

Annex

Questionnaire on the implementation of the Recommendation¹ of the European Parliament and of the Council of 16 November 2005 on film heritage and the competitiveness of related industrial industries ('the Recommendation')

Notes:

1. The questionnaire refers to all public film heritage institutions in the Member States, including those of local or regional character.
2. After each question, it is indicated in brackets its correspondence with the information already reported in the first implementation report. The aim is to facilitate your reporting, in case that the situation has not changed.

Questions:

1. LEGISLATIVE AND ADMINISTRATIVE MEASURES PROMOTING THE OBJECTIVES OF THE FILM HERITAGE RECOMMENDATION (TABLE 8)

What legislative, administrative or other appropriate measures have you adopted to ensure that cinematographic works forming part of your audiovisual heritage are systematically collected, catalogued, preserved, restored and made accessible for educational, cultural, research or other non-commercial uses of a similar nature, in all cases in compliance with copyright and related rights?

Film conservation in Germany is carried out by systematic conservation and restoration work in the Federal Archives (*Bundesarchiv*) and at various qualified entities of the *Länder*.

Under the Federal Archives Act (*Bundesarchivgesetz*, BArchG) of 6 January 1988 (BGBl. I p. 62) it is the task of the Federal Archives, founded as far back as 1955, to permanently preserve films, make them available for use and exploit them for study purposes. Making films available for use includes collecting and cataloguing them. The public has a statutory entitlement to use them under the Act and subject to compliance with more specific legislation such as copyright law.

On 8 December 1978 the Federal Republic of Germany and the *Land* of Berlin concluded an 'Administrative Agreement on the setting up and management of a Cinematheque Association (*Kinematheksverbund*)' aimed at conferring on this body the 'duties of a central German cinematheque'. The Administrative Agreement formed the basis of bilateral contractual agreements between the Federal Archives and, respectively, the German Cinematheque Foundation (*Stiftung Deutsche Kinemathek*, SDK) in Berlin and the German Film Institute (*Deutsches Filminstitut*, DIF) in Frankfurt am Main. For the first time this coordinated the work of these three institutions; in 2005 it was contractually agreed to continue the collaboration.

As part of this cooperative effort, the Federal Archives, as the central German film archives, are responsible under the authority of the Federal Government for:

- archiving German film output, including co-productions, as completely as possible;

¹ OJ L 323, 9.12.2005

http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/l_323/l_32320051209en00570061.pdf

- preserving film stock by stabilising the starting materials, restoration and care;
- opening up the film holdings by form and content-based criteria;
- providing copies of films for study and entertainment.

The SDK and the DIF, on the other hand, concentrate on passing on living film culture and historical knowledge of the German film industry in particular by film distribution, retrospectives, film festivals, exhibitions, events, publications, film research, data collection and consultancy.

In addition to the Cinematheque Association's three full members (the Federal Archives, the SDK and the DIF), co-opted members are the film museums of Düsseldorf, Munich and Potsdam and CineGraph (the Hamburg Centre for Film Research). Associate members include the Friedrich Wilhelm Murnau Foundation, Wiesbaden, and the DEFA Stiftung film foundation, Berlin.

Finally, another measure that should be mentioned is an obligation, dating back to 2004, to deposit copies of cinematographic works made with public funding, this being the prerequisite for films belonging to the national audiovisual heritage to be systematically collected, catalogued, preserved, restored and made available for non-commercial purposes under the existing legislation.

2. DEFINITION OF CINEMATOGRAPHIC WORKS FORMING PART OF THE NATIONAL FILM HERITAGE (TABLE 8)

How do you define the notion of cinematographic works forming part of your audiovisual heritage?

Germany's film heritage basically includes all cinematographic works produced or co-produced in Germany which are intended for public showing in a film theatre or at a film festival or have actually been shown in public. This includes all films which have received funding from Federal or *Land* film funding institutions for their production and/or distribution.

3. FILM HERITAGE INSTITUTIONS (TABLE 1)

What appropriate bodies have you designated to carry out the public interest tasks described in point 2 with independence and professionalism, ensuring that they are provided with the best available financial and technical resources? What is their budget for 2009? What is their workforce for 2009 (staff directly related to film heritage)?

Please list all film heritage institutions, including also those of regional or local character, as well as their websites.

The Federal Archives (*Bundesarchiv*) have assumed the main responsibility for preserving and protecting Germany's film heritage. This institution, as a Federal authority, has since its foundation in 1955 been, amongst other things, the archiving body for films which have received German state funding. The Federal Archives have a staff of 800 trained archivists, some 80 of whom work in the Film Archives Department. An estimated 10% of the Federal Archives' total budget of €21 million goes into the archiving of film. About another €750 000 is spent annually on routine film restoration work by film technical firms. Also, a world-leading service centre for film storage and processing was opened in 2005 at a construction cost of €11 million, where difficult preservation and restoration work is carried out by about 40 specialists. Some 400 cinematographic works a year are restored there for the first time or can be upgraded for public access.

The *Länder* too have designated archive bodies for this task, including the SDK and the DIF.

In addition there are image and film institutes and similar bodies at *Land*, district and municipal level, which are performing film archiving and educational tasks in their respective sectors but which cannot all be listed here for reasons of space. The exchange between these institutions is organised by the Network of Multimedia Resource Centres (*Netzwerk Mediatheken*), which is managed by the German Cinematheque Foundation (*Stiftung Deutsche Kinemathek*, SDK).

4. COLLECTION

4.1. Deposit of cinematographic works forming part of national audiovisual heritage (Table 2)

1) *What steps have been taken to systematically collect cinematographic works forming part of your audiovisual heritage?*

At present more than 160 000 cinematographic works and relevant documents of all sizes are catalogued in the Federal Archives alone (computer-assisted since 1991); another 400 are added every year. These include films promoted with public money in Germany (by Federal funding institutions or those of the *Länder*), which have to be deposited with the Federal Archives, or, in the case of works funded by the *Länder*, with another qualified archive.

Foreign cinematographic works, on the other hand, are collected e.g. in the German Cinematheque Foundation (*Stiftung Deutsche Kinemathek*, SDK) and in the German Film Institute (*Deutsches Filminstitut*, DIF), though these do not systematically collect foreign films shown in Germany. Such work could, however, be based on the data of the 'Voluntary Self-Regulation of the Film Industry' (*Freiwillige Selbstkontrolle der Filmwirtschaft*, FSK), which covers foreign films shown in German cinemas.

A systematic filmography of German cinema productions is being put together by the DIF's Internet portal on German cinema, www.filmportal.de. This site now contains information on some 72 000 German films and 154 000 people in the German movie industry. The DIF updates the portal constantly to include the latest films systematically. Projects are also under way on the www.filmportal.de website to add to the German film heritage data retrospectively, currently collecting non-fiction films since 1960.

The German Federal Film Board (*Filmförderungsanstalt*, FFA), an institution incorporated under public law, offers an overview of the annual production of German films made with public funding.

2) *Would you describe the type of deposit in your Member State as*

- i. Legal deposit*
- ii. Compulsory deposit of all funded films*
- iii. Voluntary deposit*
- iv. Other (please specify)*

At present: ii. Compulsory deposit of all funded films.

The compulsory requirement to deposit all films made with public funding, introduced in 2004, is implemented by means of declarations of intent on the part of the Federal or *Land* film funding institutions and the German Federal Film Board (*Filmförderungsanstalt*, FFA): all film promoters require funding recipients to deposit a copy of the film produced. Voluntary deposit is also possible.

Partly for historical and Federal reasons, deposit currently takes place decentrally, i.e. not only with the Federal Archives, but also with other film archives (e.g. the DIF, the SDK and qualified *Länder* archives).

With the measures described, Germany is meeting its international obligations and it is currently engaged in preparing its ratification of the European Convention for the Protection of the Audiovisual Heritage (Council of Europe). However, for some time Parliament and the Federal Government have been discussing the introduction of further-reaching measures to safeguard the national audiovisual heritage. This was prompted by a study published by the Cinematheque Association (*Kinematheksverbund*) in 2005 on the state of audiovisual archiving in Germany, which revealed gaps in Germany's safeguarding of its film heritage.

3) *What material has to be deposited?*

A technically perfect archivable copy of the film funded is expected to be deposited. As a rule it will be an unused 35-mm positive copy. Guidelines for the deposit of digital formats are under discussion, but the problem here is that there is as yet no possibility of long-term digital archiving at low cost.

4) *What is the deadline for deposit? Do you ensure that deposit takes place when the film is made available to the public and in any case not more than two years later?*

The film funding bodies have made a commitment to adopt a common arrangement in their funding guidelines whereby at the latest 12 months after the first public showing of the film or, if the film is on release for more than 12 months, at the end of theatrical exhibition, the recipient of production or distribution funding places a technically perfect archivable copy of the film funded at the disposal of the appropriate archiving institutions free of charge for archiving. If the film has not been released to the public, the 12-month period begins with the making of the zero copy. It is not yet possible to guarantee the deposit of a film before or simultaneously with its release.

5) *Is there a compliance checking for the deposit obligation and for the quality of the material? Which measures have been taken to ensure good technical quality of the deposited cinematographic works (with accompanying metadata as appropriate)?*

Germany does not yet have any legal control mechanisms for checking compliance with the deposit obligation for publicly funded films. Its film funding bodies have, however, themselves made an undertaking to tie the granting of funds to the physical deposit of a technically perfect archivable copy.

A quality control of the copies submitted in order to comply with the deposit obligation does take place, in that the archives accepting the film copies check that they are technically serviceable. But so far no technical standards have been agreed between the archives which would ensure that the copies deposited were of uniform technical quality.

4.2. Collection of cinematographic works not forming part of national audiovisual heritage (Table 9)

1) *Is there any provision/practice in your Member State concerning the collection of cinematographic works not forming part of the national audiovisual heritage?*

In Germany, a film may be shown or made accessible to the public only if it has been passed by the Voluntary Self-Regulation of the Film Industry (*Freiwillige Selbstkontrolle der Filmwirtschaft*, FSK), in particular in order to protect the young. This means that data is collected on all films submitted to the FSK for examination (including films that are not part of Germany's audiovisual heritage). There is, however, no deposit obligation attached to the FSK inspection.

2) *And about moving-image material other than cinematographic works?*

Film videos as published media works and cinematographic works showcasing music ('music films') are collected at the German National Library (*Deutsche Nationalbibliothek*) as part of a statutory deposit obligation (see §14 in conjunction with §3(4) of the German National Library Act (*Gesetz über die Deutsche Nationalbibliothek*, DNBG) of 29 June 2006 (BGBl. I, p. 1338).

Other moving-image material, e.g. on DVD or Blu-Ray only, is collected in the course of FSK inspection (see 4.2(1) above).

4.3. Collection of non-film material (Table 9)

Is there any provision/practice in your Member State concerning the collection of non-film material?

There is no legal requirement for the collection of material accompanying films or film-related material, but the institutions in the Cinematheque Association collect and store masses of film-related material, e.g. in personal or business legacies. As a rule, in this case individual contracts are concluded between the archive and the legal owner. Documentation accompanying films may be deposited with the institutions in the Cinematheque Association on a voluntary basis. In the case of other published media works, there is a legal obligation to deliver them to the German National Library (see §14 DNBG).

5. CATALOGUING AND DATABASES (TABLE 3)

1) What measures have been taken to promote the cataloguing and indexing of deposited cinematographic works and to encourage the creation of databases containing information about the films, making use of European and international standards?

Institutions in the Cinematheque Association have always been actively involved in the work of the CEN.BT Technical Committee 372: Cinematographic Works to standardise computer-assisted film descriptions in European film archives. The standardisation requirement is handled by the German Institute for Standardisation (*Deutsches Institut für Normung*, DIN) together with the German Film Institute. The Federal Archives are also participating as the central collecting body.

The Cinematographic Works Standard (CWS) has yet to be implemented in the systems and data files of the film archives pending the adoption of the complete version as a European Standard.

Besides this, the German Cinematheque Foundation is supporting the development of an open source software for the administration of analogue and digital films and material accompanying films. This software relates to numerous national and international standards and interfaces (VWS, SKOS, EAC, Museumdat, Museumvok, FRBR, etc.), and will also form the basis of a catalogue of the German film to be compiled jointly by the Federal Archives, the German Cinematheque Foundation and the German Film Institute .

2) What measures have you taken to promote European standardisation and interoperability of film databases and their availability to the public, for instance through the internet?

The MEDIA Plus funded MIDAS project to set up an EU-wide federated database for film holdings was coordinated by the German Film Institute. The web portal www.filmarchives-online.eu which resulted from this project currently lists more than 26 000 mainly non-fiction film works contained in 18 archives. Participants from Germany apart from the German Film Institute are the German Cinematheque Foundation, the Film Archives department of the Federal Archives and the scientific film institute IWF Wissen und Medien gGmbH.

When the project ends in January 2009, the German Film Institute will take over operation of www.filmarchives-online.eu and will act as service provider for the other archives participating.

In addition to this, information on holdings of the Cinematheque Association's partner institutions is searchable via the German BAM portal for libraries, archives and museums (www.bam-portal.de).

In the case of feature films, www.filmportal.de gives free search information on cinema distribution and accessibility of media for private viewing, such as DVD or Blu-Ray. Another source of information (for payment) for finding and purchasing copies of feature films is the filmecho/filmwoche journal's online rental catalogue. This catalogue can also be used to some extent for searching for copies from the catalogues of partners in the Cinematheque Association, such as the German Cinematheque Foundation.

Since September 2008 the EU project 'EFG – The European Film Gateway' has been underway. 20 partners, including 14 film archives and cinematheques, are currently working on a common Internet portal for access to films and film-related material in the film heritage institutions. EFG acts as an 'aggregator' for the European digital library, Europeana. The project is funded under the eContentplus programme and with various co-financing schemes of the Member States and coordinated by the German Film Institute.

3) *Have you contributed to the setting-up of a network of databases encompassing the European audiovisual heritage together with the relevant organizations, in particular the Council of Europe (Eurimages and the European Audiovisual Observatory)?*

No.

4) *Have you invited archiving bodies to add value to stocks by organizing them in collections at EU level, for instance, by theme, author and period?*

Germany's federal system does not permit instructions to be given from the centre to all archiving bodies in this way, but it can reasonably be assumed that the German archives concerned have a vested interest in a high level of compatibility with comparable institutions.

5) *Could you describe the databases that are used by your Film Heritage Institutions? Are they searchable via internet?*

Besides the databases referred to above (www.filmportal.de; www.filmarchives-online.eu), we should mention here the www.lost-films.eu website developed by the German Cinematheque Foundation together with partner archives both in and outside Germany. 'Lost Films' is on the one hand an information source offering, for selected and as far as we know lost films, what film-accompanying material is available (such as reviews, scripts, publicity material, photos, posters, production design, etc.), to provide a solid basis for film-historical study even with this title. On the other hand, 'Lost Films' is a platform with which information can be obtained on films and film fragments which have been preserved in archives but can still not be clearly identified. This approach has already led to some definite identifications. The non-proprietary software used makes it possible to add further partners to the project.

6. PRESERVATION (TABLE 4)

1) *What measures/programmes have been taken in order to ensure preservation of deposited cinematographic works? Preservation measures should include in particular:*

- *the reproduction of films on new storage media;*
- *the preservation of equipment for showing cinematographic works on different legacy storage media.*

The cinematographic works deposited with the Federal Archives are preserved. In particular, films shot on self-decomposing and explosively self-igniting materials like nitrocellulose or

cellulose triacetate are, when necessary, transferred photochemically on to a polyester support medium that is suitable for long-term storage.

Equipment for showing cinematographic works on a variety of old storage media is maintained in the Federal Archives as far as is necessary for restoring the films and being able to show them.

Significant collections of cinematographic equipment are to be found *inter alia* at the German Cinematheque Foundation, Potsdam Film Museum, the German Film Institute and the Museum of Technology (*Deutsches Technikmuseum*). The institutions in the Cinematheque Association also run cinema theatres where historic films in all kinds of formats are always a key programme feature and thereby ensure that the necessary technical infrastructure is preserved.

- 2) *Does the national copyright law implement the exception of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society²? This exception allows Member States to authorise acts of reproduction made by publicly accessible libraries or archives which are not for direct or indirect economic commercial advantage.*

Yes.

7. RESTORATION (TABLE 4)

- 1) *What measures have been adopted in order to permit, within your legislation, the reproduction of deposited cinematographic works for the purpose of restoration while allowing rightholders to benefit from the improved industrial potential of their works resulting from that restoration on the basis of an agreement between all interested parties?*

The Federal Archives' statutory mandate to preserve films manifests itself in the right and obligation to permanently preserve existing film material – e.g. by conversion to new supports – and keep it accessible. Individual deposit agreements under private law are concluded for this purpose. Under the Federal Archives Act (*Bundesarchivgesetz, BArchG*) and in compliance with copyright, rightholders and the general public have a right of access to cinematographic material from restoration work which allows them to continue to be exploited.

Films are also being restored in joint financing schemes with some rightholders.

Restoration projects are being carried out by the Federal Archives, the German Cinematheque Foundation, the German Film Institute and other institutions – in some cases with partners of the Cinematheque Association.

- 2) *How have you encouraged projects for the restoration of cinematographic works with high cultural or historical value?*

The Federal Archives, the German Cinematheque Foundation and the German Film Institute are receiving public funding to maintain the infrastructure and the technical know-how for the restoration of films and accompanying material.

In addition, the Friedrich Wilhelm Murnau Foundation (*Friedrich-Wilhelm-Murnau-Stiftung*) receives through the state-owned Transit Film GmbH funds derived from the exploitation of German historic film stock which can be put towards restoring films of high cultural or historic value.

² OJ L 167, 22.6.2001, p.10.

The Federal Cultural Foundation (*Kulturstiftung des Bundes*) has in the past provided financial support for some exemplary restorations, such as 'Battleship Potemkin' and 'Berlin Alexanderplatz'.

8. ACCESSIBILITY (TABLE 5)

- 1) *Have you adopted legislative or administrative measures to allow designated bodies to make deposited cinematographic works accessible for educational, cultural, research or other non-commercial uses of a similar nature, in compliance with copyright and related rights? Please give details of the measures taken.*

Under the Federal Archives Act access to the holdings of the Federal Archives, and hence also to the films stored there, is open to all. The same applies to other qualified entities too. Films, material accompanying films and specialist libraries can be used for private, official, scientific and publishing purposes. Non-commercial lending of the films stored in the Federal Archives is mainly through the German Cinematheque Foundation and the German Film Institute. Other qualified entities also lend films from their own holdings. In every case this must be with the consent of the rightholder concerned. In a number of qualified entities, such as film museums and cinematheques, which in some cases have their own theatres, access may be gained for viewing cinematographic works either there or at individual viewing stations (PCs).

- 2) *Have you taken measures to ensure access for people with disabilities to deposited cinematographic works, in compliance with copyright and related rights? Please give details of the measures taken.*

Publicly funded institutions are required by their government mandate to comply in particular with the provisions of the Act on Equal Opportunities for Persons with Disabilities (*Behindertengleichstellungsgesetz*, BGG). Measures derived from that include barrier-free access to cinema halls and library rooms and the preparation of ancillary materials for people with sensory disabilities.

9. PROFESSIONAL TRAINING (TABLE 5)

What steps have been taken to promote professional training in all fields related to film heritage?

The Film Archives Department of the Federal Archives trains candidates for the Chamber of Commerce and Industry's qualification of 'film and video laboratory technician'. The trainees learn how to work with archive material in the Federal Archives' workshops. This is exclusively technical training, however.

In Germany there is not yet a defined occupational profile or university degree as film and media archivist with technical, philological and film and media studies qualifications, such as have already been recommended in a UNESCO initiative. Interested students have to be directed to offers in France, the Netherlands, Italy, and in particular the USA and Australia.

10. EDUCATION AND MEDIA LITERACY (TABLE 6)

- 1) *What steps have been taken to promote the use of film heritage as a way of strengthening the European dimension in education and promoting cultural diversity?*

In Germany there are numerous bodies at Federal and *Land* level offering special programmes for using the film heritage as a means of strengthening the European dimension in education and promoting cultural diversity and film and media competence. The means

especially suitable and most used for this are exhibitions, retrospectives, festivals, conferences, colloquia, film study courses, publications and DVD releases.

- 2) *What steps have been taken to foster and promote visual education, film studies and media literacy in education at all levels, in particular in professional training programmes or European programmes?*

Besides the educational offerings of the film museums, such as those of the German Cinematheque Foundation and the German Film Institute, the key institutions in Germany are the non-commercial *Land* and municipal film archives and *Land* media centres, which make their stocks available to the public in a targeted manner.

The Federal Agency for Political Education is also contributing to disseminating and maintaining a broad film and media competence with special project series and teaching guides (*Filmhefte*).

- 3) *What steps have been taken to promote close cooperation between producers, distributors, broadcasters and film institutes for educational purposes?*

In the supraregional school education sector, the federally funded agency Vision Kino (www.visionkino.de) is among those promoting film and media competence jointly with distributors, cinemas, producers and cinematheques. This includes the school cinema weeks that are organised annually in the individual *Länder*. Institutions in the Cinematheque Association are also participating. The German Film Institute, for example, organises the 'school cinema weeks' in the *Land* of Hessen. The German Cinematheque Foundation regularly organises exhibitions on film and television that are aimed specifically at children and young people.

11. FOLLOW-UP OF PRIORITIES IDENTIFIED IN THE FIRST IMPLEMENTATION REPORT

What has been done in your Member State in order to address the following priorities, identified in Point 24 of the first implementation report?

- 1) *establishing a long-term strategy for their national film heritage and annual plans for specific issues (digitisation, restoration, education, etc);*

The European Commission's recommendations for dealing with the audiovisual heritage have led to a number of top-level political initiatives in Germany, which have meant that in future it will be possible to avoid the losses of the past and gaps in the present film heritage.

As regards preserving the film heritage retrospectively, the only option still available is damage limitation. Strategies are currently being agreed between the individual archives which are supposed to lead to more transparency in the existing archive holdings. All the same there continue to be uncertainties with regard to exploitation rights, which means that the institutions concerned are very reluctant to publish their stocks.

With this experience in mind, discussions are currently under way between the Federal Government and Parliament, and involving the film industry, to find suitable measures to preserve Germany's film heritage beyond current practice.

As regards the handling of digital film formats, strategy talks continue to be held in the member institutions of the Cinematheque Association. But the development of these strategies is suffering from the basic problem that adequate long-term archiving on a technically reliable and financially feasible scale for the data volumes in moving pictures is not

yet available. For handling digital formats in the area of film heritage this initial problem therefore needs to be solved first.

Digitising analogue film stocks would also involve disproportionately high costs, which rules out digitising all analogue film material in cinema quality. For financing reasons it is being contemplated whether or not to digitise works only where they are specifically called for and where the requesting institute promises to pay the costs.

As stated above, restoration work continues unabated. However, it should also be stressed in this regard that some restoration projects simply depend on chance. For example, in Germany the fortuitous discovery of the presumed lost scenes from the film 'Metropolis' has meant that with the help of public funds this milestone in German film history can now be fully restored for digital reproduction.

- 2) *monitoring compliance with the mandatory forms of deposit (both with the obligation of deposit and the technical quality of the material);*

Germany does not yet have any statutory provisions governing the monitoring of compliance with mandatory deposit and the technical quality requirements. However, its film funding institutions have committed themselves to making the payment of funds subject to the actual deposit of a technically perfect copy.

- 3) *promoting voluntary deposit as a complement to legal deposit. Member States should encourage by all means agreements between film heritage institutions and rightholder associations covering the possible cultural uses of the deposited material by the archive;*

The member institutions of the Cinematheque Association are of course endeavouring, as far as they are able, to make possible voluntary deposit. The Federal film funding guidelines therefore provide for voluntary deposit of the starting materials of a film.

- 4) *continuing efforts to achieve interoperability of film databases, and to make those databases accessible via the Internet;*

As mentioned above, the online resources www.filmportal.de and www.filmarchives-online.eu contribute to interoperability and wide availability.

- 5) *establishing partnerships with the commercial sector and with other film archives for the restoration of cinematographic works, with the objective of sharing know-how and increase resources available;*

In Germany there is not much commercial interest in film restoration. The restoration of analogue films is carried out largely in institutions which are publicly funded, either directly or indirectly. Besides these institutions there is also a limited number of small firms whose services are mainly called upon by TV stations.

The digital restoration sector is still in the development stage. There is likely to be a sharp increase in demand for digital restorations as soon as digital projection technology can be implemented throughout Germany and further innovative advances are made in the digital archiving field.

In the circumstances only a small number of know-how sharing partnerships have been created so far.

- 6) *seeking agreements with rightholders with a view to promote cultural access to film heritage as broadly as possible. Have you encouraged the designated bodies to specify, in agreement or by contract with rightholders, the conditions under which deposited cinematographic works may be made available to the public?*

There is no direct link between deposit and release. However, the Cinematheque Association's member institutions are endeavouring to ensure by means of contractual agreements that the non-commercial use of films, for example, is possible.

- 7) *creating specialised courses at university level for all areas related to film archives;*

There have been no new developments on this since the last questionnaire.

- 8) *giving higher priority and visibility to educational programmes and activities.*

With the introduction of Vision Kino in 2005 high priority was given to film education in Germany. Vision Kino's mission and aim is, as part of the cultural education of youth and in the framework of a general media competence in particular to raise children's and young people's film awareness and at the same time to draw their attention to the cinema as a place of culture and the original location for showing films.

12. CHALLENGES OF THE DIGITAL ERA FOR FILM HERITAGE INSTITUTIONS

What has been done or is planned to be done in order to face the challenges of the digital era, described in point 25 of the first implementation report?

- 1) *collection/acquisition of digital material (distributed in cinemas or via new channels);*

The institutions in the Cinematheque Association will be cooperating closely with the centre of excellence for the setting up of the German Digital Library, to be established in 2010, to agree on how the New Media are to be used in the future.

- 2) *storage/conservation of digital material, which could require regular migration to new formats or supports;*

The Federal Archives certainly have the technical facilities for broad-based long-term archiving of digital materials. They are building up a Digital Archive for written documentation, which will be using technology that essentially lends itself to the digital archiving of films too. But this would require a huge expansion of the existing storage capacity, which in view of the additional volumes of data would lead to very high costs (at current prices the cost factor is likely to be about 10 times that of analogue technology). So this method for the long-term archiving of films cannot (yet) be seen as having a mass storage capability.

The German Cinematheque Foundation is already cooperating with the German Nestor competence network for digital preservation, on which the German National Library and the Federal Archives and the Institute for Museum Research (*Institut für Museumsforschung*), together with a number of state and university libraries, are collaborating. As a result of this cooperation a high-level symposium on the preservation and archiving of digital data was held in spring 2009. The German Cinematheque Foundation is also implementing concepts for the preservation and availability of digital materials in the case of material accompanying films. This also concerns historically important production materials which would not otherwise be preserved. Cooperation with computer centres is also being increased, while exchange is being further encouraged in the Nestor project. In addition, the German Cinematheque is participating in other digital preservation research projects.

- 3) *applying digital technologies for restoration;*

The Federal Archives do have the technology for digital restoration, but their technical expertise in analogue or photochemical restoration work is still thought to be more efficient.

4) *giving access via internet to the collections, while ensuring respect of copyright laws;*

Via the Internet portal on German cinema, www.filmportal.de, selected items from the holdings of the partners in the Cinematheque Association are available online. The German Film Institute has published some of its stocks on the Internet in other individual thematic projects such as digitisation and online publishing of the film censorship decisions in the period 1920-1945.

5) *integration in the European digital library.*³

In September 2008 the 'EFG – The European Film Gateway' project was launched. In this project 20 partner institutions, including 14 film archives and cinematheques, are currently working on a common Internet portal for access to films and film-related materials in the film heritage institutes. EFG acts as an 'aggregator' for the European Digital Library, Europeana. The project is supported by the EU's eContentplus programme and coordinated by the German Film Institute. Data and content from www.filmportal.de are made available through the European Digital Library.

The German Cinematheque Foundation is also supporting the expansion of Europeana through cooperation with the BAM Portal (www.bam-portal.de) and the Athena network (www.athenaeurope.org).

13. FILM POLICY AND FILM HERITAGE

Is film heritage fully included in the film policy of your Member State? Have you considered linking funding film production and film heritage? For instance, it could be considered that films that have been financed with public funds are deposited and made available for cultural and education purposes by recognised film heritage institutions. This could be implemented in practice, for instance by requesting from producers that have received funding that they agree that:

- *film institutions make cultural screenings of those films without paying a fee;*
- *there be an educational use of their films (screenings made in schools, extracts made available for teaching purposes);*
- *extracts of their films be made available in Europeana.*

Preservation of the film heritage of course has a high priority in all film policy measures. However, the proposed regulation will mean a substantial encroachment on producers' private legal positions. For this reason Germany is not aiming at such a blanket scheme, affecting all public funding measures equally. It is nevertheless common practice in individual cases where a current film deals with educationally useful subject matter to reach agreement with the producer for the film to be screened in a school free of charge.

14. EUROPEAN AND INTERNATIONAL ACTIVITIES (TABLE 6)

1) *Are your film heritage institutions involved in bilateral cooperation with those of other Member States? Are they active in European associations and projects? Are they active at international level?*

The institutions in the Cinematheque Association coordinate their work with other European film heritage bodies through their membership of the Association of European Cinematheques

³ www.europeana.eu

(*Association des Cinémathèques Européennes*, ACE). With the Director of the German Film Institute, Claudia Dillmann, as the President of ACE, German representatives are decisively involved in the activities of the Association.

The European projects in which German institutions are or have been involved include:

- EFG – The European Film Gateway (eContentplus, 2008-11)
- Europa Film Treasures (MEDIA Plus, 2007-10)
- MIDAS / filmarchives-online.eu (MEDIA Plus, 2006-9)
- CEN BT TC 372 Cinematographic Works standardisation (2005-9)
- CinEd@ys European Film Heritage Week (2002)

The institutions are also cooperating in the framework of the annual FIAF Summer School, which is supported *inter alia* by ACE and the MEDIA Plus Programme. The Summer School's training and continuing training programme is aimed at students, trainees and film archivists.

The 'Lost Films' project run by the German Cinematheque Foundation has encouraged cooperation between film archives in many European countries, in particular Germany, the Czech Republic, France, the Netherlands and Poland, for researching and describing the film cultural heritage. Lost films are documented and film fragments are identified. At the same time this lays the foundation for new film restorations.

2) *How are you encouraging and supporting designated bodies for the purpose of exchanging information and coordinating their activities at national and European levels in order for example to:*

(a) ensure the coherence of collection and conservation methods and the interoperability of databases;

(b) release, for example on DVDs, archival material with subtitles in as many European Union languages as possible, in compliance with copyright and related rights;

(c) compile a European filmography;

(d) develop a common standard for electronic information exchange;

(e) produce common research and educational projects, while promoting the development of European networks of cinema schools and museums?

Support for coordination between the designated bodies is mainly through financial incentives. In addition, the degree of national and European networking achieved in Germany also indicates that some efforts still need to be made at national level, but at the same time it has become clear that the level of protection that has been attained is already of a comparatively high standard.

(2a) For the members of the Cinematheque Association, i.e. the Federal Archives, the German Cinematheque Foundation and the German Film Institute, interoperability of databases has a part to play in the development of a joint inventory which is to be compiled on the basis of the CollectiveAccess open-source collection management system. The financial resources are not yet available for this project, however.

(2b) Release of the archival material as proposed would not be in compliance with current copyright law. However, the holdings of the Federal Archives are open for inspection on site under certain conditions. Availability of the archival material to external users is another matter. The Federal Archives respond only to specific requests, which can of course be made in any of the languages of the European Union. But a mandatory requirement for any release of this kind would be the agreement of the rightholder concerned.

(2c) In the recent past it has been possible to add to the national filmography using public funding. The German Film Institute has been made responsible for maintaining and publishing the national filmography as one of the tasks of www.filmportal.de. The experience gathered in this area flows into the EFG project and thereby becomes available for constituting a European filmography as well.

(2d) The CEN BT TC 372 standard has been developed with the aid of public funding. The interoperability of databases has been improved with the setting-up of a federated database of European film archives in the MIDAS project. The www.filmarchives-online.eu portal that has emerged from this project currently boasts more than 26 000 mainly non-fiction cinematographic works Europe-wide, in 18 archives.

(2e) The institutions are entitled to pay their ACE or FIAF membership contributions from public funds. The representatives of the Cinematheque Association's member institutions are also assisted in carrying out their central ACE or FIAF duties.

15. PROGRESS IN RELATION TO PROBLEMS ENCOUNTERED IN THE FIRST IMPLEMENTATION REPORT (TABLE 7)

What has been done to address the problems encountered or weak areas identified in table 7 of the first implementation report, in relation to your country?

It has not, admittedly, been possible to solve completely the problems in the area of long-term archiving. It can be said, however, that the issue of 'digital preservation' is high on the political agenda in Germany owing to the creation of the German Digital Library. Moreover, the Federal Archives essentially have the technical facilities for digital long-term archiving, though this is (as yet) too expensive for digital films.

16. BEST PRACTICES

Is there any specific good practice in the area of film heritage in your Member States that you would like to report?

Following on from the experience related in the previous report on the online film heritage information portal www.filmportal.de, it can be said here that the portal has been developed further and not least that it has also led to an increased awareness of Germany's film heritage.

As a means of identification of film fragments and making use of Web 2.0 capabilities, we should also mention here the German Cinematheque Foundation's 'Lost Films' project (www.lost-films.eu).

17. NEED FOR FURTHER EU ACTION?

Is there a need of further action of the EU in any of the areas related to film heritage?

Copyright and orphan works legislation, particularly with regard to online publication

In accordance with the Commission Recommendation of 24 August 2006 (2006/585/EC), the German Government has consulted the interested parties on the creation of mechanisms to facilitate the use of orphan works. From its evaluation of the replies received, the German Government hopes to be able to judge in particular to what extent there is any need for legislative action in this area and how this is to be met, including, if necessary, from the practical angle. Only once the replies received have been evaluated will it be possible for the Government to decide whether a statutory measure is to be recommended and what form it should take.

In this connection the proposals of the High Level Expert Group (Copyright Subgroup) mandated by the European Commission in its *Memorandum of Understanding on Orphan Works* will have to be discussed as well. Then it will also be necessary to examine whether and to what extent measures need to be taken at EU level.

Promotion of standards drawn up in the film archiving community

Propagating standards like the CWS and giving instruction on how to apply them are just as important as preparing them in the first place. Here there is a need at EU level to give support to promotional and workshop activities as well as reference implementation projects.

(Co-)financing of digitisation initiatives also, and particularly, for moving pictures

One of the main arguments for the digitisation of books also applies to films: works that are no longer on release can thus – taking into account the copyright standards – be made accessible at relatively low cost to a broad, worldwide public. But the costs in the case of digitisation of audiovisual content are relatively higher than those in the case of books. This makes public commitment from the EU side, too, all the more necessary. A suitable approach would be to promote, and maybe even create, domestic initiatives that have the same thrust.