

09-HERA-JRP-CI-FP-19

OOR

Of Authorship and Originality

Final report

FINAL REPORT

CRP number: 09-HERA-JRP-CI-FP-19

CRP acronym: OOR

CRP title: Of Authorship and Originality. Reclaiming Copyright in Support of Creative Collaboration in the Digital Environment

Date of latest version of the Description of CRP against which the assessment will be made:

Annual report: 1st 2nd 3rd

Period covered: from 1 February 2012 to 30 June 2013

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CRP website address: <http://www.ivir.nl/HERA.html>

final conference site address <http://www.creativitythatcounts.org/>

Declaration by the Project Leader

I, as the Project Leader of this CRP and in line with the Terms and Conditions for the HERA JRP grants, declare that:

- The attached annual report represents an accurate description of the work carried out in this CRP for this reporting period;
- The CRP (tick as appropriate):
 - has fully achieved its objectives;
 - has achieved most of its objectives with relatively minor deviations¹;
 - has failed to achieve critical objectives².
- The public website is up to date, if applicable.
- To my best knowledge, the expenditure statements which are being submitted as part of this report are in line with the actual work carried out and are consistent with the report on the resources used for the CRP.
- All partners, in particular non-profit public bodies, secondary and higher education establishments, research organisations and SMEs, have declared to have verified their legal status. Any changes have been reported under section on CRP management.

Name of the Project Leader:Mireille van Eechoud.....

Date://

Signature of the Project Leader:

¹ If either of these boxes is ticked, the report should reflect these and any remedial actions taken.

² If either of these boxes is ticked, the report should reflect these and any remedial actions taken.

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1. Final Report

1.1 Summary (4 pages)

- Objective of the OOR project

'Of Authorship and Originality' was a collaborative research project funded by the joint research programme of [HERA](#), the Humanities in the European Research Area. It was a multi-disciplinary collaboration of the Institute for Information Law (University of Amsterdam, The Netherlands), Infomedia (University of Bergen, Norway) and the Centre for Intellectual Property and Information Law (University of Cambridge, United Kingdom). The project queried how insights from literary theory, music studies, film/visual studies and other Humanities' disciplines can help articulate copyright norms that enable sustainable collective creative practices in the digital environment. Our focus has been on two interrelated, key concepts in copyright law: the author and the work.

- The Individual Projects

Authorship in Collective Arts

Department of Information Science and Media Studies
([Infomedia](#)), University of Bergen



Prof. Jostein Gripsrud, principal investigator
Dr. Erlend Lavik, post-doctoral researcher

This project's theoretical challenge was in finding a way to modify the traditional Romanticist notion of authorship, particularly in view of the characteristics of collaborative production of artworks in different media and genres, without giving up on the idea that creators or authors of such works must retain a right to certain forms of control of the subsequent use of their works. In collaboration with our partners in the field of law, we tried to identify ways in which a renewed understanding could and should impact on the making and the interpretation of copyright law. While exploring theoretical contributions in several disciplines, our empirical focus was on creative processes in audio-visual production and popular music, and on theatre as a collaborative art form. The first two cultural forms are heavily dependent on digital technologies and are thoroughly marked by collaborative forms of production. Theatre remains a more 'analogue' collaborative form so makes for interesting comparison. The Bergen project studied these three media and genres using well-proven ethnographic methodologies (participant observation and semi-structured interviews).

Multiplicity of Authors

Centre for Intellectual Property and Information Law
([CIPIL](#))
Faculty of Law, University of Cambridge



Prof. Lionel Bently, principal investigator
Dr. Laura Biron, post-doctoral researcher
Dr. Elena Cooper, post-doctoral researcher (from July 2011)

At present, by and large, national rules on authorship and copyright ownership are still based on the author as an individual autonomous agent operating in isolation. Within the overall theme of the research proposal on creative collaboration in the digital environment and copyright's response to facilitate such creative expression (or rather lack of it), the project by CIPIL focused mainly on problems of multiple authorship. Central in this stream were the

relations between contributors: how roles are perceived within creative communities, and the status that copyright law attaches to the various roles, notably the allocation of authorial control both as regards economic rights and immaterial interests (the 'moral rights' of the author). Drawing upon the authorship theories explored in the initial phase of the CRP, and incorporating the results of its case studies and those by Infomedia, the CIPIL project re-evaluated notions of co-authorship and explored approaches that are conducive to collaborative creative production.

The Work as Creative Expression

Institute for Information Law ([IVIR](#))

Faculty of Law, University of Amsterdam

Dr. Mireille van Eechoud, principal investigator & overall project leader

Dr. Stef van Gompel, post-doctoral researcher

Prof. Bernt Hugenholtz, senior researcher



This project queried the continued viability of the 'original work of authorship' as a legal object. From an economic perspective, the delineation of copyright subject-matter is of course necessary in order to make it a marketable entity. Copyright law thus has a natural tendency to view creative expression as a 'thing', to which rights are attached. At the same time, the law in many jurisdictions now seems to have evolved to the point where 'original' and 'creative' seem to be synonymous terms, both meaning little more than 'not directly copied' or 'resulting from a modicum of freedom of choice'. In this stream the focus was on how insights humanities scholarship can provide to critically rethink the concept of 'work of authorship'. In a nutshell, the primary findings are that especially aesthetics, art history and production studies are excellent sources for improving our understanding of what is problematic about work concepts as used in contemporary copyright law. It is much more challenging however to articulate alternative conceptions of work which stand up to the requirements of law, especially in terms of legal certainty and procedural efficiency.

• Work performed

The OOR project started in June 2010, with post-docs on board in all three individual projects by the autumn. In the initial phase the focus was on refining the research design for the individual projects and deciding how to best realise synergies between the individual projects. The 2010 October 'focus workshop' held at Emmanuel College, Cambridge gave us valuable input from leading academics from a variety of humanities' disciplines. The researchers have had to be flexible about priorities in light of the evolving landscape of European copyright, which on the topics central to our CRP is moving fast (and in surprising ways).

2011 was a year primarily of further data collection, field work, analysis, more data collection, looking to the lessons to be learned from collaborative works in 'analogue' settings, constructive debate among the researchers on the challenges of multidisciplinary research, and the writing of the first outputs. Frequent team meetings and the first of a series of research exchanges facilitated collaboration. These were continued through 2012 and 2013. As planned, the production of outputs of various nature geared up, to include articles in national and international peer reviewed journals, a video-essay, blogs, but also various (invited) papers given at conferences and workshops.

Throughout the lifespan of the project, invitation only workshops were organized to discuss intermediate results with a wider group of academics. These workshops were themed around (audio-visual) production studies (Bergen), Trends in Multiple Authorship: Empirical Studies and Legal Implications (Amsterdam), Notions of and conditions for authorship and creativity in media production (Bergen) and Authorship Dynamics and the Dynamic Work (Cambridge). The final public conference held in April 2013 joined academics from art studies, aesthetics, law, media studies and artists to debate such topics as the diverse ways in which relations between creative contributors are perceived in creative communities and how this reflects (or should reflect) in copyright law; to what extent analytic philosophy of art can help shape norms about

joint works of authorship and what role aesthetics ought, and ought not, to play in copyright law.

▪ **Results**

The project has yielded a variety of outputs that contribute to fresh perspectives on ways in which the Humanities can inform a rearticulation of copyright norms. Our findings have been presented at conferences and workshops, published in peer reviewed academic journals, in book contributions and on the electronic resources of the partner institutions. A book entitled 'Works of Authorship' is in production with Amsterdam University Press. Publication of further writings continues throughout 2014. The researchers formed a wider network of academics from a broad range of Humanities' disciplines with a shared interest in copyright policy. This network we expect can help promote discourse on the wider potential of Humanities. Because we recognise the importance of a continued exchange with academics from different humanities disciplines, the partners have taken concrete steps to ensure the network created in the course of the project is kept alive and growing. As a result of these efforts we have been approached to take part in research proposals, present at conferences and be involved in teaching copyright to students of humanities/social sciences.

▪ **Impact**

The outcome of the research consists of fresh perspectives on how the Humanities can inform a rearticulation of copyright norms. The practical value of the research lies in its focus on the work and on authorship, two areas where copyright norms are relatively opaque. Copyright regulation increasingly takes place at the international level, even though authors have a bundle of territorially separate rights. The binding international legal norms on authorship and on the work as object of protection are quite flexible, whereas those on exclusive rights (i.e. which acts require authorization of the right owner) are much more detailed. The EU thus has more leeway to adjust copyright policy through re-interpretation of the concepts of 'work' and of 'authorship'.

At the start of the project, harmonisation of the national norms at the EU level was in its early stages, so there was considerable added value to be derived from our research. Since the project started, on the topic of what is required for a production to enjoy the status of copyright 'work', EU law has started to move at full speed. The Court of Justice (the highest court on EU copyright law) has taken a very activist approach and is crafting a supranational notion of 'original intellectual creation' as copyrighted subject-matter. Its judgments are controversial and raise many questions, which made our research all the more topical. Members of the project teams, because they already were involved in a critical reappraisal of notions of 'work' and 'author' were very visible in both academic and policy debate.

In the construction and analysis of copyright norms, economic and technological concerns have long dominated the debate. The HERA OOR project has helped to bring to the fore insights from the arts and humanities research in this technology and market driven area. As harnessing 'creativity' is an increasingly important topic on national and international research agenda's (e.g. in Horizon 2020, in the programmes of the Dutch national research council and of UK research councils) the work commenced with HERA is easily carried into the future. At a time when Humanities research is under pressure of showing its value for society, but also finds itself moving into the promising new roads of digital humanities, arguably the regulation of cultural production is an area where arts & humanities will have much to contribute. The OOR projects and its sister projects in the HERA programme are an important but initial step.

1.2 CRP objectives (1 page)

Please provide an overview of the main CRP objectives, as included in Annex II of the Acceptance of Grant Certificate (Description of Collaborative Research Project). These objectives are required so that this report is a stand-alone document. This section should not exceed one page.

The overarching question in the CRP was how insights from the Humanities can help to rearticulate the discriminatory function of the notions of work and authorship, so as to promote copyright norms that enable sustainable creative practices in the digital environment. Our CRP ran for a total of 3 years (37 months). The first annual report covered the first 8 months in which the groundwork for the rest of the research effort was laid.

According to the work plan of the Collaborative Research Project as included in Annex II of the Acceptance of Grant Certificate, in the second and third phases (reporting period for months 9 through 20, and for months 21-37 respectively), the objective was essentially threefold. First, carry out the empirical work (case studies) on collaborative practices in IP2 (Infomedia), i.e. on music, documentary making and stage production, and on digital artists (CIPIL), the latter being additional empirical research that we decided to do following the initial 'focus' workshop in October 2010. The second objective was to identify relevant sources (academic literature, caselaw, policy documents, etc.), complete initial analysis and do additional data collection and writing up of results. These processes were more iterative than anticipated, especially as new developments in the EU courts and policymaking called for some adaptation of work so as to remain relevant at the intersection of law and policymaking. The timing and prioritizing of objectives was therefore not followed strictly, and some work was redistributed among the partners.

The third objective was to further expand knowledge about the CRP to a wider community and broaden the network of experts within humanities and law in which conversation can take place on how cultural considerations may inform copyright policy. This was achieved through the workshops/paper sessions organized by the CRP, by team members speaking at conferences and policy oriented meetings. In terms of knowledge transfer, communicating CRP activities and outputs through a website and other means were foreseen. See section 1.6 for results so far.

1.3 Achievements of the CRP

Please provide a concise and clear description of the achievements obtained at CRP level, addressing the following issues (4-5 pages max.):

1.3.1 Progress beyond the state-of-the-art: What would you highlight as the most innovative/original scientific contribution(s) of this CRP to the field of research?

Prior to the CRP, there was already a certain amount of scholarly engagement between humanities and legal scholars in the field of copyright. Never previously had there been such a sustained effort to consider the value of humanities work for legal scholarship, the development of legal rules in the field of copyright.

The progress beyond the state of the art comes from learning when and how humanities scholarship can inform legal thinking in this field. The overall conclusion is that this is a complex relationship. Humanities scholars do not offer concepts or research insights that can be readily deployed by participants in the legal system. This is for a host of reasons. First, humanities scholars work in different ways, with different aims and with different foci. There are no simple, unanimously agreed outcomes from humanities scholarship. Rather, it is a field characterised by fluidity, dynamism, conflict, and contest. Second, because humanities scholarship has different goals, its interests are often different from those of a legal system. Third, and more positively, humanities scholarship can and often does offer really valuable case-studies on the practices, ideas, assumption, and motivations of those involved in cultural

production. These outputs can be factored into the complex policy-making process that ultimately may inform changes in legal rules.

The first insight, most obvious from the work of Lavik and van Gompel, was that much work in the humanities, which may first appear to have significance for law, in fact seeks to address related but very different questions that make its usefulness rather limited. In particular, the project engaged with questions of 'quality' of works, observing that in legal terms issues of quality primarily arise as threshold questions for protection of works by copyright (and the law tends to eschew such determinations). In contrast, humanities thinking has largely concerned identification of quality as a signal of the exceptional status of particular works. Debates and conclusions in humanities scholarship on the latter question were found to be of limited assistance in developing legal standards to set the threshold of protection for works by copyright. Nevertheless, the engagement between the humanities and law confirmed that there was much merit in the traditional reluctance of the legal system to engage in qualitative determinations (sometimes referred to as the principle of non-discrimination), beyond the conventional wisdom that the law should not engage in art criticism.

The second insight, both clear from the work of Lavik and van Gompel and from the contributions of Cooper and Biron, was that the humanities scholarship itself rarely offers up simple material that can be readily appropriated and harnessed in informing legal policy making. Sometimes, however, the revelation of complexity itself is a valuable antidote to certain established assumptions operating in the legal field. Cooper found through empirical analysis of the world of digital art that views about authorship are multiple and diverse. Some art practitioners cling to what might be thought of as romantic views of authorship. Others have a more plural understanding of the process through which they work, recognising and attributing many collaborative contributors. The CRP had been premised on the widespread assumption that collaborative practices had burgeoned in the digital environment, and the work revealed this assumption to be largely unwarranted. Similarly, theoretical claims about the 'death of the author' are not generally mirrored in the conceptions of those involved in cultural production, though their understandings of authorship are complex and varied. In turn, a key contribution was to confirm that wholesale rethinking of authorship and the management of collaborative works within the copyright field was premature. For the moment, it is probably sensible to keep muddling through.

The third insight was that legal conceptions and cultural practices do nevertheless often diverge, and that familiarity with and consciousness of these divergences can be useful in thinking about legal policy. This was clear in Bently and Biron's survey of attribution of authorship, where legal conceptions were often at odds with cultural practice, as well as their joint work of authorship in the era of the entertainment franchise (exploring how changing practices in cultural production, which increasingly seem to value the production of ideas, concepts or formats, are in tension with legal conceptions of authorship which tend to break the cultural field down into discrete parts, attributing authorship to the proximate cause of the final form of each of a multitude of parts).

The fourth insight was that the flexibility of the law to respond to changing cultural practice was limited because certain ideas such as 'authorship' were deployed to structure the field, and that flexibility might be introduced by understanding authorship less as a structural prop (a single unifying concept) and more as a conceptual building block that might vary in shape and size depending upon its role.

In some respects this project came too early as what is valuable to law as a practice characterized by constructing the general from the specific are (empirical) insights in how cultural productions get made: which agents are involved, what are their relations, roles, authority, how do creative processes work, how do ideas, styles travel? The developing field of 'production studies' as are on the rise in film/audiovisual field holds promise here. Also, we expect that the growing room for empirical studies in various disciplines will yield useful insights. But over the course of the CRP the academic sources identified were still patchy. This makes it difficult to draw lessons for copyright, as the entire copyright system leans strongly towards generalized norms for a broad range of cultural production types and practices, using 'creative' effort as a catch-all. The transition to digital humanities might lead to just the mix of

in-depth analysis of individual instances of production and trend studies that would allow enriched legal reasoning.

1.3.2 *Relevance to the Call: Among the achievements of this CRP, what is in your opinion the most relevant to the HERA JRP Programme Call for Proposals?*

Looking across the many diverse projects that came out of the Creativity and Innovation theme, perhaps what is most distinctive and relevant of the OOR CRP is that much of the work went into unpacking what notions of creativity actually mean in law, and how they differ from notions in other fields. But from the perspective of HERA as a humanities' based programme, the value of our CRP undoubtedly lies in the sustained effort to study how such disciplines might influence legal thought.

1.3.3 *Please add list of all completed outputs using the Table 1 above.*

TABLE 1. CRP OUTPUTS						
Out-put no.	Output name	Lead partner	Delivery date	Delivered Yes/No	Actual / Forecast delivery date	Comments
						Outputs and delivery times taken from table in CRP Work plan (A1.4) Annex II. Q=quarter
1	Focus Workshop	IVIR	Q3 2010	Yes	30.10.10	@ Emmanuel College Cambridge
2	Workshop 1	Infomedia	Q2 2011	yes	28.06.11	@ Un. Bergen, Norway (on production studies)
3	Workshop 2	IVIR	Q3 2011	yes	16.12.11	@ Amsterdam, jointly organised with CIPIL. (on Trends in Multiple Authorship)
4	Workshop 3	Infomedia	Q2 2012	yes	02.11.12	@ Bergen (Notions of and conditions for authorship and creativity)
5	Workshop 4	CIPIL	Q3 2012	yes	15.12.12	@ Cambridge (Authorship Dynamics and the Dynamic Work)
6	Workshop 5	-	Q1 2013	no		Reserved for additional research exchanges.
7	Public Conference	IVIR	2012/3	yes	26.04.13	Originally envisaged for intermediate stage (late 2012), since planned as end result
8	Explorative study authorship theories	Infomedia	Q3 2011	Yes		Distributed pieces (CIPIL philosophy, Infomedia hermeneutics)
9	Writings B	Infomedia	Jun 2011	yes		see 1.4.2 (some forthcoming pubs)
10	Writings C	IVIR/CIPIL	Q3-4 2011	Yes		see 1.4.1 and 1.4.3
11	Writings D	Infomedia	Q4-2 2012/3	Partial		see 1.4.2, (some forthcoming pubs)
12	Writings E	IVIR/CIPIL	Q1-2 2013	Partial	Q2-4 2013; 2014 (print)	Contributions to end of project book, see 1.4.2 (some forthcoming pubs)
13	Final HERA Conference	HERA	Q2	yes	30.05-01.06.2013	HERA conference set up changed so OOR not presented as such. Joint session with Cultivate project on ownership of cultural identity at Time & Place festival.

1.4 Achievements of the Individual Projects

Please provide an overview of the main achievements of each **Individual Project** and their contribution to the CRP (2 pages max. per IP).

1.4.1 IP 1 The Work as Creative Expression (IViR, University of Amsterdam)

As written in the CRP proposal, the Individual Project on the Work as Creative Expression pursues a twofold objective. It seeks to articulate, first, how copyright policy can better facilitate the needs of creators to engage with existing works and materials without having to seek prior authorisation and, second, how copyright can better recognise art forms and practices where the creative value is in the processes as much (or even more so) as in the final product or artefact. As part of the research design, the Individual Project suggested to critically examine the legal boundaries of the literary or artistic work and the right of reproduction and to study authorship theories to arrive at a critical rethink of artistic expression as a process instead of (or in addition to) as a product.

As the project progressed it became obvious that the European Union angle required more emphasis than envisaged when we drafted the proposal. Previously, it was common opinion among copyright scholars (and policy makers) that EU law had little to say about the specific criteria for determining what constitutes a copyright work and who qualifies as author (except for some areas like software and databases). But recently the Court of Justice of the EU (CJEU) has taken on an unexpected and much criticized activist role in shaping a harmonized pan-European work notion. The interpretation of the legal boundaries of the literary or artistic work becoming a predominantly European affair, the research team delved into a critical analysis of the harmonized concepts of originality and the work in the stream of CJEU judgments, and their reception in national legal systems. Mireille van Eechoud published an article on the diverse readings of the CJEU's case law in *JIPITEC* (2012), a leading peer-reviewed open access journal on intellectual property and information technology.

Another key publication, written by Van Gompel (Amsterdam) and Lavik (Bergen), also takes the recent debate in Europe about the work concept as a starting point, but adds a new dimension to it by focusing on the apparent ban in EU copyright norms on taking criteria such as quality, merit, aesthetics and purpose into consideration when deciding on the eligibility for protection of works. It concludes that, since judges cannot always escape qualitative or aesthetic considerations when determining whether or not a work attracts protection, copyright law's concept of originality would fail to adequately serve its discriminatory function, should this ban be taken literally. This fits the first objective mentioned above. Van Gompel and Lavik's article is published in English in the renowned copyright journal *Revue Internationale du Droit d' auteur RIDA* (2013), with a full text translation in French and Spanish.

The IViR team further published various case comments in leading journals and blog posts on the CJEU's case law. Hugenholtz consistently commented on leading CJEU cases about work and authorship notions in the primary Dutch court reports journal *Nederlandse Jurisprudentie*. Hugenholtz and Van Eechoud each also published a chapter on notions of the work in Dutch copyright law in the first ever English book detailing the entire Dutch Copyright system (2012). In addition, the members of the research team gave talks on the topic of harmonization at a number of seminars and conferences, including a conference co-organised with the University of Namur (Belgium) and hosted by Mrs Gallo, member of the European Parliament, at the European Parliament in early 2012. Later that year, Van Gompel also gave a talk on 'Creativity v. copyright: is there a line to draw?' at the European Parliament. This shows that the research project has attracted considerable attention, also at the policy level.

A topic which was not originally foreseen in the CRP proposal, but which is highly relevant to the Individual Project's first objective of enhancing the free space for creators to build upon existing works and materials, is orphan works. These are works of authors that are unknown or cannot be found, with the result that the works cannot be included in digitization projects or reliably used for remixes, mash-ups and other adaptations. The problem is acute and the EU proposed legislation, which was adopted in 2012. Van Gompel contributed to the debate

through various blogs and two peer reviewed articles, published in the Dutch law journal *AMI* (2011) and the US law journal *Berkeley Technology Law Journal* (2012), which is one of the world's top journals on law and technology. Van Gompel also gave a talk on orphan works at the symposium on *Orphan works & mass digitization: obstacles & opportunities* in Berkeley CA (USA) and a series of lectures at the University of Strasbourg (France).

The successful collaboration between Lavik and Van Gompel resulted in another co-authored article, which is more at the intersection of law and the humanities. This article, which analyses if aesthetic theories can play a useful role in firming up the originality requirement in copyright law (see 1.4.3 for further details), is published in the *Journal of the Copyright Society of the USA* (2013), a leading peer reviewed US journal on copyright law. By focusing on copyright law's originality threshold from a humanities perspective, this article not only adds to the specific objectives of the Individual Project on the work as creative expression, but also contributes to the overall research question of the CRP on how insights from the Humanities can help to rearticulate norms in copyright law.

Two other papers, to be published as chapters in the book that celebrates the conclusion of the CRP, also study the fresh perspectives that humanities can bring to the concept of the copyrighted work as creative expression. These papers not only challenge the legal boundaries of the work, but also add to the second objective by analysing the work as a creative process. The first paper, written by Van Eechoud, explores the impact of the progressively extended right to control reproduction and adaptation of the work on our notion of the work, suggesting that the latter is no longer a stable, identifiable object, but rather a fluid concept that involves allocating value 'around' the work to the right owner. In analysing this impact, it draws upon insights from literary studies, cultural studies and music studies. The second paper, written by Van Gompel, studies how limits to autonomy, creativity and the expression of personality in creative processes may have bearing on the practical application of the CJEU's originality test, which involves an assessment of whether or not a work exhibits 'free and creative choices' reflecting the author's personality. This test is difficult to apply to works that result from complex collaborative processes such as those that online communities create (whether software, art or encyclopaedias). Van Gompel's paper explores how aesthetics, creativity studies and production studies can help to rearticulate the limits to copyright law's originality test. These two papers bring together the two objectives of the Individual Project in one coherent analysis of the work as creative expression. A similar approach was taken by Van Gompel and Van Eechoud when presenting their work and an overview of the main achievements of the CRP at the *Creativity that Counts?* conference in Amsterdam (2013).

Van Eechoud finally also will contribute a chapter to an interdisciplinary book project initiated by professor Helle Porsdam of the HERA Cultivate project, which takes Dürer as its main point of departure. In her paper, Van Eechoud queries to what extent copyright scholars look to academic disciplines beyond the legal for answers by examining inter alia where they take their inspiration and what it is they expect to gain.

Through these various presentations and publications in leading national and international journals, the Individual Project on the Work as Creative Expression accomplished a high degree of external knowledge transfer. In addition, the team cooperated closely with Infomedia (IP2) and CIPIL (IP3) to ensure that available knowledge and new insights were mutually exchanged within the CRP. The IViR team also contributed by collecting data, analysing relevant materials and providing input to the two other Individual Projects (see 1.4.2 and 1.4.3). Regular team meetings and research exchanges of the individual members of the CRP strengthened the synergy between the Individual Projects. The CRP benefited considerably from the focus, taken in several of the outputs, on the intersection between humanities and the law. This has advanced our understanding of how much the law can actually gain from insights from within the humanities. For example, while Lavik & Van Gompel (2013) found that aesthetics are too heterogeneous to provide enough toehold for the legal analysis of higher degrees of originality, Van Gompel's study into creative constraints and Van Eechoud's work on the impact of the reproduction right on the notion of the work (forthcoming 2014) illustrate that other disciplines within the humanities, such as creativity studies, literary studies and music studies, could possibly assist in developing a more sophisticated interpretation of specific aspects of the law.

1.4.2 IP2 Authorship in Collective Arts

Principal investigator Gripsrud had only a very limited research component in the project, which consisted of doing empirical research into the production of collective art forms. To contrast 'analogue' and electronic art forms, he studied both theatre and popular music to understand how contributors view their role in production and any claims to control the outcomes. Gripsrud followed the staging of a play at the National Theatre in Bergen (*Den Nationale Scene*) in the autumn of 2011, i.e. observed rehearsals and interviewed actors, the stage designer, the director of the play and the theatre's director. In addition he interviewed a prominent playwright about the role of playwrights in the production process.

As for the study of popular music, he interviewed semi-professional musicians as well as professionals, the latter also with extensive international experience, one touring globally, and, in addition, a highly successful entrepreneur and manager in the record/music business – all based in Bergen. He also studied a recent court case in the city over the rights to one of the songs recorded by an internationally renowned electronica group, Røyksopp. The article based in this research – 'Creativity and the sense of ownership: Collective authorship in theatre and popular music' will be published in the project's upcoming anthology.

Post-doctoral researcher Lavik's first publication was entitled 'The Poetics and Rhetoric of *The Wire's* Intertextuality'. The article explores how the critically acclaimed US television series invokes previous texts and genres, particularly the western genre, in order to sharpen its social criticism. While it did not deal explicitly with copyright, it did explore the concept of intertextuality, both as a theoretical term and in hermeneutic practice, which in turn was an important stepping stone for Lavik's later publication 'Romantic Authorship in Copyright Law and the Uses of Aesthetics', which specifically deals with the usefulness (or lack thereof) to copyright law of different notions of intertextuality in the humanities.

Lavik then pursued his interest in the series in a rather different direction with the video essay 'Style in *The Wire*'. One aim was to explore – in practice – the importance of being able to draw upon copyrighted audio-visual material for critical purposes. The video essay was published on Vimeo in April 2012, and has been widely seen and circulated online. He then drew on his experience in creating the video in more theoretical work 'The Video Essay: The Future of Academic Film and Television Criticism?', published in open access journal *Frames*, with subsequent smaller pieces in *Frames* and in *Rushprint*, a journal for the Norwegian film and television industry.

Lavik worked closely with the IVIR and CIPIL post-docs during two research stays abroad, two weeks in Cambridge and two weeks in Amsterdam. Much time was dedicated to discussing and outlining three articles, two of them co-authored with Stef van Gompel. The first of these is called 'On the prospects of raising the originality requirement in copyright law: Perspectives from the Humanities', on which he served a first author. This article critically examines existing proposals to raise the originality threshold in copyright law. It draws on the concept of *domain* from sociocultural studies of creativity to explain just why it would be so problematic to identify and apply a stricter originality criterion which takes into consideration the artistic merit of works of authorship. As such the article explicitly brings into play theories from the humanities in order to shed light on copyright policy. The article has been published in the internationally renowned copyright journal *The Journal of the Copyright Society of the USA*.

The second work, on which van Gompel serves as first author is called 'Quality, merit, aesthetics and purpose: An inquiry into EU copyright law's eschewal of other criteria than originality', and seeks to clarify the scope of the EU requirement that no other criteria than originality may establish the copyrightability of works of authorship. This article has been published in English in the *Revue Internationale du Droit d'Auteur*, vol. 236, where it has been translated into French and Spanish.

The third work will appear in the project's anthology, to be published by Amsterdam University Press, and is called 'Romantic Authorship in Copyright Law and the Uses of Aesthetics'. The first part of this article critically examines the widespread claim that the ideology of Romantic

authorship has propelled copyright expansion. The second part explores the broader issue of how aesthetics can most usefully inform copyright policy. It argues that aesthetic theories and interpretations are geared towards very different purposes than copyright law, making interdisciplinarity very challenging. The principal claim is that common ground between law and the humanities is firmer at the level of craft than at the level of theory and philosophy. What scholars of art and popular culture could bring to the table is not so much existing terms and theories as a more broad-based and eclectic expertise in recognizing, and providing arguments for, cultural and artistic value. Their sense of the history of different art forms and artistic practices, and their sensitivity towards, and ways of thinking about, social and artistic value should be confronted specifically with the kinds of works that actually pose problems in copyright law. The conclusion, then, seeks to identify the kinds of questions and approaches that would be most rewarding for future projects at the intersection between law and the humanities.

Finally, Lavik has conducted a production study of the television drama series 'Kampen for tilværelsen' ['The Struggle for Existence'], produced by national public broadcaster NRK. The series is a particularly interesting case for the purposes of the CRP, as it represents a first attempt by the NRK to adopt the so-called 'one vision' model, which has proven so successful in Denmark and in some ways can be seen as a kind of throwback to the ideals of Romantic authorship. At the same time there are obvious tensions between the stated ideal and the actual creative decision-making process on the production, as there is not one writer/creator on 'Kampen', but rather three.

Lavik has followed the production as an observer, being present in the so-called writers' room as key discussions have taken place between the three writers, two directors, the producer, a script consultant, and an actor. The goal is to arrive at a deeper understanding of the collaborative nature of television series, and to explore how the 'one vision' ideal serves both to structure parts of the creative process and as a convenient marketing ploy.

Lavik has also conducted semi-structured interviews with the three screenwriters, the producer, and the director of the first three episodes. The interviews have been transcribed and, but the writing of the article was still in progress by the end of the project because the fieldwork took place late in the project, as Lavik was dependent on the availability of the interviewees.

1.4.3 IP3 Multiplicity of Authors (CIPIL, University of Cambridge)

The Cambridge strand of the project interrogated the challenge of multiple authorship in the context of creative collaboration in the digital environment, drawing on insights from humanities disciplines.

In exploring this theme, Dr Elena Cooper conducted a qualitative empirical study into concepts of authorship employed by artists and poets working with digital technology. Qualitative work of this nature is rarely done and Cooper's findings challenge some of the existing assumptions about authorship in the digital environment. A paper presented at Edinburgh College of Art in November 2012 and published in the final anthology of the HERA project *Electronic Literature as a Model of Creativity and Innovation in Practice*, argues that, far from always a challenge, the wider discourse on the digital arts can provide copyright law with coherence and legitimacy: *Of People Not Machines: Authorship, Copyright and the Computer Programmer*, in 'Remediating the Social' ed. S. Biggs, published by University of Bergen, Bergen, Norway, 2012. A further paper, presented at the University of Amsterdam in April 2013 and due to be published in the project's final anthology, argues that rather than a category in decline, 'authorship' is of continuing importance to many working in the digital environment, spanning not just collaborative notions but also solitary ones: *Authorship and Copyright: Reassessing the Challenge of the Digital*, in *The Work of Authorship*, University of Amsterdam Press, forthcoming, 2014.

Dr Elena Cooper's research on the HERA project has also spanned comparative and historical perspectives on multiple authorship. The comparative paper explores how and why differences in joint authorship doctrine have emerged in the common law world, despite their common root (the nineteenth century English case of *Levy v Rutley*). The historical paper uses the 70 year process of compiling the Oxford English Dictionary, instigated by the Philological Society in 1857, as a case study for large scale multi-authored collaborations. This was a process involving the contribution of thousands of volunteer readers, sub-editors and assistants, alongside the salaried editors. Cooper's research uncovers original archival material about how the copyright implications of involving masses of contributors were understood in the nineteenth century, and uses this as a basis for fresh reflection on the challenges for copyright posed today by large-scale multi-author ventures like Wikipedia. Preliminary findings from this research were presented at the University of Cambridge in December 2012, and at the British Legal History Conference in Glasgow in July 2013.

Philosopher Dr Laura Biron's paper *Authorship and communicative norms: implications for copyright law* considers the contribution that existing philosophical literature on the justification of copyright might have HERA's concerns with the work, originality and (multiple) authorship. It begins by outlining three categories that have application to questions about authorship: labour, personality and communication, and explaining a deeper distinction underlying these categories, between proprietary and non-proprietary accounts of authorship. It goes on to illustrate how these differing approaches to authorship might be applied to the three questions considered by the HERA project, offering new analysis.

Dr Biron collaborated with Cooper to produce a joint paper which is currently under review: *Copyright and Multiple Authorship: Insights from the Philosophy of Art*. This breaks new ground for both the disciplines of law and philosophy. From a philosophical standpoint the paper teases out what institutional art theories of the late twentieth century, which are usually seen as theories about the 'work', say about 'authorship'. The paper then explores how a new definition of authorship, rooted in concepts of 'role', 'authority' and 'intent' might assist copyright lawyers in approaching cases of co-authorship.

Biron has also worked with Bently on two papers. The first is a mapping of discontinuities between authorship as conceived in British copyright law and cultural practices of designating authorship (through attribution). It will be published in the end of project book *The Work of Authorship*. The paper charts cases in which cultural practices recognise authors where copyright would not (eg either conceptual art, and scientific authorship), as well as cases where law might recognise authors that cultural practice denies (as might be the case with literary

editors, thesis supervisors, and family contributors). The paper reflects on the causes and significance of these discontinuities, and how copyright might be changed to accommodate the diversity of practice across the broad field of cultural production covered by copyright law. The second paper is an examination of film authorship in the past thirty years, as films have become one component in the development of entertainment franchises. The paper argues that the new system of production has tended to place increasing emphasis on the development of the concept or story, recognising that the film-as-celluloid/film-as-cinema experience was only one part (and possibly a subsidiary part) of the 'expanded universe' that its release initiated. Such an approach seems only to exacerbate tensions between legal and cultural conceptions of authorship. For the 'expanded universe' comprises in legal terms any number of distinct copyright-protected productions – novels, comics, posters, toys (possibly sculptures, works of applied art), sequels etc – each with their own author. Whether any of them are sufficiently influenced by the creator of the concepts that they express, embody or develop, such as to make the concept-creator a co-author, is a matter of fact, but will depend on their close involvement in decisions over the form of the product. But in general, a provider of an idea or concept does not make the right kind of contribution.

Bently has developed a third paper, currently in draft form, which was presented at the HERA final conference. Entitled, 'Disaggregating Authorship' the paper reflects on the impediments to copyright responding to the diversity in understandings of authorship, particularly in collaborative environments. The paper argues that copyright's concern to limit the number of authors reflects logics that are only relevant to issues of copyright ownership. Armed with this insight, Bently argues that copyright might adopt other, more flexible ideas of authorship in some of its other functions. In particular, the paper points the way towards a more open notion of authorship for attribution purposes than that for ownership of copyright. An alignment of copyright with cultural practice might be achieved through embracing a wide range of beneficiaries of the attribution right than are currently recognised as authors (and potential owners) of copyright works. Biron continues to work on her book, entitled *The Idea of Intellectual Property* which, amongst other things, examines philosophical principles underpinning notions of multiple authorship in law. This is due to be published by Oxford University Press in 2014.

1.5 CRP management

Please use this section to summarise management of the CRP activities during the reporting period (5 pages max.).

This section should include the following:

- 1.5.1 List of scientific & technical personnel involved in each Individual Project (Name, position, contract start/end dates; estimated percentage of work time dedicated to the programme. For PhD candidates please indicate whether they achieved their PhD within the CRP duration). Please note changes in the consortium, if any. Please note any changes to the legal status of any of the partners.

Name	position	Start date	End date	Av. % time	
IP 1					
Dr M. Van Eechoud	PL/PI, post-doc researcher	01.06.2010	30.06.2013	40%	
Prof. P.B. Hugenholtz	Sr. researcher	01.06.2010	30.6.2013	5%	
Dr S. Van Gompel	Post doc researcher	01.11.2010	30.06.2013	80%	
IP 2					
Prof. J Gripsrud	PI	01.06.2010	30.06.2013	10%	
Dr E. Lavik	Post doc researcher	01.08.2010	30.06.2013	100%	
IP3					
Prof. L. Bently	PI	01.06.2010	30.06.2013	10%	
Dr L. Biron	Post doc researcher	01.10.2010	31.01.2013	50%	(incl. 4 months maternity leave extension)
Dr E. Cooper	Post doc researcher	01.07.2011	01.07.2013	100%	

- 1.5.2 Evaluation of collaboration and communication among the partners in this CRP: How have the partners in this CRP been working together? Please, describe the kind of exchanges among CRP members (ideas, technologies, tools, students), including joint publications (if any).

In the project proposal it was already foreseen that for our multidisciplinary project to be successful, the researchers must engage in close collaboration. Over the course of the project 8 plenary face to face research team meetings were held (see 1.5.5) and the team members participated in a focus workshop and four themed workshops organised for the CRP by the project partners. Everyone presented work at the final Creativity that Counts conference in Amsterdam (April 2013). Contact was also maintained via Skype, email and telephone. Individual meetings took place between various team members during research exchanges. The PL has been long term visiting scholar at Cambridge University which also facilitated collaboration across the CIPIL and IVIR projects.

Research teams hosted the one day research team meetings taking turns. The schedule for the meetings was agreed at the start of the CRP and is followed through, with only minor changes in dates and venues. The format followed was that organisational & administrative matters were dealt with in a short session, so that most of the meeting could be devoted to discussing

progress on the individual projects and the relations between them. Researchers benefited from the in depth discussions, and follow up ideas/plans in smaller groups using mail, skypes, etc. Meeting minutes and 'to do' lists were distributed among team members and posted on the project site.

Partly in with a view to facilitate joint publications (articles, papers, see list at 1.6.2), the CRP had allocated some funding for researcher exchange visits. The first of these had taken place in 2011 (Lavik and Van Gompel to Cambridge, Sep 2011), with subsequent visits of Lavik and Cooper to Amsterdam (Feb and April 2012). Because the first research exchange proved to be invaluable particularly for the post-docs working on joint publications, the CRP had re-allocated budget for a workshop to research exchanges. As it turned out this budget was not used up completely because the two research exchanges planned towards the end of the project fell through due to planning difficulties. Cooperation continues beyond the lifespan of the project to ensure all work still in progress/under review will be published.

For internal CRP purposes, a project site has been set up in UvACommunities (the University of Amsterdam's collaborative research web tool). Central tools include a wiki where project members can read and contribute information about their activities, sources, projects/events/persons relevant to our CRP and also has a 'resources' section where each member can up/download files.

1.5.3 European-added value: explain the added value of trans-national collaboration within your CRP (e. g. in terms of critical mass of expertise, scale and scope).

For copyright scholars, to be able to make a sustained research effort that escapes the normal orientation on specificities of national legal systems –or supranational characteristics of EU law– has been one major advantage of the HERA scheme. To deliver excellent research combining expertise about national legal systems was crucial. Also, everyone involved has taken the opportunity to deepen their understanding of how (and why) national norms differ, and be more sensitive to how creative practices might be informed by certain readings of (national) norms. The scale of the project and therefore ability to link and extend existing transnational networks across disciplines was of major importance to the researchers, as it helped them grasp more fully just how rich but spread about topical knowledge is. To be able to bring together academics from many different disciplines, drawing together international excellence, has put everyone involved in a much better position to seek future collaboration.

1.5.4 CRP consortium management tasks and achievements.

The CRP involved three academic institutes, with a principal investigator at senior level for each institute. The PI was responsible for directing the activities at her/his institute. Project lead and Principal Investigator 1 was Dr Mireille van Eechoud (IVIR, University of Amsterdam). As project lead Van Eechoud was the contact point for HERA and responsible for reporting duties. The project lead is responsible for the administrative and financial management of the overall project. Payments to the participating institutes by the PL are made to a schedule based on the payments by HERA-ESF and provided the Individual Projects have been reported in conformity with the funding agencies' requirements.

Van Eechoud monitored the research plans of the Individual Projects and ensured being up to date on progress, guarding the coherence and agenda of the CRP in collaboration with the other principal investigators. To this end she maintained regular contact esp. with PI Gripsrud and Bently. The regular face to face team meetings were an important means to discuss in-depth progress, interdependencies, and KT activities to be undertaken by the project teams and plan CRP events, especially the paper sessions/workshops. Between meetings, frequent contact ensured follow up of tasks taken on by project members. For communication between teams, see section 1.5.2.

1.5.5 List of internal CRP meetings, dates and venues.

NB: table does not include intra-CRP meetings (incl. skypes/telco's) between members of different project teams or within teams, only 'plenary' meetings involving all three projects.

Date	Venue	Comments
27.04.2013	Amsterdam	one day team meeting
22.03.2013	Amsterdam	one day team meeting
14.12.2012	Cambridge	one day team meeting
01.11.2012	Bergen	one day team meeting
04.05.2012	Cambridge	one day team meeting
15.12.2011	Amsterdam	one day team meeting
20.09.2011	Cambridge	half day team meeting (combined with research exchange)
27.06.2011	Bergen	one day team meeting
26.03.2011	Amsterdam	one day team meeting
29.10.2010	Cambridge	One day team meeting
08.06.2010	Skype video	3 hour skype PIs

1.6 CRP Impact: Dissemination, Networking and Knowledge Transfer

Please use this section to describe how the results of the CRP have been exploited and disseminated so far (5 pages max., excluding the tables).

1.6.1 Please provide a concise description of the all **networking activities** (different from internal CRP networking) highlighting the most important ones for this CRP (in terms of outcome, impact, opportunities for trans-national collaborations and synergy with other European and international initiatives).

The project teams have established and maintained contact with relevant researchers and projects early on. At Oxford, Professor Georgina Born's MusDig 5 year project is funded by an ERC Advanced grant and examines the wide-ranging changes to music and musical practices influenced by digitization and digital media. Bently and Van Eechoud discussed copyright aspects with the DigMus team early in the project, while Born took part in the focus workshop. In January 2013 findings from the OOR project were presented at the MusDig conference 'Intellectual Property, Cultural Commons and Ontological Politics'. Also in music studies, ties were formed with with AHRC Research Centre for Musical Performance as Creative Practice run by professors Rink and Cook at the University of Cambridge. Gripsrud maintained contact with professor Anne Danielsen at University of Oslo, whose research project Rhythm in the Age of Digital Reproduction is relevant to the case studies undertaken by Infomedia.

Contacts with the HERA Cultivate project led by professor Porsdam have persisted throughout the lifespan of OOR. Van Eechoud took part in the Cultivate kick-off conference, Porsdam visited Wolfson college Cambridge and together they debated ownership of cultural identity at a session of HERA's public humanities festival in London (2013). Van Eechoud will contribute to an interdisciplinary book project proposed by Professor Porsdam, and the latter has actively participated in the Bergen workshop. Collaboration with the ELMCIP project also flourished, with members taking part in our Amsterdam workshop (PI Yra van Dijk and dr. Penny Travlou), and Cooper presenting her work on digital artists at the ELMCIP final conference (2012). Outside HERA, various team members have taken part in events organised by the Beyond Text programme of the AHRC, and have made contact with individual researchers with mutual research interests.

Our CRP has attracted attention not only in the EU and US, but also in Australia and China. Team members were approached with ideas for organizing joint conferences on the project

themes (e.g. Hong Kong University) and for applying for an Australian Research Council grant (on copyright for novel art forms). Both are being considered.

The fact that the HERA JRP programme had a thematic focus on creativity and innovation, and that joint HERA meetings were organized by ESF (notably the kick-off in Vienna, the knowledge transfer meeting in Dublin and the final conference and festival in London) really facilitated the establishment of cross-CRP networking.

1.6.2 Please provide a list of **all publications** (peer reviewed articles, books, news articles, etc.) using Table 2 (please see above).

TABLE 2: LIST OF PUBLICATIONS (CHRONOLOGICAL ORDER)										
NO.	Title	Main author	Title of the periodical or the series	Num., date	Publisher	Publ place	Publ Year	Relevant pages	Permanent identifiers ³ (if available)	OA ⁴ ?
1	Government Works	Mireille van Eechoud	P.B. Hugenholtz, A.A. Quaedvlieg & D.J.G. Visser (eds.), A Century of Dutch Copyright Law. Auteurswet 1912-2012.		Delex	Amsterdam	2012	141-175		yes
2	Works of Literature, Science and Art	Bernt Hugenholtz	P.B. Hugenholtz, A.A. Quaedvlieg & D.J.G. Visser (eds.), A Century of Dutch Copyright Law. Auteurswet 1912-2012.		Delex	Amsterdam	2012	19-41		yes
3	The Poetics and Rhetorics of <i>The Wire's</i> Intertextuality	Erlend Lavik	<i>Critical Studies in Television</i>	vol. 6, no. 1.	Manchester University Press	Manchester	2011			
4	Public reason, communication and intellectual property	Laura Biron	Anabelle Lever (ed), New Frontiers in the Philosophy of Intellectual Property		Cambridge University Press	Cambridge	2012			No
5	Along the road to uniformity – Diverse Readings of the Court of Justices judgments on the copyright work	Mireille van Eechoud	JIPITEC	2	Un Gottingen/Karlsruhe/Hannover	Germany	2012			yes
6	Noot bij Painer HvJEG 1.12.2011, zaak C 145/10	Mireille van Eechoud	AMI	2012-2	VVA	Amsterdam	2012			yes
7	Another piece of the puzzle, or is it? CJEU on photographs as copyright works	Mireille van Eechoud	Kluwer Copyright Blog		Kluwer	Deventer	7 Dec 2011		http://kluwercopyrightblog.com/2011/12/07/another-piece-of-the-puzzle-or-is-it-cjeu-on-photographs-as-copyright-works/	yes

³ A permanent identifier should be a persistent link to the published version (full text if open access or abstract if article is pay per view) or to the final manuscript accepted for publication (link to article in repository).

⁴ Open Access is defined as free of charge access for anyone via the internet. Please answer 'yes' if the open access to the publication is already established and also if the embargo period for open access is not yet over but you intend to establish open access afterwards.

TABLE 2: LIST OF PUBLICATIONS (CHRONOLOGICAL ORDER)

<i>NO.</i>	<i>Title</i>	<i>Main author</i>	<i>Title of the periodical or the series</i>	<i>Num., date</i>	<i>Publisher</i>	<i>Publ place</i>	<i>Publ Year</i>	<i>Relevant pages</i>	<i>Permanent identifiers³ (if available)</i>	<i>OA⁴?</i>
8	ALAI 2011 Report on the Netherlands	S. van Gompel, M. van Eechoud	ALAI proceedings		ALAI	Paris	2011		http://www.alaidublin2011.org/wp-content/uploads/2011/05/Netherlands.pdf	Yes
10	Het richtlijnvoorstel verweesde werken: Een kritische beschouwing	S. van Gompel	AMI	2011-6	VVA	Amsterdam	2011	205-218		yes
11	European Commission Proposes a Directive on Orphan Works	Stef van Gompel	IRIS: Legal Observations of the European Audiovisual Observatory	2011-7	Council of Europe Audiovisual Observatory	Strasbourg	2011	5		yes
12	The Commission's Proposal for a Directive on Orphan Works.	Stef van Gompel	Kluwer Copyright Blog	14 June 2011	Kluwer	Amsterdam	2011	-	http://kluwercopyrightblog.com/2011/06/14/the-commission%E2%80%99s-proposal-for-a-directive-on-orphan-works/	yes
13	Noot bij Hof van Justitie EU 16 juli 2009, C-5/08, (Infopaq); en Hof van Justitie EU 22 december 2010, C-393/09 (BSA) [case comment]	Bernt Hugenholtz	Nederlandse Jurisprudentie	2011/288-289	Kluwer	Deventer NL	2011	-		yes
14	Opinion of the Advocate General of the ECJ in the Kampusch case (2): the notion of originality in photographs	Stef van Gompel	Kluwer Copyright Blog	3 May 2011	Kluwer	Amsterdam	2011	-	http://kluwercopyrightblog.com/2011/05/03/opinion-of-the-advocate-general-of-the-ecj-in-the-kampusch-case-2-the-notion-of-originality-in-photographs/	yes
15	Noot bij HR 28 oktober 2011 (Mag Instrument Inc / Edco Eindhoven) [case comment]	Bernt Hugenholtz	NJ	2012/45	Kluwer	Deventer NL	2012	-		yes
16	Noot bij Hof van Justitie EU 4 oktober 2011 (Football Association Premier League / QC Leisure) [case comment]	Bernt Hugenholtz	NJ	2012/164	Kluwer	Deventer NL	2012	-		yes

TABLE 2: LIST OF PUBLICATIONS (CHRONOLOGICAL ORDER)

NO.	Title	Main author	Title of the periodical or the series	Num., date	Publisher	Publ place	Publ Year	Relevant pages	Permanent identifiers ³ (if available)	OA ⁴ ?
17	Noot bij Hof van Justitie EU 1 maart 2012 (Football Dataco / Yahoo! UK) [case comment]	Bernt Hugenholtz	NJ	2012/433	Kluwer	Deventer NL	2012	-		yes
18	Of People Not Machines: Authorship, Copyright and the Computer Programmer	E. Cooper	'Remediating the Social' ed. S. Biggs	2012	ELMCIP	Bergen NO	2012	-	http://elmcip.net/node/4635	yes
19	Copyright and Culinary Creation	Bernt Hugenholtz	J. F. Hovden & K. Knapskog (eds.), <i>Hunting High and Low</i>		Spartacus/Scandinavian Academic Press	Oslo No	2012	750-756		no
20	Style in <i>The Wire</i>	E. Lavik	Vimeo	2012	-	-	2012	-	http://vimeo.com/39768998	yes
21	The Video Essay: The Future of Academic Film and Television Criticism?	E. Lavik	Frames	2012, no 1	University of St Andrews/BAFTS S	Edinburgh	2012	-	http://framescinemajournal.com/article/the-video-essay-the-future/	yes
22	Some Reflections on My Video Essay Venture <i>Style in The Wire</i>	E. Lavik	Frames	2012, no 1	University of St Andrews/BAFTS S	Edinburgh	2012	-	http://framescinemajournal.com/article/some-reflections-on-my-video-essay-venture/	yes
23	Video essay om <i>The Wire</i>	E. Lavik	Rushprint	2012	Rushprint	Oslo	2012	-	http://rushprint.no/2012/4/videoessay-om-the-wire/	yes
24	Hof van Justitie EU 2 mei 2012, zaak C-406/10 (SAS Institute Inc. / World Programming Ltd.), [case comment]	Bernt Hugenholtz	NJ	2013/270	Kluwer	Deventer	2013	-		yes
25	Annotatie bij Hof van Justitie EU 9 februari 2012, zaak C-277/10 (Martin Luksan / Petrus van der Let) [case comment]	Bernt Hugenholtz	NJ	2013/196	Kluwer	Deventer	2013	-		yes
26	Annotatie bij Hoge Raad 22 februari 2013 (Stokke / H3 Products) [case comment]	Bernt Hugenholtz	NJ	2013/501	Kluwer	Deventer	2013	-		yes
27	Annotatie bij Hoge Raad 12 april 2013 (Stokke / Fikszo) [case comment]	Bernt Hugenholtz	NJ	2013/502	Kluwer	Deventer	2013	-		yes

TABLE 2: LIST OF PUBLICATIONS (CHRONOLOGICAL ORDER)

<i>NO.</i>	<i>Title</i>	<i>Main author</i>	<i>Title of the periodical or the series</i>	<i>Num., date</i>	<i>Publisher</i>	<i>Publ place</i>	<i>Publ Year</i>	<i>Relevant pages</i>	<i>Permanent identifiers³ (if available)</i>	<i>OA⁴?</i>
28	Annotatie bij Hoge Raad 12 april 2013 (Hauck / Stokke) [case comment]	Bernt Hugenholtz	NJ	2013/503	Kluwer	Deventer	2013	-		yes
29	The work of authorship: creativity that counts.	Mireille van Eechoud (ed.)	-	-	Amsterdam University Press	Amsterdam	2014 (forthc)			yes
30	Copyright's hunting grounds	Mireille van Eechoud	H. Porsdam, Durer's Rhinoceros		Ashgate		forthc			?
31	Creativity and the sense of ownership: Collective authorship in theatre and popular music	Jostein Gripsrud	M. van Eechoud (ed.) The work of authorship: creativity that counts.		Amsterdam University Press	Amsterdam	2014 (forthc)			yes
32	Creativity, autonomy, and personal touch: A critical appraisal of copyright law's originality test	Stef van Gompel	id.		Amsterdam University Press	Amsterdam	2014 (forthc)			yes
33	Romantic Authorship in Copyright Law and the Uses of Aesthetics	Erlend Lavik	id.		Amsterdam University Press	Amsterdam	2014 (forthc)			yes
34	Authorship and communicative norms: implications for copyright law	Laura Biron	id.		Amsterdam University Press	Amsterdam	2014 (forthc)			yes
35	Authorship and Copyright: Reassessing the Challenge of the 'Digital'	Elena Cooper	id.		Amsterdam University Press	Amsterdam	2014 (forthc)			yes
36	Adaptations	Mireille van Eechoud	id.		Amsterdam University Press	Amsterdam	2014 (forthc)			yes
37	Discontinuities Between Legal Conceptions of Authorship and Social Practices: What, if anything, is to be done?	Laura Biron & Lionel Bently	id.		Amsterdam University Press	Amsterdam	2014 (forthc)			yes

TABLE 2: LIST OF PUBLICATIONS (CHRONOLOGICAL ORDER)

<i>NO.</i>	<i>Title</i>	<i>Main author</i>	<i>Title of the periodical or the series</i>	<i>Num., date</i>	<i>Publisher</i>	<i>Publ place</i>	<i>Publ Year</i>	<i>Relevant pages</i>	<i>Permanent identifiers³ (if available)</i>	<i>OA⁴?</i>
38	The authority of Authorship. Copyright and the Oxford English Dictionary in the Nineteenth Century	Elena Cooper	to be submitted							?
39	Copyright and multiple authorship: Insights from the philosophy of Art.	Laura Biron & Elena Cooper	Under review Oxford J Legal Studies							?

1.6.3 Please fill out the following questionnaire:

CRP Publications and Open Access	
<p>1. How many articles were published/accepted for publication in peer-reviewed journals?</p> <p>17</p>	<p>Excluding reviewed conference proceedings, OA peer reviewed book (chapters) etc.:</p>
<p>2. To how many of these is open access⁵ provided?</p>	
<p>1. How many of these are published in open access journals?</p>	<p>3</p>
<p>2. How many of these are published in open repositories?</p>	<p>14 (incl. partner websites)</p>
<p>3. To how many of the CRP publications is open access not provided?</p>	
<p>4. Please check all applicable reasons for not providing open access:</p>	
<p><input type="checkbox"/> publisher's licensing agreement would not permit publishing in a repository</p> <p><input type="checkbox"/> no suitable repository available</p> <p><input type="checkbox"/> no suitable open access journal available</p> <p><input type="checkbox"/> no funds available to publish in an open access journal</p> <p><input type="checkbox"/> lack of time and resources</p> <p><input type="checkbox"/> lack of information on open access</p> <p><input type="checkbox"/> other:</p>	<p>x</p> <p>x</p> <p>x</p>

1.6.4 Please provide a list of the main **dissemination** and **knowledge transfer activities** (appearances in media, exhibitions, websites, etc) undertaken by the CRP.

- **Web presence**

In addition to its page on the HERA site, the OOR project has its own dedicated page on the IVIR website and also features on the websites of CIPIL (Cambridge) and Infomedia. Events and outputs of the projects are also posted on the public part of the project wiki.

- **Presentations / papers given (in chronological order from latest)**

Lionel Bently, participated in the art event on authorship in copyright [Assembly \(Curiosity\) by Agency](#) (Kobe Mathys) at Turner Contemporary at Margate (UK) on 14 September 2013

Elena Cooper, The authority of Authorship. Copyright and the Oxford English Dictionary in the Nineteenth Century, British Legal History Conference, Glasgow, 10 July 2013.

Lionel Bently, panelist at Eva Weinmayr's 'The Piracy Project' at the Showroom ('A Day at the Courtroom'), London 15 June 2013.

Stef van Gompel, 'Copyright and Access to Cultural Heritage: Challenges for Digitization and the Orphan Works Problem', WIPO/CEIPI Advanced Training Course on the Legal, Administrative and Economic Aspects of Intellectual Property, Strasbourg: CEIPI, 13 June 2013.

Jostein Gripsrud, Humanities and copyright, OOR HERA final conference Creativity that Counts?, University of Amsterdam 26 April 2013.

⁵ Open Access is defined as free of charge access for anyone via the internet.

Elena Cooper, 'Authorship and Copyright: Reassessing the Challenge of the Digital', OOR HERA final conference Creativity that Counts?, University of Amsterdam 26 April 2013.

Mireille van Eechoud, 'Voices near and far – Digital authorship and creativity debates in law', OOR HERA final conference Creativity that Counts?, University of Amsterdam 26 April 2013.

Stef van Gompel, Judging originality – Copyright law's peculiar notion of creative work, OOR HERA final conference Creativity that Counts?, University of Amsterdam 26 April 2013.

Erlend Lavik, 'The role of aesthetics in copyright law', Creativity that Counts? HERA Of Authorship and Originality Project Public Conference, University of Amsterdam, 26 April 2013.

Laura Biron, 'Joint authorship doctrine – Insights from philosophy of art', Creativity that Counts? HERA Of Authorship and Originality Project Public Conference, University of Amsterdam, 26 April 2013.

Lionel Bently, 'Disaggregating the authorship function as a response to discontinuities between legal and social conceptions of authorship', Creativity that Counts? HERA Of Authorship and Originality Project Public Conference, University of Amsterdam, 26 April 2013.

Jostein Gripsrud, 'Hierarchically ordered individuals: Collective production in theatre and popular music,' Creativity that Counts? HERA Of Authorship and Originality Project Public Conference, University of Amsterdam, 26 April 2013.

Stef van Gompel, 'Bescherming van creatieve prestaties', IEMES week *Hear, see, do, experience*, Fontys Academy for Creative Industries, Tilburg, 6 December 2012.

Elena Cooper, Of People Not Machines: Authorship, Copyright and the Computer Programmer, ELMCIP final conference, Edinburgh College of Art, Edinburgh, November 2012.

Stef van Gompel, 'Object, subject en formaliteiten van het auteursrecht', VVA ledenvergadering: *Auteurswet in perspectief, verleden en actualiteit*, Amsterdam, 9 November 2012.

Stef van Gompel, 'Creativity v. copyright: is there a line to draw?', S&D Group conference on *Copyright: what is broken, how to mend it?*, European Parliament, Brussels, 18 October 2012.

Stef van Gompel, 'Copyright and Access to Knowledge: Challenges for Digitization and the Orphan Works Problem', WIPO/CEIPI/INPI Advanced Training Course on the Legal, Administrative and Economic Aspects of Intellectual Property, Strasbourg: CEIPI, 3 July 2012.

Bernt Hugenholtz, 'An Agenda for EU Copyright Reform', Lisbon Council IP Summit, Brussels, 10 September 2012.

Stef van Gompel, 'Orphan works and related issues', Research master in European and international Intellectual Property Law (Master 2), Strasbourg: CEIPI, 3 April 2012.

Stef van Gompel, 'What is the best approach to addressing the orphan works problem?', Berkeley Center for Law & Technology Symposium on Orphan works & mass digitization: obstacles & opportunities, Berkeley CA, 12-13 April 2012.

Lionel Bently, Parody and Copyright, Glasgow, March 2012.

Lionel Bently, Harmonization By Stealth: The ECJ and Copyright, Conversations on Copyright, University of Edinburgh, March 2012.

Lionel Bently, You've Gotta Be Joking: Parody and Copyright, Oxford University, February 2012.

Bernt Hugenholtz, 'Plagiarism versus Copyright. The Rise of Rights in Reputation', 13th EIPIN Congress, Munich, 4 February 2012

Bernt Hugenholtz, Harmonisation or unification of copyright in the EU?, Conference InfoSoc@Ten: Ten Years after the EU Directive on Copyright in the Information Society, European Parliament, Brussels, 13 January 2012.

Lionel Bently, Harmonization By Stealth: The ECJ and Copyright, Conference InfoSoc@Ten: Ten Years after the EU Directive on Copyright in the Information Society, European Parliament, Brussels, 13 January 2012.

Elena Cooper, Multiple Authorship: Law and Art in the Digital Sphere, HERA OOR Workshop on Trends in Multiple Authorship: Empirical Studies and Legal Implications. Amsterdam 16 December 2011.

Bernt Hugenholtz, Plagiarism: (Moral and) Legal Aspects, Royal Academy of Science (KNAW) ALLEA Symposium, Amsterdam, 14 December 2011.

Lionel Bently, No Laughing Matter: Parody and Copyright, Brunel University, US, December 2011.

Erlend Lavik, The Usefulness of the Humanities: Some Observations Based on the HERA Project, Infomedia Seminar, Bergen, Norway 7, December 2011.

Lionel Bently, Flexibilities in UK Copyright Law, with Ronan Deazley (briefing paper), Global Forum on Copyright Flexibilities, Amsterdam, December 2011.

Mireille van Eechoud, Of Interfaces, snippets and sequences. Is the European Court of Justice fragmenting or integrating the notion of copyright works? CIPIL Intellectual Property Seminar Series 2011-12, Cambridge University, UK, 24 November 2011.

Bernt Hugenholtz, In © We Trust (?), ICRI 20th Anniversary Conference, Leuven University, Belgium, 15 November 2011.

Mireille van Eechoud, Pivotal concepts long overlooked? The work and authorship in EU copyright law, Oxford Invited Speaker Intellectual Property Seminar, Oxford University, 27 October 2011.

Jostein Gripsrud, Creativity and Copyright, Arts Council Norway, Oslo, 12 September 2011.

Bernt Hugenholtz, Unification of Copyright in the EU, Conference on The European Copyright Code (Wittem project), Leuven University, Belgium, 16 September 2011.

Laura Biron & Lionel Bently, Multiple Authorship in Law and Literature, McGill University, Montreal, Canada, 16 September 2011.

Bernt Hugenholtz, Framing the Public Interest Agenda in Copyright, key note, Global Congress on IP and The Public Interest, Washington College, American University, Washington DC, 25 August 2011.

Erlend Lavik, 'The Relationship between the Humanities and Law as Hermeneutic Disciplines', NordMedia conference, Iceland, August 2011.

Lionel Bently, Non-Authorship, Conference on Franchises and Copyright Law, University of New South Wales, Australia, 8 July 2011.

Mireille van Eechoud, 'The Edge of Protection, What is a Work?' ALAI Conference, Dublin, 30 June 2011.

Lionel Bently, The Future of Content, British Library, London, June 2011.

Stef van Gompel, 'Providing online access to art: the current legal framework in Europe', Fundació Antoni Tàpies seminar: Law and access to culture in the information society: questions and legal challenges, Barcelona: Universitat Politècnica de Catalunya, 12 May 2011.

Bernt Hugenholtz, 'The accomplishment of European copyright harmonization', International Copyright Conference, University of Cyprus, 14-16 April 2011.

Mireille van Eechoud, 'Authorship and originality, the HERA OOR project', Beyond Copyright workshop, Queen Mary University of London, 8 April 2011.

Erlend Lavik, 'Film Criticism in the Digital Era', Remix Cinema Workshop, Oxford Internet Institute, Oxford UK 25 March 2011.

Bernt Hugenholtz, 'The Future of Copyright in Europe'. Det årlige opphavsrettskurset - Digitale utfordringer i opphavsretten (The annual copyright conference - digital challenges in copyright law), Sandefjord (Norway), 25 March 2011.

Laura Biron, 'Copyright and multiple authorship: the case of musical works', Renew, Reuse, Recycle: From Quotation to Remediation in Art and Popular Music, CRASSH conference (Centre for Research in the Arts, Social Sciences and Humanities, University of Cambridge), Cambridge UK, 19 March 2011.

Bernt Hugenholtz, 'The Dynamics of Harmonization of Copyright at the European Level', EIPIN Congress, European Parliament, Strasbourg, France, 24-25 February 2011.

Laura Biron, 'John Locke and the labour theory of intellectual property: a new interpretation', Law and Philosophy seminar, Georgetown University USA, February 18th 2011.

Erlend Lavik, 'The Relationship between the Humanities and Law as Hermeneutic Disciplines', OOR Focus workshop 30 October 2010, Cambridge UK.

Mireille van Eechoud. 'Multidisciplinary research into Authorship & Originality', OOR Focus workshop 30 October 2010, Cambridge UK.

Jostein Gripsrud, 'Infomedia project: Authorship in Collective Arts', OOR Focus workshop 30 October 2010, Cambridge UK.

Laura Biron, 'Philosophical conceptions of authorship and their impact on copyright law', OOR Focus workshop 30 October 2010, Cambridge UK.

Lionel Bently, 'The Future of Copyright in Europe', talk to AIPPI, London UK, July 2010.

1.6.5 Please highlight the most useful **training activities** (workshops, courses or summer schools) undertaken in the framework of this CRP.

Not applicable.

- 1.6.6 *Please provide a concise description of **CRP contribution to the HERA JRP visibility**: What has this CRP done so far to promote the programme more actively and widely? Please, indicate the outcome and impact of the dissemination activities developed during this period.*

At conferences, workshops, through day to day contacts team members have in their institutes extended networks as well as in external communications (e.g. Faculty and University newsletters, websites, social media) the OOR project has been presented as part of the HERA programme. We have routinely informed audiences of the nature and objectives of the overall HERA programme by way of introduction to our specific CRP.

- 1.6.7 *Key contribution of this CRP to the HERA JRP Programme: How has the Programme benefited from this CRP? Please, provide one example that clearly illustrates your valuable input (whether scientific, networking, training and/or dissemination input).*

PI Mireille van Eechoud took part in a panel debate with professor Helle Porsdam on Ownership of Cultural Identity at the HERA Time and Place public conference (London 2013).

- 1.6.8 *Key contribution of the Programme to this CRP: How has your participation in the programme influenced your research (in terms of visibility, collaborations, opportunities, ideas)*

Especially for the legal scholars involved in the CRP, the opportunity to engage with a wide range of academics from different disciplines has been extremely valuable. As is set out above at 1.3.1-2 and 1.4 many lessons have been learned about the possibilities and limitations of identifying and applying theoretical concepts from e.g. literary studies, aesthetics, art history and music studies in a legal setting. No doubt our advanced understanding will help the team members (as well as the academics with whom they collaborated) in future research design. The same is true for dealing with the challenges of doing cross border multidisciplinary research, in terms of especially methodologies, language, and proper fora for publication. The programme empowered us to better bring across to research administrators and funders what is needed in terms of incentives, evaluation systems and publication platforms for successful sustained multidisciplinary research to take place. As both 'international' and 'multidisciplinary' are key requirements in many funding schemes today (not just by research councils and the EU but also within universities) the HERA programme is an important accelerator for learning to do such research effectively.

- 1.6.9 *Please provide details of the most important new initiatives (either within a national or an international context) that have been or will be developed as a result of the collaboration of this CRP and the HERA JRP.*

We are exploring the possibility of co-organizing a conference with Hong Kong University, tying in with empirical work to be undertaken there in various creative industries in Hong Kong and mainland China. There are also plans to start teaching copyright to film/audiovisual studies students at the University of Bergen. Van Eechoud has been approached by Australian academics to set up a project on copyright for novel art forms, to be funded by the Australian Research Council.

More generally, the network that all project participants have built over these past three years has positioned them well to be more alert to the possibilities of doing multidisciplinary research and involve the networked academics in activities of our institutions (e.g. invitations to give papers in seminar series, take part in round tables, explore potential grant applications). The networking impact of the HERA project did not cease when the project came to an end. For example, Bently will speak on 'Exceptions for Authors' at a conference at Tel Aviv University in January 2014 and on 'Disaggregation of Authorship' as a distinguished visitor to Lewis and Clark law school in Portland Oregon in February 2014. Creativity and authorship will also be a theme for a panel session at IVIR's large international information law conference in Amsterdam (July 2014).

2. Financial report

In this section, please include a financial report of each Principal Investigator for the total duration of the CRP. The financial report should explain the use of resources, in particular highlighting and explaining any deviations from the CRP budget as presented in Annex II of the Acceptance of Grant Certificate (Description of Collaborative Research Project) Please provide an explanation of employment costs, subcontracting, travel costs and any major costs incurred by each Principal Investigator, such as the purchase of important equipment or large consumable items.

There is no standard definition of 'major direct cost items'. CRP partners may specify these, according to the relative importance of the item compared to the total budget of the CRP, or as regards the individual value of the item. These costs can be listed in Table 4 below (one table per Principal Investigator):

Table 4: Major cost items for the total duration of the CRP

TABLE 2. MAJOR COST ITEMS FOR PRINCIPAL INVESTIGATOR PROF. DR. MIREILLE VAN ECHOU (UNIVERSITY OF AMSTERDAM), FOR THE ENTIRE PERIOD 01.06.2010-30.06.2013		
Item description	Amount	Explanations
Employment costs	266899	Salaries of post docs Van Eechoud, Van Gompel and sr researcher Hugenholtz
Dissemination	9010	Open Access publication end of project book
Travel & Subsistence	50566	(including venues)
for Focus workshop	(5003)	October 2010
for 4 CRP Teammeetings	(13543)	March 2011/December 2011/March 2013/ April 2013
for 4 CRP Workshops	(20083)	June 2011/December 2011/November 2012/ December 2012
for Final Conference	(11937)	April 2013
Research exchanges	5337	April 2013 Amsterdam (Cooper), Feb 2012 Amsterdam (Lavik), Sep 2011 Cambridge (Lavik, Van Gompel)
Remaining costs	10345	Conference visits Van Eechoud/Van Gompel ALAI/MusDig/Infosoc/Berkeley/final HERA conference Admin. support for website, workshops, conference.
TOTAL COSTS	342157 E	

TABLE 2. MAJOR COST ITEMS FOR PRINCIPAL INVESTIGATOR PROF. JOSTEIN GRIPSRUD (UNIVERSITY OF BERGEN) FOR THE ENTIRE PERIOD 01.06.2010-30.06.2013		
Item description	Amount	Explanations
Employment costs	318 590 €	Salaries of post-doc researcher Erlend Lavik (4 860 hours in total, 265 705,72 €) and PI Prof. Jostein Gripsrud (570 hours in total, 52 884,30 €)
Dissemination	0 €	
Travel & Subsistence	9 583 €	CRP Team meetings (November 2012, June 2011, E 5600) Fieldwork travel expenses for interviews (E 1158) Conference visits, workshops.
Remaining costs	0 €	
TOTAL COSTS	328173 €	

TABLE 3. MAJOR COST ITEMS FOR IP3, PROFESSOR LIONEL BENTLY (UNIVERSITY OF CAMBRIDGE) FOR THE ENTIRE PERIOD 01.06.2010-30.06.2013		
Item description	Amount (80% of cost)	Explanations
Employment costs	26937 € 35.012 € 65.261 €	PI, Prof. Lionel Bently 0.11fte (av. 3.8 hrs. per week, 01.06.2010-30.06.2013) Post-doc. Dr Biron, 0.5 fte (av. 18.5 hrs. p/w, 01.10.2010 – 31.01.2013 *) Post-doc. Dr Cooper, 1 fte (av. 37 hrs. p/w, 01.07.2011- 30.06.2013)
Dissemination	0 €	-
Travel & Subsistence 4 CRP Team meetings	8796 € (6980) €	Oct 2010, May 2012, Dec 2011, May 2012, Dec 2012 Travel/telephone costs interviews digital artists
Fieldwork Cooper	(1254) €	
Conferences, other	(561) €	
Remaining costs	24€ 143.038 €	Various Small Research Costs Overheads/estates/indirect calculated in accordance with AHRC rules
TOTAL COSTS	279068 €	

3. Expenditure statements and Summary Expenditure Statement

This section should include:

- 3.1 **A separate expenditure statement** from each Principal Investigator; and
- 3.2 **A summary expenditure statement** which consolidates the claimed HERA JRP contribution of all the CRP partners in an aggregate form, based on the information provided in expenditure statement by each Principal Investigator.

A scanned copy of each duly signed expenditure statement should be included in this section (signed originals to be sent in parallel by post).

TEMPLATES TO BE PROVIDED ON THE HERA JRP WEBSITE