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Submission to the

**QUESTIONS FOR THE PUBLIC CONSULTATION "EUROPEANA – NEXT STEPS"**

EVA gathers 24 European collective management societies (CMS) for fine arts, illustration, photography, design, architecture and other visual works. The EVA members represent over 50 000 authors and manage their copyrights nationally and internationally.

**Introduction**

EVA appreciates the Europeana project and its aim to facilitate the access to European cultural heritage to a broader population. When fine arts works become increasingly accessible through the web sites of museums and linked together through Europeana a growing number of citizens might be attracted to visit museums where the original works can be found. A long term effect might also be a broader interest in the arts in general including contemporary arts with a possible positive effect on the art market.

The same applies for works of arts and photography published in books that are subject to scanning and digitisations by libraries. The images in books are indispensable parts of publications and the making available without the images would seriously prejudice the rights and interests of all players.

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Material that has not been published before - such as family photographs - should be subject of legal evaluation as concerns moral and personality rights before addressing any copyright issue that might arise supplementary.

EVA believes that Europeana has a great potential to promote the knowledge economy and to increase interest of citizens in the arts. The copyright principles and standard rights of the *acquis communautaire* and the Berne Convention should be maintained in order to ensure that works are legally made available and authors have a warranty to always be rewarded when providing content to the knowledge economy.

## **Content for Europeana**

### Question 6

*Which categories of content are so important for 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?*

EVA appreciates Europeana as a project to open broad access to cultural heritage and European cultural diversity. We believe that works made legally available have the potential to promote the knowledge economy provided that authors will always be rewarded. The economic and cultural value of creators of the contents needs to be recognised and protected. Authors need to receive revenues from the exploitation of their works as an incentive for further creation and in order to maintain their abilities to create.

EVA participated in the setting up of tools that facilitate the legal treatment of protected works. EVA contributed to the debates of the copyright subgroup in the frame of the i2010 HLEG as concerns sector specific guidelines for orphan works. We had the opportunity to make aware of the particularities of embedded works in books.

It should be reminded that unfortunately visual authors were not represented in the HLEG itself and therefore the debate on sector specific guidelines for the orphan works due diligence search was a window to introduce the position and information on this sector. We refer to the documents reflecting these positions in particular the Annex joint report with its findings and conclusions on embedded visual works that were endorsed by the MoU by all participants.

EVA societies have set up back in 2002 OnLineArt (OLA), a body for easy rights clearance. Through OLA users within the EEA, Switzerland, USA and Australia receive cross border licences for uses of works of art on internet websites under equal conditions. A special tariff for non commercial archive uses was introduced in 2007 in order to offer to libraries, museums and archives licenses for world wide (cross border-) uses under privileged conditions for non-commercial uses.

OLA is also a tool that links databases which enable the search for authors that are difficult to trace and therefore to help the cultural heritage institutions (CHI) with their task to search

for rights holders. Being a very helpful tool for the CMS at the moment an extension of the use of this database is taken into consideration within the frame of orphan works either on a voluntary basis or - in case of a specific orphan works legislation – as a partner with mandate by law for instance by mandatory collective management.

#### Question 7

*What is the best way to encourage cultural institutions and rights holders 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?*

Fine arts and photography are in general less related to a territory in comparison to published books which appear in languages, notwithstanding that images embedded in publications share to some extent the same situations.

OLA was created in the first place to offer world-wide licences for uses that are in general intended to reach internet users across the world. Thus, users are provided with licences that they need for cross border uses. Differences within the EEA copyright legislation concerning provisions of exceptions to the copyrights acts do not bring users at risk to be subject to criminal pursuit in neighbouring countries where a certain exception would not exist. The licence covers such uses. The existence of exceptions in some countries is addressed by the tariff structure.

#### Question 8

*How can the difference in the level playing field for digitisation 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)?*

Cut-off dates for fine art works are no appropriate tool to deal with the matter. The limited duration of the protection term is already the legal tool to address the conflicting interests of the public and the individual author. Embedded works have other protection terms than the works where they are published and would need a specific evaluation.

Works of fine art are particular copyrighted “products” because the authors create original works that are launched – ideally – into the art market. There is no industry needed to market a product which would be produced in a certain number of copies and undertake the marketing. Mostly authors of fine arts and photography become celebrities with a high interest from the market to publish and exploit their works only very late in their lives or even after they are deceased, completely independent from any predictions provided by market analysis. The argument that a published product would lose market value over the years does not fit for art works at all.

EVA societies believe that the sector specific due diligence search guidelines worked out within the copyright sub working group on the i2010 HLEG are a useful starting point to develop useful tools to tackle the problems the CHIs are faced with. Besides, the CMS gathered under the roof of EVA provide for a network of databases to facilitate the search for orphan works. OLA is issuing the necessary licences for multi repertoire and worldwide uses.

In case of future legal solutions the EVA societies would advocate for a mandatory collective management in order to ensure that authors are always rewarded for the uses of their works. In the field of fine arts and photography where the legislations do not provide the CMS with a general collective mandate for all authors the search for authors holds the incentive to encourage more authors to adhering to a CMS.

Remuneration for authors that still remain untraceable should be returned into the cultural sector including for instance for the support for art projects, social support and health care for authors and the non commercial work of CHIs that promote the arts. CMS who are in charge in member countries with administering such funds can provide more detailed information on this issue.

### 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?*

EVA proposes that the governance structure of Europeana should include authors of fine arts and photography or their representatives. Thus, Europeana could be provided with specific and precise information on solutions worked out in the sector of images for the problems encountered by the CHIs.

For further information on this and other issues please consult our web site:

[www.eartists.org](http://www.eartists.org)

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Secretary General  
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