tweak, and build upon the licensed work even for commercial purposes, as long as you credit the creator(s) and license new creations under the identical terms.</p>
	<p>Attribution-NoDerivatives (CC BY-ND): A license that does not allow you to make derivatives works like crops or lower quality versions. This license allows for redistribution, commercial and non-commercial, as long as it is passed along unchanged and in whole, with credit to the creator.</p>
	<p>Attribution-NonCommercial (CC BY-NC): The simplest non commercial license. This license lets others remix, tweak, and build upon licensed work non-commercially, new works must also acknowledge the creator and be non-commercial, derivative works do not have to be licensed under these terms.</p>
	<p>Attribution-NonCommercial-ShareAlike (CC BY-NC-SA): Lets others remix, tweak, and build upon work non-commercially, as long as the creator is credited and derivatives are licensed under identical terms.</p>
	<p>Attribution-NonCommercial-NoDerivatives (CC BY-NC-ND): The most restrictive of the six licenses, it only allows downloading of works and share them with others as long as the creator is credited, derivatives are not allowed and commercial use is not permitted.</p>
	<p>Creative Commons Zero Public Domain Dedication (CC0): Allows licensors to waive all rights and place a work in the public domain.</p>
	<p>Public Domain Mark (PDM): Allows institutions to mark works that have been identified as free of known copyright restrictions.</p>

Figure 2: The six Creative Commons licences and two public domain tools. Reproduced from Lisette Kalshoven & Maarten Zeinstra (Kennisland), IPR guides for Europeana Food and Drink (Amsterdam 2015), <https://creativecommons.org/licences/by/4.0/> (CC BY 4.0).

Data providers may choose any of the Creative Commons licences or public domain tools, or one of the five other Europeana rights statements. Starting in late 2016, these Europeana rights statements are being transitioned to Rightsstatements.org, a collaboration between Creative Commons, Kennisland and key stakeholders within Europeana and the Digital Public Library of America (DPLA), which provides a set of internationally interoperable rights statements.

Currently, Rightsstatements.org provides 11 standardised rights statements, specifically meant to foster the re-use of cultural heritage resources¹⁵. Only six of these rights statements will be used by Europeana. These include replacements for four of the existing rights statements, introduction of two new rights statements and deletion of one rights statement. Interestingly, the rights statement for paid access will no longer be supported.

Existing rights statement	New rights statement ¹
Rights Reserved - Free Access http://europeana.eu/rights/rr-f.html	In Copyright
Orphan Work http://europeana.eu/rights/orphan-work-eu.html	In Copyright EU Orphan Work
Out of copyright - non commercial re-use http://europeana.eu/rights/out-of-copyright-non-commercial.html	No Copyright Non-Commercial Use Only
Unknown copyright status http://europeana.eu/portal/rights/unknown.html	Copyright Not Evaluated

Existing rights statement	New rights statement
new (pending decision in copyright WG)	No Copyright Other Known Legal Restrictions
new (pending decision in copyright WG)	In Copyright- Educational Use Permitted

Existing rights statement	New rights statement
Rights Reserved - Paid Access http://europeana.eu/rights/rr-p.html	No longer supported

Figure 3: The six new Rightsstatements.org licences, relative to their Europeana predecessors. Reproduced from the Rights Statements Europeana Factsheet: http://pro.europeana.eu/files/Europeana_Professional/IPR/rightsstatements-org-factsheet.pdf (viewed April 25th, 2016).

¹⁵ Rights Statements website: <http://rightsstatements.org/> (viewed April 24nd, 2016).

2.7 Data Ownership

For those who wish to publish content online which they did not produce themselves, there are additional IPR issues to consider. These include ensuring ownership of the content, and that agreements are in place similar to the Europeana Data Exchange Agreement or the Archaeology Data Service's Deposit Licence (see Appendix 1).¹⁶ This useful flowchart sets out how to determine ownership, and whether an agreement needs to be put in place.

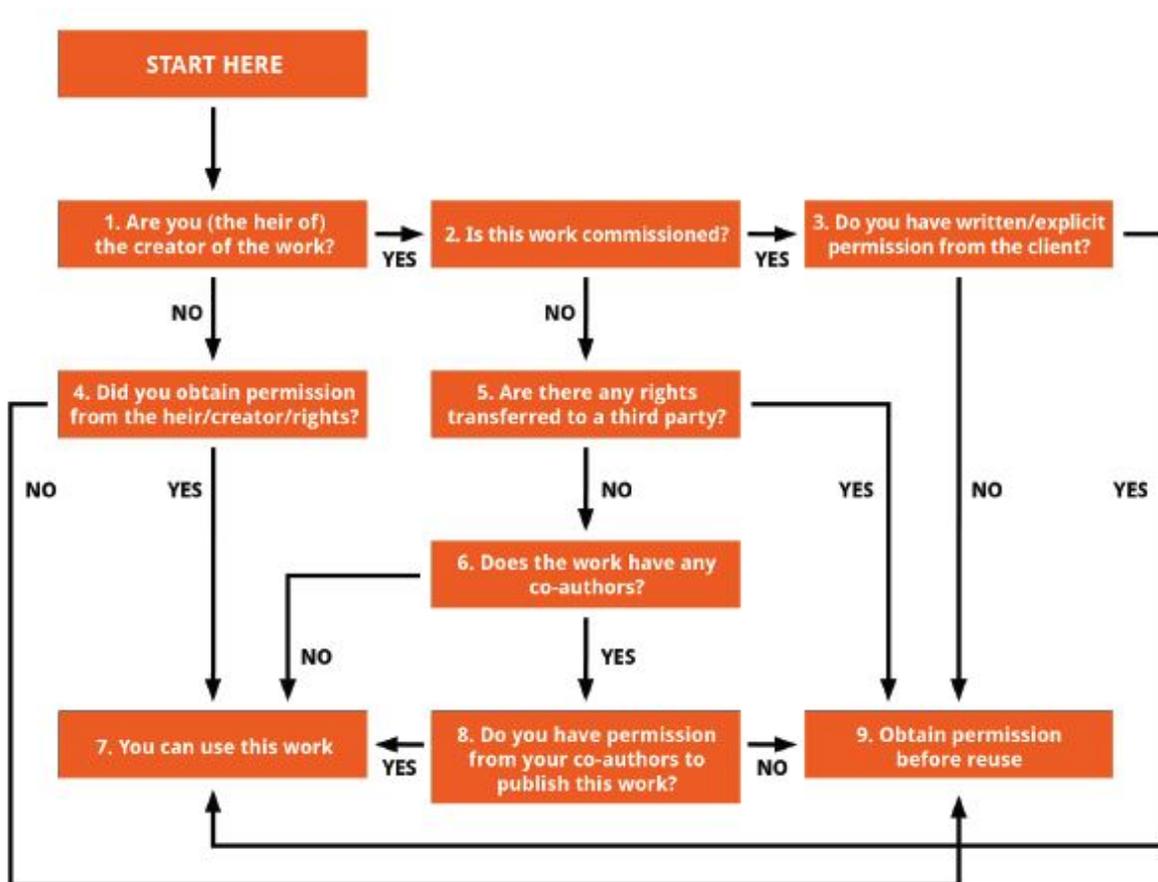


Figure 4: The workflow for determining ownership of content, and whether it can be re-used. Reproduced from Lisette Kalshoven & Maarten Zeinstra (Kennisland), IPR guides for Europeana Food and Drink (Amsterdam 2015), <https://creativecommons.org/licenses/by/4.0/> (CC BY 4.0).

While the majority of digital archaeological resources still reside with their creators, archiving and dissemination by third parties is becoming more common, and should be encouraged. Archaeological resources are similar to most cultural heritage resources. They are often created

¹⁶ Archaeology Data Service website: http://archaeologydataservice.ac.uk/attach/guidelinesForDepositors/ads_licence_form.pdf (viewed April 22nd, 2016).



using full or partial public funding (even when the archaeology is carried out by a commercial contractor), and should therefore be accessible to the public.

Kennisland refers to organisations that professionals (typically authors or performers) join so that they can exploit their works for them as Collective Management Organisations (CMO) and discuss their use and limitations.¹⁷ Data derived from archaeological research however, even when deposited with a collective archive or dissemination platform, nearly always requires permission to be obtained directly from the rights holder for any dissemination.

¹⁷ Kennisland 2016, *Copyright & Digitisation of Cultural Heritage*, PowerPoint presentation, Kennisland, Amsterdam.

3 IPR Policy Currently in Use for Archaeological Data

In order to frame the discussion of IPR and archaeological data, the use of IPR will be divided into two relationship categories (the second of which has two sub-categories). These categories are not unique to archaeology, nor are they the only possible scenarios that might be encountered, but they represent the most common relationships within archaeology. These categories are:

1. the relationship between the rights holder (an individual, or an organisation which claims rights over the content created by its employees) and an archive, repository, heritage agency, memory institution, or other organisation charged with holding and/or disseminating content on behalf of the rights holder/data provider
2. the relationship between an archive, repository (etc.) and:
 - a. data users
 - b. an aggregation platform for resource discovery

Within Europe, there are a variety of organisations which hold archaeological data, but there are three organisations with a specialism in archiving and disseminating archaeological data, all of whom are members of the CARARE network, and have experience in making their resources discoverable within Europeana. These organisations are the Archaeology Data Service (ADS) in the United Kingdom, the Koninklijke Nederlandse Akademie Van Wetenschappen - Data Archiving and Networked Services (KNAW DANS) in the Netherlands, and the Deutsches Archäologisches Institut (DAI) in Germany. These three organisations have experience with the full range of data typically generated within archaeology, and a thorough understanding of the issues surrounding it. Every country has differences in copyright law, and this discussion is not meant to be a comprehensive survey of copyright implementation across Europe, but rather a focussed understanding of IPR and archaeology. Therefore, practical scenarios, implementations and challenges are described, that should be recognisable by anyone dealing with IPR and archaeological data, regardless of the specific laws in place within their country. When comparing approaches between the three organisations and countries, it was found that good practice was more similar than expected. As such, the categories above will be explored from the perspective of the ADS, followed by a discussion of how the approaches and policies of DAI and KNAW DANS were found to differ, as appropriate.

3.1 Archaeology Data Service (ADS), United Kingdom

The ADS is based within the University of York. Now in its 20th year, it has evolved from being one of five discipline-based service providers within the UK research council funded Arts and Humanities Data Service (AHDS), into a self-sustaining organisation. The aim of the ADS is to collect, describe, catalogue, preserve, and provide user support for digital resources created as a product of archaeological research.¹⁸ The ADS seeks to collect and disseminate high quality material which will facilitate future archaeological research or which preserves a primary record of past archaeological

¹⁸ Archaeology Data Service website: <http://archaeologydataservice.ac.uk/about/background> (viewed April 28th, 2016).

work. The ADS Collections Policy¹⁹ provides the framework within which the ADS collection is developed and sourced, in order to meet the requirements of the primary users of the ADS collections. To meet these needs and best facilitate high quality archaeological research the ADS maintains a layered Collections Policy, providing access to:

- data preserved in the long term by the ADS;
- resource discovery metadata for data held by another body.

3.1.1 The relationships between data providers and the ADS

The layered nature of the ADS Collections Policy means data can be provided to the ADS in several ways which necessitate different relationships between ADS, the data providers and the rights holders. As a condition of acquisition, the ADS always negotiates the broadest possible assignment of rights to guarantee access and enable redistribution of all data types. However, in all data acquisition scenarios the rights holder always retains copyright, so the relationship between the ADS and the data provider is strictly for the long term preservation and/or dissemination of the resource. At no point does the ADS accept any liability for the accuracy or content of the data it disseminates, or for any damage incurred owing to use of the information contained therein.

Archived datasets

All data provided to the ADS to preserve in the long term enters the ADS Collection by deposit under the ADS Deposit Licence (see Appendix 1). This strategy is preferable in the case of fixed or static datasets. These datasets can be the products of individuals, projects or institutions. The ADS Deposit Licence is signed by the data provider on behalf of all rights holders to data within a dataset. This licence provides the legal permissions and warranties needed to allow the ADS to enhance, validate, store, translate, copy, or re-arrange the dataset to ensure its future preservation, and to distribute the data under specified terms and conditions of access. This is a non-exclusive licence, which ensures that copyright of the data is not transferred by this agreement and provides other safeguards for the rights holders. Datasets with severe dissemination restrictions will be accepted only under exceptional circumstances.

Served and brokered datasets

Where appropriate, the ADS negotiates data exchange or access agreements with organisations to disseminate resources not preserved or maintained by the ADS. Data providers of these Served and Brokered datasets sign an adapted form of the ADS Deposit Licence which provides the legal permissions and warranties needed to allow the ADS to simply store data and distribute it under specified terms and conditions of access. In order to ensure similar levels of data access and consistency across the ADS collections, the data

¹⁹ Archaeology Data Service website: <http://archaeologydataservice.ac.uk/advice/collectionsPolicy> (viewed April 29th, 2016).

provider must agree that the data can be disseminated under the same terms of use and access as archived data sets. This is also a non-exclusive licence, which ensures that copyright of the data continues to be held by the original rights holder.

Catalogued datasets

Where significant resources are held by other agencies, the ADS may pursue co-operative agreements for the exchange of resource discovery metadata, in preference to direct acquisition of the resource itself. It should be noted however, that the ADS only catalogues and links to resources of high quality and utility to its user community. Data providers of catalogued datasets enter into an agreement which provides the legal permissions and warranties needed to allow the ADS to store the metadata or finding aids, and distribute them under specified terms and conditions of access. This is a non-exclusive licence, which ensures that copyright of the resource discovery metadata is retained by the original rights holder and does not cover the content described by the resource discovery metadata and provided by the other agency.

3.1.2 The relationship between the ADS and data users

It is the aim of the ADS to provide integrated access to its collection at no cost to end users. This aim can only be achieved if the data providers can be assured that their own rights are protected. Consequently, the use of the ADS collection is covered by a variety of legal instruments to protect the ADS, the data providers and ADS users. This protection is provided by the ADS Terms of Use and Access.²⁰ By accepting the Terms of Use and Access users are entering into a legally binding agreement with the ADS. In each of the data provider relationships described above, the agreements must allow re-use that conforms to the ADS Terms of Use and Access, unless data providers have requested a more permissive access licence such as a Creative Commons licence like CC-0 or CC-BY.

The ADS Terms of Use and Access affirm the ADS will levy no charge for accessing data, require no documents to be signed by users or hold information on general users. In return users, using or reproducing, in whole or in part, any material disseminated by the ADS are granted a non-exclusive, non-transferable licence to use the material for teaching, learning, and research purposes, provided the copyright owners are acknowledged. Research includes any work undertaken for the advancement of archaeological knowledge and/or the understanding of the historic environment. Such work may be commercially sponsored, or it may be funded by academic bodies or learned societies, or it may be unsupported. Data cannot be sold or supplied by a user to a third party.

The ADS, as maintainers of the disseminated data, explicitly disclaim to the extent permitted by law any responsibility for the accuracy, content, or availability of information located through use of

²⁰ Archaeology Data Service website: <http://archaeologydataservice.ac.uk/advice/termsOfUseAndAccess> (viewed on April 29th, 2016).

data disseminated by the ADS, or for any damage incurred owing to use of the information contained therein.

Information obtained through use of the ADS catalogue may be subject to specific use constraints, the details of which are accessible. It is the responsibility of potential and actual users to be aware of such constraints and to abide by them.



Figure 5: A graphic simplifying the ADS Terms of Use and Access. Archaeology Data Service website: <http://archaeologydataservice.ac.uk/advice/termsOfUseAndAccess> (viewed on April 29th, 2016).

3.1.3 Relationship between the ADS and aggregation platforms for resource discovery

To further the impact and usefulness of the data it holds, the ADS has partnered with a variety of initiatives to make its collections more discoverable. This includes metadata aggregation platforms like CARARE, Europeana and ARIADNE.²¹ The relationship between the ADS and these platforms is fairly straightforward when it comes to providing resource discovery metadata for the archived datasets held by the ADS, where a depositor has signed the standard deposit licence. In these cases, the relationship is simply an agreement between the two parties to share the metadata under a set of terms, where the copyright is always held by the original rights holder. Despite only resource discovery metadata being provided to an aggregator, this relationship can be far less simple when it comes to bespoke agreements negotiated with other organisations; in many cases they may not hold the copyright to the resource directly either. The main complication in these cases is with the licence under which the aggregation portal intends to licence the resource discovery metadata.

²¹ ARIADNE portal website: <http://portal.ariadne-infrastructure.eu/> (viewed on April 29th, 2016).

Although the original data provider will have agreed that ADS can disseminate the metadata under specific terms of use and access, these terms may not be as permissive as a CC-BY licence (for example), which many aggregators require. The way in which heavily layered IPR issues like this should be handled is often unclear in practice, and on occasion, bespoke solutions must be found.

3.1.4 Identifying copyright ownership

Archaeological datasets deposited at the ADS often contain data collected during a variety of activities by many different individuals on behalf of many different projects and organisations. Determining who holds the copyright for the data within a dataset can be complex. The most common and straightforward situation is that the creator of the data holds the copyright for the data. In commercial archaeology or within an academic environment, copyright for data created during the course of an individual's employment is often commonly owned by the employer as part of their employment contract. Complexity begins to enter into the process when data creators and organisations work in partnership, resulting in ownership of data within a dataset being claimed by different parties or shared between parties. Further complications are experienced when third parties are involved, such as organisations or individuals funding data creation, who may require another party hold the copyright. In the UK, there may be a further complication when Crown Copyright is applicable. Crown Copyright²² exists on works made by the UK's sovereign or by a servant of the Crown in the course of duties, which includes some of the key heritage organisations with which the ADS works closely, such as Historic England or Historic Environment Scotland. The UK legal framework for copyright is provided by the 1988 Copyright, Designs and Patents Act.²³

In order to navigate these complexities, the ADS recommends all contracts explicitly address copyright issues and make it clear in advance what information will be considered confidential when a project is complete. The ADS places the responsibility to correctly identify who holds the copyright for data on the data depositor, who is required to acknowledge that they are the:

“owner of the copyright and associated intellectual property rights in the whole Data Collection or is duly authorised by the owner, or owners, of these rights and is capable of granting under this agreement, a licence to hold and disseminate copies of the material.” - ADS Deposit Licence, Section 5.3.1 (Appendix 1).

In the 20 year history of the ADS, while depositors have often needed to be reminded of their requirement to obtain permission from copyright holders before depositing data, there have been very few instances where there has been a request to remove material due to copyright.

In addition to copyright, the owners or creators of intellectual property have a related moral right pertaining to their work. In archaeology, this right might extend to individuals working on a large excavation team or work party. While it may not be possible to identify these people individually, it

²² <http://www.nationalarchives.gov.uk/information-management/re-using-public-sector-information/copyright-and-re-use/crown-copyright/>

²³ http://www.legislation.gov.uk/ukpga/1988/48/pdfs/ukpga_19880048_en.pdf



is consistent with ethical practice that their contribution be acknowledged. In most instances, this does not compromise copyright. Where possible, the ADS acknowledges all contributors in a suitable manner.

3.1.5 Licenced materials

Licensed and external data provide unique challenges to digital archiving, as copyright, licences, or software may prohibit some archival tasks. Challenges may include the ability to copy, reproduce, or convert files from their formats into those suitable for archiving, or the ability to contribute those files to the archive at all. The latter may be particularly challenging, for example when a GIS file uses an underlying map layer for which the depositor does not own the licence, and its removal will significantly diminish the ability to interpret, read, or re-use the file. Certain materials, such as background or contextual geospatial survey data, are often acquired from sources external to a project and therefore owned by third-parties who may retain a licence to the information. In the majority of cases an external organisation cannot archive such data without the express permission of the licence holder and where commercial value still exists for the licensed dataset such permission is rarely granted. In such cases the ADS may archive and disseminate the derived data, but also hold metadata which points to relevant data at a third-party organisation. Particularly in the case of so-called Big Data (e.g. sensory scans and other complex data sources), such a distributed arrangement additionally has the advantage that access to the large dataset is maintained by a specialist organisation other than the archive. The reverse of this, however, is that users who require access to the full dataset may be required to purchase the data from the third-party, or the third-party may choose to curtail access to/cease to maintain the data at any time.

3.1.6 Commercial use of data

The ADS Terms of Use and Access reflects one of the more unique and problematic aspects of working with archaeological data. In the UK, and in countries around the world, archaeology may be a competitive, commercial enterprise. In some countries, archaeology is carried out under the auspices of central or regional government, by not-for-profit contractors tied to a city, region or university, be fully for-profit, or any combination thereof. This is certainly the landscape in the UK, which makes navigating IPR particularly difficult when it comes to providing resources for re-use. The ADS is committed to working for the entirety of the archaeological domain in the UK, which means serving both the non-profit and for-profit research sectors equally. This means resources made available for re-use by the ADS may be freely used by for-profit organisations, though the products of that use must then be distributed in the public domain (and cannot be sold to a third party).

As such, standard Creative Commons licences are not appropriate, and as the ADS was an established open data archive before the advent of the current 'Open Data' movement and the creation of standard licences began to develop significant momentum, using bespoke terms of use and access was initially the only feasible option. With the rise of standard licences and the resulting

enthusiastic advocacy around 'Open Data' and their adoption, the ADS came under criticism for not being an open data archive, for not immediately adopting a standard licence. While this assessment can be seen as ironic, it does highlight the fact that there are degrees of openness. While legally, the ADS Terms of Use and Access essentially allow the same level of use as CC BY-SA, by adopting a standard licence, the ease of re-use will almost certainly result in increased re-use. Adopting a standard licence is under investigation at the ADS, but it will require a substantial investment of time to make the transition, so must be weighed against other organisational priorities.

3.1.7 Sensitive personal data

An issue closely related to IPR is the archiving and dissemination of confidential or sensitive personal data. Archaeological archives may sometimes include sensitive or confidential data which relates to identifiable individuals, but which may also provide valuable historiographical or contextual information of importance to understanding the context of data collection and, more broadly, for the history of Archaeology. The ADS wishes to preserve such data, and to make it available for research, learning and teaching. At the same time it recognises this may raise issues of confidentiality and privacy covered by institutional ethics policies, and possibly falls within the scope of the UK Data Protection Act 1998 and other legislation. The ADS has a set of guidance on the Deposition of Sensitive Data (See Appendix 2). Strategies for dealing with confidential and sensitive personal data depend upon the nature of the research, but are essentially informed by a researcher's ethical obligations towards participants and society and by legislation. Sensitive and confidential data can be shared ethically if researchers pay attention, from the planning stages of research, to three important aspects:

1. when gaining informed consent, include consent for data sharing;
2. where needed, protect people's identities by anonymising data;
3. and consider access restrictions to data.

The ADS has had to refuse to disseminate data where these considerations have not been taken into account.

3.1.8 Embargo periods

When dealing with the archiving of digital data, it is important that the data is archived (accessioned and ingested) at the point of deposit. This is to ensure the data is in the correct format and accompanied by the appropriate documentation to ensure long term preservation and sustainability. This does not mean that the data has to be automatically accessible to the public. It may be deemed appropriate to establish an embargo period during which the data will be secured in an archive, but not accessible to the public. The length of the agreed embargo period will depend on the sensitivities involved. This is commonly used to protect sensitive archaeological sites from potentially damaging attention, or to hold data until copyright has expired.

3.1.9 Barriers to Re-use

Archaeology employs a wide variety of methods associated with the sciences, but in many instances, and particularly for excavation, testing cannot be repeated and the process is inherently destructive. While there is a tradition of replication for testing a scientific theory in the sciences, which expects access to data as a matter of course, there is no such tradition in archaeology. At the same time, because archaeological data is often a product of the destruction of the primary resource, it is even more important that barriers to re-use be addressed. Over the last 20 years, ADS staff have worked to understand why data creators in archaeology choose not to make their data open for re-use. IPR concerns figure highly in the reasons most often given. The reasons include:

- Incorrect belief that they will no longer own their data once deposited
- Don't hold the copyright and can't get permissions
- Unsure who owns the copyright
- Incorrect belief that they can no longer publish data elsewhere
- Don't have informed consent to make data publically available
- Have published elsewhere and are unsure if they can also deposit with us
- Unaware data would be shared so have not properly prepared it for dissemination
- Fundamental belief that it's 'their data' and don't need to make it available
- Don't want other people to benefit from their work

Despite these reasons, IPR issues are rarely a true obstacle and many of the reasons given are easily overcome. Archaeologists should ensure that contracts explicitly address copyright issues and make it clear in advance what information will be considered confidential when a project is complete. At the time when the information is deposited in an archive, it is important to identify any copyright holder(s). Also, if there are data, documents, or parts of documents in the archive that have restricted access, it is important to identify which individuals are allowed access to the digital archive and under what conditions. The key to removing IPR as a barrier to re-use will have to be both education surrounding IPR, and clear, simple information about copyright. Standard licences greatly help with this, but more needs to be done. Positively there are indications that perceptions are starting to shift in recent years. These include:

- Researchers who think 'It's my data' are fewer (generational shift)
- Best practice and standard professional guidelines for UK archaeologists are starting to include long-term preservation and public access to data
- Impact benefit of open data beginning to be recognized by researchers and employers
- Funders are now requiring long-term preservation and dissemination (but as yet there is no enforcement of this, which is a critical problem)
- The Open Access movement is gaining momentum and depositors are more aware of standardised licences such as Creative Commons
- Increased professionalism within archaeology has led to a greater desire to follow best practice



3.2 Deutsches Archäologisches Institut (DAI) / IANUS, Germany

The various issues surrounding IPR and licensing were found to be very similar between the ADS and the DAI. There were differences found in the definitions of the legal terms in use (copyright, IPR, moral rights, exploitation rights, related rights vs. Urheberrecht, Nutzungsrechte, verwandte Schutzrechte) between the UK and the German laws but the information as set out through the work of the Kennisland partnership was found to sufficiently describe the situation in Germany, so this was not considered a problem. The major difference was that there is no such thing as Crown Copyright in Germany.

IANUS, as a national archival infrastructure based at the DAI, currently has no plans to hold any served or brokered datasets, but rather is developing services for archived and catalogued datasets. In this context the differentiation between data owner and data provider is also treated similarly between the UK and Germany, along with the content of their deposit licence and Terms of Use and Access. The IANUS policies are currently being legally checked and thus only available internally, and in German, but for those interested in learning more, the team can be contacted via <http://www.ianus-fdz.de/> or by email: ianus-fdz@dainst.de.

With regard to re-use with aggregators like Europeana, metadata will be licenced as CC-0 as default. The content made discoverable through Europeana by the DAI (through the CARARE and EAGLE projects) was all licenced under CC-BY-NC-ND 3.0, as the IPR was directly owned by the DAI. The DAI provided around 180,000 digitised, historical books via the CARARE project, with metadata licenced as CC-BY-SA and around 125,000 images via the EAGLE project, with metadata licenced as CC-BY.

In some instances the DAI has photographed museum collections, and while the DAI own the rights to the photographs, agreements with the owners of the objects being photographed may not necessarily include public dissemination on the Internet. This is a good illustration of the changing nature of intellectual property with the rise of the Internet. Uses which may not have been envisioned when the photographs were created now exist that did not exist at the time. Therefore in many cases, if legacy content is to be digitised and disseminated online, complicated and time-consuming re-negotiations with holders of the original IPR are necessary. That said, the DAI only cites one instance over the last 20 years where the intellectual content owner complained about the online publication of their work, which then had to be removed. This likely reflects the fact that most creators understand that we are in a transitional time with regard to IPR and the Internet.

With regard to the access policy of IANUS, the policy is very similar to what is used by DANS, in that data collections are using open, standard licences as much as possible (primarily CC-BY and CC-BY-SA) and the choice (and responsibility) is left to the owner of the data to choose what is appropriate.

For data that is not made available using an open licence, restricted access is provided for registered users. These users may be a general, predefined group (e.g. members of an institution), a person group predefined by the data owner (e.g. members of a research team), or an individual who can request access by approval of the data owner. For all collections with restricted access there need to

be clear reasons for the restriction and a temporal limitation (which for the embargo option should not normally exceed 24 months). This means that data owners will be contacted regularly to enquire as to whether the reasons for restriction are still valid or not.

With regard to the Key IPR and Related Concerns set out in the ADS section, along with the issues around the various data types, these were found to be just the same for the German situation.

For further information in German, the following reports are available:

Report on the legal aspects of long-term preservation of digital data from archaeology

<http://dx.doi.org/10.13149/000.0nc98i-f>

Report on the legal aspects dissemination and re-use of digital data with regard to licensing of materials and databases

<http://dx.doi.org/10.13149/000.3h7mtr-d>

Research in the Digital World: Legal Guidelines for the Humanities

<http://webdoc.sub.gwdg.de/pub/mon/dariah-de/dwp-2015-12.pdf>

3.3 Koninklijke Nederlandse Akademie Van Wetenschappen - Data Archiving and Networked Services (KNAW DANS), Netherlands

The various issues surrounding IPR and licensing at KNAW DANS were found to be very similar to those of the ADS and the DAI. KNAW DANS has created a file upload system called EASY, and for data files deposited with EASY a licence is agreed upon with DANS (see Appendix 2). This agreement is based on the most relevant laws and codes of conduct in place for the Netherlands, such as the Copyright Act, Databases Act, and Personal Data Protection Act. Like the ADS and the DAI, the data owner retains ownership when the data is deposited, and the licence is 'non-exclusive' so the owner of the data retains all freedom to deposit and/or make the data available elsewhere.²⁴

Like the DAI, but unlike the ADS, DANS offers a choice within the licence agreement for fully open access, open access to registered users, or restricted access. As with all three providers, data may be subject to temporary embargo under certain conditions. Unique to DANS is when the fully open access licence (CC0) is chosen, database and copyright rights are waived at the time of deposit and all possible rights are renounced.

When looking at re-use, obviously the open access data using the CC0 waiver can be re-used in any way, but for data where users must register, re-use or distribution of the datasets as a whole that either require registration or are under restriction will be subject to approval by the rights holder,

²⁴DANS Licence website: <http://dans.knaw.nl/en/about/organisation-and-policy/legal-information> (viewed on May 29th, 2016).

commercially or not. In all instances, DANS requests attribution to be given, along with proper bibliographical citation, even for data licenced using CC0.

DANS also makes special provisions with regard to personal data in order to comply with the Personal Data Protection Act. Users of datasets containing personal data are obliged by DANS to follow the code of conduct “Gedragscode voor gebruik van persoonsgegevens in wetenschappelijk onderzoek” (Code of conduct for using personal data in scientific research). This code is an elaboration of the Personal Data Protection Act. Archaeological data rarely contains personal data, but this may sometimes occur.²⁵

Concerning re-use within aggregators like Europeana, Heiko Tjalsma has created the following comparison between Europeana and DANS with regard to IPR that may be useful.

	EUROPEANA	DANS
Publication of Metadata	All metadata available on europeana.eu are published free of restrictions, under the terms of the Creative Commons CC0 1.0 Universal Public Domain Dedication. However if you re-use data published by Europeana, you are encouraged to follow the Europeana Usage Guidelines for Metadata and to provide attribution to the data sources whenever possible.	DANS has <i>de facto</i> the same policy; all metadata available in EASY are open and free of restrictions. This is however not explicitly stated; in particular for users this is nowhere mentioned. Consequently in no way is the Creative Commons CC0 1.0 Universal Public Domain Dedication formally applied to the metadata of EASY.
Rights statements on data Public Domain	Where copyright does not exist, has expired or has been waived and best practice guidelines for use apply.	CC Zero Waiver Public Domain licences are in place.

²⁵DANS Licence agreement: <http://www.dans.knaw.nl/en/about/organisation-and-policy/legal-information/DANSlicenceagreementUK5.3DEF.pdf> (viewed on May 29th, 2016).

<p>Rights statements on data</p> <p>Creative Commons licences</p>	<p>Where the rights holder grants permission to apply one of the six Creative Commons licences.</p>	<p>DANS does not have other (than CC zero Waiver) Creative Commons licences in place. The licence ‘Open Access for Registered Users’ is very close to CC-BY and to lesser degree to CC-NC. The only difference is that user registration is required.</p>
<p>Rights statements on data</p> <p>Rights Reserved</p>	<p>Where access to the objects is provided, and additional permissions are required for re-use.</p>	<p>This is close to Restricted Access in EASY: access is only allowed after permission is given by the rights holder. Additional conditions can be imposed.</p>
<p>Rights statements on data</p> <p>Unknown Status</p>	<p>Where the rights are unknown or the object is a legally recognised Orphan Work.</p>	<p>This category formally does not exist. DANS however has “Orphaned Datasets” in its archive: the rights holders are either deceased or untraceable.</p>

4 IPR with Regard to Data Type

Data type can make an impact upon the IPR issues and concerns experienced. The following is a brief analysis of IPR issues relating to specific data types.

4.1 Documents and Texts

Beyond standard IPR considerations, the main IPR concerns with documents and text are that an employer may hold copyright for any material produced as part of employment, and there is potential for a publisher to claim IPR. Data depositors must be aware that any document or text where they believe they hold the original IPR may have been transferred to an employer or publisher under the terms of employment or publication, or some level of restriction may be placed on how the data can be used, which may affect long-term preservation and dissemination by an archive.

4.2 Databases and Spreadsheets

The guidance given from Directive 96/9/EC of the European Parliament on the legal protection of databases is that use is only restricted for 15 years after a database is created (or substantially updated), but most archaeologists would likely be surprised to discover their raw data becomes part of the public domain after 15 years. Databases are often the result of the amalgamation of existing data and can be compiled by several people. Archaeologists need to be aware that copyright of the database structure and the content of the database can be held by different copyright holders. For example the copyright for the British and Irish Archaeological Bibliography's database structure is currently held by the Council for British Archaeology, but much of the content within the bibliographic database is resource discovery metadata provided by publishers who may hold the copyright for this metadata. The database also contains abstracts where the copyright is held by the individual who wrote the abstract, and the database can link to text files where the copyright belongs to the author of the document, or potentially a third party, such as the author's employer.

Largescale databases created by local or governmental bodies often also have complex IPR issues. As a result even metadata can be considered unsuitable for freely available access and can affect the deposition for long-term preservation, dissemination and re-use.

4.3 Raster Images

The main concern with raster images in relation to archaeological projects is the likelihood that many individuals can be responsible for creating the images. Unless an agreement is in place that passes all copyright to an employer or project lead it can be extremely difficult to manage the copyright of a larger raster image collection created in the field.

Also of note are the data protection issues regarding images of people who are often present at community archaeology projects or site open days. If the photos will be published, informed consent



must be given by adult subjects, and for children, informed consent must be obtained by the parent or guardian. In the UK this age is 16, but most countries have similar legislation.

4.4 Vector Images including CAD

Vector images are often used in archaeology to digitise the hand-drawn plans and sections from large archaeological excavation projects. This means the person who drew the image and the person who digitised the image may consider they hold the copyright for the material. To support future uses of project data captured by desk-top techniques, it is important to record information both about the original source and the digitisation process. Some data sources used in preparing vector images (e.g. maps, drawings and photographs) are also likely to be held in copyright by others. Data depositors must not only have permission to use these sources, but must be certain all necessary permissions to use derived versions of the data have been granted. For example, data originating from the national UK mapping agency (Ordnance Survey) may be used by the North Yorkshire County Council to derive a new dataset 'owned' by the County Council. These data may in turn be used by York Archaeological Trust to derive a further new dataset. Although little of the original resource may still be present, the Ordnance Survey continues to hold intellectual property rights which must be recognised, and which may well affect later uses of the data, e.g. dissemination to the public.

4.5 Audio-visual Data

Audio-visual and multimedia items have complex copyright protection. This is especially true of films, which may include (for example) a video of an excavation or a lecture, and in such cases there may be separate copyright protection for the moving images, sound track, or screenplay and so on. To disseminate this material, informed consent for the data to be disseminated may also be needed from the participants. As with raster images this is particularly relevant to imagery of children. If a third party has been contracted to create the audio-visual material it is important to understand who will retain copyright for particular areas of material (see Section 2.2 on Related Rights). Archaeologists also deal with amateur audio-visual material, which may inadvertently contain material such as clips from popular films or music that is under copyright.

4.6 Aerial Survey

The majority of archaeological research projects using aerial photographs or satellite images generally won't need to mount flights or launch a satellite into space. Instead, most projects will have acquired such data via an organisation or commercial enterprise that collects and distributes these types of images. In addition, such entities can also supply specialist advice required to interpret these types of images. As such, there can be multiple levels of IPR that have to be considered during the purchase of services or data to ensure the data can be made publically accessible. Data licences may also place limitations on derived data. Restrictions can range from simply placing an acknowledgement and licence number on any derived data sets, through to strict

restrictions on how much of an original dataset can be reproduced, and the methods of reproduction. When purchasing data or contracting an organisation to undertake aerial survey it is important that IPR around the raw data is clearly understood by all parties. Contracts can be written for the IPR to be passed on to the person contracting and/or purchasing the data, or it can stay with the data creator. Some services or products are available to use free of charge for educational or non-commercial purposes, but passing this data on to an archive to provide context for interpretation is not possible unless express permission has been sought for the archive to preserve that material and make it publically available under a given set of terms and conditions of access.

4.7 Unmanned Aerial Vehicle (UAV) Survey

As with aerial survey, most projects will acquire UAV via a commercial organisation, resulting in the possibility of multiple levels of IPR that have to be considered during the purchase of services or data, to ensure the data can be made publically accessible. When purchasing data or contracting an organisation to undertake a UAV survey, it is important that the IPR for the raw data is clearly understood by all parties. Contracts can be written for the IPR to be passed on to the person contracting/purchasing the data, or it can stay with the data creator where permission will be required to archive and disseminate the material.

4.8 Geophysics

Geophysical data in the UK is often compiled by a specialist geophysical survey organisation on behalf of an archaeological project or contractor. Geophysical data, like many other data types can have several layers of IPR, the raw data, the processed data, and the interpretations made from the data. In these cases there can be multiple levels of IPR that have to be considered during the purchase of services or data to ensure the data can be made publically accessible. There is significant concern in the geophysical community in making raw data publically available, as this removes its commercial value.

4.9 Marine Survey

As with other forms of specialist survey, marine survey is usually undertaken by a specialist company, resulting in the possibility of multiple levels of IPR to be considered during the purchase of services or data, to ensure the data can be made publically accessible. In the UK, marine survey Crown Copyright is often a significant consideration. In addition to the original datasets, data licences may also place limitations on derived data. Restrictions can range from simply placing an acknowledgement and licence number on any derived data sets, through to strict restrictions on how much of an original dataset can be reproduced, and the methods of reproduction²⁶.

²⁶ Marine Survey: A Guide to Good Practice: http://guides.archaeologydataservice.ac.uk/g2gp/RSMarine_3-5 (viewed on May 20th, 2016).

4.10 Laser Scanning

IPR issues around laser scanning data are very similar to aerial photography, in that most projects acquire data via an organisation or company that collects and distributes these types of datasets, and can also supply specialist advice required to interpret commercial photographs or satellite images. There can be multiple levels of IPR to be considered during the purchase of services or data, to ensure the data can be made publically accessible. When purchasing data or contracting an organisation to undertake laser scanning, the IPR associated with the raw data must be clearly understood by all parties. Contracts can be written for the IPR to be passed to the person contracting/purchasing the data, or it can stay with the data creator. If additional products are made from the original registered point cloud, it is strongly advised to archive the final product as well as the interim dataset used in its creation. However, data licences may also place limitations on derived data. As part of the IPR assessment for the 3D-ICONS project, IPR was traced through complex 'activity chains' concluding that the Imaging Partner, responsible for carrying out the laser scanning:

...must arrange access to the objects, sites and related materials for the purpose of capturing data and the making of digital models. Under the simplest access agreement, ownership of the resulting digital data and initial models will rest with the Imaging Partner who will release this primary data and models under the CC-BY-NC-ND terms to 3D-ICONS. Any Shared IPR or liabilities between the Heritage Institution (HI) and the Imaging Partner need to be defined under their access agreement. One key purpose of the Access Agreement is to establish IPR ownership and assign appropriate share values of the IPR for any later royalty payments.²⁷

For what 3D-ICONS terms Development Partners, the situation becomes even more complex:

Development Partners may of course be the same organisations as undertook the original imaging but their outputs are critically different. It is they who will produce the visualisation models that will be seen by the public as 3D-Entities and Details. In order to produce these 3D-Entities and Details, Development Partners need to have a Derivative Agreement with the original Imaging Partner. This may be an internal agreement, a Creative Commons Agreement, or a B2B agreement. But best practice within 3D-ICONS means that we are likely to require this critical step to be fully authorised. It makes sense that altering the earlier data sets will require a waiver to the original user licence as it will acknowledge the generation of new IPR. Any commercial work will necessitate reprocessing of the data and therefore it is likely that the two waivers will be issued together. The derivative waiver would also allow the partner to generate new IPR of the reprocessed data that is substantially different from the original, and not be limited by the pre-existing CC licence. These new items can be wholly commercial.²⁸

²⁷ 3D-ICONS website: <http://3dicons-project.eu/eng/Resources/D7.2-Report-on-IPR-Scheme> (viewed on April 29th, 2016).

²⁸ 3D-ICONS website: <http://3dicons-project.eu/eng/Resources/D7.2-Report-on-IPR-Scheme> (viewed on April 29th, 2016).



4.11 Close-Range Photogrammetry

At a minimum, any close-range photogrammetry project submitted for archive will consist of a group of raster images and associated metadata (project level details and camera information). IPR issues associated with normal raster images apply, with additional concerns if the project is carrying out processing using photogrammetric software and creating vector products of this further processing (including 2D vector graphics, point clouds, and 3D surface models) which are to be archived, separate copyright may apply²⁹.

4.12 Dendrochronology

Dendrochronological analyses are quite unusual in their reliance on existing reference datasets. Without the open sharing of datasets, each researcher would need to undertake the painstaking task of building highly-replicated chronologies from the present day back to the time period of interest for each new region they work in. Care should be taken to investigate the copyright and IPR agreements for the existing data³⁰.

4.13 GIS

GIS often contain data acquired from sources external to a project and therefore owned by third parties who may retain a licence to the information. In the majority of cases an external organisation cannot archive and disseminate such data without the express permission of the licence holder, and where commercial value still exists for the licenced dataset, such permission is often unlikely to be granted. When deriving data from another source, or when making use of derived data, it is the responsibility of the data user to ensure that any intellectual property rights belonging to the initial data creator(s) are respected. In some cases this may simply be a requirement to acknowledge the originating source, while in other cases a royalty payment may be due for some part of the data to be used. A common dataset used in GIS in UK archaeology comes from the Ordnance Survey (OS). OS requests that users of their information ask permission before any procedure requiring copyright clearance is undertaken. As OS data is under Crown Copyright, especially rigorous regulations are applicable. In the UK, the national grid is even covered by Crown Copyright on Ordnance Survey maps. It's not the national grid, *per se*, that is subject to copyright. The national grid is a standard Transverse Mercator map projection, using the Airey Spheroid and a false origin to the south west of the Isles of Scilly. Since it is a mathematical transformation, determined by people long since dead, it is not of itself copyrightable. However, the OS usage of the national grid -- displaying grid coordinates with two letter codes for the 100km squares -- is Crown Copyright. Using OS data (maps, digital data) to specify position of other data (maps, images, etc.) also gives the OS IPR in the resultant data, map, etc. Indeed, the OS claim that they own the positional content of the new data.

²⁹Close-Range Photogrammetry: A Guide to Good Practice:
http://guides.archaeologydataservice.ac.uk/g2gp/Photogram_4-1 (viewed on May 20th, 2016).

³⁰Dendrochronological Data in Archaeology: A Guide to Good Practice:
http://guides.archaeologydataservice.ac.uk/g2gp/Dendro_Section4 (viewed on May 20th, 2016).



It is thus an offence to pass this information on to a third party without the explicit, and prior, permission of the OS³¹.

4.14 Virtual Reality

IPR concerns with virtual reality data are similar to other data types such as laser scanning, with layered IPR being possible and with the virtual reality model subject to copyright for the data upon which the virtual reality model is derived. Collaborative Virtual Environments can also add to the complexity of identifying copyright holders.

³¹GIS Guide to Good Practice: http://guides.archaeologydataservice.ac.uk/g2gp/Gis_2-7 (viewed on May 20th, 2016).

5 Key Issues and Recommendations

Taking into consideration the scenarios and challenges outlined previously, this report will conclude with several key issues for those working with archaeological data, and recommendations for best practice.

IPR stakeholders for archaeology

The archaeological domain is very complex with regard to intellectual property rights (IPR). This complexity stems from the diversity of content associated with archaeological research, and the overlap between the commercial and non-commercial sectors. Digital archaeological resources take almost any format in current use, and can be transformed from one digital format to another for reasons of analysis, preservation or dissemination, and these transformations can have implications for ownership and re-use. In some countries, the majority of archaeological fieldwork is now carried out by commercial companies or organisations which bid competitively to do the archaeological work. This is driven by development, rather than a particular research agenda, and often has local and national governmental criteria to satisfy, in addition to their own intellectual property needs. Within the academic sector, projects may not have to consider governmental intellectual property needs, but expectations often come from funders, publishers, and their own research institutions.

Key Issue: Understanding IPR for the archaeological domain first requires an understanding of the current research landscape within each country, including whether copyright holders are working within a commercial or research-based environment. Each will have its own requirements in order for that data to be re-used.

Recommendation: Determine who the different stakeholders are who may influence IPR for the archaeological data with which you are working. Was the data created as part of a commercial project or academic research? Who might influence the IPR requirements for the data?

Establishing copyright ownership and moral rights

Archaeological datasets often contain data collected during a variety of activities by many different individuals on behalf of many different projects and organisations. Determining who holds the copyright for the data within a dataset can be complex. In commercial archaeology or within an academic environment, copyright for data created during the course of an individual's employment is often commonly owned by the employer as part of their employment contract. Complexity begins to enter into the process when data creators and organisations work in partnership, resulting in ownership of data within a dataset being claimed by different parties or shared between parties. Further complications are experienced when third parties are involved, such as organisations or individuals funding data creation, who may require another party hold the copyright. In addition to copyright, the owners or creators of intellectual property have a related moral right pertaining to their work. In archaeology, this right might extend to individuals working on a large excavation team



or work party. While it may not be possible to identify these people individually, it is consistent with ethical practice that their contribution be acknowledged. In most instances, this does not compromise copyright. Typically it is the responsibility of the data holder to correctly identify who the copyright holder is, not the disseminator of the data.

Key Issue: Copyright ownership must be determined before data can be re-used. As archaeologists often work as part of large and complex teams, this can be difficult to establish unless set out at the start of a project. When work is carried out as part of a team, it is important to acknowledge the contribution of those who are not copyright holders (moral rights).

Recommendation: Clarify who the copyright holder is before making plans for re-use. If the project includes contributions from archaeologists who are not copyright holders, make sure their moral rights are respected through acknowledgement.

Determining the type of IPR relationship

Use of IPR in archaeology typically focusses on two types of relationship:

1. the relationship between the rights holder (an individual, or an organisation which claims rights over the content created by its employees) and an archive, repository, heritage agency, memory institution, or other organisation charged with holding and/or disseminating content on behalf of the rights holder/data provider
2. the relationship between an archive, repository (etc.) and:
 - a. data users
 - b. an aggregation platform for resource discovery

Key Issue: Making data available for re-use in archaeology often involves a complex set of relationships. These relationship need to be carefully understood and defined between parties, usually with a formal agreement.

Recommendation: Consider the range of relationships that might be necessary in order for archaeological data to be as open and available for re-use as possible. Build the potential for re-use into relationships even when re-use isn't currently possible.

Licencing for re-use

Organisations holding content which is subject to copyright, who wish to disseminate that content, must do so with a licence. To make licencing easier to understand and enable greater re-use, content providers are increasingly moving towards using standard licences, rather than bespoke terms of use and access that need interpretation. The more recognisable and standardised a licence is, the more likely content will be re-used, and re-used correctly. Examples of standard licences are those provided through Creative Commons and Rightstatements.org.



Key Issue: To better enable re-use, archaeologists should consider using standard licences for both content and metadata when possible. While content may be already be open, standard licencing enables ease of re-use.

Recommendation: Archaeologists should become familiar with standard rights statements, and consider using them when possible.

Understanding the difference between content and metadata with regard to IPR

Use of the terms content and metadata can often be quite confusing, but it is important to understand the difference with regard to IPR, especially when disseminating content through an aggregator like Europeana. Metadata is often described simply as ‘data about data’, but this can also be confusing. An easier way to think about it might be ‘metadata describes content’ so that users can find and understand the data. When exploring IPR, it is important to understand that metadata and content for a single resource usually requires different licences. Content is nearly always subject to copyright, but metadata will often be placed in the public domain. This allows aggregators like Europeana to freely hold metadata so that users can find and understand their resources, but the content itself continues to be held by individuals or organisations which retain copyright.

Key Issue: Although often referred to interchangeably (and confusingly) as ‘data’, the data that is actual content, and the metadata that describes it often requires different licencing in archaeology. It is important to understand how data will be re-used. If content is being disseminated, it will require a licence that allows it to be re-used. If metadata is being used by an aggregation platform, it will often require a separate licence, usually in the public domain.

Recommendation: Determine whether archaeological content is being disseminated directly, or if only metadata is being provided to an aggregation platform to make the content more discoverable. Licencing of metadata is often forgotten when creating IPR relationships, but should be included when making formal agreements.

Barriers to Re-Use

Archaeology employs a wide variety of methods associated with the sciences, but in many instances, and particularly for excavation, testing cannot be repeated and the process is inherently destructive. While there is a tradition of replication for testing a scientific theory in the sciences, which expects access to data as a matter of course, there is no such tradition in archaeology. At the same time, because archaeological data is often a product of the destruction of the primary resource, it is even more important that barriers to re-use be addressed. IPR issues are rarely a true obstacle and many of the reason given are easily overcome (see Section 3.1.9).

Key Issue: Barriers to re-use need to be addressed in archaeology and overcome. The key to removing IPR as a barrier to re-use will have to be both education surrounding IPR, and clear, simple information about copyright. Standard licences greatly help with this, but more needs to be done.



Recommendation: Archaeologists should ensure that contracts explicitly address copyright issues and make it clear in advance what information will be considered confidential when a project is complete. Also, if there are data, documents, or parts of documents in the archive that have restricted access, it is important to identify which individuals are allowed access to the digital archive and under what conditions.

IPR with regard to data type

As set out over and over in Section 4, archaeology makes use of a very broad range of data types, and within these data types, most have complex issues with ‘layered’ or ‘stacked’ IPR. This means a single digital object can be subject to multiple layers of IPR protection and each of these layers will typically require a different kind of agreement between partners to allow re-use. This means establishing copyright ownership at many points may be necessary.

Key Issue: IPR issues will vary greatly in archaeology, depending on the data types in use. In order to allow re-use, the different, often layered copyright ownership must be understood and taken into account.

Recommendation: When dealing with a complex, layered data types, data creators need to plan for re-use. This requires thinking about IPR as a workflow alongside the data workflow, ensuring re-use is possible, even if the dissemination plan is unknown at the start of a project.



6 Appendix 1

ADS Sample Deposit Licence



Archaeology Data Service Deposit Licence

Title of Data Collection

.....
.....

1. Parties and Contact Details

1.1 Printed Name: (hereafter 'the Depositor')

Signed:

Date (dd/mm/yy):

Position:

Institution:

Address:

.....

.....

.....

Post Code:

Contact email:

Contact phone:

Contact fax:

1.2 Printed Name: **Prof. Julian D. Richards** **For the University of York**

Signed:

Date: (dd/mm/yy)

Position: **Director**

Institution: **Archaeology Data Service**

Address: **University of York**

King's Manor

York

Post Code: **YO1 7EP**

Contact email: **jdr1@york.ac.uk**

Contact phone: **01904 433954**

Contact fax: **01904 433939**



2. Introduction

- 2.1 The Depositor wishes to deposit material for archiving and distribution by the Archaeology Data Service of the University of York for education, private study, and research ("educational purposes").
- 2.2 This agreement between the Depositor and the University of York provides the legal permissions and warranties needed to allow the Archaeology Data Service to preserve, and make accessible in a variety of formats and media, the deposited materials for educational purposes.
- 2.3 This is a non-exclusive licence, which ensures that copyright in the original data is not transferred by this agreement and provides other safeguards for the Depositor such as requesting acknowledgement in any publications arising from future research using the data. It permits use of the Data Collection only for non-commercial purposes, teaching, research and private study. Cataloguing information and documentation can be publicly available but access to the Data Collection will only be available to Authorised Users who have agreed to abide by licence conditions unless the Depositor has stated that the Data Collection can be available to any user.

3. Definitions and Interpretation

- 3.1 In this Agreement the following words have the following meanings:

'Agreement': this document including all of its terms and conditions.

'Authorised user': individuals authorised by the Archaeology Data Service to use the Data Collection, or a member of an institution authorised by the Archaeology Data Service to use the Data Collection under a site licence.

'the Data Collection': the material to be provided by the Depositor under the title given on Page 1 of this Licence.

'Commercial purposes': use of the Data Collection for any reason direct or indirect which generates a profit.

'Educational purposes': use of the Data Collection for education, private study or research provided that such use does not generate a profit

4. Licence

- 4.1 The Depositor grants a non-exclusive licence of the Data Collection to the University of York to hold on behalf of the Archaeology Data Service for the duration of this Agreement for archiving, distribution and use for educational purposes. Such right shall include (but not be limited to) the right to:
 - 4.1.1 distribute copies of the Data Collection to authorised users in a variety of media formats.
 - 4.1.2 promote and advertise the Data Collection in any publicity for the University of York, Archaeology Data Service.
 - 4.1.3 to catalogue, enhance, validate and document the Data Collection.
 - 4.1.4 to electronically store, translate, copy, or re-arrange the Data Collection to ensure its future preservation and accessibility.



- 4.1.5 incorporate metadata or documentation in the Data Collection into public access catalogues for the Data Collections.

5. Depositor's Rights and Undertaking

- 5.1 The Depositor is free to use or publish the Data Collection elsewhere.
- 5.2 The Depositor does not warrant or guarantee the Data Collection in terms of the comprehensiveness, accuracy, reliability, or otherwise of its contents.
- 5.3 The Depositor hereby warrants and undertakes as follows:
- 5.3.1 that the Depositor is the owner of the copyright and associated intellectual property rights in the whole Data Collection or is duly authorised by the owner, or owners, of these rights and is capable of granting under this agreement, a licence to hold and disseminate copies of the material.
- 5.3.2 that the Data Collection is not and shall be in no way a violation or infringement of any copyright, trademark, patent, or other rights whatsoever of any person.
- 5.3.3 that the Data Collection does not and will not contravene any laws, including but not limited to the law relating to defamation, or obscenity.
- 5.3.4 that the Depositor is not under any obligation or disability created by law, contract or otherwise which would in any manner or to any extent prevent or restrict him from entering into and fully performing this Agreement.
- 5.3.5 to notify the Archaeology Data Service of any change of copyright ownership affecting the Data Collection.
- 5.3.6 to notify the Archaeology Data Service of any confidentiality, privacy or data protection issues pertaining to the Data Collection.

6. The Archaeology Data Service's Rights and Responsibilities

- 6.1 The Archaeology Data Service shall:
- 6.1.1 take reasonable measures to prevent unauthorised access to duplication of or distribution of the Data Collection whilst it is in the Archaeology Data Service's possession or under its control.
- 6.1.2 permit authorised users to access and use the Data Collection, or any part of it. All subsequent access to and use of such material will be for the authorised user's educational purpose and may not be offered, whether for sale or not, to anyone who is not an authorised user.
- 6.1.3 draw the following notice to the attention of each authorised user as part of the authorisation process:

All material supplied via the Archaeology Data Service is protected by copyright and other intellectual property rights, and duplication or sale of all or part of any of the datasets is not permitted, except that material may be duplicated by you for your research use or



carare



educational purposes in electronic or print form. You must obtain permission for any other use. Electronic or print copies may not be offered, whether for sale or otherwise to anyone who is not an authorised user.

- 6.1.4 request authorised users publishing any work based in whole or in part on the Data Collection to display information crediting its creator and Depositor and to declare that those who compiled the original Data Collection bear no responsibility for the further analysis or interpretation.
- 6.1.5 not be under any obligation to take legal action on behalf of the Depositor or other rights holders in the event of breach of intellectual property rights or any other right in the material deposited.
- 6.1.6 not be under any obligation to reproduce, transmit, broadcast, or display the Data Collection in the same formats or resolutions as those in which the material was deposited.
- 6.2 While every care will be taken to preserve the physical integrity of the Data Collection, the University of York shall incur no liability, either expressed or implicit, for the Data Collection or for the loss of or damage to any of the Data Collection.
- 6.3 The copyright in any additional data added by the Archaeology Data Service to the Data Collection, and any search software, user guides and documentation that are prepared by the Archaeology Data Service to assist authorised users in using the Data Collection shall belong to University of York on behalf of the Archaeology Data Service and any other parties that the Archaeology Data Service may choose to enter into an agreement with to produce such materials.

7. Royalties

- 7.1 No royalties shall be paid for the use of the Data Collection for educational purposes, archiving or publicity.

8. General

- 8.1 **Communications**
All notice under this Agreement shall be in writing and shall be sent to the address of the recipient set out in this Agreement or to such other address as the recipient may have notified from time to time. Any notice may be delivered personally or by first class post or by fax or by e-mail and shall be deemed to have been served if by hand when delivered, if by first class post 48 hours after posting, if by fax when confirmation of transmission is received and if by e-mail, when confirmation of receipt is received from the system of the recipient. If no reply is received to a notice under this agreement the consent of the recipient will be deemed to have been given after 30 days have elapsed from the issue of that notice.
- 8.2 **Successors**
This agreement is binding on and will benefit the successors and assigns of the parties.
- 8.3 **Entire Agreement**
This Agreement constitutes the entire agreement between the parties. No



variation will be effective unless in writing signed by or on behalf of both parties.

8.4 Invalidation

If any part of this Agreement is held unlawful or unenforceable that part shall be struck out and the remainder of this Agreement shall remain in effect.

8.5 Joint Venture

This Agreement does not create any partnership or joint venture between the parties.

8.6 Waiver

No delay neglect or forbearance by either party in enforcing its rights under this Agreement shall be a waiver of or prejudice of those rights.

8.7 Proper Law

This Agreement is governed by the laws of England excluding any conflicts of law principles. Any dispute that may arise concerning this Agreement shall be decided by the High Court and the parties shall submit to its exclusive jurisdiction for that purpose.

8.8 Term of the Agreement

This Agreement shall take effect on execution hereof and shall continue for the duration of copyright in the Data Collection unless either party terminates this agreement.

8.9 Termination

8.9.1 In addition to any remedy, the University of York on the one hand and the Depositor on the other may terminate this agreement immediately without further obligation in the event of any breach of this Agreement which cannot be remedied or is not remedied within thirty (30) days of the party in breach being requested to do so by the other party.

8.9.2 Where there is no breach, either party may terminate this Agreement upon six months' notice. However where there is no breach and this Agreement is terminated by the Depositor during the term of this Agreement, the Archaeology Data Service shall be entitled to charge the Depositor for such costs as have been incurred in archiving and cataloguing the Data Collection, and any other investment of resources in the Data Collection prior to its withdrawal.

8.10 Disclaimer

The Depositor and the University of York shall be under no liability for any loss or for any failure to perform any obligation hereunder due to causes beyond their control, including but not limited to industrial disputes of whatever nature, Acts of God, hostilities, force majeure or any circumstances which they could not reasonably foresee and provide against.



7 Appendix 2

DANS Licence Agreement

Data Archiving and Networked Services



Licence Agreement

Deposit date

The following parties are involved in this Licence Agreement:

1. The organisation or person authorised to transfer and deposit the digital dataset(s), hereafter referred to as *the Depositor*
2. The organisation that is authorised to archive and manage the digital dataset(s), hereafter referred to as *the Repository*

The Depositor is:

The person or legal entity registered as such with the Repository

The Repository is:

Organisation:	DANS, Data Archiving and Networked Services, on behalf of KNAW (Royal Netherlands Academy of Arts and Sciences)
Represented by:	Dr. P.K. Doorn, Director
Postal address:	P.O. Box 93067
Postal code:	2509 AB
Town/city:	The Hague
Country:	The Netherlands
Tel.:	+31 (0)70 349 4450
E-mail:	info@dans.knaw.nl

DANS is an institute under the auspices of the Royal Netherlands Academy of Arts and Sciences (KNAW) which is also supported by the Netherlands Organisation for Scientific Research (NWO). DANS is based in The Hague.

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DANS

This Licence Agreement is subject to the following provisions:

1. Licence

- a. The Depositor grants the Repository a non-exclusive licence for digital data files, hereafter referred to as 'dataset'.
- b. The Repository is authorised to include the dataset in its data archive. The Repository shall transfer the content of the dataset to an available carrier, through any method and in any form.
- c. The Repository is authorised to make the dataset (or substantial parts thereof) available to third parties by means of on-line transmission. In addition, the Repository has the right, on the instruction of third parties or otherwise, to make a copy of the dataset or to grant third parties permission to download a copy.

2. The Depositor

- a. The Depositor declares that he is a holder of rights to the dataset, or the only holder of rights to the dataset, under the Databases act (*Databankenwet*) and where relevant the Copyright Act (*Auteurswet*) or otherwise, and/or is entitled to act in the present matter with the permission of other parties that hold rights.
- b. The Depositor indemnifies the Repository against all claims made by other parties against the Repository with regard to the dataset, the transfer of the dataset, and the form and/or content of the dataset.

3. The Repository

- a. The Repository shall ensure, to the best of its ability and resources, that the deposited dataset is archived in a sustainable manner and remains legible and accessible.
- b. The Repository shall, as far as possible, preserve the dataset unchanged in its original software format, taking account of current technology and the costs of implementation. The Repository has the right to modify the format and/or functionality of the dataset if this is necessary in order to facilitate the digital sustainability, distribution or re-use of the dataset.
- c. If the access categories "Restricted Access" or "Other Access", as specified at the end of this Agreement, are selected, the Repository shall, to the best of its ability and resources, ensure that effective technical and other measures are in place to prevent unauthorised third parties from gaining access to and/or consulting the dataset or substantial parts thereof.

4. The dataset

- a. The dataset to which the licence relates consists of all the databases, documentation and other data files and documents that form part of this dataset, which have been transferred by the Depositor.
- b. The Depositor declares that the dataset corresponds to the specification provided.
- c. The Depositor declares that the dataset contains no data or other elements that are, either in themselves or in the event of their publication, contrary to Dutch law.
- d. The Depositor indemnifies the Repository against all claims by third parties relating to the content of the dataset.
- e. The Depositor will supply the dataset by means of a method and medium deemed acceptable by the Repository.

5. Removal of datasets / changes to access conditions

- a. The Repository may decide not to make the dataset available to third parties for a temporary period or permanently as well as to remove the dataset from the archive

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wholly or in part. The Repository is entitled to do so if a Depositor has submitted a request stating the reasons for this action. In the case of not making the dataset available, the Repository shall retain the dataset in the data archive, but shall no longer allow third parties to access the dataset or substantial parts thereof.

b. If sufficient weighty grounds exist, the Repository has the right to remove the dataset from the archive wholly or in part, or to restrict or prevent access to the dataset on a temporary or permanent basis. The Repository shall inform the Depositor in such cases.

6. Availability to third parties:

a. The Repository shall make the dataset available to third parties in accordance with the access conditions agreed with the Depositor: "Open Access", "Open Access for Registered Users", "Restricted Access" or "Other Access". Access conditions may vary between parts of the dataset.

b. The Repository shall make the dataset available to third parties with whom they have reached agreement on the General Conditions for Use only if agreement has been reached with the Depositor on one of the following access categories: "Open Access for Registered Users", "Restricted Access" or "Other Access". Unless agreed otherwise with the Depositor, the use of datasets is subject to the General Conditions of Use laid down by the Repository. When the "Open Access" access category is agreed, the dataset shall be made available to third parties without the Depositor necessarily agreeing on the General Conditions for Use with said third parties.

c. If the access category "Restricted Access" has been agreed, the Repository shall make the dataset (or parts thereof) available only to the persons and/or organisations specified by the Depositor.

d. If a dataset (or parts thereof) to which the access categories "Restricted Access" or "Other Access" apply contain, as evidenced by the specification provided by the Depositor, personal data as referred to in the Personal Data Protection Act of The Netherlands (WBP; *Wet Bescherming Persoonsgegevens*, Act of 6 July 2000, Bulletin of Acts and Decrees 302, Article 9 paragraph 3 and Article 23 paragraph 2), the Repository shall make the dataset (or parts thereof) available only if this is permitted by law, which in any case should be taken to include making the dataset (or parts thereof) available for the purpose of historical, statistical or scientific research.

e. Notwithstanding the above, the Repository can make the dataset (or substantial parts thereof) available to third parties:

- if the Repository is required to do so by legislation or regulations, a court decision, or by a regulatory or other institution
- if this is necessary for the preservation of the dataset and/or the data archive
- (to a similar institution) if the Repository ceases to exist and/or its activities in the field of data-archiving are terminated

f. The Repository shall publish the documentation, hereafter referred to as metadata, as provided by the Depositor with the dataset, and make this freely available.

Metadata is defined in this agreement as the content of all the fields that has been filled in with this dataset as standard under the tab "Description" in EASY.

g. The general information about the research and the metadata relating to the dataset, as defined in article 6.f, shall be included in the Repository's databases and publications that are freely accessible to all persons.

7. Provisions relating to use by third parties

a. The Repository shall require third parties to whom the dataset (or substantial parts thereof) is made available to include in the research results a clear reference to the dataset from which data have been used. The reference must comply with the

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DANS General Conditions of Use. This obligation does not apply if the “Open Access” access category has been agreed on. In that case, the Repository will make every effort to inform third parties that they should include in their research results in whatever form, a clear acknowledgement of the source of the datasets from which data have been used.

b. The Repository shall oblige any party or parties to which it makes the dataset available to respect any copyright or database rights relating to the dataset.

8. Death of the Depositor or Discontinuance of the Depositor's organisation

From the time that the Depositor dies or in the event that the Depositor's organisation ceases to exist and no notice of termination in accordance with Article 10 has been given and if no legal successors, other parties that hold rights to the dataset or other persons mentioned in the field Rights Holder or in the field Creator of the metadata relating to the dataset, as defined in article 6.f, are known to DANS, the Repository shall be entitled to do whatever it considers reasonable in order to realise its objectives.

9. Liability

a. The Repository accepts no liability in the event that all or part of a dataset is lost.
b. The Repository accepts no liability for any damage or losses resulting from acts or omissions by third parties to whom the Repository has made the dataset available.

10. Term, cancellation and termination of the Agreement

a. This Agreement shall come into effect on the date on which the Repository publishes the dataset (hereafter the date of publication) and shall remain valid for an indefinite period. If the repository decides not to include the dataset in its data archive, this Agreement is cancelled. The Repository notifies the Depositor of publication or non-inclusion of the dataset in its data archive. Cancellation of this Agreement is subject to a period of notice of six months, and notice shall be given in writing. It is possible to change the agreed access category at any time during the term of the Agreement.
b. Notwithstanding point (a), this Agreement shall end when the dataset is removed from the data archive in accordance with Article 5 of this Agreement.
c. If the Repository ceases to exist or terminates its data-archiving activities, the Repository shall attempt to transfer the data files to a similar organisation that will continue the Agreement with the Depositor under similar conditions if possible.

11. Jurisdiction

DANS is entitled, but not obliged, to act independently against violations of the Copyright Act (*Auteurswet*) and/or any other intellectual property right of the holder(s) of rights to the dataset and/or the data from the dataset.

12. Applicable law

Dutch law is applicable to this agreement.



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Access categories for datasets:

The Repository is permitted to distribute the dataset and make it available by means of one of the methods mentioned below and, if indicated below, making use of the additional option Embargo. Notwithstanding the above, the Repository, after consultation with and on request of the Depositor, is permitted to distribute parts of the dataset and make these available by means of one of the methods mentioned below being *another* than the one chosen for the dataset if that is clearly indicated by the Depositor.

You have chosen:

[Open Access: unlimited access without registration of user registration]

the Depositor agrees to the dataset being made available in accordance with the conditions of the Creative Commons Zero Waiver, the CC0 1.0 Universal Public Domain Dedication (Appendix 1). In doing so, the Depositor renounces all possible rights relating to the dataset.

[Open Access for Registered Users: unlimited access for registered users]

The Repository is permitted to make the dataset available to all persons, legal entities and organisations registered with the Repository.

[Restricted Access: access with the permission of the Repository]

The Repository is permitted to make the dataset available to persons, legal entities and organisations registered with the Depositor only after receiving express permission from the Depositor.

[Restricted Access: access restricted to registered persons or group members, N.B. only for archeology]

The Depositor may grant access permission in advance for persons, legal entities and organisations that belong to one of the user groups specified by DANS and/or the Depositor.

[Other Access: the data are not available via EASY]

The dataset will be made available by means of another method to be agreed with the Repository.

You have additionally chosen:

[Temporary restriction: Embargo]; only possible if Open Access. Open Access for Registered Users of Restricted Access has been chosen

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