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## **STAKEHOLDER CONSULTATION ON EUROPEAN COMMISSION COMMUNICATION "EUROPEANA – NEXT STEPS"**

This submission is made by the International Federation of Reproduction Rights Organisations (IFRRO<sup>1</sup>). IFRRO represents and links Reproduction Rights Organisations (RROs) worldwide. RROs administer reproduction and other relevant rights, including certain forms of digital uses, in copyright text- and image-based works on behalf of publishers and authors, including visual artists. These rights are normally referred to as reprographic rights. Members of IFRRO include national RROs, and national and international associations of creators and publishers, such as the Federation of European Publishers (FEP), the European Writers Congress (EWC), European Visual Artists (EVA), the European Newspaper Publishers Association (ENPA), the European Federation of Magazine Publishers (FAEP), the International Association of Scientific, Technical and Medical Publishers (STM), and the International/(European) Federation of Journalists (EFJ) at European level.

We will limit our submission to the questions most relevant to the IFRRO community.

### **GENERAL REMARKS**

Giving European culture a lasting visibility on the Internet and turning our common and diverse heritage into an integral part of Europe's information infrastructure for the future is indeed important for the European knowledge economy. It is a prerequisite that the making available of and access to content is provided legally to works agreed to by authors and publishers, and on the basis of conditions and terms acceptable to them.

The current legislation on Community level offers sufficient flexibility and a workable equilibrium between the right of rightholders and the interests of users to address challenges posed by changing environments. Focus should be on the deployment of solutions available. Flexibility can only be built on general international (including Community-wide) principles, leaving implementation to the Member States and the parties concerned. More detailed norms on a Community level would not serve the purpose of improved access to copyright works in a changing technological and media environment. Rather, we request that the European

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<sup>1</sup> Interest Representative Register ID number: 91217342449-83.

Commission (EC) finds means to encourage the use of existing instruments, which clearly demonstrate that trust and understanding between stakeholders can bring partners to flexible solutions, with the ability to change over time.

#### **MAKING AVAILABLE OF CONTENT THROUGH EUROPEANA (QUESTION 6)**

While ensuring diversity and quality as well as availability of the content categories through Europeana, we recommend the use of the tools developed jointly by rightholders and cultural institutions for the EC i2010 digital libraries initiatives<sup>2</sup>: with the view to assisting in the facilitation of online accessibility to copyright works which are orphan or out-of-print, a set of tools, including criteria for diligent search for rightholders to works and two model licensing agreements for the digitisation and making available of out-of-print works, has been developed by the copyright subgroup of the i2010 High Level Expert Group (HLEG).

The diligent search criteria and the model licensing agreements have been worked out and agreed upon by teams made up of representatives from the library, author, publisher and RRO communities, and have been endorsed by the archives and museums representatives in the copyright subgroup and the HLEG. Having been developed and agreed by the relevant stakeholders, these instruments are a valuable resource when making available works to a large public through Europeana.

#### **SOLUTIONS FOR CROSS-BORDER ACCESS (QUESTION 7)**

The HLEG and its copyright subgroup for the i2010 digital libraries initiative developed a comprehensive set of tools to tackle, for instance, the orphan works issue on a national basis: sector-specific guidelines on diligent search for rightholders to orphan works, combined with a Memorandum of Understanding signed by the main 27 stakeholder organisations committing themselves to observe them; criteria for orphan works databases; criteria for rights clearance centres to clear the right to digitise and to make available orphan works by cultural institutions. It also devised instruments, including model licensing agreements, to address works which are out-of-print, highly relevant also in relation to orphan works. One of the key conditions is that the due diligent search must be conducted in the country of publication, when known or ascertainable. Furthermore, solutions adopted by each Member State should be capable of mutual recognition.

The ARROW<sup>3</sup> project, partnered by both rightholders and library representatives, aims to support Europeana through providing solutions that will assist in addressing further important intellectual property issues such as identifying rightholders, rights involved in and the status of a work, and by implementing the solutions developed by the HLEG and its copyright subcommittee. Most importantly, it is a goal to enable the search for defined information and data and the making of works available across borders. Solutions envisaged by the venture

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<sup>2</sup> i2010 High Level Expert Group - Copyright Subgroup's Final Report on Digital Preservation, Orphan Works and Out-of-Print Works; see [http://ec.europa.eu/information\\_society/activities/digital\\_libraries/experts/hleg-meetings/index\\_en.htm](http://ec.europa.eu/information_society/activities/digital_libraries/experts/hleg-meetings/index_en.htm).

<sup>3</sup> Accessible Registries of Rights Information and Orphan Works towards Europeana, shortlisted under the European Commission's *eContentplus* Programme; <http://www.arrow-net.eu/>.

include the establishment of systems for the exchange of rights data, the creation of registries of orphan works, information on or registries of out-of-print works and a network of rights clearance mechanisms. Key to achieving this objective is interoperability, standards deployment and stakeholder involvement. Thus, ARROW would contribute to the facilitating and accelerating of the diligent search and, consequently, mass digitisation and making available online processes.

Against this background, the European Commission should facilitate and finance cluster meetings for the coordination between Europeana and relevant projects financed under the *eContentplus* programme. Such meetings could, for instance, have the frequency of the i2010 digital libraries HLEG. This would also be in harmony with and follow up recommendations made by the Copyright Subcommittee under the HLEG.

We request that the Commission finds means to encourage further the use of the recommendations of the HLEG, including the diligent search criteria and the model licences drafted by the copyright subgroup for the i2010 digital libraries initiative, which clearly demonstrate that trust and understanding between stakeholders can bring partners to flexible solutions, also across borders, with the ability to adapt to changing environments.

The HLEG did not deal comprehensively with the challenge of enabling a cross-border and European-wide solution. It is necessary to establish a mechanism that provides relief from civil and criminal liability in respect of licensing of uses of orphan works, both within national borders and cross-border, when a diligent search has been conducted and documented, both for the licensee and the rights clearer. Legal certainty to the rights clearer should, as a minimum, be ensured through a system of authorisation of rights clearers to administrate the rights of orphan works. It may also be appropriate to examine whether to establish, at Community level, a set of criteria that national solutions shall comply with, in addition to observing the due diligent search criteria, in order to be recognisable in other Member States, and this needs to take into account the requirement that the diligent search is conducted, *inter alia*, in the country of publication of the work.

#### **NO NECESSITY FOR A CUT-OFF DATE (QUESTION 8)**

There is no necessity for a cut-off date on a European level. The Memorandum of Understanding (MoU) on Diligent Search Guidelines for rightholders to Orphan Works, signed by 27 cultural and rightholder organisations, concluded that “*historic cut-off dates were not thought to be helpful*”.<sup>4</sup> Historic cut-off dates are strictly of no relevance in relation to works which are orphan, since such works are by definition works which are copyright-protected. If the author is unknown, then Article 1(3) of the Copyright Term Directive (2006/116/EC)<sup>5</sup>, which provides that works of anonymous/pseudonymous authorship are protected for 70 years after the work is lawfully made available to the public, will apply, and this may be a means of establishing that a particular work may be in the public domain, albeit the author remains unknown.

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<sup>4</sup> Memorandum of Understanding on Diligent Search Guidelines for Orphan Works, Report from the Visual/Photography Working Group, Annex 1: Query of the Visual Works Group to the Text and Audio-Visual Work Groups. Report from the Visual/Photography Working Group, 3.1.

<sup>5</sup> Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights.

#### **INCENTIVES FOR CULTURAL INSTITUTIONS TO MAKE THEIR DIGITISED PUBLIC DOMAIN MATERIAL ACCESSIBLE (QUESTION 10)**

Stakeholders, including cultural institutions, have shown that they can develop appropriate instruments themselves to make works accessible. Moreover, within the framework of the EC-sponsored project ARROW, stakeholders also examine business models for accessibility to works in libraries and the deployment of solutions that have been developed and approved by the EC i2010 Digital Libraries High Level Expert Group (HLEG). Libraries, representatives of authors and publishers and RROs are working to devise comprehensive schemes, which address *inter alia* the issues of rights, rightholders and the status of rights in relation to works including orphan works, so that the clarification of online availability and conditions for the digitisation and making of works accessible online is more easily achievable. An example of a workable scheme is the collaboration of the German Research Library, DFG, the German Literature Conference, DLK, the Börsenverein des Deutschen Buchhandels, and the RROs VG WORT and VG Bild-Kunst in laying the foundations for a German digital library of the twentieth century.

We would welcome an initiative from the Commission to enhance its encouragement to make use of the instruments developed in conjunction with the EC i2010 HLEG and which are already available. The Commission is further requested to sustain test-bases, by, on the one hand, maintaining a stable and predictable legal framework, and, on the other hand, giving financial support to the digitisation process and rights clearance in Member States itself.

#### **FINANCING OF EUROPEANA (QUESTION 11)**

The financing of Europeana also raises questions related to the conditions of access to cultural heritage. Consequently, related questions should be addressed in the framework of a defined public policy, in which the risk of allowing a monopoly for the management of cultural heritage, the interest of developing a digitisation strategy based on options selected by rightholders in cooperation with libraries and other cultural institutions, and specific quality requirements for particular categories of documents, are being considered.

#### **REPRESENTATION OF RIGHTHOLDERS (QUESTION 13)**

Irrespective of the financing model, the governing structure for Europeana – which would best serve its aims – should include representatives of rightholders, with a link from rightholders to one or more advisory committees, as appropriate, which should also include rightholder representatives.

There are many successful models for online accessibility to copyright works, which already involve rightholders, such as ‘Gallica’<sup>6</sup> in France, ‘Ebog’<sup>7</sup> in Denmark, ‘Libreka’<sup>8</sup> in Germany or the ‘Bookshelf’<sup>9</sup> (“Bokhylla”) project in Norway. It is fundamental to emphasise that copyright is not an obstacle to the creation of digital libraries or to the free circulation of knowledge: it is the precondition for the expression of creativity online in a sustainable way. As

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<sup>6</sup> <http://gallica.bnf.fr/>.

<sup>7</sup> <http://www.ebog.dk/>.

<sup>8</sup> <http://www.libreka.de/>.

<sup>9</sup> <http://www.nb.no/bokhylla>.

a consequence, it is strongly recommended that rightholders be represented in the governing structure of Europeana.

**PRIVATE INVOLVEMENT IN EUROPEANA (QUESTION 14)**

Private involvement in Europeana will best take shape through public/private partnerships, and in particular through links from Europeana to the sites of publishers and authors or sites that can make works available with their consent, and which represent or are licensed by them, such as ‘Gallica’, ‘Ebog’, ‘Libreka’ or ‘Bokhylla’. It is also recommended that representatives of the publishing industry be represented in the governing structures of Europeana.

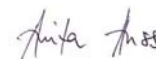
As an example, Gallica reflects a public policy to foster digitisation and make copyright-protected works available. This is also reflected in the possibility for funding, for instance, for publishers in relation to the digitisation of their books to be indexed through Gallica via the French National Book Center (i.e. the French Ministry of Culture), provided they commit to include a certain number of books in the portal. This has encouraged publishers to actively examine a variety of business models.

We thank the European Commission for the opportunity to comment on the Commission Communication “Europeana – next steps” and appreciate your consideration of our views. If required, we will be pleased to provide further information or answer any questions about this submission.

Respectfully submitted,



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