



Deliverable 4.1: Overview of UGC Copyright Management industry practices

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Work Package 4: Rights Management

InVID - In Video Veritas: Verification of Social Media Video Content for the News Industry

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Abstract:

This is the first deliverable of WP4, Rights Management. It reviews the legal scope of InVID focusing on copyright of social media from an EU law perspective. The deliverable also overviews current practices regarding the reuse of User Generated Video by the news industry. Based on this analysis, it provides a set of recommendations for InVID development and use under copyright law and social networks' terms of use.

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1 Introduction

The document starts with an introduction to applicable law from the point of view of the reuse of digital content from social networks, focusing on copyright law. Though a general overview is provided, the focus is placed on regulations at the European level because it is from where InVID platform and services will be offered.

Then, an overview of current practices regarding the reuse of User Generated Content (UGC) by the news industry is provided, focusing on User Generated Video (UGV). To better define the scope under consideration, a survey about current practices in the news industry when reusing social media has been conducted.

The survey, as well as desk research and internal discussions among consortium participants, has helped to prioritise the social networks to target and the kind of copyright agreements required to clear the most common kinds of content and reuses. Based on the main sources of UGC identified, YouTube, Twitter and Facebook, their terms of services have been also analysed.

To conclude this report, a set of guidelines for the future development of InVID regarding rights management are provided.

1.1 History of the document

Table 1: History of the document

Date	Version	Name	Comment
07/11/2016	V0.1	R. García, UdL	Prepare structure for D4.1
14/11/2016	V0.2	R. García, UdL	Stable version including full ToC and tentative content
23/11/2016	V0.3	M. Teixidor, UdL R. García, UdL	More detailed structure of the Relevant Legal Framework Section
25/11/2016	v0.4	R. García, UdL	Added "Scope of the Project" subsection to Section 1.2
28/11/2016	v0.5	M. Teixidor, UdL R. Arnó, UdL P. de Barrón, UdL G. Sánchez, UdL R. García, UdL	Added section about orphan works and another about datasets and privacy
29/11/2016	v0.6	D. Teyssou, AFP	Added section Overview Media Industry practice regarding UGC
29/11/2016	v0.7	P. de Barrón, UdL	Added section Overview Social Networks Policies
30/11/2016	v0.8	J. Spangenberg, DW	Review

30/11/2016	v0.9	E. Apostolidis, CERTH	Review
02/12/2016	v0.10	M. Teixidor, UdL R. García, UdL	Updated version of Relevant Legal Framework and general review
04/12/2016	v0.11	R. García, UdL	Preparation QA version
19/12/2016	V0.12	R. García, UdL M. Teixidor, UdL P. de Barrón, UdL	Reviewed version
21/12/2016	V0.13	R. García, UdL	Final version

1.2 Purpose of the Document

This deliverable summarises the work done in Task 4.1 of Work Package 4. It presents an overview of the common practices in the media industry related to the use and licensing of User Generated Content. It also includes an overview of the legal context to correctly address all potential copyright issues related to the reuse of User Generated Content found in social media, e.g. correct licensing and attribution.

2 Legal scope

At this stage of the project, the main project components from the user perspective are:

- **InVID Multimodal Analytics Dashboard:** it allows journalists to explore news events from social networks and identify social media posts and videos that they might use for news reporting. From the dashboard, they will also be able to check the verification and rights status of the selected media items. If verification is required, journalists can get support through the InVID Verification Application.
- **InVID Verification Application:** supports journalists during the Video Verification Workflow, as detailed in D6.2 deliverable. This verification process also includes retrieving available information about the copyright status of the media item. If the journalist decides to reuse it, the application also supports the process of contacting the content owner and negotiating a reuse agreement.

The previous description of the functionality of the project's main components determines the lifecycle of UGC from a copyright perspective. The steps of this lifecycle are summarised in Figure 1.

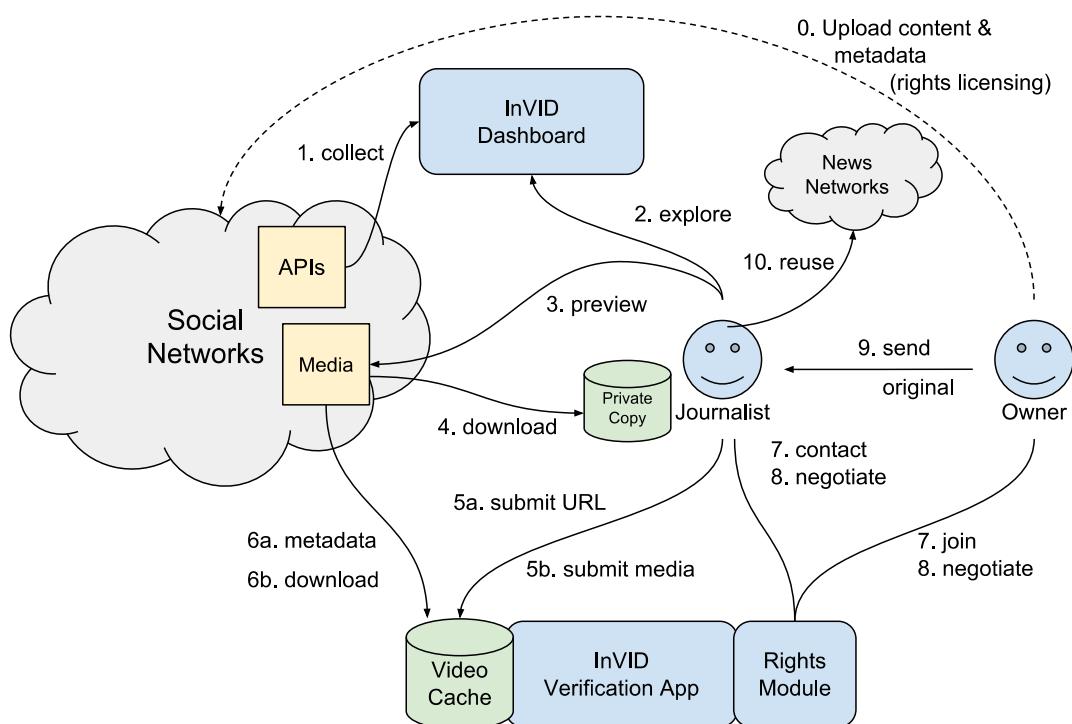


Figure 1: UGC lifecycle from a copyright perspective

From this figure, it is possible to analyse the legal implications, focusing on copyright law, of each of the identified steps:

1. The InVID Dashboard collects items as links from social networks using the APIs they provide.

Legal Perspective: the InVID components using these APIs should comply with their terms of service, including data protection and privacy provisions as described in Section 2.6.

2. The user consumes the social network items through links from the InVID Dashboard.
3. When a media item from a social network is available, it is embedded or linked back to the social network so it is consumed from its source.

Legal Perspective: the terms of service of social networks and copyright law allow linking or embedding practices. On the other hand, they forbid downloading or require getting permission from the content owner for content reproduction.

4. In practice, when the user identifies an interesting piece of content, the journalist might directly download media from the social network for preservation purposes only, as recommended in different verification guidelines like Amnesty International's¹.

Legal Perspective: downloading is not permitted by most social networks' terms of service, e.g., YouTube as detailed in Section 3.2. This deliverable explores exceptions that might allow journalists to download media for verification purposes. Section 2.3.5 analyses alternatives like private copy or exceptions for "press and reporting" purposes.

5. If the journalist is interested in the UGV but wants to check the accuracy or has doubts about its authenticity, the verification process can be triggered using the InVID Verification Application.

- a. The journalist submits the URL of the UGV in the corresponding social network.
- b. Alternatively, if the journalist has obtained the video by other means, it can be submitted to the InVID Verification Application.

Legal Perspective: storing the submitted video is an act of reproduction that would require getting reproduction rights from its owner. Copyright exceptions are explored in Section 2.3.5, particularly those related to research purposes.

6. The InVID Verification Application supports the UGV verification process as detailed in D6.2 deliverable. Some of these verification steps are based on metadata about the video, while other steps are content-based and thus require a temporal cached copy of the video binary file.

- a. For verification based on video metadata, it can be usually retrieved from the social network using the video URL and the corresponding metadata API. Alternatively, metadata can be also retrieved from the video file if submitted by the journalist.

Legal Perspective: as long as the available metadata APIs are used and content is not involved, their corresponding terms of service are the only limitations to take into account. If the journalist submitted a content file, then the same considerations as for the previous point 5b apply.

- b. For verification based on video content, if the video file was not submitted by the journalist, it is necessary to retrieve the content from the social network or from alternative sources like the content owner.

¹ Amnesty International Citizen Evidence Lab, <https://citizenevidence.org/2014/04/10/how-to-downloading-and-preserving-videos/>

Legal Perspective: the terms of service of the social networks forbid downloading videos as detailed in Section 3.3. Moreover, copyright law requires reproduction permission from the content owner. In jurisdictions where press exceptions could allow reproduction of copyright protected material, the person sheltered by the press exception will presumably be the journalist, but not the InVID Verification Application. Section 2.3.5 explores the applicability of other exceptions like research purposes.

7. If the journalist wants to reuse the UGV, the InVID Rights Management module can be used to contact the alleged content owner and establish reuse conditions. The journalist should first check, using the InVID Verification Application, if this is the first share of the video. Moreover, the invitation sent to the social network user requests confirmation about if s/he is the person who shot the video and includes a disclaimer about this being assumed if the user accepts the invitation. The owner should accept the invitation in order to log in the Rights Management module and use the credentials of the social network where the content was posted in order to facilitate ownership verification.
8. When the alleged content owner joins the InVID Rights Management module, InVID first checks ownership of the UGV: this verification is based on the identity of credentials from the content owner accessing the platform with the credentials of the social network where the UGV was posted. If this check is successful, then the owner is invited to review the conditions of the reuse request, accept them or adjust them until s/he reaches an agreement with the journalist.
9. If a reuse agreement is reached, the content owner can then send the video file to the journalist. This might be a better quality version than the one available from social networks.

Legal Perspective: the agreement should include copyright license terms that allow reuse including rights licensed, scope (exclusivity, duration, territory, channels, etc.), and economic reward if any. It is also recommended that the agreement involves the content owner providing a copy of the original content to the journalist. This will be a legal reproduction that can then be reused under the agreed conditions.

10. After an agreement has been established with the content owner, it would then be possible to reuse the UGV under the terms established in that agreement. However, it is also anticipated that under pressing conditions about current events it might be impossible to get a response from the content owner in due time. Consequently, the journalist should be capable of overriding the InVID Rights Module and proceed to reuse under this particular conditions.

Legal Perspective: as long as an agreement with the content owner has been reached, it will enable the agreed reuses, for instance, to republish the video. However, in the situation of UGV about current events for which it has not been possible to contact or reach an agreement with the content owner, the journalist might also proceed to reuse it under copyright law exceptions like current events reporting, which are explored in Section 2.3.5. In this situation, the journalist should be made

aware of possible risks and/or possible implications that s/he should check for her/his particular jurisdiction.

2.1 General considerations

Whilst technology is moving fast and creating new possibilities every single day, the law is far from following quickly and addressing these high-speed changes: it seems today that never in human history has law been so far from the reality it tries to regulate (Wadhwa, 2014). This is especially true when referring to copyright legislation.

Copyright has its origins in printed copies of texts, where printers found a first protection of their business through the grant of an exclusive license to print (the “right to copy”): it was back in the 18th century when the Suzerain granted them a **time-limited** privilege to print. An industry boomed allowing new actors to benefit from the revenues it generated: not only the printer who had made an investment obtained a return through the monopoly it had been offered, but also authors began to have a reward for their creative effort.

Copyright evolved, following industrial developments and inventions, covering more objects (graphic prints, films, performances, etc.) and more beneficiaries (photographers, directors, musicians, etc.). Laws developed **nationally**, following two main systems: the Anglo-Saxon model and the continental approach. In the first model, the work is conceived as the author’s creation from which s/he can benefit economically. In the continental model, in addition to economic exploitation rights, moral rights are vested in the author that cannot be waived, are perpetual and legally protected.

Still, copyright always referred to **material objects**: the spiritual work of an author was not conceivable or understood (and therefore not protected) unless it was materialized in a physical object (a document, a painting, a picture, a film, etc.) and exploitation was not possible unless limited copies or representations of such first fixations of the work were made (a book, a poster, a music-record, a film registration, etc.).

But the current and ongoing technological revolution that began at the end of the 20th century has brought mainly two dramatic (in terms of copyright, of course) changes to this system: first, **the unlimited possibility for any person (not only industries) to access and make identical copies of any existing work** protected under copyright **at any time**; second, the **dilution of territorial borders**.

Both changes undermine current copyright legislation grounds and make it clear both that national legislations cannot afford a global market as well as traditional copyright categories such as rights definitions and exceptions do no longer fit in the ongoing conversation.

While legislators seek to build an adapted legislative corpus to deal with this new reality (because it is still agreed that copyright is the main incentive to encourage creation, reward creators and industries that allow their works to reach the public and allow humanity to boom and progress), many technological companies like Google or Twitter have started building their own private regulations mainly in the form of Terms and Conditions that apply to the services they provide to the Information Society we are in.

Therefore, and in general terms, the first assumption to make before we start any legal analysis is to recognise that we have a totally non-adapted legal framework that is being permanently questioned and that is under an on-going discussion and revision.

2.2 InVID: understanding the scenario from a legal perspective

Nowadays, more and more news media are feeding their channels with eye-witness UGV that are uploaded to social platforms such as YouTube, Twitter and Facebook. Since news media do not always directly know the owners, creators and/or uploaders of these contents, they need to find ways to ensure two very important things: first, verification of contents; second, clearance of rights so that exploitation of UGV is made without legal risks.

Clearance of rights, which is the main focus of the project from the legal perspective, needs to be made mainly in the context of breaking news needs: therefore, this should be done in the shortest timeframe possible, since events are or need to be reported as they happen, ideally. Therefore, the objective is to study if there is a legal coverage that allows an EU-wide platform to provide: (1) legal treatment of UGV for verification purposes and (2) legal use of UGV.

2.3 Copyright

There isn't an EU-wide copyright law that ensures a unique and common treatment of copyright in the whole EU territory. Instead, the EU has as many copyright legislations as Member States. Territoriality, as a basic principle of copyright protection, entails that copyright and related rights to copyright are conferred by national laws and enforced within the limit of each state. The object, definition and scope of copyright vary in each jurisdiction.

The need to establish a European internal market, as well as systems that ensure that competition is not distorted within it, has brought the European legislator to enact several directives on copyright. These directives set harmonised standards that reduce national discrepancies in specific aspects focused by each directive, but they need to be transposed into national legislation in order to be applied. This means that each state introduces the directive adapting it to its internal legislation but with some freedom to phrase it and to adopt standards in different degrees. As a result, differences between jurisdictions do exist and do not guarantee a common treatment of copyright issues within the EU².

² The main Directives include:

- Directive on the harmonisation of certain aspects of copyright and related rights in the information society ("[InfoSoc Directive](#)"), 22 May 2001
- Directive on the enforcement of intellectual property right ("[IPRED](#)"), 29 April 2004
- Directive on the legal protection of databases ("[Database Directive](#)"), 11 March 1996
- Directive on the term of protection of copyright and certain related rights amending the previous 2006 Directive ("[Term Directive](#)"), 27 September 2011
- Directive on certain permitted uses of orphan works ("[Orphan Works Directive](#)"), 25 October 2012

However, all European countries have signed all relevant World Intellectual Property Organization (WIPO) Treaties³. Consequently, international standards and definitions have been introduced in their jurisdictions, which allow a common understanding of basic copyright concepts. According to this, some important concepts to understand copyright in the context of InVID are presented in the following subsections.

2.3.1 Subject-matter of copyright

Copyright extends to both:

- **Works**⁴ understood as the product of human creativity embodied in a material form (that is, expressed); it includes cinematographic works to which works expressed by a process analogous to cinematography are assimilated; and,
- Other **subject-matter** understood as rights protecting not works but investments made by other agents than authors (publishers, producers, etc.) helping them to make their works available to the public (books, films, music records, etc.); it includes rights granted to audiovisual producers for the investment made on audiovisual recordings of works but also of any succession of images with or without sound (which are considered as films⁵).

For InVID, this means that a UGVs always qualify for copyright protection: UGV will be a **work** if sufficiently creative or a **subject-matter** of copyright if not. Why does this matter? The difference is important because (1) only works benefit from moral rights; (2) copyright protection for works is longer than for other subject-matter of copyright.

The survey presented in Section 3.2 shows that most UGVs are “simple recording of facts” so they should be treated as other subject-matter of copyright, where moral rights will not apply *per se*. However, those UGVs constituting video reports/stories or documentaries qualify as works as a creative effort has been made by the author, so moral rights will apply.

³ Including the following:

- The Berne Convention for the Protection of Literary and Artistic Works (1886).
- The Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (1961).
- The Copyright Treaty, Geneva (1996), which was signed directly by the EU.

⁴ Art. 2 Berne Convention: (1) The expression “literary and artistic works” shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.

⁵ Art. 3 Directive 2006/116/EC “(...) The term ‘film’ shall designate a cinematographic or audiovisual work or moving images, whether or not accompanied by sound”.

2.3.2 Ownership

Copyright on both works or other subject-matter is exclusively owned by:

- The **author** that created the work, from the sole fact of the creation.
- The **person** (natural or legal) that made an investment in any of the other subject-matters of copyright (for videos, the person recording it).

This ownership is exclusive and vests on the original owner all rights that the copyright law grants (economic rights and moral rights if applicable). This means that UGV creator (whether author or producer) has the monopoly of copyright in it. It is important to stress that the person who shot the video, by pressing the record button of the device (mobile phone or camera), is the creator of the UGV. This should be taken into account **when contacting the user that uploaded the video because he might not be the content owner if he did not shoot it**. This is even so when the owner of a device lends it to someone who then shoots a video, as described by Dubberley (2016) in his journalist's guide to copyright law and eyewitness media. The guide illustrates this fact with the case of a photograph of Ben Innes with the hijacker of his flight shot by a member of the cabin crew. "The reality is the copyright of the image of Innes with Seif Eldin Mustafa belongs to the cabin crew member who took the shot, not Innes" (Dubberley, 2016, p. 13).

The creator will be the only person/entity allowed to directly exploit, on an exclusive basis, the video. One mean of exploitation is by transferring or licensing economic rights on the video to third parties. Such transfer or license will allow the third party benefiting from it to exploit the video within the limits of the transfer or license: the third party's rights on the video will have the exact scope of the transferred or licensed rights.

The main conditions that will determine such scope are: exclusivity or non-exclusivity; economic rights included; duration; authorised modalities and means of exploitation; territories. A legal use of a video under a license will be the use that complies with all and each of its conditions.

The survey in Section 3.2 shows that some UGVs are **commissioned videos**. The commission of a video means it has been recorded under a contractual agreement (including also verbal agreements) that may include a transfer or license of rights (the extent of which will depend on the agreement with the recorder of the video). In these cases, it may be that the creator of the video (the person pressing the button) is not the owner of its economic rights because the creator has worked for a media company under an agreement that directly assigns copyright to the media organisation (such assignment being as wide as the scope of the agreement).

Videos uploaded to any platform under a Creative Commons (CC) license are videos that already carry a license. This means the creator is uploading the video under some very particular conditions for third parties to reuse it: the specific conditions of the Creative Commons license s/he has chosen for it. A legal use of a UGV under a CC license is the use that respects all and each of the conditions of the CC license.

2.3.3 Extent of Rights

Copyright is a set of rights that include, mainly:

- **Moral rights**⁶: when a human creation qualifies as a work, the author has a set of personal rights s/he cannot waive such as **paternity** (the right to be mentioned as the author) and **integrity** (the right to oppose to modifications prejudicial to the author's honour or reputation). Such rights cannot be waived, are perpetual in some jurisdictions and remain with the author even if s/he transfers his economic rights to a third party. This means s/he can enforce moral rights on her/his works (that is, issue proceedings if s/he detects any violation of such) even though s/he may not have any economic right on them.
- **Economic rights**: benefit both authors and other rights holders (they are then generically referred to as "neighbouring" or "related" rights). They cover acts of exploitation of works and other subject-matter of copyright. Relevant rights for the digital market, according to the InfoSoc Directive (art. 2 and 3) are:
 - The **reproduction** right as:
"the right to authorise or prohibit direct or indirect, temporary or permanent reproduction of a work or other subject-matter by any means and in any form, in whole or in part: a) for authors, of their works; (...) d) for the producers of the first fixations of films, in respect of the original and copies of their films".
 - The **communication to the public** right (including, for authors, the right to **make the work available to the public**) as:
"1. (...) the exclusive right to authorise or prohibit any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them. (...) 2. (...) the exclusive right to authorise or prohibit the making available to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them: (...) (c) for the producers of the first fixations of films, of the original and copies of their films."

⁶ Moral rights are not harmonised at the EU level but have a minimum common definition under art. 6bis of WIPO Rome Treaty:

"(1) Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation.

(2) The rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized by the legislation of the country where protection is claimed. However, those countries whose legislation, at the moment of their ratification of or accession to this Act, does not provide for the protection after the death of the author of all the rights set out in the preceding paragraph may provide that some of these rights may, after his death, cease to be maintained.

(3) The means of redress for safeguarding the rights granted by this Article shall be governed by the legislation of the country where protection is claimed."

- Other Directives set **compensation** rights (when uses by third parties are made under legal exceptions or when exploitation cannot be individually authorised by the author). Primary rights will be managed by the rights holder directly or through his agents; compensation rights will mostly be managed by collective copyright societies.

For InVID, and considering that **(1) eye-witness recordings of facts may not always qualify as a work but will always qualify as an audiovisual recording with neighbouring rights and (2) the acts of exploitation involve reproduction and public communication of the work or audiovisual recording, this means that UGV will always need copyright clearance with the author or rights holder.**

2.3.4 Duration

Copyright is limited in time; although terms have been harmonized under the Directive 93/98/EEC, later replaced by Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights, national legislations may still apply in their territories longer term for some works because of transitional provision periods in the adoption of the Directive.

- For **works:** copyright protection lasts for the lifetime of the author plus 70 years *post mortem auctoris* (with some special provisions such as co-authorship works. There, the period starts running upon the death of the last of the co-authors)⁷. After this period, works enter the public domain and can be freely exploited provided moral rights on the work are respected.
- For **audiovisual recordings:** related rights protection lasts for 50 years from the moment the recording was made or was first published⁸. After this period, recordings enter the public domain and can be freely exploited.

Considering the reuse of eyewitness recordings of current facts for breaking news, they will never exceed the abovementioned periods and will not be in the public domain. Consequently, a use that does not require copyright clearance is unlikely to happen and uses of UGV in this particular case are uses that will always mean getting an authorisation from the copyright holder.

2.3.5 Exceptions

There isn't any "fair use" provision in the EU that would give users the possibility to copy any copyright protected works or other subject-matter of copyright for limited and transformative purposes such as comment upon, criticism or parody as a defence for copyright infringement claims as it does exist in the United States.

⁷ Art. 1 Directive 2006/116/EC: "1. The rights of an author of a literary or artistic work within the meaning of Article 2 of the Berne Convention shall run for the life of the author and for 70 years after his death, irrespective of the date when the work is lawfully made available to the public.

⁸ Art. 3 Directive 2006/116/EC: "The rights of producers of the first fixation of a film shall expire 50 years after the fixation is made. However, if the film is lawfully published or lawfully communicated to the public during this period, the rights shall expire 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier."

Instead of that, the EU copyright framework works with **limits and exceptions** to copyright. Such limits and exceptions search a balance between the exclusive rights of authors and rights holders and other fundamental rights vested in other individuals that enter into conflict with copyright when these individuals are users of copyright protected works or other subject-matter of copyright. Because authors' rights are also human rights, any exception or limit to them is of strict interpretation.

The Directive on the harmonization of certain aspects of copyright and related rights in the information society (the so-called InfoSoc Directive), of 22 May 2001 harmonized the right of reproduction, the right of communication to the public, the right of making available to the public and the distribution right (García, 2010), with the effort to provide the rights holders with a high level of protection: the scope of exclusive rights was very broadly defined and adapted to the online environment. The Directive also introduced, in article 5, an exhaustive list of exceptions to copyright protection to allow for certain, specific activities that pertain to scientific research, the activities of libraries, and to disabled people. This list includes one mandatory exception and twenty (20) optional exceptions: Member States' ability to introduce exceptions or extend the scope of any existing ones in their legislations is limited by the Directive's list.

Mandatory exception:

- **Temporary, transient or incidental acts of reproduction:** rights holders' authorization is not necessary when reproductions are an integral and essential part of a technological process with the sole purpose to enable (a) a transmission in a network between third parties by an intermediary, or (b) a lawful use of a work or other subject-matter to be made, and such transient or incidental act has no independent economic significance.

Optional exceptions: from the twenty listed items, only five (5) seem to be of interest for the InVID project:

1. **Private use:** (5.2.b) "*in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation which takes account of the application or non-application of technological measures referred to in Article 6 to the work or subject-matter concerned*". InVID is not a natural person, therefore, it cannot benefit from this exception.
2. **Ephemeral recordings of works by broadcasting organisations** (5.2.d): "*in respect of ephemeral recordings of works made by broadcasting organisations by means of their own facilities and for their own broadcasts; the preservation of these recordings in official archives may, on the grounds of their exceptional documentary character, be permitted*". InVID is not a broadcasting organisation, therefore, it cannot benefit from this exception, where available. Just InVID platform users that are members of broadcasting organisations can benefit from this exception and when they exercise them outside of the scope of the platform.

3. **Scientific research** (5.3.a): "*use for the sole purpose of illustration for teaching or scientific research, as long as the source, including the author's name, is indicated, unless this turns out to be impossible and to the extent justified by the noncommercial purpose to be achieved*". In jurisdictions where this exception is available and while InVID carries out a scientific research project on the possibilities of verification tools and copyright licensing, it may rely on this exception in order to use copyright protected works and other subject-matter for its research.

4. **Use by the press** (5.3.c): "*communication to the public or making available of published articles on current economic, political or religious topics or of broadcast works or other subject-matter of the same character, in cases where such use is not expressly reserved, and as long as the source, including the author's name, is indicated, or use of works or other subject-matter in connection with the reporting of current events, to the extent justified by the informative purpose and as long as the source, including the author's name, is indicated, unless this turns out to be impossible*".

InVID cannot benefit from this exception, where available, since it is not and unlikely to ever become a press company directly reporting current events, but a legal person carrying out verification and licensing clearance of UGV. InVID users that are members of the press can exercise this exception but just when reporting about current events and outside of the scope of the InVID platform.

5. **Quotation for criticism or review** (5.3.d): "*provided that they relate to a work or other subject-matter which has already been lawfully made available to the public, that, unless this turns out to be impossible, the source, including the author's name, is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purpose*".

InVID could benefit from this exception, in jurisdictions where available, if it delivers a final review work of its own where the previous work (the UGV) is reviewed or criticised. To do so, several conditions should be met:

- a. The review work by InVID should be published (this could be a report);
- b. The UGV should have been previously lawfully made available to the public: if not flagrantly illegal, it can be understood that content uploaded by users who accept terms and conditions where they warrant to be the creators and copyright holders of the uploaded content presumably entails a lawful publication;
- c. The source and author name of UGV shall be indicated (unless impossible) when releasing the work where the UGV is reviewed;
- d. The use shall be accordant to fair practice and made to the extent required by the specific purpose of the review work, which seems to be within the limits of what is required to conduct an InVID verification process.

Further in-depth research on this exception is required to verify the scope and degree of implementation it has had in different EU jurisdictions: InVID should consider incorporating in the EU country where this exception has been implemented with the

widest scope and provide EU-wide services from that jurisdiction. If conditions are met, InVID may rely on this exception, for instance, to keep a public record of fake UGVs. However, end users (media/press companies) shall ensure legal reuse through licensing of the UGV or Use by the Press exception where available.

According to paragraph 5 of Art. 5, all of these exceptions and limitations "*shall only be applied in certain special cases which do not conflict with a normal exploitation of the work or other subject-matter and do not unreasonably prejudice the legitimate interests of the rights holder*" introducing here the Berne Convention "three steps test"⁹.

2.3.6 Linking and orphan works

Sixth, as far as **linking** and **orphan works** in the EU are concerned, the following applies:

- **Linking:** The act of linking (including hyperlinking, deep linking, framing and embedding) refers to the act where no reproduction of works is made but the access to a work originally posted anywhere on the web is provided through an own page or site. According to recent Court of Justice of the European Union ruling¹⁰, linking does not infringe copyright provided several conditions are met:
 - a. The linked work has legally been made available online with the consent of the rights holder.
 - b. No protection measures are circumvented, so the work is not communicated to any new public.
 - c. Persons acting **for** profit when publishing links should carry out the necessary checks to ensure that the work linked to is not illegally published.
 - d. Persons acting **not** for profit and publishing links to works made available cannot reasonably know that the work has been published without consent.
- **Orphan Works:** are works or phonograms protected by copyright in which no rights holders are identified or, even if one or more of them is identified, none is located despite a diligent search for them has been carried out (according to article 2.1 of the Directive 2012/28/EU). In these cases, this regulation authorises certain reuses of the content without requiring prior authorisation, as detailed in Annex A. However, InVID cannot benefit from this special permission because it is not one of the kinds of organisations enjoying it: public libraries, museums, educational establishments, archives, film or audio heritage institutions or public service broadcasters.

⁹ Art. 9 Berne Convention: "(2) It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author. (3) Any sound or visual recording shall be considered as a reproduction for the purposes of this Convention."

¹⁰ See: Svensson case (C- 466/12); BestWater case (C-348/13); Sanoma case (C-160/15).

2.4 e-Commerce legislation

Since the InVID applications are or can be deployed as online services, InVID also needs to take into account e-Commerce legislation: The overall goal of the EU harmonization efforts is to enable copyright protected goods (e.g. films, software etc.) and services (e.g. services offering access to these goods and or providing verification of these works) to move freely within the internal market.

Directive 2000/31/EC on electronic commerce created the basic legal framework for online services, including electronic commerce in the Internal Market. The Directive removes obstacles to cross-border online services in the European Union and provides legal certainty to business and citizens alike. It establishes harmonized rules on issues such as the transparency and information requirements for online service providers, commercial communications, electronic contracts and limitations of liability of intermediary service providers.

The proper functioning of the Internal Market in electronic commerce is ensured by the Internal Market clause, which means that information society services are, in principle, subject to the law of the Member State in which the service provider is established. In turn, the Member State in which the information society service is received cannot restrict incoming services.

An intermediary service provider is an organisation that provides services for accessing, using or participating in the Internet; they may be organised in various forms, such as commercial, non-profit; privately owned, community owned. These services include also services provided free of charge to the recipient and funded, for example, by advertising or sponsorship.

In what may be of interest for the InVID project, it shall be pointed out that intermediary service providers storing information provided by the recipient of the service shall not be held responsible for contents uploaded by users in their platforms as long as:

1. It does not have knowledge of illegal activity or information and is not aware of facts or circumstances from which illegality is apparent;
2. Upon obtaining such knowledge or awareness, it acts expeditiously to remove or disable access to the information.

Therefore, if InVID provides tools for users to verify and license this content but does not upload content itself, it might be in a safer position regarding responsibility for possible infringing material uploaded by its users.

2.5 Future EU-Copyright developments

At present, a very recent Proposal for a Directive on Copyright in the Digital Single Market is being discussed: its Recital 3 clearly points out that "*legal uncertainty remains, for both rightholders and users, as regards certain uses, including cross-border uses, of works and other subject-matter in the digital environment (...) there is a need to adapt and supplement*

the current EU copyright framework. This Directive provides for rules to adapt certain exceptions and limitations to digital and cross-border environments. It also provides for measures to facilitate certain licensing practices as regards the dissemination of out-of commerce works and the online availability of audiovisual works on video-on-demand platforms with a view to ensuring wider access to content. Finally, to achieve a well-functioning marketplace for copyright, this Directive provides for rules on rights in publications, on the use of works and other subject-matter by online services storing and giving access to user uploaded content and on the transparency of authors' and performers' contracts¹¹.

The Directive focuses on copyright (e.g. turning some copyright exceptions, e.g. educational exceptions, into mandatory ones) and ISP storing and giving access to large amounts of works uploaded by users to whom it imposes new obligations such as the obligation to conclude agreements with rights holders in order to use their works and to adopt measures to avoid unlawful content.

In what may be of interest for the InVID project, the Directive also includes a text and data mining mandatory exception in the field of scientific research, thus allowing scientists to analyse big corpuses of text and data of materials that are lawfully accessible with the legal certainty that this activity does not amount to copyright infringement. The exception only benefits a limited group of beneficiaries ("research organisations": universities, research institutes or organisations conducting scientific research as their primary goal, on a non-profit basis or pursuant to a public interest mission recognized by a Member State) which entails that those that do not fall into the group will require rights holders' authorization before they engage in text and data mining activities.

This proposal and its discussion will be followed during the development of InVID. Notwithstanding, from what is known right now about the Directive, it does not seem to be going to introduce new regulations that significantly change the way InVID plans to deal with copyright.

2.6 Personal data protection and privacy regulations

Though the focus of this deliverable and of WP4 is on the legal aspects related to copyright, it is also important to note that there are many aspects of InVID that should be viewed from the perspective of personal data protection and privacy regulations. In this regard, InVID is taking into account the results of the FP7 project REVEAL¹² about social media verification, as REVEAL deals with issues of social media verification from the journalistic and enterprise perspective.

REVEAL's Deliverable D1.2 (Verhaert, Kuczerawy & Valcke, 2014) provides a description and analysis of the existing (and future) legal framework with regard to privacy protection and

¹¹ Found under: <http://www.communia-association.org/2016/09/06/commission-proposes-limit-text-data-mining-europe/> (text available under:

<https://drive.google.com/file/d/0B6d07lh0nNGNNjZpcGlsQ3pJN3M/view>)

¹² <http://revealproject.eu>

processing of personal data of individuals. Similar to REVEAL, InVID also processes personal data mainly coming from social networks and can support this processing from a legal perspective on the legitimate interest exception, as detailed below. Likewise, the use of the collected personal data should be attributed to the journalist as a separate data controller independent from InVID.

Regarding the application of the previous guidelines to InVID, the focus has been placed on the datasets generated by the project that are reported in deliverable D1.1: Data Management Plan. The legal framework under consideration is defined by the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (Council of the European Union & European Parliament, 2016). This new regulation has been considered to produce the following recommendations for the implementation of the Data Management Plan. This regulation has not yet entered into force but will do so before InVID ends. All member countries should adapt their regulations to this common framework before May 2018.

In relation to the introduction and the reference to sensitive data, it is important to note that no special categories of personal data are going to be processed by the project, as defined in Art. 9 RGPD2016/679:

“Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation shall be prohibited.”

On the other hand, some of the InVID datasets are going to be made available, for instance, the dataset identified in D1.1 "InVID_Data_WP2_1_TRECVID". Consequently, if personal data capable of identifying a person is included in any of these datasets, data should follow a "pseudonymisation" process that guarantees that identification will not be possible. This process is defined in Art. 4 RGPD2016/679:

“(5) ‘pseudonymisation’ means the processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information, provided that such additional information is kept separately and is subject to technical and organisational measures to ensure that the personal data are not attributed to an identified or identifiable natural person;”

However, as recommended by the InVID Ethics Committee, there are inherent risks in pseudonymisation that should be taken into account. The project should consider full anonymisation if datasets collecting personal data are made public. The problem with pseudonymisation is that each record retains a masked identifier that makes re-identification possible. This means that an attacker would be able to link several references of the same user using the masked identifier and collect enough information to re-identify her/him. It is precisely to thwart such linkage-based record aggregation that it is recommended not to

include identifiers in any form. The proposed solution in this regard is to implement a k-anonymisation method like the one detailed in (Sánchez, Martínez & Domingo-Ferrer, 2016).

In relation to datasets being reused but restricted to non-commercial research, it should be taken into account that this kind of use will not be possible once the InVID project finishes, for instance for the dataset in D1.1 "InVID_Data_WP2_2_ImageNet".

Many datasets are based on social media crawling and the processing of the collected data. For instance, the dataset "InVID_Data_WP2_3_TopicDetection" is built from documents crawled in a 24-hour period by the webLyzard platform. First of all, it should be checked in these cases that data collection and processing are based on the available terms of use, for instance, Twitter terms and conditions if this API is used.

From the personal data perspective, Art. 6.1 RGPD2016/679 should be used as the guide to justify if the use of personal data is legitimised:

"Processing shall be lawful only if and to the extent that at least one of the following applies:

(a) the data subject has given consent to the processing of his or her personal data for one or more specific purposes;

(b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;

(c) processing is necessary for compliance with a legal obligation to which the controller is subject;

(d) processing is necessary in order to protect the vital interests of the data subject or of another natural person;

(e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;

(f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.

Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks."

Moreover, the social networks research community has already established guidelines for researchers to respect the privacy of social networks' users. For instance, Rivers and Lewis (2014) propose the following guidelines for the processing of tweets:

- Make objectives, methodologies, and data handling practices transparent and easily accessible.
- Protect the anonymity of tweet authors by not publishing identifiable information without consent.

- Honour Twitter users' efforts to control their personal data by omitting private and deleted tweets.
- Do not use tweet data to aggregate personal information from other sources.
- Respect the context in which a tweet was sent.

Also related to this kind of processing is the following: when a particular user of the monitored platform is identified and contacted, data processing can be done without that user's explicit consent based on the legitimate interest exception (RGPD 2016/679 Art 6.1.f). In any case, when the user is contacted, for instance because some content s/he has published is going to be reused, the user should be informed following Art. 14 RGPD2016/679, "Information to be provided where personal data have not been obtained from the data subject" as it is stated in that particular article of RGPD2016/679.

Regarding the datasets collecting media, for instance the dataset in D1.1 "InVID_Data_WP3_2_InVidFakeVideos" collecting fake videos: if they come from third party platforms (YouTube, Twitter, etc.), this will require an authorisation from the platform. Alternatively, media can be requested from the original creator together with an authorisation to reuse it.

Some datasets are based on data from registered users, especially the dataset "InVID_Data_WP4_1_UGCRegisteredProviders". In these cases, a deregistration procedure should be provided and users should be informed that the collected data will be preserved for a given period of time due to operation needs. For instance, if a previously registered content provider has established agreements with reusers about owned content, these agreements will be kept even if the provider deregisters for a period of time. These agreements constitute evidence that might be required in the future to solve litigations about content reuse.

Finally, in relation to registered users' privacy, and especially when it is possible to collect private data about them like location in the case of the InVID Mobile Application, it might be interesting to stress the focus on data privacy and the protection of content providers. This is the case, for instance, for the dataset "InVID_Data_WP7_1_UGVideo1". Consequently, and given the latest legislation available from RGPD 2016/679, the recommendation is to implement a data protection by design and by default approach as detailed in Art. 25:

"2. The controller shall implement appropriate technical and organisational measures for ensuring that, by default, only personal data which are necessary for each specific purpose of the processing are processed. That obligation applies to the amount of personal data collected, the extent of their processing, the period of their storage and their accessibility. In particular, such measures shall ensure that by default personal data are not made accessible without the individual's intervention to an indefinite number of natural persons."

This recommendation should be applied to the InVID Mobile Application, as it will be able to get access to user location. This information will be shared through the mobile application to facilitate verification, but only if the user explicitly opts in. Consequently, if the user does not explicitly do the contrary, the default behaviour is that all this information is not shared by the InVID Mobile Application.

3 Current practices regarding the use and licensing of User Generated Content

3.1 Overview

In April 2014, the Tow Center for Digital Journalism published a report on Amateur footage¹³ showing that, while “UGC is used by news organisations daily”, mainly “when other imagery is not available”, “news organisations are poor at acknowledging when they are using UGC and worse at crediting the individuals responsible for capturing it”.

The key findings of the content analysis undertaken in 2013 for that report showed that as much as “72% of UGC was not labelled or described as UGC” and “just 16% of UGC on TV had an onscreen credit”. The same report outlined that these “troubling practices exist across both television and web platforms”.

The authors, Claire Wardle, Sam Dubberley and Pete Brown, wrote that many of the 64 interviews conducted for their research with news managers, editors, and journalists from 38 news organisations based in 24 countries around the world, “used the term ‘Wild West’ to describe the current landscape”.

“Most journalists, however, now know that copyrights exist with uploaders even after they share it on a social network and understand the need to seek specific permission to use someone’s content. Still, there’s a difference between what people know and what people do”, explained this report.

“Certainly the pressure of rolling news means that there are more situations on 24-hour news channels where a senior editor will make the decision to run with pictures without securing permission (knowing they will ‘sort it out’ retrospectively if necessary) than on daily bulletin programs. Broadcasters working outside the pressures of rolling news explained that obtaining permission from an uploader was mandatory before using content.”

In InVID, we have been constantly analysing breaking news events (and their corresponding videos) to update our use cases and requirements as well as to keep up with new developments in online video usage.

During the Brussels bombings of March 22nd 2016, the video¹⁴ corresponding to the frame shown in Figure 2 was taken by a witness from the airport parking lot.

¹³ http://towcenter.org/wp-content/uploads/2014/04/80458_Tow-Center-Report-WEB.pdf

¹⁴ <https://www.youtube.com/watch?v=Khb8DaXVXRI> (1st video posted on Youtube on 22nd of March 2016)



Figure 2: Screenshot of Brussels airport bombing video from parking lot, March 22nd 2016; video captured by Pinchas Kopferstein

This video was then shared with the Flemish publication *Joods Actueel* and through the WhatsApp mobile app where Anna Aronheim, then a defence correspondent for the Israeli 24-hour news television channel i24news.tv, picked it up and shared it via her Twitter channel. The video was retweeted more than 27,000 times and ended up very quickly on almost every news website and every news television worldwide, both in web and broadcast.

It's only six hours after that Mrs Aronheim acknowledged, in response to inquiries, that she was not in Brussels and that she had picked up the video from WhatsApp, without identifying the source of the footage. A couple of hours later the Storyful "social news agency", as it defines itself, claimed they had got the diffusion rights on this video from the owner and issued a copyright.

Two days later, David Clinch, global news editor at Storyful, was interviewed by the WAN-IFRA World Editors Forum, and complained against "the mass misattribution of a viral video"¹⁵.

In the study summarised in Table 2, conducted in November 2016, eight months after the Brussels bombings, we initially used the same panel of media as in the Tow Center report on amateur footage, listed in Table 3, and looked at copyright and credit mentions of the Brussels video.

Table 2: Copyright and credit mentions for the Brussels bombings viral video

Media	Links to the video	Credit	Copyright	Mention (soundtrack/text)
Euronews English	http://www.euronew	no	no	no

¹⁵ <http://blog.wan-ifra.org/2016/03/24/mass-misattribution-of-viral-brussels-video>

	s.com/2016/03/22/panic-and-chaos-follows-brussels-airport-blasts			
Euronews Hungarian	http://hu.euronews.com/2016/03/22/magara-vallalta-az-iszlam-allam-a-brusszeli-merenyleteket	no	no	no
CNN	http://edition.cnn.com/videos/world/2016/03/22/brussels-airport-blast-explosions-elbaqir-lklv.cnn/video/playlists/deadly-explosions-rock-brussels/www.cnn.com	news_executive	@news_executive	no
BBC	http://www.bbc.com/news/world-35869074	BBC	BBC	BBC TV coverage from Brussels as a series of explosions hit the city ¹⁶
France 24	http://mashable.france24.com/monde/20160322-les-images-amateurs-des-attentats-de-bruxelles?page=24	@AAronheim	no	Aronheim tweet ¹⁷
France 24 Arabic YT channel	https://www.youtube.com/watch?v=5fO7huMnRgI	no	no	no
Telesur	http://videos.telesurtv.net/video/523613/belgicaelevan-alerta-maxima-en-bruselas-tras-atentados-con-explosivos	no	no	no
Al Jazeera English	http://video.aljazeera.com/channels/eng/videos/brussels-attacks-explosions-hit-	no	no	no

¹⁶ According to sources from the European Broadcasting Union, it seems that the BBC was among the media who managed to get in touch with the content owner and to reuse the video, although no proper credit is displayed

¹⁷ The video was not retrieved on two of the three France 24 channels (French, English) but it was present on the French version of the Mashable publication, which is partially owned by France 24

	airport-and-metro/4811922768001			
NHK World	N/A	N/A	N/A	N/A
Al Jazeera Arabic	http://www.aljazeera.net/news/international/2016/3/2/قتلى-وحراحي-في-2-تقجيرين-بمطار-بروكسل	no	no	no

Table 3: List of media outlets analysed in the Tow Center report on amateur footage

News Organization	Location of Headquarters	Language
Al Jazeera Arabic	Doha, Qatar	Arabic
Al Jazeera English	Doha, Qatar	English
BBC World	London, United Kingdom	English
CNN International	Atlanta, United States	English
euronews	Lyon, France	English
France 24	Paris, France	French
NHK World	Tokyo, Japan	English
Telesur	Caracas, Venezuela	Spanish

Then, we completed our study incorporating more media brands, as summarised in Table 4.

Table 4: Copyright and credit mentions by media brands beyond those in the Tow Center report

Media	Links to the video	Credit	Copyright	Mention (soundtrack / text)
Deutsche Welle	http://www.dw.com/en/blast-in-brussels-live-updates/a-19132784	@AAronheim	no	Aronheim tweet
BFMTV	http://www.bfmtv.com/international/explorations-a-l-aeroport-de-bruxelles-961016.html	@AAronheim	no	Aronheim tweet and several screenshots with BFMTV logo
Sky news	http://news.sky.com/video/video-passengers-flee-after-blasts-at-brussels-airport-10215814	Pictures Anna Aronheim	no	no
N24 Deutschland	http://www.n24.de/n24/Nachrichten/Politik/d/8260954/internationale-reaktionen-	@AAronheim	no	no

	auf-die-anschlaege.html			
i24news English	http://www.i24news.tv/en/tv/replay/news/x3zbfrl	no	no	no
i24news French	http://www.i24news.tv/fr/tv/revoir/no-playlist/x3zbnot	no	no	no
Russia Today English	https://www.rt.com/news/336593-explosions-brussels-video-inside/ https://www.rt.com/news/336519-explosions-hit-brussels-airport/ https://www.rt.com/news/336523-brussels-zaventem-visitors-flee/	@tar791 courtesy @exen @AAronheim	no no no	no no Aronheim tweet
RTVE	http://www.rtve.es/alcarta/videos/los-desayunos-de-tve/desayunos-bruselas-220316/3533764/	no	no	Twitter images
Fox News	http://video.foxnews.com/v/4812990754_001/?#sp=show-clips	Fox News	no	no
ABC News Australia	http://www.abc.net.au/news/2016-03-22/brussels-airport-metro-rocked-by-explosions/7268106	ABC News	no	no

The above is just an illustrative example but shows the same results than the more systematic study conducted by the Tow Center about amateur footage and it also supports David Clinch's claim of "mass misattribution". Similarly to the findings of the Tow Center report, channels do not properly mention the copyright holder or give proper credit to the owner. We find the same evidence with the viral video of the Brussels airport bombing.

Several reasons explain these findings:

- First, the urgency to report on breaking news events, especially when the only available eyewitness media comes from social networks. The cross-publishing of videos from mobile networks to web platforms render even more difficult the task to confirm the content ownership and to secure proper attribution.
- Second, the pressure of rolling news is very strong in breaking news situation. So does the ripple effect of media monitoring and imitating themselves which often eases the spread of hoaxes. If some big brand publishes a breaking news UGC video, other

media are more likely to follow, sometimes at the expense of being less rigorous in the verification process (and/or assuming that the big trustable brands have verified it and cleared the right to use it), taken for granted that the right of the public to be informed in a breaking news situation will overpass other rights.

- Third, the profusion of social networks, mobile instant messaging applications, micro-blogging platforms and new web sources is increasing competition (for media), complexity (for journalists and verifiers) and spreading speed.

3.2 Survey of copyright management industry practices

This section includes the questions and responses from an online survey¹⁸ conducted as part of WP4 to gather information about current practices in the news industry when dealing with UGV content and copyright. The section concludes with a summary of the responses.

3.2.1 Introductory text accompanying the survey

The following text introduces the survey:

"The InVID project develops a social media video content verification platform to detect and verify newsworthy video files shared via social media.

Besides verification of UGV, another issue that the news industry faces is how to ensure a correct management of copyright on such content is done, so that copyright infringement risks (claims and suits) can be minimised.

For that purpose, the InVID platform will include a UGV rights management tool that aims at ensuring, as far as possible, a legal use of UGV. The process aims at collecting as much information as possible from metadata on social media content (UGV), as well as from exchanges between UGV creators and the platform, providing clear indications on reuse conditions, limits and/or risks, and allowing licences to be managed from the platform itself.

This questionnaire aims to gather feedback about how the news industry is currently facing this issue and to guide the development of the InVID platform so it can assist media companies during this part of the process. The survey is composed of 6 sections, a total of 25 questions and should take you no longer than 15 minutes."

3.2.2 Survey questions and responses

So far, seven responses have been collected to the survey available online as a Google Form, which is still open for additional responses at:

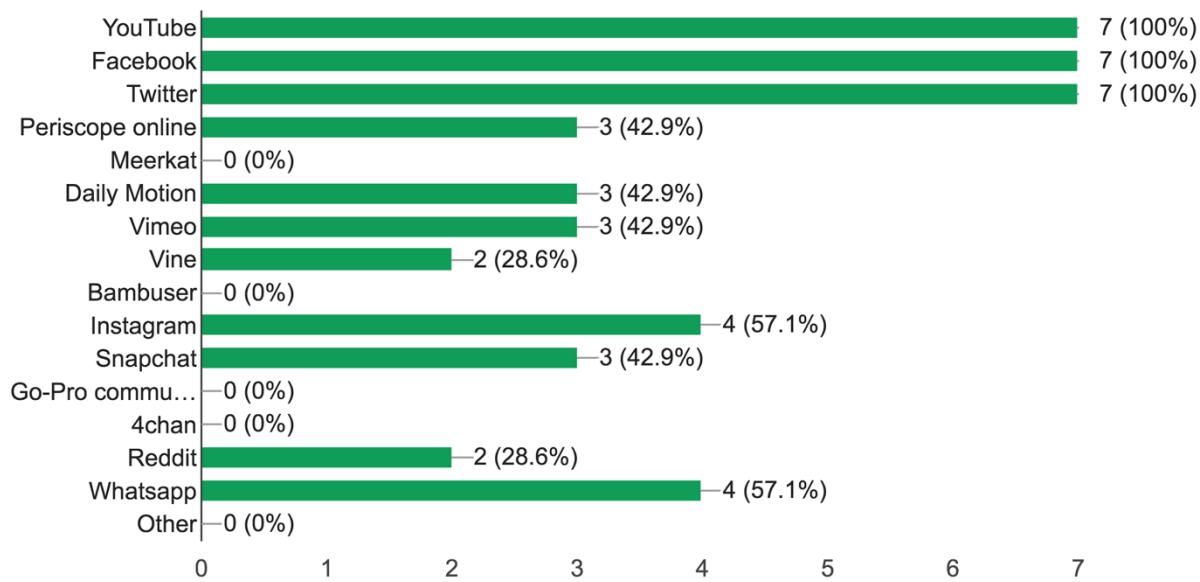
<https://docs.google.com/forms/d/e/1FAIpQLSeeZHWEPHZCDTD1ikmkiZVkbGX4Qfk8ajoyGuD2s2hP37zr0g/viewform>

¹⁸ <https://goo.gl/forms/DoyEpLzCkBdph9J23>

3.2.2.1 Questions about the origin of User Generated Videos

"Which sources do you crawl to find UGV? Please, check all that apply."

The options for this question presented to the user as a checklist are: WhatsApp, Reddit, 4chan, Go-Pro community channel, Snapchat, Instagram, Bambuser, Vine, Vimeo, Daily Motion, Meerkat, Periscope online, Twitter, Facebook and YouTube.



"Do you have a favourite channel in any of these sources you regularly go to? If so, could you please name it?"

There are 5 responses.

YouTube
YouTube
YouTube, Facebook
Facebook, Twitter, Instagram, Periscope
no

3.2.2.2 Questions about the nature of User Generated Videos

"Simple recordings of facts (the video simply shows images of facts, places or people as they are)"

The individual responses about the percentage of UGV being simple recordings of facts are: 80%, 80%, 100%, 20%, 30%, 70%, 90%.

On average, respondents consider that 67% of UGV they deal with as part of their daily work in the news industry are simple recordings of facts.

"Video report / Video story (the video is made with the specific intention of relaying information or recounting certain events)"

The individual responses about the percentage of UGV being video reports or video stories are: 20%, 20%, 100%, 40%, 40%, 30%, 0%.

On average, respondents consider that 36% of UGV they deal with are video reports or stories.

"Documentary (the video is nonfictional and intended to document some aspect of reality, primarily for the purposes of instruction or maintaining a historical record)"

The individual responses about the percentage of UGV being documentaries are: 0%, 0%, 0%, 40%, 50%, 0%, 0%.

On average, respondents consider that 13% of UGV they deal with are documentaries.

"Other (please list them and include the approximate percentage of videos of these other types)"

There was just one response to this question, which mentioned an additional kind of UGV to be considered, "Spots institutionnels"¹⁹, but that did not provide a percentage.

"Are any of the user generated videos you reuse commissioned contents (videos made under an assignment)?"

57.1% of respondents said that some of their reused UGV were commissioned content, while the remaining 42.9% responded that none was commissioned.

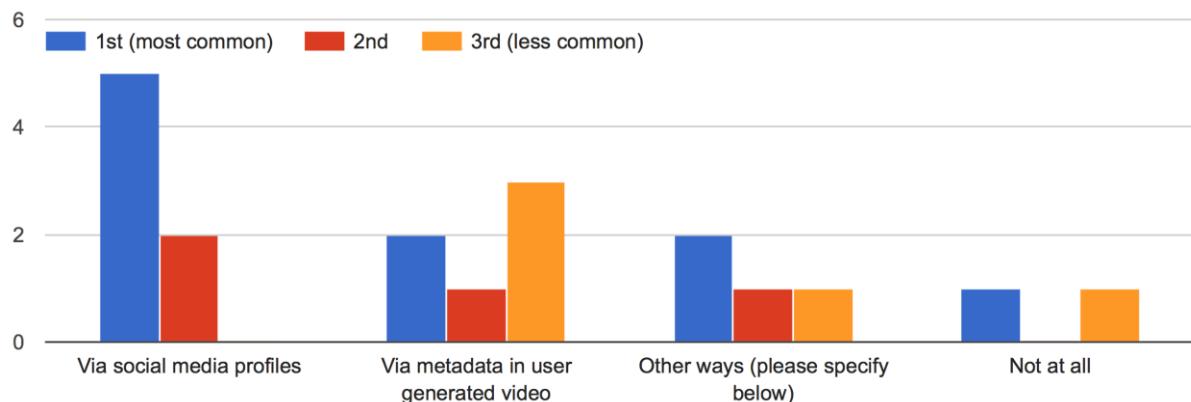
"If the previous answer is "Yes", what percentage of user generated videos are a commissioned work?"

Though 4 respondents to the previous question answered that some of the UGVs they reused were commissioned content, there are just 3 individual responses to this question, which are: 10%, 30% and 50%, 30% on average.

3.2.2.3 Questions about current UGV Rights Management process

"How do you identify copyright owners (content generators)? Please order from most to least common or leave blank if you don't use that method to identify them"

¹⁹ In French, it means "institutional footage"

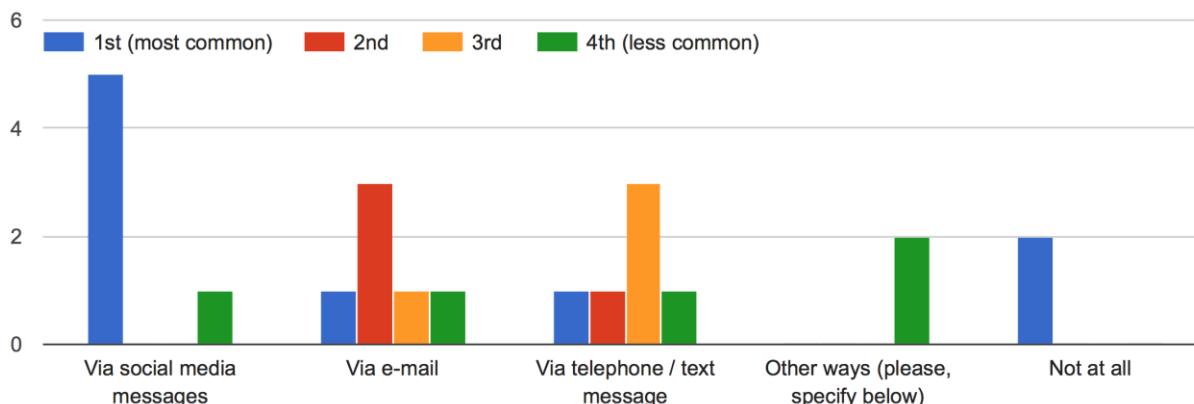


"Please specify other ways of identifying owners you may use"

There are 3 responses.

- Talking with owners (by phone, skype, ...) to determine the circumstances of the video shot, see if we can trust them.
- Through local correspondents or third parties for activist groups.
- Other media.

"How do you contact copyright owners (content generators)? Please, order from most to least common or leave blank if you don't use that method to contact them"

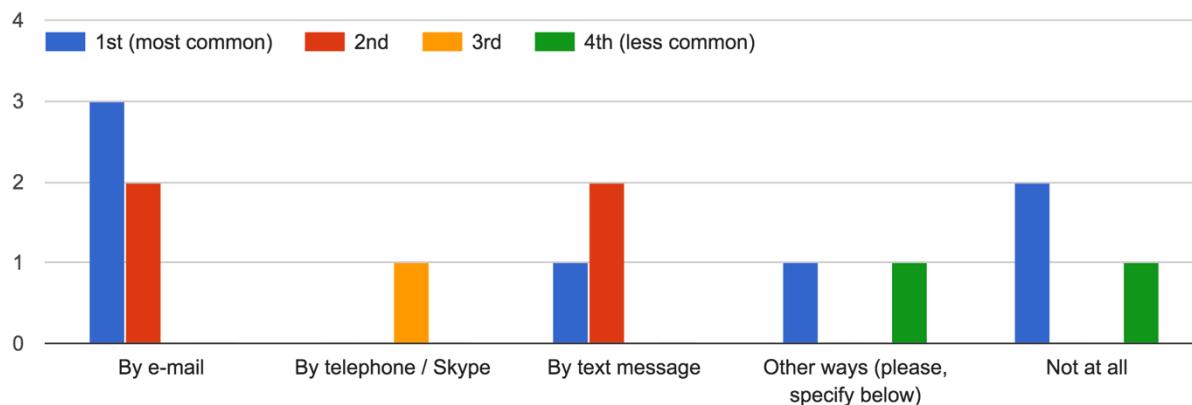


"Please specify other ways of contacting owners if you use them"

There are two responses.

- Could be through third parties, another person of an activist group for example
- Phone

"How do you get authorizations to reuse UGV? Please order from most to least common or leave blank if you don't use that method to get them"



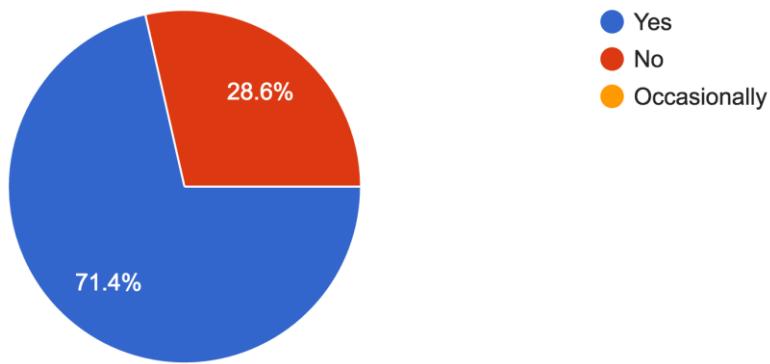
"Please specify other ways of getting authorisations if you use them"

There is just one response.

Facebook, Twitter

"Do you always keep records of such authorisations?"

There are seven responses, 5 answered "Yes" and 2 "No".



"In case of verbal / non-written authorisations: How do you keep record of them? (for instance recording the phone call)"

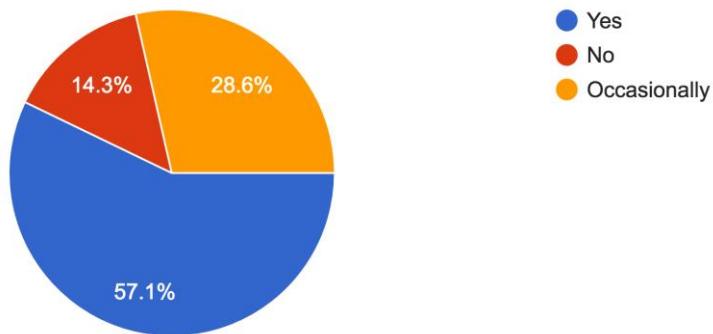
There are two responses.

We ask for text confirmation

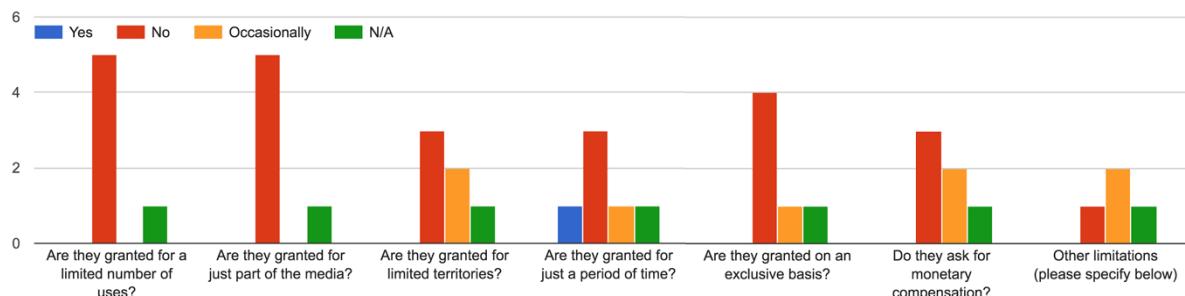
Always ask for a written confirmation by email or via social media platform

"Do authorisations include specific terms or limitations?"

There are 7 responses, 4 answered "Yes", 2 "Occasionally" and 1 "No".



"If some or all authorisations include terms or limitations:"



"Please specify other ways of limiting authorisations if you use them"

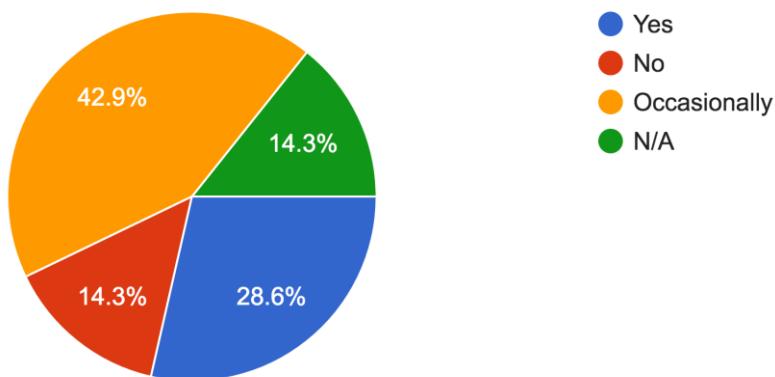
There are 3 responses.

No credit (asked by the contributor), no distributor, AFP only,
Creative commons licenses
No resale for non editorial purposes

3.2.2.4 Questions about relationship with content generators

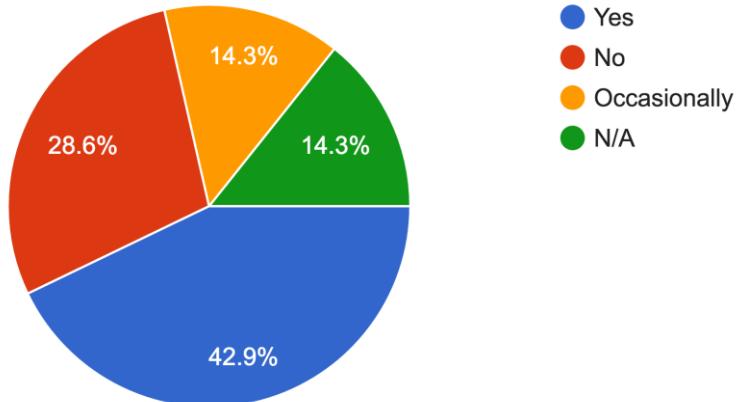
"Do users sometimes send you UGV proactively?"

There are 7 responses, 3 answered Occasionally, 2 Yes, 1 No and 1 N/A.

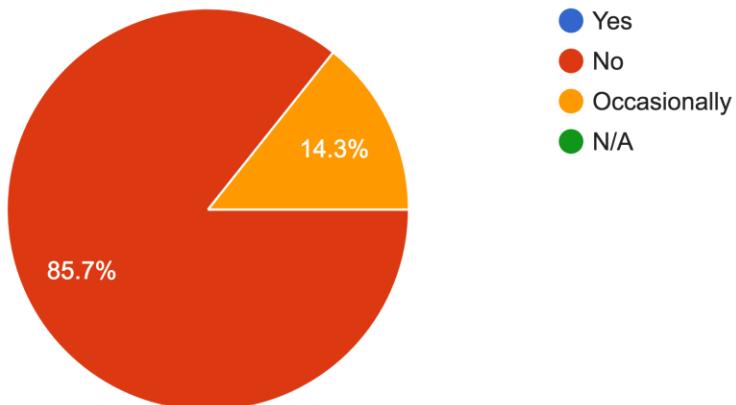


"Do you register productive users to contact them later for more materials?"

There are 7 responses, 3 answered Yes, 2 No, 1 Occasionally and 1 N/A.

**"Do you encourage people to generate content?"**

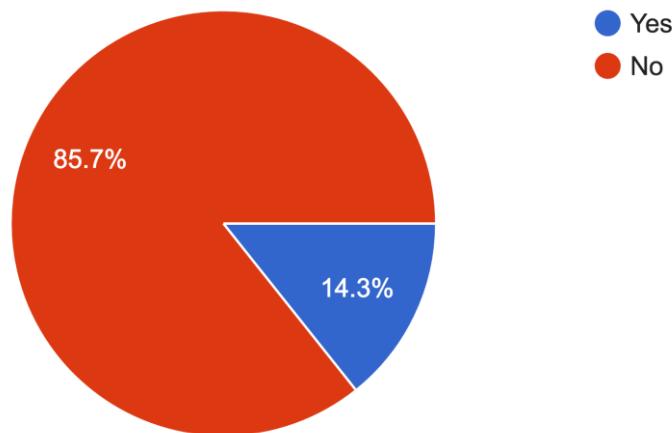
There are 7 responses, 6 answered No and 1 Occasionally.

**"If you encourage users, please explain how you go about this"**

There are no responses to this question.

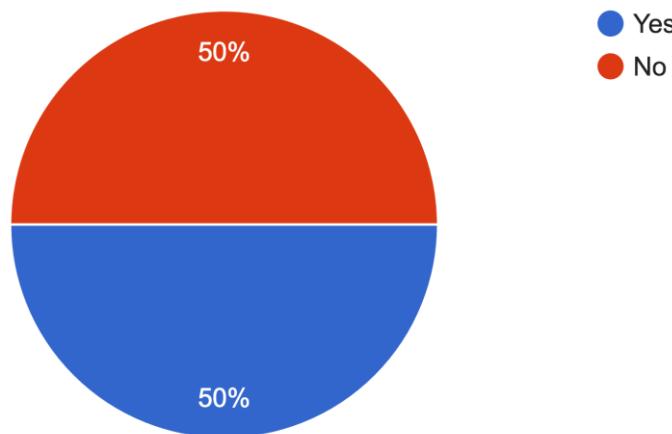
3.2.2.5 Questions about experience with litigations about User Generated Video**"Have you ever experienced any litigation issues with UGV?"**

There are 7 responses, 6 answered No and 1 Yes.



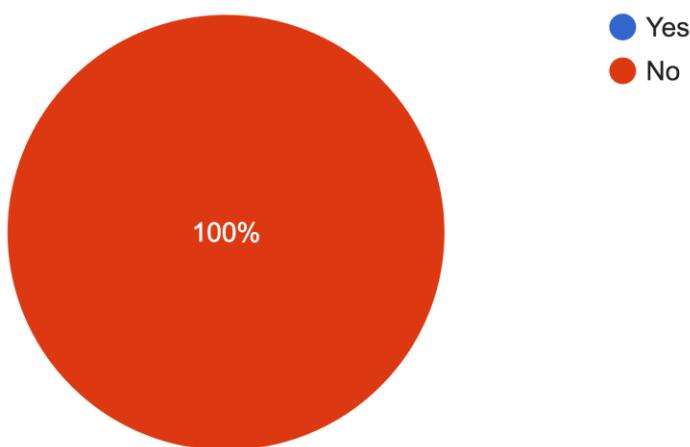
"If the previous answer is "Yes", did you reach an agreement with the user?"

There are 2 responses, 1 answered No and 1 Yes.



"Are you currently being sued in relation to user generated video reuse?"

There are 7 responses, all answered No.



"Can you share more details about these cases? If you prefer to share them directly, you can also email us"

There are no responses to this question.

3.2.2.6 Questions about requirements for an automated User Generated Video Rights Management system

"What are/have been your biggest legal challenges in working with user generated video so far?"

There are 3 responses to this question.

Identifying the right owner, getting in touch quickly with the owner on social networks
To obtain authorization is the biggest challenge
To have a written authorization

"Specify any cumbersome, repetitive, time-consuming tasks involved in tackling above legal challenges or securing the rights management of user generated video"

There are 3 responses to this question.

Getting information on the alleged owner from multiple sources
To join the contributor and to obtain his/her approval to use the video
When people cannot send their video and don't know how to send it

"What would you like to see in InVID?"

There are 2 responses to this question.

Being able to describe quickly our media activities and to reach asap the contributor in order to get his/her agreement to use and distribute the video.
Finding any way or application to send videos

3.2.3 Survey results summary

Regarding the origin of UGV reused by the news industry, responses to the questionnaire place the focus on three social networks as the main sources of social media for news reporting: YouTube, Facebook and Twitter.

From the point of view of the nature of these videos, they are mainly recordings of facts, thus constituting subject-matter and not works, thus not having associated moral rights as detailed in Section 2.3.1.

When dealing with UGV rights, the main source to identify the owner is via social media user profiles, according to the survey results, and via direct conversation on phone (or Skype and such like). Contributors are contacted mainly through social media messages. However, the most common way to get the authorisation to reuse is via e-mail.

Usually, the respondents keep record of these authorisations and include specific terms or conditions, which are related to specific territories, restricted time periods, exclusivity conditions or compensation requests.

Regarding the relationship with UGV creators, respondents only occasionally have content sent to them proactively. Respondents said they do keep track of users generating interesting content, but do not encourage them to generate and supply content actively. Most respondents have not been involved in litigations about UGV.

Finally, regarding what they would like to see in a UGV rights management system, they are interested in support through the whole process, from identifying and contacting the owner to obtaining a reuse authorisation the system keeps track of. They also want the system to be able to quickly reach the owner and clearly communicate the intended reuse so an agreement can be reached in a timely manner.

3.3 Social networks policies regarding User Generated Content

Like in the case of the REVEAL project about social media verification, taking into account Terms and Conditions (T&C) of social networks is crucial for InVID, too. REVEAL's Deliverable D1.2b (Kuczerawy, Ombelet, Sarris & Valcke, 2015) provides a detailed review of the Terms and Conditions of Twitter from the perspective of the use of its API and the development of tools consuming it. The same guidelines will be used during the development of the InVID Multimodal Analytics Dashboard, which will be mainly based on Twitter's API. Some of these guidelines have been presented in Section 2.6. A similar approach will be followed when consuming YouTube's API.

The focus of this deliverable is then not on the use of social networks' APIs but on the policies regarding the social media made available through them. This is a key issue to explore in how InVID and its users can reuse social media. As the survey results show, the main sources of social media are YouTube, Facebook and Twitter. This is also supported by the experience of the InVID partners from the news industry. The following sections summarise the relevant parts of social networks' T&C regarding content.

3.3.1 YouTube

Regarding content, YouTube's Terms of Service²⁰ state that content should not be directly downloaded and that the content owner retains all rights. Consequently, the owner should be contacted to seek authorisation for further uses beyond consuming the content through YouTube services. It is assumed that the content owner is the person who has uploaded the content since he or she has claimed so when uploading the content by accepting YouTube terms for uploaded content: but this assumption may not always be true since many users are uploading third-parties content to social media platforms.

In this regard, YouTube makes the recommendations presented in Table 5 when re-broadcasting YouTube content. This also applies when republishing content outside the

²⁰ <https://developers.google.com/youtube/terms>

context of YouTube, for instance making the video available through a newspaper website without using YouTube features for video embedding.

Table 5: YouTube recommendations²¹ regarding re-broadcasting UGV in YouTube

Re-broadcasting videos
Some guidelines for incorporating YouTube content are below:
<ul style="list-style-type: none"> • Credit the content owner. Though YouTube has a license to distribute the video, it's the YouTube user who owns the content. We encourage you to reach out to users directly when you find video you'd like to use, and to provide attribution by displaying the username or the real name of the individual, if you've obtained it. • Credit YouTube in your re-broadcast of the video. When you show a YouTube video on television, please include on-screen and verbal attribution. • Contacting a YouTube user. Clicking on a YouTube username will take you to the user's channel, where you can see what personal information he or she has shared (name, web site, location, etc.). From here, you can use YouTube's on-site messaging system to contact the user. First, you must be logged into your own YouTube account. Then, click on the username of the individual you'd like to reach out to and select "Send Message."

The previous guidelines apply to any video available under YouTube's terms. Alternatively, YouTube contemplates that uploaders make their content available using a Creative Commons license, concretely the CC-BY license: "*by marking an original video of your property with a Creative Commons license, you grant the YouTube community the right to reuse and edit this video*"²². UGV licensed under these terms can be edited using the YouTube Video Editor and then downloaded from there.

With videos licensed under a CC-BY license, the user is free to copy and redistribute the material in any medium or format and remix, transform, and build upon the material for any purpose, even commercially. The licensor cannot revoke these freedoms as long as license terms are followed. The only requirement is attribution while the derived videos do not need to be made available under the same CC-BY license.

This is the only Creative Commons license currently supported by YouTube, the least restrictive of all Creative Commons options. It is mainly intended to facilitate video remixing with artistic and creative purposes and not likely to be used by uploaders of eyewitness media. In any case, the InVID platform should make this information available to journalists to facilitate the process of UGV reuse. This information is available through YouTube's API.

3.3.2 Twitter

Like YouTube, Twitter also clarifies in its Terms of Service that the uploader retains all rights. Consequently, it is possible to contact the uploader to get permission for reuses outside the scope of this social network. However, as noted for YouTube, the assumption that the uploader is the author/creator of the content is to be cautiously taken: s/he may be uploading third parties' content. In any case, the range of rights granted by the uploader is very wide, as shown in Table 6. The user grants to Twitter a worldwide, non-exclusive, royalty-free license (with the right to sublicense) to use, copy, reproduce, process, adapt, modify, publish,

²¹ <https://www.youtube.com/yt/press/media.html>

²² <https://support.google.com/youtube/answer/2797468?hl=en>

transmit, display and distribute such content in any and all media or distribution methods (now known or later developed). This license includes the right for Twitter to provide, promote, and improve the Services and to make content submitted to or through Twitter available to other companies, organisations or individuals for the syndication, broadcast, distribution, promotion or publication of such content on other media and services, subject to their terms and conditions for such content use. Such additional uses by Twitter, or other companies, organisations or individuals, may be made with no compensation paid to its owner with respect to the content that s/he submits, posts, transmits or otherwise make available through the Services. In addition, the user should represent and warrant that s/he has all the rights, power and authority necessary to grant the rights granted herein to any content that s/he submits.

For all of these reasons, and like in the case of YouTube, it might be also considered beyond the end of the project, and when commercial exploitation of InVID starts, to establish agreements with Twitter as a way of getting access to the content to be verified, as this kind of use can be granted by Twitter under the Terms of Service accepted by the uploader.

Table 6: Section in Twitter's Terms of Service²³ about uploader rights regarding the submitted content

<p>...</p> <p>Your Rights</p> <p>You retain your rights to any Content you submit, post or display on or through the Services. What's yours is yours -- you own your Content (and your photos and videos are part of the Content).</p> <p>By submitting, posting or displaying Content on or through the Services, you grant us a worldwide, non-exclusive, royalty-free license (with the right to sublicense) to use, copy, reproduce, process, adapt, modify, publish, transmit, display and distribute such Content in any and all media or distribution methods (now known or later developed). This license authorizes us to make your Content available to the rest of the world and to let others do the same. You agree that this license includes the right for Twitter to provide, promote, and improve the Services and to make Content submitted to or through the Services available to other companies, organizations or individuals for the syndication, broadcast, distribution, promotion or publication of such Content on other media and services, subject to our terms and conditions for such Content use. Such additional uses by Twitter, or other companies, organizations or individuals, may be made with no compensation paid to you with respect to the Content that you submit, post, transmit or otherwise make available through the Services.</p> <p>Twitter has an evolving set of rules for how ecosystem partners can interact with your Content on the Services. These rules exist to enable an open ecosystem with your rights in mind. You understand that we may modify or adapt your Content as it is distributed, syndicated, published, or broadcast by us and our partners and/or make changes to your Content in order to adapt the Content to different media. You represent and warrant that you have all the rights, power and authority necessary to grant the rights granted herein to any Content that you submit.</p>

3.3.3 Facebook

Similar to the rest of analysed social networks, Facebook's terms also state that the user retains ownership of the content posted to Facebook, as detailed in Table 7, and assuming s/he is not uploading third parties' content. In this case, the user can also control how it is shared with using the privacy settings. For instance, the user can restrict content sharing to

²³ <https://twitter.com/tos?lang=en>

just his friends, so content is not publicly available or available through Facebook's API for data processing. Consequently, the legitimate interest exception mentioned in Section 2.6 will not apply.

On the contrary, if content is shared publicly, Facebook's terms state: "*When you publish content or information using the Public setting, it means that you are allowing everyone, including people off of Facebook, to access and use that information, and to associate it with you (i.e., your name and profile picture)*". Consequently, in this case, the legitimate interest exception will apply and user data can be processed like in the cases of YouTube and Twitter.

In addition, a Facebook user grants Facebook a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use any Intellectual Property content that s/he posts on or in connection with Facebook (IP License). This IP License ends when s/he deletes her/his IP content or her/his account.

Table 7: Section in Facebook Terms of Service²⁴ about uploader rights regarding the submitted content

...
Sharing Your Content and Information
You own all of the content and information you post on Facebook, and you can control how it is shared through your privacy and application settings. In addition:
For content that is covered by intellectual property rights, like photos and videos (IP content), you specifically give us the following permission, subject to your privacy and application settings: you grant us a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use any IP content that you post on or in connection with Facebook (IP License). This IP License ends when you delete your IP content or your account unless your content has been shared with others, and they have not deleted it.
When you delete IP content, it is deleted in a manner similar to emptying the recycle bin on a computer. However, you understand that removed content may persist in backup copies for a reasonable period of time (but will not be available to others).
When you use an application, the application may ask for your permission to access your content and information as well as content and information that others have shared with you. We require applications to respect your privacy, and your agreement with that application will control how the application can use, store, and transfer that content and information. (To learn more about Platform, including how you can control what information other people may share with applications, read our Data Policy and Platform Page.)
When you publish content or information using the Public setting, it means that you are allowing everyone, including people off of Facebook, to access and use that information, and to associate it with you (i.e., your name and profile picture).
We always appreciate your feedback or other suggestions about Facebook, but you understand that we may use your feedback or suggestions without any obligation to compensate you for them (just as you have no obligation to offer them).

²⁴ <https://www.facebook.com/terms.php>

4 Main findings applicable to InVID

From a legal perspective and according to the current EU copyright framework where Fair User or Fair Dealing are not applicable, our preliminary conclusions regarding the legal scope of the InVID platform are the following:

1. Legal coverage for InVID verification operations involving content reproduction might be based on the **research project exception**, presented in Section 2.3.5. This includes content reproduction for UGV verification, plus public communication when fake content is detected. Alternatively, content can be downloaded by the InVID users as natural persons based on the private use exception, and then submitted by them to the platform for verification.
2. InVID could benefit from a **quotation for criticism or review** exception, in jurisdictions where available, if it delivers a final review work of its own where the previous work (the UGV) is reviewed or criticised. To do so, several conditions should be met. A specific in-depth research on this exception shall be made to verify the scope and degree of implementation it has had in different EU jurisdictions. InVID may rely upon this exception if conditions are met, but InVID users (media/press companies) shall ensure legal broadcasting through **licensing** of the UGV or the **use by the press exception** where available just for **current events**, as detailed in Section 2.3.5.
3. More generally, licensing for end users (media/press companies) reuse requires obtaining express authorization. This can be achieved through a system requiring UGV creators to **explicitly authorise** such reuse facilitated by the InVID platform. However, first, **content ownership** should be checked or at least confirmed with the content uploader. Ownership is based on **who shot the video** and not on who uploaded it or who is the recording device owner, as detailed in Section 2.3.2.
4. Alternatively, and especially as soon as InVID enters commercial exploitation and it is no longer a research project, another possibility is to explore **agreements with social media platforms** in order to get permission for media reproduction for verification purposes as part of the terms and conditions agreed by the social network users.
5. Finally, and just for InVID users not the InVID platform, operating in countries where Fair User or Fair Dealing applies, they can rely on this special provision when reusing content to report about current events. A guideline for the particular territory where they are going to conduct the reuse can be obtained from "The Fair Use/Fair Dealing Handbook" (Band & Gerafi, 2015).

5 Summary

This document reviews the legal scope of the InVID platform, focusing on copyright law and EU legislation, and current practices in the news industry regarding the reuse of social media. Based on that, it provides a set of recommendations that guide the development and use of InVID when dealing with content from social networks, from content verification to its reuse by the news industry. This deliverable will be followed by deliverable D4.2, which will define the model and workflow to be implemented by the InVID Rights Management module. The implementation of this module will constitute deliverables D4.3 and D4.4.

Annex A. Orphan works

Copyright laws, as harmonised under InfoSoc Directive, state that the rights holders' exclusive rights of reproduction of their works require the prior consent of such to the digitisation and the making available to the public of those works. In the case of Orphan Works, rights holders are unknown so it is not possible to obtain such consent.

For this reason, the EU regulation on Orphan Works aims to create a **legal limit to copyright** regarding the digitisation and diffusion of orphan works. It thus contributes to the preservation and dissemination of European cultural heritage, also ensuring legal certainty in the internal market. Directive 2012/28/EU of the European Parliament and of the Council, dated 25 of October 2012, on certain permitted uses of orphan works was enacted in order to allow certain limited uses of orphan works in the EU, provided such uses meet the special conditions set forth by the Directive and only if they are made by the kinds of organisations detailed next.

In particular, the Directive applies to the following **categories of works** first published or broadcast in an EU Member State (art. 1.2):

- works in the print sector (books, journals, magazines and newspapers),
- cinematographic and audio-visual works,
- phonograms,
- works embedded or incorporated in other works or phonograms (e.g. pictures in a book).

Organisations allowed to benefit from the legal limit uses under the Directive are the following (art. 1.1):

- public libraries, museums, educational establishments,
- archives,
- film or audio heritage institutions,
- public service broadcasters.

Such institutions are entitled to digitise orphan works and make them publicly available online in all Member States because of their public interest mission (art. 6.1). They can only exploit such works for **cultural or educational purposes**, without any commercial profit, and may only generate revenues in such uses for the exclusive purpose of covering their digitising costs (art. 6.2).

Before using these works for the abovementioned purposes, the aforementioned organisations have to ensure that a **diligent and good faith search** of the copyright holders is done in order to verify the orphan work status (art. 3.1).

The search shall be carried out in the Member State of first publication or broadcast, and in the case of cinematographic or audiovisual works, in the Member State where its producer has his headquarters or habitual residence (art. 3.3), such as, for example, two pre-cataloguing actions:

- a query to the database of orphan works or,
- if this consultation does not succeed, the subsequent consultation will be carried out in any other available sources.

The **consequences** of the recognition of a work as orphan is that status shall then, by mutual recognition, be valid across the European Union. Organisations will be able to make it available online in all Member States (art. 4).

In order to easily access such classification by both the organisations and the rights holders, it will be available in the single European online database of orphan works (art. 3.6), and created and managed by the European Union Intellectual Property Office (previously known as OHIM).

This cataloguing can be appealed by the non-identified rights holders, wrongly considered, who can claim their rights in the work through the remedies for copyright infringement in Member States' legislation (art. 5 and 6.5). In that event, the lawful use of the work can continue only if those rights holders give their authorisation to do so.

Also, rights holders who put an end to orphan works receive fair compensation for the use that has been made of their works, to be determined by the Member State where the organisation that uses an orphan work is established.

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