

**CONTRIBUTION BY THE NATIONAL LIBRARY OF SPAIN
November 10th 2009**

Questions for the public consultation "Europeana - next steps"

The present document complements the Commission Communication on 'Europeana – next steps' with a series of questions for consultation. Interested parties are invited to submit their comments on all or some of the questions **by 15 November 2009** to:

European Commission,
Directorate General for Information Society and Media
Unit 'access to information', EUFO 2281
Rue Alcide de Gasperi
L-2920 Luxembourg
or by e-mail to: ec-digital-libraries@ec.europa.eu

Contributions will be published on the digital libraries website of the Commission, unless requested otherwise by the organisation/person submitting them.

The questions of this consultation all have a direct impact on the future development of Europeana. Some of the questions - in particular questions 7-10 - also have more general policy implications for the digitisation, accessibility and use of content from cultural institutions. The replies to these questions will feed into the further policy development in areas such as the re-use of public sector information and copyright related questions for the digitisation and online accessibility of cultural material. In the latter area the questions complement the work undertaken by the Commission in the context of the Green Paper on copyright in the knowledge economy and the follow-up Communication. Where relevant, the results of the consultation will be taken up and further discussed in stakeholder groups and working groups with Member States' representatives.

Questions for consultation

General

Question 1

Which orientations would you suggest for the future development of Europeana as a common access point to Europe's cultural heritage in the digital environment?

Europeana should continue to integrate all available digital content in libraries, museums, archives and audiovisual collections from every Member State + other European countries that are members of the Council of Europe, including universities and other cultural institutions. Europeana should broad its range to include monuments, architecture, archaeological sites, and documented intangible

heritage in Europe (following the definition of the appropriate UNESCO Convention). The documentation of relevant historical events, frequently included in the Ephemera collections from libraries and museums, could add attraction to Europeana users.

Europeana should aim to also include paid-for materials (usually in-copyright materials legally available in the digital offer of participating libraries) and consider the development of a standard multilingual payment system. To this end, it is important to revisit EU copyright laws and develop a standard European licence that avoids territorial limitations .

Question 2

Which features should be given priority in the further development of the site?

Commonly used features in digital libraries + draw into the opportunities provided by Web.2.0. Europeana should improve its current functionalities and translate metadata in all Europeana languages for a true multilingual experience. It should also consider some new functionalities such as automatic translation of contents and semantic search but also use crawling technologies for full text indexation. Nevertheless, metadata cannot be abandoned since they are important for retrieval of non-textual materials. Finally, much can be done, for example for monuments and related documents, to allow their easy localization through Google Maps.

Question 3

Has Europeana struck the right balance between making Europe's digitised cultural heritage searchable through a common entry point and at the same time giving visibility to the institutions that contribute the material, or should the material accessible through Europeana be presented in a more unified way?

Although the identification of content holders or publishers seems to be secondary for Europeana users, participating institutions and funders need to maintain their branding and are not easily ready to invest financial and human resources to build a melting-pot in Europeana without any return of investment. The search by participating institutions and stakeholders in general allows them to track harvesting of their materials by Europeana and plays also a useful role of healthy competition among them. On the other hand, mention to content holders is also important for researchers, a user category that Europeana should not neglect. They need this provenance information for proper citation as well as for clearing rights for reuse when appropriate.

Question 4

How should Europeana further develop its own autonomous identity?

Taking into account the incredible richness of European heritage, its exhaustive digitization can only be a long term objective and even a utopia. A content policy is therefore a key issue for the development of identity in any digital project as users must know what is available. Until now, Europeana has not a content policy as such and it rather relies on the variety of content policies adopted by its contributing institutions and stakeholders. It would be timely to reach an agreement on a content policy for Europeana based on a consensus by stakeholders assisted by appropriate expert assessment. In the meantime, the EU can help to build Europeana's brand identity by ensuring that all funded projects are consistent with Europeana's identity and contribute to reinforce it.

Question 5

Should there be minimum requirements for the content brought into Europeana by the contributing organisations (e.g. minimum viewing or use options)? If so, who should be responsible for defining and imposing these minimum requirements?

Yes. Minimum requirements for content and functionalities should be defined by Europeana in consultation with content providers in order to reach a consensus. Content providers should conform to these. All data should comply with one of the current world standards for libraries, museums, archives and audiovisual materials as well as for cross-interoperability. Europeana should carefully follow technological developments in this area in close contact with their developers (IFLA, IASA, ICA, ICOM). All digitised content should contain a persistent identifier to avoid broken links and error messages, and use OAI-PMH or OpenSearch for easy harvesting by Europeana. The metadata and thumbnails contributed to Europeana should be reusable by Europeana allowing the creation of virtual collections, specific sites targeted at specific audiences, etc. Once adopted, the Public Domain Charter of the EDL Foundation should be used as a guiding principle. Public Private Partnerships for digitisation, contracted by content providers under exclusive deals should be licenced for short timescales in order to prevent undesirable inhibitions that go against freedom of access and the development of the knowledge society.

Content for Europeana

Question 6

Which categories of content are so important for the users that Member States and their cultural institutions should be encouraged to make them available through Europeana? What measures can be taken to ensure the availability of these works through Europeana?

Since a targeted audience for Europeana has not been defined, categories of desired contents cannot be identified. Appropriate studies are needed and should be conducted in Member States. These studies should be based on standardized questionnaires elaborated at the European level and ideally be financed by the European Commission. In absence of those studies, priority should be given to reach a balance between patrimonial treasured materials of European interest – particularly those fragile ones to which public access is extremely limited - and

more recent publications of the XXth century and onwards. Such a balance responds to both, preservation of most valuable heritage materials and supposed user interest on current contemporary topics. If digitisation is undertaken by private companies and exclusions on time or use apply, negotiations at the national level could include access by Europeana, even if paid for.

Question 7

What is the best way to encourage cultural institutions and rightholders to take into account cross-border access - including through Europeana - in their agreements on digitisation and dissemination of in-copyright material? Which legal or practical barriers to this cross-border access need to be addressed?

Harmonization of copyright in Europe is the only sustainable solution. New laws for Internet usage of copyrighted material are necessary for effective cross-border access. The harmonization exercise should address legal inconsistencies related to digitisation of orphan and out-of-print works. In the case of orphan works, an exception in favour of National Libraries, limited by an opt-out mechanism, should be privileged. A standard blanket licence at the European level enabling reasonable sums of money to be paid to rightholders for in-copyright materials currently available in the market, could also be considered. In the meantime, institutions contributing to Europeana should avoid licensing agreements which restrict the use to specific territories.

Question 8

How can the difference in the level playing field for digitising and making accessible older works between the US and Europe (in particular the 1923 cut-off date in the US, that places all material from before 1923 in the public domain) be addressed in a pragmatic way (e.g. better databases of orphan and out-of-print works, a cut-off point that imposes lower requirements for diligent search in relation to orphan works)?

Current European copyright policies clearly disadvantage access of European citizens to a huge amount of works if compared with the USA ones. The development of ARROW as a database of orphan and out-of-print works, that could constitute the only requirement for diligent search of orphan works, seems necessary. Nevertheless, we must recognize that such a sophisticated tool will require many years to be trusted and fully operational. This is time lost for European users with regard to American ones. Several private companies are currently developing systems to find a solution to the orphan works issue (interrelation with databases of Copyright Offices or crossing with death notices of prominent authors as published in the press, etc.) This emerging new systems should be carefully examined. Nevertheless, setting a US-style cut-off date across the whole of Europe would be the most helpful pragmatic solution. Alternatives such as the creation of a basic level remuneration to rightholders via blanket licences with appropriate collecting societies, unless they are of permanent nature, will represent an increasingly heavy burden on digitisation budgets of contributing

cultural institutions, already obliged to also finance the expensive preservation of their digital objects.

Question 9

What policies should be adopted to avoid that the process of digitisation itself creates new types of sui generis copyright that, in turn, could create barriers to the dissemination of digitised public domain material?

The update of EU copyright law to the internet age and its consequent harmonization through Europe should fix this risk. In the short term, the UE, in cooperation with WIPO, should develop Guidelines on the rights of museums, libraries and archives with regard to the digital exploitation of their public domain materials in order to advise what can be acceptable usage in this area. This could help clarify and orient institutional policies as well as contribute to the establishment of a clear framework on what Europeana users can or cannot expect to do with digitised public domain materials.

Question 10

*What measures can be taken to ensure that cultural institutions make their **digitised public domain material** accessible and usable in the widest possible way on the Internet? Should there be minimum requirements for the way in which digitised public domain content is made available through Europeana?*

See answer to this in Question 9.

Financing and governance

Question 11

Which financing model would reflect a fair distribution between Community funding, Member States' funding and private funding, taking into account that the aim of Europeana is to give the widest possible access to Europe's cultural heritage at pan-European level? Could Europeana be financed solely by national cultural institutions or by private funding?

Far from being just a wonderful flagship project for the encouragement of digitisation in Europe, Europeana is probably the most ambitious pan-European socio-cultural project ever developed. It will not be sustainable and independent unless 100% financed by the European Union. Individual Member States already bear the primary responsibility of funding national digitisation and digital preservation as well as the creation of national digital libraries and aggregators to Europeana. Gathering every year *ad-hoc* contributions for Europeana from each member state is time-consuming and a source of instability. Core funding from private sources represents a high risk for Europeana, both in terms of sustainability

and independence. In the current context of economic crisis, sponsorship is particularly difficult and the fiscal incentives at the European level are unclear. As for other financial models, the issues are:

- are Member States ready to accept a Europeana business model based on advertisement? If so, would it be viable at all?
- Are European Member States ready to negotiate the systematic ingestion of its digital contents into Google Search and share with Google the advertisement revenues? If so, what would be the *raison d'être* for Europeana?

Question 12

Is sustained European Union funding for the basic operations of Europeana necessary and justified for the period after 2013? What type of European funding instrument could best be used?

As said before, a 100% UE financment is the appropriate model. Countries already pay into the Community budget for the promotion of European cohesion and social unity. The Cohesion Fund should deploy a minimal part of its budget for Europeana as a crucial contribution to the development of a common European consciousness that also disseminates the various social and cultural values of European citizens. Europeana is a model of unity in diversity and a source of inspiration for other regions and continents.

Question 13

Which governance structure for Europeana would best fit the preferred financing model (as indicated under question 11)? Should there be a role in the governance structure for organisations other than content providers?

The governance of Europeana should be entrusted to their persistent content providers, i.d. participating public cultural institutions whose mission is precisely to provide access to their collections and preserve them for future generations. The recently adopted governance is a step forward in the clarification of roles within the EDL Foundation, if compared to the previous one. In the long term, however, the Council and its emanating Executive Committee should be exclusively composed of major content providers and national aggregators. Pan-European Organizations should have a status of advisers to the Council while other interested holders of content - commercial and public - should have a status of observers. The EDL Foundation should be accountable to, both to an Assembly of participating Member States (strategic issues regarding overall orientations and content policies) and to the European Commission (technical and issues, user services and financial accountability).

Question 14

How can private involvement in Europeana best take shape (e.g. through sponsoring, through technological partnerships, through links from Europeana to the sites of publishers and other rightholders where the user can buy in-copyright content, or through another type of partnership)?

Links from Europeana to the sites of publishers and other rightholders where the user can buy copyrighted materials could be developed quite soon with those National Libraries whose digital collections already incorporate this system. This is a way to promote private involvement in Europeana - and in public digital libraries in general – as well as the best way to rapidly increase the offer of contemporary in-copyright materials. Otherwise, for a project like Europeana, open source software should be deployed wherever feasible.

Question 15

How can private sponsorship of Europeana best be stimulated? Are commercial communications on the Europeana site acceptable, and, if so, what type of commercial communications (e.g. logos of sponsors, promotion of specific products)?

As mentioned before, sponsoring would require the adoption of harmonised fiscal incentives across Europe since, at the moment, national sponsoring policies largely differ from a country to another. This means that logos of sponsors associated to participating national digital libraries have to be accepted and they have to appear associated to items of theirs when those items are ingested into Europeana. This may be a requirement in due respect to the original sponsorship agreement concluded at the national level (this is the case of the National Library of Spain, whose digital offer is heavily sponsored by Telefonica). Moreover, should private sponsorship to Europeana develop in the future, the appearance of a sponsor's logo should clearly state the nature of the sponsorship at the European level in order to avoid confusion with sponsors at the national level.

As for the promotion of specific products, we are inclined to concentrate in the promotion of institutional products and, eventually, of titles belonging to participating publishers (see answers to Questions 14 and 16)

Question 16

Should there be a contribution (financial or other) in exchange for the links from Europeana to sites with content for which the user has to pay? Can a model such as that of Gallica 2, providing links from the site of the Bibliothèque Nationale de

France to the content on the sites of French publishers, be transposed to Europeana?

The French experience of Gallica2 model, already transposed by the National Library of Spain (ENCLAVE project) is, as such, the best possible system for the inclusion of copyrighted materials available in the market with the voluntary contribution of participating publishers. It should be transposable to Europeana as well. Being an on-going experiment, these two experiences can provide interesting lessons and a solid ground for further development, particularly with regard to the desirable harmonization of accounting requirements by publishers. In the medium term, the issue of establishing a fee or any other kind of contribution could be examined as a basic revenue to be shared by the corresponding national digital library and Europeana. However, the issue of proposing a standard fee to publishers can only be negotiated once publishers have gained solid experience, consider cooperation with digital libraries as a routine new sales channel, and have fully realized the economic impact that the inclusion of their contents in Europeana may have in their sales traffic and in their overall business models. For the time being, the inclusion of their materials in participating national digital libraries and in Europeana should remain free of charge for them.