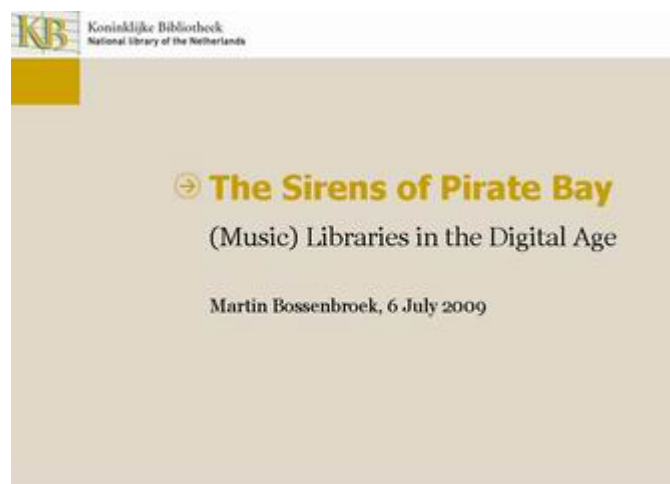


## Slide 1. Clip Michael Jackson – 35 seconds



## Slide 2. Title presentation



## **dies and gentlemen, good morning,**

Eleven days ago, on Thursday 25 June, Michael Jackson died. You can hardly have missed the fact, since it was the news event of the week all over the world, with 'Neverland' being the hotspot of global media attention. His fans mourned the death of 'The King of Pop', the yellow press made its final cracks about 'Wacko Jacko', but one way or the other, everybody agreed that a legendary icon of pop music had died.

And so do I. But that's not the reason I start this keynote address for your annual conference with this remarkable songwriter/singer/performer. The reason is that Michael Jackson in more than one sense embodied – and therefore symbolizes – the revolutionary changes in the music industry as a whole during the last decades. And to give you the most important clue right away, Michael Jackson not only was The King of Pop, he also rightfully deserves the title of The King of Copyright.

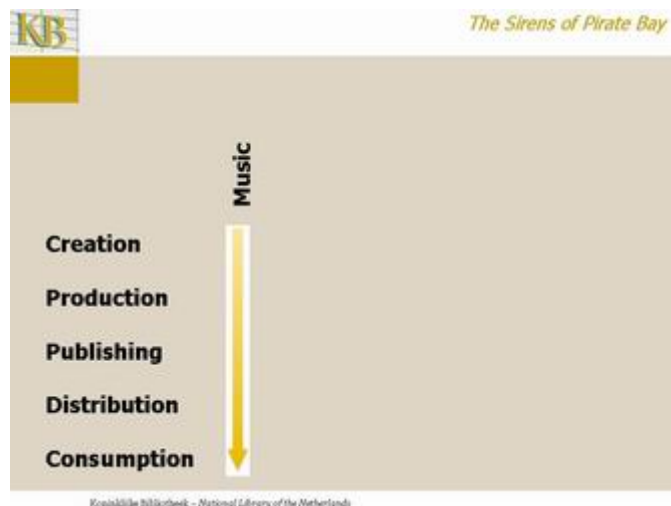
Therefore, he's the perfect starting point for my presentation, which will focus on the actual debate on copyright. The main question I'd like to pose – and answer – is: how, from a library point of view, are we to deal with this much debated issue, now that we are going digital on such massive scale and at such breathtaking speed?

My presentation breaks down into three parts. Firstly, I'll illustrate the far-reaching effects of the digital revolution for the music industry and the rest of the media landscape. In the second part I'll give you an idea of the extremely diverse reactions in society on the transformation of the media landscape, and its implications for copyright. And finally, I'll come to the most important question: how can librarians – including those far away from the turbulent pop music scene and devoted to classical music – how can librarians cope with these shifting realities of the digital world, in other words withstand the Sirens of Pirate Bay?

## **1. The digital revolution and its effects**

As a basic principle, copyright is no rocket science. It protects makers against the copying of their creative achievements without their permission. In exchange for copying makers may ask for a payment, and copyright thus offers an incentive to keep on creating. For these creators it acknowledges a basic human right, namely the right on intellectual property. But, as a consequence, copyright clashes with what is also considered to be a basic human right, namely the right to freedom of information. Traditionally it is left to the legislator and the judge to weigh the interests of the rights holders against those of the users or consumers.

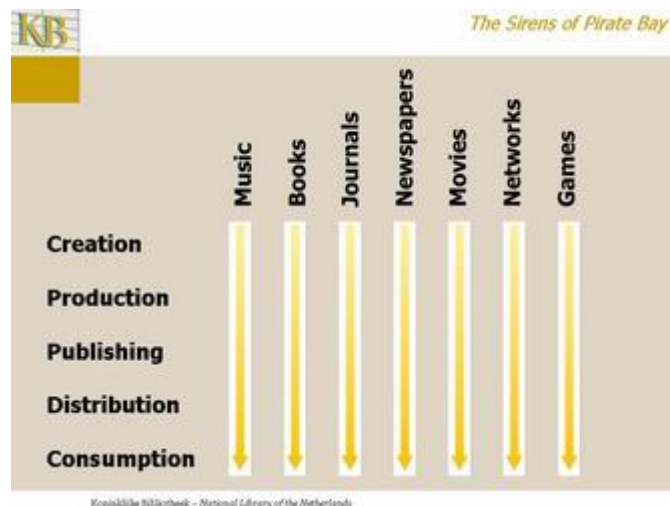
### Slide 3. Vertical chain Music: Creation, Production, Publishing, Distribution, Consumption



Back in the old days of analogue music, the situation was not too complicated. There were the original creators of a musical work, the composers and the text/songwriters. Then, in case of any recording, there were the performing artists and producers (who could execute so-called 'neighbouring rights'), engaged by the music companies, who published the results on records (later CD's and DVD's), distributed by record-shops, where the consumers could buy them – and of course, in this way paying for the publisher's and the distributor's efforts as well.

Chains like these – as you can see, vertically and downwards directed – functioned not only in the music business, but also in the book, journal and newspaper trade, the movie industry, radio & television networks and also in the new, and very fast growing branch of games.

**Slide 4. Plus: vertical chains books, journals, newspapers, movies, radio & tv, games**



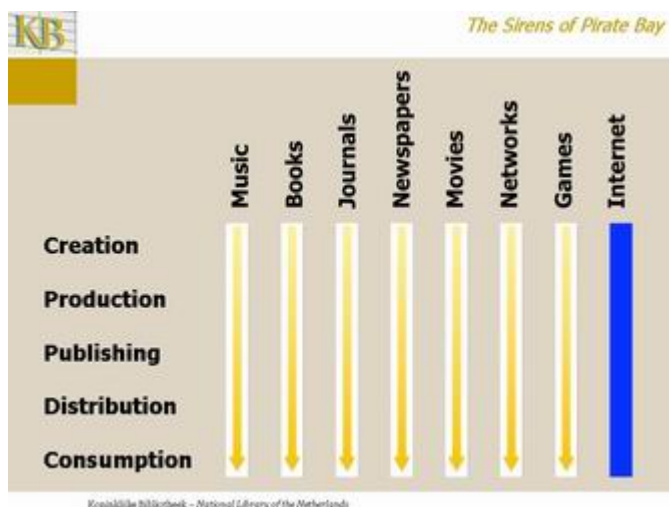
A rather clear and straight-forward picture, which was only complicated by some unexpected moves within the same – vertical – chain. For instance, in 1985 Paul McCartney was not amused to find out that the copyright on all Beatles songs – mostly written by himself and John Lennon – had been bought by a fellow artist. Yes, your guess is right, by Michael Jackson, who acquired in the same deal the music rights of other famous pop stars like Elvis Presley and Bob Dylan.

Paul McCartney bitterly commented: 'You know what doesn't feel very good is going on tour and paying to sing all my songs. Every time I sing Hey Jude, I've got to pay someone.'

Well, one can understand the personal frustration Paul McCartney must have felt – and his curiosity what's going to happen now that Michael Jackson has died – but it turned out to be only the beginning of the disturbance of the media landscape.

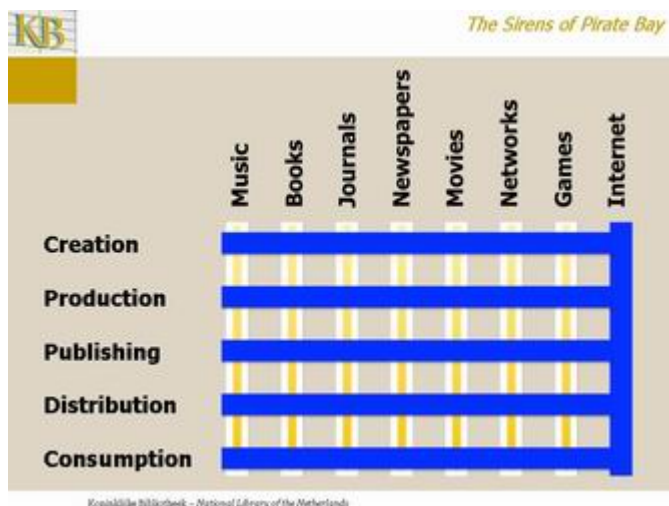
During the 1990s the digital revolution started off, with the internet as the digital medium *par excellence*. Internet turned everything upside down. It not only provided an additional and fiercely competitive chain of information, media and entertainment, altering the rules of the game,

## Slide 5. Plus: Vertical chain internet



but much more than that, it completely transformed the structure of the landscape. Traditional publishers like Elsevier and Springer turned digital, and new born digital companies arose like Google and Amazon.com, which penetrated the traditional – vertical – chains, adding their own horizontal cross media chains of online-distribution.

## Slide 6. From the vertical chain of internet horizontal chains crossing all vertical chains



Furthermore, websites like iTunes (a service of Apple) made it possible for individual consumers to skip most of the chain, and download whatever they wanted directly and instantly at, I quote, 'the world's largest jukebox for digital music' – which by the way nowadays offers also a variety of audio-books, videogames and such unexpected features like courses and lectures of Stanford University professors.

## Slide 7. Screen dump of homepage Stanford on iTunes



Please take notice of the very appropriate design of this homepage, with these beams exactly visualizing the new 'third dimension' in the pattern of the media landscape: first there were only the vertical lines, next came the horizontal lines, changing it to a cross media landscape, and in recent years the diagonal lines have joined in, transforming it to a criss-cross media landscape.

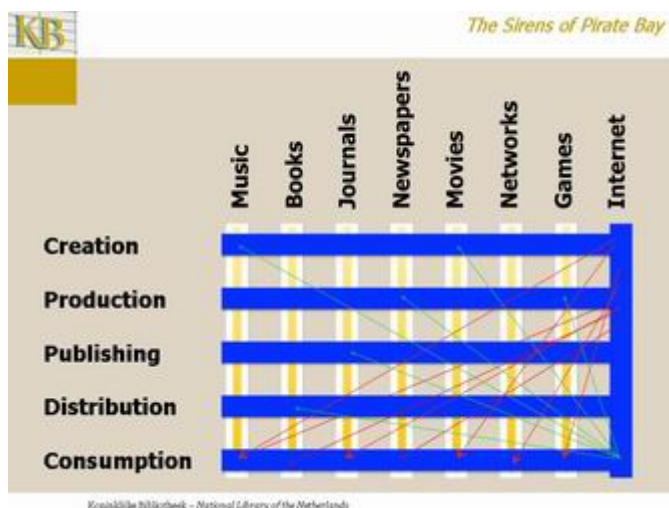
## Slide 8. Variety of diagonal lines from the vertical internet chain



And the picture still is not complete. As I said, Internet did turn everything upside down, and by all means the most revolutionary effect it has, is the opportunity it offers to reverse the direction of the lines, be it the vertical, the horizontal or the diagonal

ones. Every user of the internet can become a creator, producer, publisher and distributor, simply by uploading his or her text, music and / or video.

**Slide 9. Plus: diagonal lines with reversed angles**

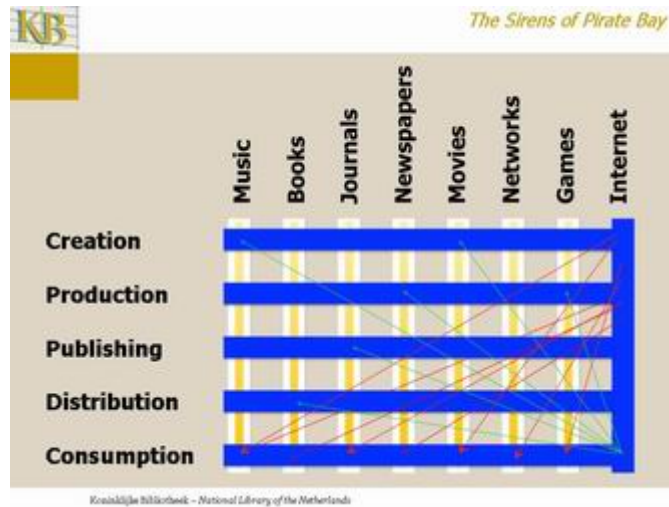


So, this is the ultimate criss-cross media landscape, which I'd like to illustrate with one final, most instructive, example. It's the story of a young Dutch girl, named Esmee Denters, who always wanted to be a singer, couldn't make it to a talent show on national television, and then as a second chance, tried her luck on the internet. On 25 August 2006 she made her own page on the videowebsite YouTube, and since then uploaded several videoclips of herself, singing own songs and covers of famous pop stars. I'll just give you a glimpse.

**Slide 10. First YouTube videoclip Esmee Denters**



## Slide 11. Criss-cross media landscape



Video-clips like these drew attention worldwide, people reacted most enthusiastically and in astonishing numbers, including the professional music world. Within six months she was offered a contract by several record labels, amongst which Tenman Records, the label of pop-star Justin Timberlake. Since then she's really got the status of internet celebrity, with invitations to show up in concert halls and talk shows all over the world, even the Oprah Winfrey show. To give you an idea of the mass publicity she generated since she uploaded simple home-made video-clips like these, I'll tell you how many times they have been watched on YouTube. I don't think you would guess it, it is more than one hundred million times...

### 2. Extremely diverse reactions in society

And that brings me to the second part of my presentation, surveying the extremely diverse reactions in society on the transformation of the media landscape, and its implications for copyright.

To start with the general public, it's justified to say that it has massively discovered and embraced the possibilities of internet, especially in the music business. The direct online availability of ever more titles has attracted an enormous appeal, especially since the introduction, in 1997, of the Mp3 format, which enabled faster downloading with guaranteed quality. The expanding services of companies like Amazon.Com and iTunes have proven too harsh a competition to the traditional cd and dvd retail-stores, which

are losing ground by the week, and will probably all be restyled as game stores within the next 5 years, if not have disappeared completely.

Another traditional pillar of the media society suffering serious damage because of the digital revolution are the newspapers, who hardly can live up to the primary role they used to have: bringing the latest news. Nowadays the latest news is permanently available on internet, whenever, wherever and in whatever form you would like to take notice of it. And when the readers are leaving, advertisers are soon to follow.

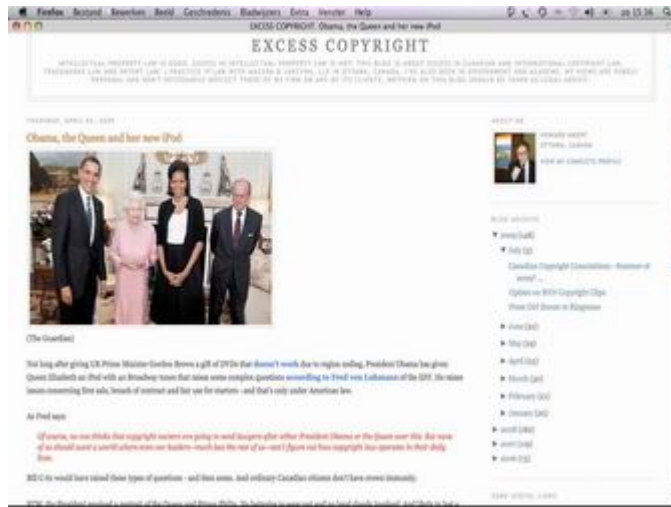
## **Slide 12. Traditional and electronic newspaper**



So far, the book trade seems to put up a stronger fight. That is mostly due to the special position of its medium. The book has a centuries long and very successful history as an information bearer in our society. And although 'the end of the book' has been proclaimed over and over again, it still seems to hold a magic spell on its users, the readers. But that doesn't guarantee eternal sacro-sanctity. On the one hand, reading itself seems to change in character under the influence of the digital revolution, on the other hand e-readers are improving in quality with every new version. And the example of the music industry can tell us that the general public is driven by convenience and comfortable availability.

In doing so, most people don't draw very strict lines between legal and illegal downloading. It's a well known fact that most of the downloading of music and films is formally and/or actually illegal, although sometimes perpetrators are not even aware of breaking the law. Such was, for instance, the case with those two public figures,

### Slide 13. President Obama and Queen Elizabeth



who were accused of piracy because one of them, President of the United States Barrack Obama, gave the other, Queen Elizabeth II of Great Britain, a present. It was an iPod, and that would have been quite okay, if not he had filled it with 40 Broadway tunes he had, according to copyright legislation, only permission to download for his own personal use.

It's examples like these that strengthen the argument of the opponents of copyright in its present form. They state that it is too complicated for the digital age, and restricts consumer rights in an unreasonable way. Some of them go as far as to call for an abolition of copyright altogether, because it would obstruct everyone's fundamental right to access to and use of the Internet.

Very principled advocates of this line of thought are to be found in Internet sharing networks like the Sweden based website Pirate Bay. A couple of months ago its founders were sued and convicted to a 2.7 million euro fine and a year in prison, for giving (instructed) access to illegally uploaded music and films. They were convicted alright, but they are appealing to a higher court, and they're not without public support.

**Slide 14. Screen shot of Pirate Party winning a seat in European elections**

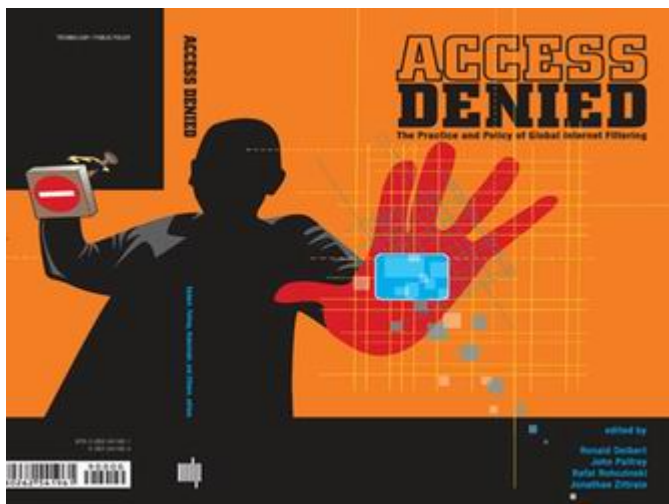


To illustrate this, the political party they founded, the Pirate Party, managed to win a seat in European Parliament during last month elections.

This is one extreme side of the spectre of opinions on copyright in the digital age. Right at the opposite side one can notice a reverse tendency, that is to stick very tightly to, even strengthening copyright rules and regulations.

The clearest example is to be found in France. Recently the French government drafted a bill to disconnect illegal downloaders from the Internet after three warnings – without court intervention. Although the constitutional council since then decided that the bill would be contrary to the French Constitution, president Sarkozy now tries to introduce a revised version of the same bill.

**Slide 15. Picture access denied**



And this tendency to tighten the rules is not only present in France. In the Netherlands, parliamentary support had been expressed last month for prohibiting downloading from an illegal source, as well. And as we speak, the European Commission is discussing to extend the so-called 'neighbouring' rights from 50 to 70 years.

So, these are the two extreme points of view in the recent debate on copyright in the digital age. Both tend to take a firm ideological stand, but right in the middle of these extremes one can also identify more pragmatic approaches.

Some music companies seem to kind of accept the status quo of massive illegal re-use and gear new innovative business models, for instance by giving away parts of sound tracks as a teaser, so that people are triggered to buy the whole CD.

And then there are the initiatives of rights holders themselves. Quite a lot of them, amateurs as well as pro's, are not interested in maintaining copyright in a strict way, and allow others to re-use their works. For instance, starting musicians want their music to be heard as widely as possible, for which the Internet is the ideal medium (compare Esmee Denters). The same holds for academics whose reputation is being boosted by their publications becoming accessible worldwide.

## Slide 16. Creative Commons



Therefore, more lenient license systems have been developed, which permit certain re-use for free: rights holders do not reserve all rights, but only some rights. So-called 'Creative Commons' licenses do allow non-commercial re-use of creative work, provided the creators' name is always mentioned.

### 3. How to cope with the new realities of the digital age?

So, now we have, in a nutshell, the full spectre of opinions on copyright in the digital age. That means we are ready for the last part of my presentation, and the final question: how can librarians cope with the new realities of the digital age, and especially with all of its hot copyright items?

#### Slide 17. Options?



By professional nature, librarians – and I guess music librarians are no different – are quite ambivalent in this respect.

As dedicated collectors and caretakers of so many wonderful, precious pieces of intellectual and artistic brilliance in our collections we feel obliged to – and yes, simply admire – all of these creative minds, responsible for them. And of course we sympathize with the notion that they should be adequately rewarded for their creative performances. I don't think any librarian would oppose the legitimacy of claims, based on the right to intellectual property.

On the other hand, it's not against our professional nature either to feel at least a little sympathy for the devil, which means in this case feel attracted to the seductive Sirens of Pirate Bay. After all, next to acquiring and taking care of our collections, it's also our mission, and in fact our job, to give as wide as possible access to them. And, well, this digital revolution offers us the most splendid opportunities to give the widest access

possible, in fact to everybody on the planet Earth with an internet connection. So, yes, there are competing sympathies within the librarian's soul.

### **Slide 18. Plus: Revision of copyright legislation**



The most fundamental way of resolving this ambivalence would be to plead for a revision of copyright legislation. As you probably know, within the European Union libraries, archives and museums enjoy certain exceptions to the copyright rules. We are allowed to make a copy for preservation purposes, and make a work – for instance sheet music – available in a closed network, provided that this network can only be consulted within our own building. So, if this privilege would be, under specific circumstances, be extended to internet use, it would help us very much.

However, since Brussels would be the place to plead for such an European wide online extension, and the rights holders lobby over there is much better organized, legal revision would really take a long and winding road, whereas digitization projects cannot wait.

## Slide 19. Plus: Google Book Search



For that last reason, one of the big, if not the biggest player in the digitization field, the Google Book Search project, has taken another approach. After being sued by American authors' and publishers organizations, Google proposed a settlement which follows an opt out approach. One can't deny that it's a practical and cost-efficient proposal: Google only pays a licence fee to rights holders who show up on a claims-made-basis.

Formally this implies copyright infringement: instead of clearing rights beforehand, Google waits whether rights holders will claim afterwards. Interestingly, this opt out approach is already used by heritage institutions with little to nothing copyright expertise. Occasionally, they have been taken aback by high copyright claims, in which case a disclaimer on your website will not help you.

And there is one more reason the Google proposal is under criticism. For instance, the director of Harvard University Library Robert Darnton argues that the settlement, in its present form, leads to the most unwanted situation, in which a private company will monopolize access to public domain works.

## Slide 20. Plus: Restriction to Public Domain Works



Next to the legal revision and the opt out approaches, there is of course one very secure option, which is to avoid the copyright problem completely, and to restrict digitization to public domain works. That's for instance the choice that's been made by the International Music Score Library Project (IMSLP). Its ambition is 'to gather all public domain music scores, in addition to the music scores of all contemporary composers who wish to release them to the public free of charge.'

It's a very fine ambition, but institutions who want to offer more, and give access to works under copyright, have to come up with other, pragmatic and workable solutions, while abiding the law.

That last condition doesn't make it easier, especially in international projects like the Repertoire international de la presse musicale (RIPM), which has to deal with differing copyright regimes in different countries.

So, what choice to make if you're a publicly funded institution, with the ambition to digitize material under copyright? The way I see it, there are only two possible options.

## Slide 21. Plus: DIY – Do It Yourself



One is DIY, in other words Do-It-Yourself. When a project involves a relatively small number of rights holders who are easy to locate, it may be feasible to clear the rights yourself by asking them all for permission. This is the approach taken by the EU High Level Expert Group in the context of the Europeana project. DIY requires a rights holder search for every single work, which may take a lot of effort.

For large scale digitization projects, such as the newspaper database of the Koninklijke Bibliotheek (a project in progress, eventually to produce 8 million digital pages of Dutch newspapers from the 17<sup>th</sup> century up till 1995), it is undoable to search for all rights holders. Not only would it take years and years and thus lots of money, in the end, even after the most diligent search ever, many rights holders would still be unknown or untraceable.

## Slide 22. Plus: Collective License Agreements



To solve this so-called orphan works problem, there's only one solution, and that's the one the Koninklijke Bibliotheek has chosen, freely improvising on Scandinavian models. We have to negotiate, with the publishers of course, but we also strive to conclude collective license agreements with collective rights management organizations, which also include warranties for orphan works. Unlike for instance in Norway, in the Netherlands we do lack the formal legal base for not seeking permission of the rights holders themselves beforehand. However, in practice this kind of contractual agreement is supported by the Dutch government. [that's the Dutch way, you know: law-abiding here in practice means law-bending].

At this moment, we at KB have made deals for the newspaper project with the respective publishers, and we are right in the middle of the negotiations with the collective rights management organizations. The main challenge now is how to reach agreement over the key question: what is a reasonable licence fee? We will have to negotiate and see.

It won't be easy, but we'll keep up high spirits, and keep in mind that we reached, on a smaller scale, some favourable agreements before. And that's how I'd like to end my presentation, in high spirits, by showing you a successful case study of digitizing copyright material in the Netherlands, on a field you're familiar with.

## Slide 23. Theatre Institute



It's about a project in which we collaborated with the Theatre Institute of the Netherlands. They wanted to digitize their collection of 12,000 pieces of sheet music, dating from 1900 to 1950, and put it online by their own website and the website of the Memory of the Netherlands, which is hosted by KB. 70 percent still in copyright, so we did have to sit around the table, in this case with Musi@opy, the Dutch collective management organization for sheet music publishers.

Well, I won't give you the details, but in the end we reached an agreement over a bulk licence contract, including a warranty for unknown rights holders, who are not members of Musi@opy.

## Slide 24. GvN page Sheetmusic TIN



As a result, the sheet music now is available on the internet in such a way that it can freely be downloaded by the public, that is, for private use only.

Well, now I've really come at the end of my presentation, and I realize you're still waiting for the musical climax. You didn't get the luring songs of the Sirens of Pirate Bay – sorry, we're not in Sweden and we just don't have Mermaids over here – but I've got something that comes very close. I started off with Michael Jackson, who named his estate Neverland, inspired by the movie of Peter Pan. In this imaginary Neverland, as you probably know, Peter Pan's opponents are pirates alright, led by the infamous Captain Hook. And especially for you, I found a video-clip, in which the pirates themselves are singing, and yes, to give it a touch of authenticity, they're singing in Swedish.

**Slide 25. Video Peter Pan: Pirates' Song**



## Slide 26. Thank You



The slide features a light beige background. In the top left corner, there is a logo with the letters 'KB' in a stylized font. In the top right corner, the text 'The Sirens of Pirate Bay' is written in a small, italicized font. The main text 'Thank You For Your Attention!' is centered in a bold, black font. Below this, the email address 'martin.bossenbroek@kb.nl' is listed, followed by 'Acknowledgements to Annemarie Beunen & Sophie Ham'. At the bottom of the slide, the text 'Koninklijke Bibliotheek - National Library of the Netherlands' is visible.

**Thank You For Your Attention!**

[martin.bossenbroek@kb.nl](mailto:martin.bossenbroek@kb.nl)  
Acknowledgements to  
Annemarie Beunen  
& Sophie Ham

Koninklijke Bibliotheek - National Library of the Netherlands

Fellow librarians, I thank you very much for your attention, I wish you a very successful conference and I hope you'll have a very pleasant stay in Amsterdam!