



***AIB Comments to COM (2009) 440 Europeana – next steps***

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**AIB comments to COM(2009) 440 "Europeana - next steps"**

Founded in 1930, AIB, Associazione Italiana Biblioteche, is the general library association in Italy, the only national association member of the International Federation of Library Associations and by far the oldest and largest association in this field in Italy, with more than 3,500 members (85% librarians, 15% libraries and other cultural institutions). AIB is member of EBLIDA, European Bureau of Library, Information and Documentation Associations. AIB is officially admitted as Observer in WIPO, World Intellectual Property Organization.

AIB welcomes the public consultation on COM(2009) 440 "Europeana - next steps" as an expression of willingness to involve all stakeholders in decisions on such a crucial issue to the development of knowledge economy. The following comments are arranged according to the numbering of the European Commission questions.

Best regards.

Prof. Mauro Guerrini  
(AIB President)



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### **General (Questions 1-5)**

#### **Question 1**

*Which orientations would you suggest for the future development of Europeaana as a common access point to Europe's cultural heritage in the digital environment?*

It should be not only an access point to Europe's cultural heritage, but a tool for reusing cultural contents and enabling the production of new services.

#### **Question 2**

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

Interoperability, not only with the final user, but also with other service providers, and from and to data/content providers.

#### **Question 3**

*Has Europeaana 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 Europeaana be presented in a more unified way?*

The balance is right, the role of contributing institutions as data/content providers must be clear, but the characterisation of Europeaana as a single and easy/friendly access point to European cultural contents, and a suitable tool for producing new contents, it's essential as well.

#### **Question 4**

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

By developing specific services: e.g. the outlook of Europeaana's interface as an open services platform, via an Application Programming Interface, with the possibility of capturing data and bringing them into other systems and applications, looks very promising.

#### **Question 5**

*Should there be minimum requirements for the content brought into Europeaana by the contributing organisations (e.g. minimum viewing or use options)?*

Yes, contents must be actually accessible, minimum use options are to be defined, content owners' rights are to be defined as well. It's also essential that data/content providers implement an effective Digital Preservation policy, and that can be certified for that.

*If so, who should be responsible for defining and imposing these minimum requirements?*

It's a Governance problem, data/content providers must have a strong role in all "decision's boards", in order to achieve a common vision and to avoid conflicts between data/content providers and service providers.



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### **Content for Europeaana (Questions 6-10).**

#### **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 Europeaana? What measures can be taken to ensure the availability of these works through Europeaana?*

The challenge of Europeaana is enabling integrated access to heterogeneous digital collections and facilitating the identification of relationships between documents, not making arbitrary hierarchies between categories of content but giving each user the opportunity to meet his/her cultural needs in an environment where are ensured: coverage, accuracy, reliability, permanence, personalized assistance, confidentiality, impartiality - in selection of content and in their organization, as well as in their delivery to user. In Europeaana should find their appropriate location contemporary works and works of bygone eras, artistic expressions and scientific research outputs, documents produced by the governments in carrying out their institutional activities and cultural industry products, the most advertised works as the least known ones, photographs, audio and audiovisual documents as textual ones. To encourage Member States and their cultural institutions to make available this content, actions are needed on several levels:

- Funding. The European Union has funded much researches on the digitization and digital preservation. It is time to bring together all fundings on concrete actions, by making the grant funding to the result of the availability of new content into Europeaana.
- Legislation. The national legislations on cultural enhancement should be strengthened and harmonized by European mandatory rules binding on all member states in relation to: legal deposit of digital works; exceptions and limitations to copyright; public availability of the out-of-print and orphan works.
- Infrastructures. Recommendations and incentives for national digital libraries based on distributed architecture, cooperation and non-duplication of activities, would be helpful and welcome.
- Governance and organisation. Governance of Europeaana should be entrusted to librarians, because digital libraries are libraries, and so require a specific professional organization. To do this, political and economical investments on the profession of librarians are needed, thereby strengthening their position within their parent institutions.



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### **Question 7**

*What is the best way to encourage cultural institutions and rightholders to take into account cross-border access - including through Europeaana - 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?*

There are gaps in the Directives on copyright, and particularly in the "Infosoc" Directive, in which the role and the needs of important segments of the knowledge chain, such as libraries, archives and research institutions, are not adequately considered. "Exceptions and limitations" should be enlarged, including provisions for out-of-print and orphan works, and enforced, by making them mandatory for member states. This is the necessary condition for overcoming the existing legal barriers.

Referring to AIB comments to the Green Paper on Copyright in the Knowledge Economy

([http://circa.europa.eu/Public/irc/markt/markt\\_consultations/library?l=/copyright\\_neighbouring\\_consultation\\_copyright/associazione\\_biblioteche/EN\\_1.0\\_&a=d](http://circa.europa.eu/Public/irc/markt/markt_consultations/library?l=/copyright_neighbouring_consultation_copyright/associazione_biblioteche/EN_1.0_&a=d)), we would like to stress that

- "The fact itself that the Directive defines them "exceptions" to copyright confirms that it is not possible to entrust their regulation to private initiative";
- "Relevant to the lawfulness of an utilization should not be the format of a work (traditional or digital) or where the content is located (on site or on-line), but the purpose and scope of that utilization. An utilization that is socially relevant, and does not affect in a significant way the interests of right holders, should be allowed";
- "AIB would like to suggest the European Commission being a catalyzer for an initiative aiming at adding a further step to the three-step principle. The fourth step should be that the legitimate interests of the right holder should not be detrimental to the world-wide progress of knowledge and to the information needs of the public".

### **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)?*

On the point of the date of public domain, the practical solution is to align the European legislation to the U.S. legislation, so that works published in Europe until 1923 fall in public domain, in Europe as well as in the United States. It would also be useful to revise the Berne Convention removing the faculty of states to establish a longer duration than 50 years after author's death,



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because it was calculated that longer terms are of advantage only for 2% of authors in the world. This would represent the return to the original aim of copyright laws - to protect freedom of expression and increase the circulation of knowledge -, which represented a break from the medieval system of privileges. The current copyright legislation could in fact produce effects opposite to those expected, effects such as monopolies vs. pluralism and equal opportunity of access to markets; forgetfulness vs. protection of author's moral right to the exploitation of the work, restrictions on access vs. cultural promotion.

On the point of orphan works, a mandatory exception at European or international level is needed. Such an instrument should provide: a precise definition of "orphan work" (AIB suggests the following: "works whose current owners have not been identified or located after a reasonably diligent research in good faith"); the possibility for libraries, archives, museums, and educational establishments to reproduce and make available orphan works for registered users, in the place and at the time individually chosen; a reference to extended collective licences, in order to define and to collect a reasonable fee for uses which require remuneration in favour of owners; in case the legitimate owner does not reappear at a later stage, a provision should allow the reallocation of a partial amount of copyright-derived royalties to the libraries and the other institutions that are responsible for work digitization and dissemination; in case the legitimate owner shows himself at a later stage, a provision should allow libraries, archives and educational establishments to make available the digital copy to their registered users. The availability of an accurate and reliable registry/data-base of works should be helpful to facilitate diligent research (better if it was supervised by independent agencies), however it is not necessary for the purpose of the suggested exception.

### ***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?*

To avoid the creation of *sui generis* rights on digital versions, the current system of copyright should be overcome. Digitization and format shifting should fall within the exceptions of the law in all cases of reproduction for personal use and of reproduction made by libraries and research institutions for their specific services. However, given that digitization and digital preservation are expensive activities, when these activities are undertaken to the benefit of the community and for non-commercial purposes by libraries and other cultural institutions, it is necessary to provide adequate funding. Such funds should be proportional to the content supplied to European and / or the "universal" digital library, and should not be occasional but permanent, to ensure an enduring service. A regular source of funding could be the VAT paid



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by libraries and cultural and research institutes for subscriptions to electronic resources.

### **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 Europeaana?*

As we have said (answer No. 2), it should be ensured interoperability, stimulating cultural institutions to adjust their digitized collections to standard recommended for inclusion in Europeaana. To do this, adequate incentives are needed, as well as investments in the professionalism of the operators. On the other hand, it should be avoided the proliferation of national standards: we need to simplify as far as possible, without sacrificing accuracy and the specific cultural needs, the minimum metadata requirements for inclusion in Europeaana.

## **Financing and governance (Questions 11-16)**

### **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 Europeaana is to give the widest possible access to Europe's cultural heritage at pan-European level? Could Europeaana be financed solely by national cultural institutions or by private funding?*

Europeana could not be financed solely by national cultural institutions or by private funding, so a permanent destination of Community funding is needed. The private funding, both in the form of sponsorship and public/private partnership are welcome, but governance and direction must remain firmly in public hands. Sponsorship and partnerships must be based on clear rules to ensure transparency and impartiality of choices.

### **Question 12**

*Is sustained European Union funding for the basic operations of Europeaana necessary and justified for the period after 2013? What type of European funding instrument could best be used?*

The central structure of Europeaana should be a light structure, based on a distributed/cooperative model avoiding duplication of activities. Given that we do not know the cost of the existing management of Europeaana, we believe that one way to both support and enhance Europeaana is what we have stated in the answer no. 7: bringing together the funding for regional projects, not on



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national or cooperative studies and research in the field of digitization and digital preservation, but on projects directly aimed at increasing the content available through Europeaana. These projects could be coordinated by national libraries and / or by the administration of Europeaana. Participating libraries should receive more funds, also via sources such as that suggested in the answer No. 9 (restitution of VAT).

### **Question 13**

*Which governance structure for Europeaana 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?*

All potential stakeholders should be involved in governance, on two conditions: the direction should remain in public hands (see above, no. 11), and all the necessary controls should be entrusted to an independent authority.

### **Question 14**

*How can private involvement in Europeaana best take shape (e.g. through sponsoring, through technological partnerships, through links from Europeaana to the sites of publishers and other rightholders where the user can buy in-copyright content, or through another type of partnership)?*

Sponsoring; Technological partnership. But neutrality, privacy and preference for open software and technologies should in any case be assured. The private action should not affect the architecture and content of Europeaana to the benefit of some to the detriment of others. An independent authority for supervision is needed.

### **Question 15**

*How can private sponsorship of Europeaana best be stimulated? Are commercial communications on the Europeaana site acceptable, and, if so, what type of commercial communications (e.g. logos of sponsors, promotion of specific products)?*

Provided the conditions of sponsorship are transparent and the distinction between marketing communication and institutional/public service communication is clear to users, sponsorship through publication of logos of sponsors is welcome.

### **Question 16**

*Should there be a contribution (financial or other) in exchange for the links from Europeaana 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 Europeaana?*

Yes, but the availability of for-fee content must not be at the expense of the availability of free library services for the same works. It should be noted that libraries exist because the costs of their collections are not available to individuals, and this applies even in the digital world.



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