

## Comments from the Association des Cinémathèques Européennes - ACE

### 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](mailto: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 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?*

The most important orientation should be to find solutions to fill the "20<sup>th</sup> century black hole". The majority of the content from the 20<sup>th</sup> century is still copyright protected and therefore not accessible (or with restrictions accessible) through Europeana. Mainly affected is the audiovisual sector, due to its comparatively short history. On the other hand it is exactly audiovisual content which is able to attract a younger audience (see Youtube, Flickr etc).

To achieve this goal, two main challenges have to be further tackled: digitisation and copyright, especially the orphan works problem.

**1.1 Digitisation programmes on European level:** While it is true that specific EU funding programmes for Digital Libraries have been set up under the eContent*plus* and the follow-up programme ICT-PSP (Competitiveness and Innovation Framework Programme), the evaluation and selection of proposals however is independent from what should be the purpose of these actions supporting the Digital Libraries initiative: to get digitised content for Europeana from all cultural heritage sectors and to enhance digitisation of material which is underrepresented in Europeana: audiovisual content.

So far, the selection of items available through Europeana is still a bit unbalanced with respect to the providing countries: Almost 70% of the items come from 4 content providers, approx. 50 % of the content comes from France. The same applies for audiovisual collections, where INA seems to be the major contributor since it is an important rights holder. A content strategy should be developed to ensure a wide variety of content across domains and Members States.

### ***Digitisation programmes on national level***

The educational, cultural and economic value of cultural heritage material is undisputable. Digitisation is necessary to preserve these materials from decay and to make them available to the public. To encourage funding on national level, one has to point out that digitisation is an investment in the future: There is an increasing demand for digital content from schools, arts education, journalists, universities, and media professionals. Pupils, students and teachers ask for audiovisual content that can be integrated into the curriculum and which can be used to develop new learning tools.

The added value and the economic benefits of digitisation are e. g. reinforcement of the creative industry as key area of the national economy and rising job opportunities. Cultural heritage institutions could create a high-quality infrastructure for digitisation, storage and distribution of content which would benefit other archives and companies. Digitisation creates specialised expertise for which exists an increasing demand, it is a driving force for the modernisation of national heritage institutions as well as the innovation of public services which will have a great impact on the visibility of these institutions.

In order to make sure that Europeana also profits from national digitisation, these programmes should include a provision that the content or part of the content (metadata and extracts) will be made available through Europeana.

### ***Copyright legislation***

To encourage digitisation and to ensure that the content can be used online, EU copyright legislation has to be amended. Although the EU Directive includes some copyright exceptions e. g. for national libraries, exceptions for the entire cultural heritage sector should be implemented, including film and audiovisual archives. These exceptions should be made mandatory in so far as EU Member States are obliged to implement them.

There is an enormous amount of film works which is created mainly with taxpayers' money and is safeguarded and studied by publicly funded institutions the purpose of which is to disseminate culture, information and data on behalf of the wider public, including the same taxpayers. Mandatory exceptions give public institutions the legal certainty in fulfilling these tasks. Mandatory exceptions are needed to encourage (expensive) preservation through digitisation, facilitating the accessibility of material, and assuring users and the public in general. Legal uncertainty leads to the fact that cultural heritage materials are no longer accessible and run the risk of fading from the collective memory. This situation contradicts the public demand for promoting and protecting cultural diversity.

### ***Orphan works***

Since the start of the Digital Libraries initiative, ACE has been involved in the discussions on how to solve the orphan works problem. Being part of the HLEG Expert Group and the Audiovisual Working Group on Digital Libraries, ACE contributed to the establishment of due diligence guidelines for orphan works in the AV sector and signed the Memorandum of Understanding (MoU) in 2008.

The MoU was a first step, but the agreement between rights holders organisations and cultural heritage institutions does not go far enough: on the one hand, following the due diligence guidelines is time costly and requires especially trained staff, e. g. in business

history or legal advisors. On the other hand, the MoU is not legally binding and therefore does not provide legal certainty. If an archive uses a disclaimer after having conducted an unsuccessful diligent search, it can still be sued for copyright infringement.

Due to the Google Books Initiative, the European Commission recently announced to start proceedings to facilitate rights clearing for orphan works. If the Commission considers to implement a legally binding instrument which facilitates rights clearing and the cross border recognition of orphan works, solutions for all cultural heritage sectors have to be found, not only for libraries and the print sector.

### **Question 2**

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

Instead of adding new features and functionalities, existing features should be improved. The quality of the service (and of the metadata) should be further enhanced in collaboration with data and content providers. The search function has to be improved:

If one is using a slightly different spelling variant of a name or a title e. g. *Jean Luc Godard* instead of *Jean-Luc Godard* the user receives a lot of results that do not relate to the director at all but to people with the same first name. It may frustrate users if they have to deal with so much ballast in the result list. It would be good if the degree of fuzzy matching were improved within the Europeana retrieval system. The ranking could be enhanced also, insofar as a search term that exactly matches an index term, the result can be ranked higher than fuzzy or approximate results.

Moreover, it would be good if a user could use commands from common retrieval languages in the simple search. For the moment only Boolean operators can be applied. For instance:

- The search entry “Jean-Luc Godard” or “Jean Luc Godard” should only retrieve results for: Jean-Luc Godard
- Truncation (at least end-truncation)
- Wildcards

Also, the development of content strategies aimed at themed content may be necessary. Europeana should be able to incorporate knowledge of users by enriching the content available online.

In the long run one should think about enabling users to establish semantic relationships between the digitised objects that come from different content providers: this illustration “belongs to” this book, etc. ().

### **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?*

Since the content is held by the provider and not integrated in Europeana, the balance seems to be reasonable.

The user needs to be conducted to the content provider if she/he would like to have more detailed information about the object and its context. It is especially important if she/he wants to re-use the material and therefore has to clear the rights.

As already mentioned in the answer to Question 1, the representation of collections and items available through Europeana is unbalanced with respect to the providing countries and domains. However, this may change to some extent once the aggregator projects deliver input.

#### **Question 4**

***How should Europeana further develop its own autonomous identity?***

##### ***Europeana vs. Google***

Thanks to Google Books, Europeana has quite a lot media response. Google Books is indeed a challenge for Europe: if the Settlement is approved, the European works held in U.S. libraries and digitised by Google will only be available to consumers and researchers in the U.S. but not in Europe itself. Although it is necessary to find solutions on European level which allow mass-scale digitisation and a pragmatic way to handle orphan works, Europeana should not try to follow Google and focus on books only. These efforts must be extended to the whole range of cultural heritage.

The overall objective of Europeana is not only to build up a web portal, but an integrated cultural space, in collaboration with hundreds of European partners. It promotes the freedom of access to knowledge and not its (possible) monopolization.

##### ***Branding***

In a short period of time, Europeana has well established its branding. The Europeana Group website gives access to branding guidelines, Europeana logos and templates. Aggregators and content provider are encouraged to publish the Europeana logo on their websites and to link to Europeana.

With respect to the Rhine release in Summer 2010, more efforts should be undertaken to promote the portal beyond the "Europeana universe" of partners, but to future user groups.

#### **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?***

A certain set of minimum requirements for quality, completeness and use of content available through Europeana may be beneficial not only for users but also for content providers. It might help archives and libraries in negotiations with rights holders about the quality of content freely available via the Web.

However, focusing on higher quality of individual items (both in terms of content essence and metadata) would make necessary a shift away from merely quantitative goals (in terms of "items accessible").

Europeana (or the EDLF) should decide after consultations with aggregator projects and major content providers, duly taking into account their needs and advice.

#### **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?***

As already mentioned, the problem of the “20<sup>th</sup> century blackhole” has to be tackled. In terms of promotion of Europeana through content available in it, it may be beneficial to move away from canonic high-culture examples à la Leonardo da Vinci and Beethoven and also turn to research examples from everyday or popular culture.

Europeana should give higher priority to the ingestion of content from underrepresented Member States as well as underrepresented domains such as audio and video.

Moving away from mere quantitative goals in terms of “items accessible” and putting more emphasis on the individual quality of content and metadata might also be beneficial and could serve as a unique selling point for Europeana in the future.

In collaboration with aggregators, Europeana should set up themes to contextualise the material. Europeana should also be prepared to offer content on upcoming important events and present them in a virtual exhibition, showcases or a highlight section. This will attract user as well as press attention.

If there is no content available which might be of interest with respect to current events - because works are in distribution/in-print and/or copyright protected -, at least bibliographic resources and catalogues should be available (e.g. not a single book title of this year’s Nobel Prize in Literature winner Herta Müller, is available via Europeana. The only search result is a thumbnail of a poster with her name on it.) In these cases, it should be thought about whether the users should be (re-)directed to TEL.

***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?***

The legal barriers are well known: Lacking harmonisation of national copyright legislation, restrictive rules concerning the making available of orphan works, etc.. Existing licenses from past or current digitisation projects cover mainly national and/or educational use, restricting cross-border access and availability to the wider public. It should be made mandatory for participation in all European as well as national publicly funded digitisation programmes to make digitised content available also through Europeana (in Germany e.g. Deutsche Forschungsgemeinschaft – DFG, JISC-Digitisation programmes etc.).

Publicly funded cultural institutions should consider including this “Europeana-clause” in their agreements with rights holders, e. g. voluntary deposit for films: one of the conditions for archiving the material could be that the archive is allowed to digitise the material for preservation purposes and to make at least previews/thumbnails available for own projects. Legal Deposit: films made with public money should also include the “Europeana-clause”.

***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)?***

Existing due diligence criteria for identifying orphan works are too complex to be fully taken into account by archives. With the existing criteria, research efforts are prohibitively high and hence pose a severe obstacle to the making available of orphan and out-of-distribution works. Setting up rights clearance centers and out-of-print / out-of distribution databases could be a first step. The HLEG Subgroup Copyright proposed several measures in this respect:

[http://ec.europa.eu/information\\_society/activities/digital\\_libraries/doc/hleg\\_minutes/copyright/report\\_key\\_principles\\_ow\\_opw.pdf](http://ec.europa.eu/information_society/activities/digital_libraries/doc/hleg_minutes/copyright/report_key_principles_ow_opw.pdf)

Moreover, pragmatic legislative measures would help here and provide legal certainty for content providers, considerably facilitating the willingness to make accessible works from the 20<sup>th</sup> century.

- A general cut-off date
- A legally binding instrument which facilitates rights clearing and the cross border recognition for orphan works
- An amendment of the EU Directive, making copyright exceptions for cultural heritage institutions mandatory in all Member States

***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?***

From a legal point of view, digitisation does not create new copyright. However, if an institution is owner or holder of public domain material, the income from selling the material is a small compensation for the investment in digitisation.

The Public Domain Charter is a first step to set up a policy for Europeana, stating that public domain material in the analogue world should stay public domain when digitised. This can only be done on the level of recommendation and awareness-raising by stressing the fact that cultural institutions have the public duty to make culture and knowledge freely available for educational and research purposes.

***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?***

First of all, it has to be stated that the share of digitised collections in European archives still is very small, the same applies to public domain material. Progress has to be made in the field of digitisation before the widest possible use and re-use on the Internet can become a top item on the policy agenda.

In the film heritage sector, material in the public domain is marginal. In any case, it should remain at the deliberation of the cultural institutions to determine which collections should be transferred to digital and how.

***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?***

As a portal which gives access to Europe's cultural heritage, Europeana should become a service of the European Commission/Union and therefore 100% funded. This is the only way to guarantee sustainability in the long run. The Europeana service should be independent from project funding which always entails the problem of how to pay matching funds and overheads.

Member States should concentrate on setting up and fund national digitisation programmes in order to enable national institutions and national digital libraries to aggregate and provide content to Europeana.

Private funding should only cover a small part of the costs, since it is not a reliable source of income and therefore endangers the sustainability of the service.

#### ***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?***

***Please see Question 11.***

The 100% long-term funding for basic operations is justified. Europeana is an extraordinary service for the European citizen. The multimedia portal does not only preserve Europe's collective memory but primarily creates it on a European level. It is a driving force for digitisation and the freedom of access to knowledge and culture.

To digitise and make available Europe's cultural heritage is an ongoing process, and a sustainable funding model will facilitate technological innovation, creativity, improvement of the service as well as the development of new services. For example, an enormous surplus may arise from new learning environments for different user groups.

#### ***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 current governance structure seems to be appropriate. The Board of Participants represents the initial group of stakeholders, namely pan-European associations of content providers. From this board, an Executive Committee is elected which is responsible for the legal and financial governance of Europeana.

Member States' and ministries representatives and organisations other than content providers should not be part of the Board, since EDLF will set up contracts with content providers and aggregators only.

If Member States' representatives would be part of the Board, national political interests could influence their opinion. The Funding and Orientation Group is the appropriate body to encourage Member State funding and support.

The function of the Council of Content Providers and Aggregators however should be defined more precisely. It is not clear if members of the Board of Participants can also become members of the CCPA.

**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)?***

Public private partnerships (PPP) could be a supplementary source of income. These PPPs can take different shapes, one model is private sponsoring for philanthropic reasons, e.g. to demonstrate social and cultural responsibility.

Through linking from Europeana to the sites of right holders and publishers/distributors: The partnership between the BnF, French publishers, aggregators and online book retailers is based on an e-book model. The portal Gallica2 includes public copyrighted material and public domain documents in a common index. Free access is given to public domain content and priced access to in-copyright material regarding the BnF-Gallica2 model, one main challenge is Google Books. It might be difficult for the publishing sector to compete with them, but in general, this kind of public private partnership should be taken into consideration

**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)?***

In some Members States, the taxation rules only allow fundraising but not sponsoring, e. g. in Germany. However the possibilities of sponsorship should be further explored.

**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?***

Traffic fees for linking from Europeana to the websites of commercial partners (“pay-per – click”) as well as brokerage fees (“per-pay-sale”) should be further explored in a cost-benefit-analysis. This can only be done once the Europeana service has become operational.