

COMMISSION'S CONSULTATION

« EUROPEANA - NEXT STEPS »

ENPA RESPONSES

15 November 2009

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 future development of Europeana depends on the ability to find balanced agreements between publishers and libraries at national level.

In some countries, publishers have achieved these agreements with libraries based on the respect of copyright legislation. Libraries can therefore benefit from the access to newspapers' content in paper and digital form under advantageous terms and conditions.

It is also important the Europeana project does not challenge the commercial activities of publishers as they already provide access through their digital archives and against payment. If Europeana provides similar articles for free to users, it would not be possible for publishers to have a proper return on investment from their digital archive services since users will have free access to the same content through Europeana.

Public/private partnership is also a good solution to improve digitisation of content: through this partnership, libraries in agreement with publishers can identify the content that can be digitised or not and made available through Europeana on a case by case basis.

ENPA therefore believes that there should be an appropriate balance of interests between access to newspapers' content and respect of publishers' commercial activities.

Question 2

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

The site of Europeana should better indicate and make visible the partnerships which already exist between newspaper publishers and libraries. This will give a good indication on the level of cooperation which already exists in the various countries.

It should also indicate better the type of copyright protection and policy agreed by the publishers as regards the articles and photos which are made available through Europeana.

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?

Question 4

How should Europeana further develop its own autonomous identity?

Europeana autonomous identity depends on the trusted relationships it can build with right holders and content providers.

ENPA believes that this trusted relationship also depends on the respect of copyright and prior authorisation of the right holder to use the content in Europeana.

Publishers are already providing a great level of access to their content through their own digital archive services. In most EU countries, publishers have established partnerships with national libraries in order to foster access to digital newspapers. In some cases, the publishers provide altogether a unique database of digital articles from various titles (ex: Infomedia in Denmark). In other cases, publishers agreed to provide access to their websites and digital services in connecting them through the library's portal (this is the case in Austria).

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?

The content brought into Europeana by the contributing organisations should follow the following minimum requirements:

- The copyright owner and the source of the material should be clearly mentioned.
- The terms and conditions for usage policies in respect of copyright rules should also be clearly indicated.
- The contact point to whom the user can have further information on the work that is made available through Europeana should be indicated

These requirements should be defined and imposed in agreement between the libraries

and the right holder on the basis of their contractual agreements and in respect of EU copyright law.

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?

It is difficult to establish a limited or predefined list or categories of content that are so important that they should make them available through Europeana.

First of all, the determination of the importance of a specific content could be variable from one person to another and is objectively difficult to decide in advance. It could also be variable according to the context in which this content is used.

Secondly, the importance (or not) of a particular content cannot be a criteria which would force the right holder to make his content available through Europeana. ENPA believes that the unique criteria is whether the content is copyright protected or not and if it is protected, only the right holder is able to decide beforehand whether this content can be licensed or not under certain conditions.

In this field, ENPA believes that a system based on the prior authorisation of the right holder (opt-in and not opt-out) is and should remain the founding principle of Europeana if this project wants to be supported by the different content sectors and remain sustainable in the coming years.

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?

As newspapers' activities and market are mainly located at national and local level, cross-border licensing is therefore still very marginal due to language, readerships, etc.

Nevertheless, for the few works that could be potentially accessible on a cross-border basis, publishers have developed joint licensing system through the establishment of digital press databases which provides a one stop shop for accessing content from various titles. These databases are also available for libraries on a contractual basis.

On a multiterritorial basis, publishers have PDLN (Press Databases Licensing Network) which aims to provide a single entry/access point to the various databases existing in various countries.

ENPA believes that these publishers' initiatives can provide an excellent basis for

public and private partnerships between the newspaper publishing sector and the libraries.

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)?

The differences between the US and European system as regards the term of protection of a work is not in itself an obstacle for access to content. Furthermore, the question seems to mix different aspects altogether: term of protection, public domain works, orphan works and out of print works.

ENPA believes that use and accessibility of newspapers' material through Europeana is a question which should be solved on a case by case basis. A broad approach based on the idea of mass digitisation will certainly have negative impacts on newspapers' viability because it would allow libraries to provide the same content that publishers already offer on a commercial basis. This would certainly result in a situation of unfair competition since "old" news articles are for most of them available through publishers' digital archives and databases.

Furthermore, the concepts of "orphan works" and "out-of-print works" are still very obscure and do not consider the differences and specificities of the different sectors. It would therefore allow libraries to use a wide variety of copyright protect content. It would also end-up in a reverse system of authorisation (opt-out instead of the current opt-in).

ENPA is very sceptical as regards a broad horizontal approach of public domain, orphan and out-of-print works and would like to open a debate based on the sectoral approach.

A change of legislation or new exception will not consider the sector's dimension. ENPA believes that practical solutions based on licensing and public/private partnership constitute the way forward.

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 sui generis protection is ensured in the EU Directive on the legal protection of databases adopted in 1996. This Directive is essential for publishers because it ensures a level of protection for the investment they have made in the overall structure of the newspapers, whether offline or online, from its production till its dissemination.

Different case-laws in various countries have proved the necessity of such protection for the viability of newspapers' activities. ENPA believes that the sui generis protection is not a barrier to dissemination of content but rather an incentive to invest in digitisation, dissemination and access to content.

Digitisation represents a cost for publishers, even for public domain works. A legal protection of the investment dedicated by the publisher to this process, in particular through the Directive of 1996 is therefore necessary to continue this activity. Without this protection, publishers will neither be encouraged nor be ready to start digitising public domain works, which will therefore be unavailable to the users.

For public domain works which have not been digitised, publishers are discussing also with libraries on public and private partnership for digitisation.

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?

Public domain works are by definition out of copyright protection. Therefore, in principle, nothing prevents libraries to digitise these works and make them accessible through Europeana.

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?

Public funding for financing Europeana should be one of the main sources of revenues since Europeana is a public and not a private initiative. It is also a good guarantee to ensure its independence and to avoid any abuses in terms of the type, selection, price of content available but also in terms of competition with commercial players.

If public funding are insufficient, it is also necessary to develop the idea of public/private partnership between publishers and libraries as we described previously. Publishers are well advanced in digitising newspapers' content and can therefore offer to libraries the possibility to access these contents under reasonable contractual conditions.

Nevertheless, a challenge which remains is the question of accessibility outside the premises of the libraries which raises certain issues as regards access control, security and piracy.

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 Europeana is a wide and ambitious project, it would certainly need sustained EU funding for after 2013. It is important that these fundings are used for financing rights' clearance aspects as this will be indispensable if Europeana becomes a sustainable project in partnership with the content industry.

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?

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)?

We have described in our responses to the previous questions the different options that publishers can provide in terms of partnerships with libraries (links to publishers websites, use of publishers' joint digital archives/databases services, PDLN, etc). However, a particular caution is necessary when this partnership is established with stakeholders (e.g. Google) who are not content providers themselves and who can find an important commercial interest in this partnership with libraries.

The US Google Book Project has raised great concerns in the European content community, including the newspaper publishing sector, because it would grant a considerable commercial advantage to Google compared to any other operators. Such a situation is of course dangerous as it would place Google into a situation of monopoly as a unique source of information and cultural products. This could also represent a direct threat to cultural diversity and access to information since Google will dictate the price and conditions of access to the content without competition from other players.

For these reasons, the involvement of private partners in Europeana such as Google requires a proper assessment of the consequences that this partnership will have on the European market and the publishing industry.

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 Europeana is supposed to be a public service, we should avoid that it becomes a

commercial platform or that it becomes completely dependant from commercial revenues. Furthermore, fair competition must be guaranteed to avoid that Europeana compete with publishers who already provide access to digital content with advertising and commercial communications but do not benefit from the same financial resources.

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 different financing model suggested in this question depends on the agreement that has been made between each publisher and the library. There should not be a unique or mandatory model. This should be left to the contractual negotiations between the partners in respect of the situation of the publishers and libraries in their national market and the conditions that can be accepted by both parties.

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