



Europeana- Next Steps

Consultation: European Federation of Journalists response

The European Federation of Journalists (EFJ) represents over 260,000 professional journalists throughout Europe. It defends press freedom and social justice through strong, free and independent trade unions of journalists and calls for journalists and press photographers to be recognised as authors of the work they create, control further use of their work and receive an equitable remuneration for it.

Many of the EFJ members are authors of books or have their words and images included in books.

All have a strong interest in the manner in which the proposed development of Europeana may set a precedent for the future of all forms of publishing, including printed and broadcast news. As journalists, they also have a strong interest in freedom of expression and of communication, including unhindered access to published material on fair terms.

General remarks

The EFJ is a signatory to the response by IFRRO, the International Federation of Reproduction Rights Organisations, and offers the Commission the following additional observations.

Journalists are – or should be – among the heaviest consumer/reader of others' works. And as one wrote in response to a consultation by an EFJ member union in May 2009¹:

“Publicly owned, three-dimensional libraries are extremely important – they educated me and provided a place to study.”

All surveyed, without exception, are strong supporters of the principle of physical public libraries.

The EFJ therefore welcomes the existence of the Europeana initiative and the consultation on its operation and is grateful to the Commission for the opportunity to comment on these vital matters.

The question is: how can we get it right, so that the library continues to be fed with new, professionally-produced content of all kinds?

¹ All quotes from this consultation by the National Union of Journalists used with explicit permission of their authors.

a) What will 'a library' be in the future?

Is the library to be re-defined as a *service* to citizens, offering the largest portion of the historical record that is commercially feasible?

Or is it to be a deposit library, a key institution of our civilisation, the complete archive of everything published? This is the default position of librarianship and, it has to be said, its bulwark against censorship.

The answer must be the latter: a complete archive.

This will raise far-reaching questions concerning freedom of expression and of access to information – concerns which we have not heard addressed to date in the context of the digital library. These questions would include whether libraries that make works available to all citizens (or all with internet connections) now need immunity from injunctions and defamation proceedings.

Any solution must protect the foundations of the information economy.

The EFJ is disappointed that the present consultation does not make clear the distinction between two very different library activities:

- The making of copies for archival purposes; and
- Making those copies available online.

Journalists in general welcome the creation of secure, permanent archives.

However, any arrangement allowing libraries to make works available to the public worldwide changes the rules of the publishing and broadcasting game completely. As one journalist consulted by an EFJ member union – someone who writes both fiction and non-fiction books – asks:

“who will buy a book, or pay commercial rates for a download, if all works are available from libraries for cheaper download onto a Kindle or similar machine? And if all books/magazines/broadcasts become available in this way, aren't libraries effectively becoming publishers?”

There is no justification for an exception to authors' rights permitting the making-available of authors' works – especially not if the “library” is in reality a commercial service.

b) Extended collective licensing would require strong safeguards to protect creativity

It is apparent from the Commission's Communication “Copyright in the Knowledge Economy” of 19 October 2009² that extended collective licensing will be a major avenue of exploration in the coming year.

Extended collective licensing for such purposes as being made available on Europeana would introduce a very serious breach of the author's exclusive right to authorise copying and making-available of their work, as guaranteed in the Berne Convention and by the TRIPS agreement:

2 http://ec.europa.eu/internal_market/copyright/docs/copyright-infso/20091019_532_en.pdf accessed 19/10/2009

especially since the intention would be to make works available to every citizen.

The breach is more serious for our members than it may first appear because journalists do not make a living only from fees paid for first use of their work. They depend on payments for:

- syndication to further newspapers and magazines;
- payments for cable re-transmission and re-broadcast of audiovisual works;
- licensing translations and editions in other territories;
- particularly, illustrators and photographers depend on fees for licences to use works from their “stock library” after – often long after – first publication. For many, licensing of pictures taken in their energetic youth provides the majority of income in later years.
- archiving

Distribution of digital copies of journalists’ words, audio, video and pictures by libraries, whether truly public or quasi-commercial, threatens all these sources of income. As the member journalist quoted above asks: where is the market for further uses when the work is available to all, wherever in the world they be, for all time, free at the point of use?

Such universal digital distribution thereby risks undermining the continued supply of high-quality professionally-produced European journalism.

It would also constitute a counter-incentive to the development of “micropayment” systems. These are often posited as a cornerstone of the future information economy. They would allow existing publishers, new players and authors acting on their own initiative to publish and broadcast works online and to gain fair reward within the existing European framework of Authors’ Rights.

If all works are available, whether sooner or later, through libraries, where is the incentive to build a fully-trusted micropayment system?

IF extended collective licensing were to be pursued to provide recompense for library distribution of works, then the modifications existing EU legal framework **must** guarantee very significant compensation – probably an order of magnitude larger than that available in some member states for private copying.

The EFJ insists that the following principles would have to be met:

- that equitable remuneration be made to authors (and performers) to ensure the existence of a body of professional creators of content feeding the European digital economy – as, for example, the Public Lending Right in the UK is payable from central funds to authors;
- an independent review body, including authors' organisations, setting the levels of that equitable remuneration;
- that the system apply to truly public libraries only – commercial operations can negotiate licenses;
- that the arrangements not include unpublished works in libraries’ holdings;
- that visual and audio works be made available only at reduced resolution or fidelity, as a discouragement to illegitimate profit-making use of works obtained from libraries;
- that no work be made available without full metadata embodying the author’s right to be identified and permitting library users to contact the author or their agent to negotiate a licence for re-use – this is especially important since all copies made available

online would be useful to those wishing to make commercial exploitation of those copies online;

- that this metadata must enable an audit trail facilitating tracing of illegitimate re-use of library copies;
- that in addition each work delivered by libraries must appear with a visible declaration of its authorship, where known, of the permitted uses (private study *etc*) and of the procedure for contacting authors (and other rights holders) to seek permission for other uses;
- that at the same time a fully enforceable prohibition on the removal of that metadata be harmonised throughout the EU;
- that at the same time the EU fund databases tools to ease tracking further unauthorised uses of library copies, not just to pursue infringers for payment but to protect the moral rights of the author and standards for ethical journalism (see below).

c) A need to respect journalists' ethics For journalists, ethics are involved as much as remuneration.

The EFJ has already identified³ a risk in the Google books settlement, in that it would permit any work made available through the Googlibrary to be embedded in a third-party publications such as websites. As one photographer responded to an EFJ member union consultation:

"I have work on racism that I would strongly wish to retain control of to prevent misuse. A colleague who works on children and education would have similar reservations."

Another dangerous possibility is that journalistic works could be embedded in such a way that they appeared to be endorsements of products and services – a clear breach of journalism ethics codes⁴.

Whatever arrangement is made for making-available by libraries, it must be coupled with:

- improved means for authors to enforce their moral right to object to the use of their work contrary to their honour and reputation;
- with improved tools for locating such abuse (see below); and
- with universal, unwaivable moral rights for all authors throughout the EU.

d) Setting a reasonable time-limit

One further suggestion that journalists have made is to set time-limits before which libraries may not make works available.

Those surveyed overwhelmingly demand the right to specify a longer period before certain works are made available through public libraries. For example:

"I would suggest that digitising all works and making them available through libraries is so revolutionary a notion that creators and their agents **MUST** be allowed some form of individual negotiation, either to opt out or to obtain fair terms for a work that still has a higher value commercial shelf-life.

3 Submission to Tilman Lueder on the Google Books Settlement, 11 Sep 2009: archived at www.londonfreelance.org/ar/efj-google-consult.pdf

4 See for example the Code of Conduct of the National Union of Journalists (UK & Ireland): "A journalist... Does not by way of statement, voice or appearance endorse by advertisement any commercial product or service save for the promotion of her/his own work or of the medium by which she/he is employed.": <http://www.nuj.org.uk/innerPagenuj.html?docid=174> accessed 09/11/09

This is an entirely reasonable demand given the request that they relinquish the exclusive right to authorise making-available that they now have. It is clearly not compatible with the libraries' request for a system that removes the obligation on them to clear rights work-by-work.

It makes us wonder whether it would be simpler and more cost-effective to grasp the nettle of funding proper rights clearance by public libraries from member state coffers.

The EFJ was among the first to call⁵ for measures to make rights clearance easier for all. The Europeana project could, if organised properly, offer powerful synergies with a scheme to create a European database linking works to their authors, performers, agents and collecting societies. The ARROW project⁶ is of course a starting-point for such a project.

5 REF TK TK????

6 <http://www.arrow-net.eu/> accessed 09/11/09

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?

To offer to media consumers through a single gateway the full range of legitimately-available works, and/or links to locations where those works are legitimately available.

Question 2

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

The search functions need significant improvement.

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?

Europeana should continue to give credit to the individual libraries – and librarians – whose hard work has enabled the secure archiving of their holding.

Question 4

How should Europeana further develop its own autonomous identity?

See 1.

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?

No minimum standards, in the sense described, are required. Information on the existence of a work is, fundamentally, as important as online viewing.

Content for European

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?

See IFRRO response.

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?

See our observations on the impact of cross-border licensing on the foundation of the European digital economy – which is the ability of individual authors to make a living as professionals – above.

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)?

If extended collective licensing were applied to older works – within the fundamental principles we outline above – the playing-field would be levelled.

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 risk appears to us to arise from a quasi-commercial “library” claiming:

- the database right;
- rights in the digitisation.

A commercial operation might indeed be entitled to those rights.

Founding Europeana as a gateway purely to genuinely public libraries means that this risk can easily be avoided by setting public policy not to enforce those rights *except* against a commercial competitor that attempted to profit from the work of these public institutions, wholesale.

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?*

No such minima are required: see answer to 5 above.

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?

Europeana must be a public institution – or a European alliance of public institutions – in the European model.

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?

Yes, it is necessary and justified.

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 obvious partners in the governance structures would be the national public institutions and the *actual* content providers: that is, authors, performers and their organisations.

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)?

All the above; but see below.

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)?

If private sponsorship is accepted, a “plaque” page similar to the plaques to be seen in opera houses would be appropriate. Advertising on library sites is not acceptable. If the “library” is a commercial service, it can negotiate licenses as any other would.

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?

A contribution to libraries for driving traffic to sites which sell full works directly to the public would appear appropriate.

-ends-

Brussels, 13 November 2009