

TENDER SPECIFICATIONS

ASSESSMENT OF THE

**ECONOMIC AND SOCIAL IMPACT OF THE PUBLIC DOMAIN IN THE INFORMATION SOCIETY -
SMART N° INFSO/2007/0043**

1. CONTEXT OF THE PROCUREMENT

1.1. Introduction

The envisaged purpose of the assessment is to analyse the economic and social impact of the public domain and to gauge its potential to contribute for the benefit of the citizens and the economy.

The public domain refers in a broad sense to information resources which can be freely accessed and used and re-used by all. Public domain content is material that is not or no longer protected by intellectual property rights. These aspects are further developed in section 1.2. But it also encompasses material that, although strictly speaking copyright protected, is generally available for all, as the copyright holder has waived part of his rights allowing for its use and re-use. This facet will be further introduced and developed in section 1.3.

The new tools of the information society make that public domain material has a considerable potential for re-use - by citizens or for new creative expressions (e.g. documentaries, services for tourism, learning material). It contains published works, such as literary or artistic works, music and audiovisual material for which copyright has expired, material that has been assigned to the public domain by the right holders or by law, mathematical methods, algorithms, methods of presenting information and raw data, such as facts and numbers. A rich public domain has, logically, the potential to stimulate the further development of the information society. It would provide creators – e.g. documentary makers, musicians, multimedia producers, but also schoolchildren doing a Web project – with raw material that they can build on and experiment with, without high transaction or other costs. This is particularly important in the digital context, where the integration of existing material has become much easier.

Although there is some evidence¹ of its importance, there has been no systematic attempt to map or measure its social and economic impact. This is a problem when addressing policy issues that build on public domain material (e.g. digital libraries) or that have an impact on the public domain (e.g. discussions on intellectual property instruments) in the digital age.

1.2. Public domain content

The Commission Communication “i2010 Digital Libraries²” and Commission Recommendation on “the digitisation and online accessibility of cultural material and digital preservation”³ have highlighted the importance of public domain material as a basic content resource and as a potential driver for new content creation and of traffic on

¹ The film “West Side Story” which grossed \$43.7 million may be considered a reworking of “Romeo and Juliet” which is considered to be based on Ovid’s “Pyramus and Thisbe”, both of which are out of copyright

²http://ec.europa.eu/information_society/activities/digital_libraries/doc/communication/en_comm_digital_libraries.pdf

³

http://ec.europa.eu/information_society/activities/digital_libraries/doc/recommendation/recommendation/en.pdf

the Internet. In this context the European digital libraries initiative aims to work together with major European libraries and other cultural institutions to turn their collections into searchable digital content. The importance of public domain material in the information society was recently stressed in the context of WIPO when discussing the establishment of its Development Agenda⁴, building on previous declarations at UNESCO⁵ and/or the World Summit on the Information Society⁶.

However, limited information exists on the number of works available in the public domain in Europe and its different types of uses and users. This will be the first objective (Objective a) of the assessment. The Internet environment has created ample possibilities for sharing information. It makes it necessary to more clearly distinguish between information that is freely available for reproduction, dissemination and commercial re-use by others and material that is not. This will increase legal certainty for users and underpin creative efforts. At the same time it will reinforce the general message that copying or distributing protected material without the consent of the rightholder is illegal.

It remains to be assessed the current economic and cultural value of works in the public domain, as well as the value of those works that will fall into the public domain in the next 10-20 years for example. This estimate will enable to gauge the real economic value and potential of the public domain. This will be the second objective (Objective b) of the assessment.

Similarly, in recent times, intense discussions have sparked about the present state and future of the public domain. Many believe that the public domain is and has been under some pressure as many discussions have focussed on the expansion of intellectual property rights. The harmonisation of the term of copyright protection until 70 years after the death of the author has, for example, brought material which would otherwise be today in the public domain back under copyright protection. It would be therefore important to analyse the consequences of those actions leading to shrinking or to extending the public domain. This feature will be part of objective b) of the assessment.

The wide majority of European cultural establishments, such as museums, libraries, and/or archives hold amongst their collections a considerable amount of public domain material. These institutions are interested in the wide dissemination and preservation of their public domain material to realise various social (cultural/educational) and economic goals, and also interested in the potential commercial and non commercial re-use of this material.

These institutions have embarked themselves in major digitalisation efforts in order to achieve the above mentioned goals and make full use of the opportunities the new digital environment offers. Funds for digitisation and availability of cultural content are scarce and are being rationalised and, with increasing public spending restrictions public-private partnerships have come into play. Private firms are co-operating with public institutions in their digitisation efforts in exchange, for example, for Web-space for advertising. This

⁴ http://www.wipo.int/pressroom/en/articles/2007/article_0037.html

⁵ The UNESCO Universal Declaration on Cultural Diversity, adopted by the thirty-first session of the UNESCO General Conference, on November 2, 2001; or the "Recommendation concerning the Promotion and Use of Multilingualism and Universal Access to Cyberspace", adopted by the UNESCO General Conference in November 2003.

⁶ WSIS Geneva declaration of principles of 12 December 2003,

has enabled that an important amount of public domain material is made available on-line allowing for its wide access and re-use.

In certain circumstances, however, some conditions on "digitized" public domain material are being established for its access and reuse. These range from establishing some fees to recoup some of the cost to the establishment of deals between cultural institutions and private firms for certain type of access and reuse conditions of this material. This could lead to public domain material becoming somehow "privatised" in the digital world through restrictive access and re-use conditions,

This study aims to identify and analyze the current practices for online access and re-use of public domain content held by European cultural institutions. Particular emphasis should be provided to the availability of "digital" public domain content and the nature and extent of use of deals between cultural institutions and private firms. In addition it should be assessed the European Cultural Institutions' capacity to implement the principles for re-use as established in the Public Sector Information (PSI) Directive⁷. (This would be the third objective of the assessment (objective c)). The Directive aims to introduce greater transparency in all EU Member States on the re-use of the information resources of public sector bodies and to ensure that private and public entities face the same conditions when re-using PSI.

1.3. Publicly available and usable content: simple mechanisms for voluntary sharing

In line with international conventions, copyright is granted automatically, without any formal procedures of registration. As soon as a text, a picture, a film or any other expression protected by copyright law has been created in its simplest form, it is automatically protected (unlike patents or trademarks, for which a registration is necessary). An explicit prior permission from the author is necessary to further distribute the material or to copy it, for example for combining it with other material.

But what if the author intends to make his creation available for others to use? Authors can waive all their rights and assign the material to the public domain, or keep some of the rights and make it available under certain conditions (e.g. the requirement to mention the source or not to re-use the material commercially). Recent initiatives, building on the possibility for the author to waive (part of) his rights are Creative Commons and Wikipedia.

In this context it is of paramount interest identifying and analyzing available mechanisms for voluntary sharing of publicly available and usable content, ascertaining the pro's and cons and estimating their impact on the basis of relevant indicators. This would be the final objective of the assessment (objective d)

2. OBJECTIVES OF THE STUDY

The main purpose of this study is to have a first and general overview of what is the situation in Europe with regard to public domain material and to assess the economic and social potential of the accessibility to this material.

⁷ Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information

2.1. Specific Objectives

The specific objectives of the study are four fold:

- a. To estimate the number of works in the public domain in the EU (at least 5 Member States) for published works, such as literary or artistic works, music and audiovisual material, to calculate approximately the levels and ways of use of the public domain material and to highlight the main users in the above mentioned sectors.** For example the contractor should identify what is the number and percentage of public domain material that national libraries and national archives hold amongst their collections.
- b. To estimate the current economic value of public domain works and estimate the value of the works that in the next 10-20 years are to be released into the public domain and determine any change in its value whilst under copyright and once it is on the public domain.** The contractor should also, analyse the consequences of applying different sets of criteria aiming at extending or shrinking the public domain describing the different potential scenarios through a sensitivity analysis.
- c. To identify and analyze the current practices for re-use of public domain content held by European cultural institutions and assess their capacity to implement the principles for re-use as established in the Public Sector Information (PSI) Directive.**
- d. To identify and analyze current available mechanisms for voluntary sharing of content and to ascertain the pro's and cons of each mechanism, highlighting the degree of use of the most successful ones and their impact based on relevant indicators.**

2.2. Methodology/Approach

In order to be able to carry out this assessment the future contractor shall have access to a network of senior experts having an excellent knowledge of the public domain and the digital content/copyright markets in the EU. The contractor will have to demonstrate that it has the capacity to gather the necessary information, either directly or through appropriate correspondents in targeted institutions (e.g. national libraries, major publishers, phonogram institutions, collecting societies, audiovisual institutions, etc) enabling them to address the different objectives and areas covered by the study.

The contractor must have a proven track record in strategic business studies, including an in-depth knowledge of the public domain and content/copyright industries. The contractor should also have the ability to access leading cultural/copyright industries in the EU to gather industry experience, as well as key public sector players.

The use of data quantification to support the findings and the extrapolations envisaged in the study is a key part of the study. This will be particularly the case in the context of estimating the current and future value of the public domain. (Objective b)

The methodology indicated here is based on the experience of previous studies. Alternative approaches may be proposed and will be considered and evaluated as part of the tender. The study methodology should be based on data collection and verification techniques.

In particular, the external contractor will have to use different methodological tools to carry out the assessment, like for example:

- *desk research*, gathering all relevant existing material on the situation in the different countries and areas.
- *on site surveys*, to measure *i.e.* the number of public domain works within national archives
- a survey (paper-based or online) and in depth *interviews with key-players* from the public and private sector in different sectors and EU Member States.
- *analysis of case studies*, to *i.e.* illustrate the findings.

The assessment of the economic and social impact of the public domain in the information society is a challenging task as no specific methodology has been established so far. In this context, the Commission, when discussing the inception report at the second meeting (see below 4.1), at its expense will contact relevant experts in the field in order to discuss, fine tune if necessary and validate the proposed methodology of the contractor.

3. DURATION

The duration of the execution of the tasks shall be up to 16 months and subject to the provisions of Art. I.2.3 of the contract.

4. DELIVERABLES, MEETINGS AND TIME TABLE

4.1. Deliverables

The future contractor shall present the following deliverables:

- I. **Inception Report:** to be submitted not later than 2 months following the signature of the Contract. This report will contain a detailed planning of activities, including the process of stakeholders' consultation and gathering of information, the coordination process between the different parts of the assessment, a detailed list of indicators for the objectives and draft versions of questionnaires to be submitted to relevant stakeholders shall be presented.
- II. **Progress Report:** to be submitted not later than 9 months following the signature of the Contract. The progress report will describe the work carried out and the results obtained according to the work plan presented by the contractor. It will also include results on at least two countries of particular relevance. In particular, the report will state; (i) the preliminary results obtained on the overall work covered by the contract and (ii) the planned work programme for the following period.
- III. **Draft final study report:** 3 paper copies of the Draft final study report shall be presented at the end month 14 following the signature of the Contract. This draft shall contain an advanced version of the report for quality assessment and revision and describe the work carried out. The feedback from the review will provide guidelines to consolidate the final study report and steer the work of the last weeks.
- IV. **Final Study Report:** shall be presented at the end of month 16.

- a. 3 paper copies of the Final Executive Summary only, consisting of several pages summarising the main findings of the Report.
- b. 3 paper copies of the Final Executive Summary and full Final Report, bound together; as well as 1 unbound copy.
- c. 3 paper copies of any supporting presentations and material.
- d. 2 sets of all documentation in electronic form on a CD/DVD. The files should be stored in multiple (portable) file formats (word, pdf, rtf, etc).

All deliverables are to be produced in English. The deliverables will be reviewed by the European Commission Services, who will provide the quality assessment of the work performed.

4.2 Meetings

Four working meetings will take place in the European Commission premises in Luxembourg.

Kick-off Meeting

A first (kick-off) meeting will be organised by the Commission services during month 1 just after the signature of the contract by both parties.

Second Meeting

A second meeting during which the future contractor will present the inception report shall be held 2 months after signature of the contract by both parties. In this meeting, the Commission, at its expense will contact relevant experts in the field in order to discuss, fine tune if necessary and validate the proposed methodology of the contractor in its inception report.

Third Meeting

A third meeting will be organised during which the future contractor will present the progress report shall be held 10 months after signature of the contract by both parties.

Fourth Meeting

A fourth meeting will be organised during which the future contractor will present the draft final study report will be held 15 months after the signature of the contract by both parties.

4.3 Timetable

Deliverable	Meeting	Month						
	Kick-off meeting		1					
Inception report as in § 4.1				2				
	Meeting to discuss inception report			2				
Progress report as in § 4.1					9			
	Meeting to discuss progress report				10			
Draft final study report as in § 4.1						14		
	Meeting to present draft final study report						15	
Final study report as in § 4.1								16

5. TERMS OF APPROVAL OF REPORTS

After reception of each report, the Commission will have 20 working days in which:

- to approve it, with or without comments or reservations;
- to reject it and request a new report.

If the Commission does not react within this period, the report shall be deemed to have been approved.

Where the Commission requests a new report because the one previously submitted has been rejected, this shall be submitted within 20 working days. The new report shall likewise be subject to the above provision