

NARODNA IN UNIVERZITETNA KNJIŽNICA / NATIONAL AND UNIVERSITY  
LIBRARY

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**Questions for consultation**

The present document complements the Commission Communication on 'Europeana - next steps' with a series of questions for consultation. Interested parties are invited to submit their comments on all or some of the questions **by 15 November 2009** to:

European Commission, Directorate General for Information Society and Media Unit 'access to information', EUFO 2281 Rue Alcide de Gasperi L-2920 Luxembourg or by e-mail to: <a href="mailto:INFSO.DIGITAL-LIBRARIES@ec.europa.eu">INFSO.DIGITAL-LIBRARIES@ec.europa.eu</a>
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Contributions will be published on the digital libraries website of the Commission, unless requested otherwise by the organisation/person submitting them.

The questions of this consultation all have a direct impact on the future development of Europeana. Some of the questions - in particular questions 7-10 - also have more general policy implications for the digitisation, accessibility and use of content from cultural institutions. The replies to these questions will feed into the further policy development in areas such as the re-use of public sector information and copyright related questions for the digitisation and online accessibility of cultural material. In the latter area the questions complement the work undertaken by the Commission in the context of the Green Paper on copyright in the knowledge economy and the follow-up Communication. Where relevant, the results of the consultation will be taken up and further discussed in stakeholder groups and working groups with Member States' representatives.

*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?*

--Europeana should continue to integrate all available digital content from museums, libraries, archives and audiovisual collections from every Member State. It should do this for collections from the national to the local level, so that the richest range of content is available to users.

--Europeana should broaden its range to more accurately reflect the cultural and scientific heritage of Europe. This would include, but is not limited to, monuments, architecture and the built environment, archaeological sites, social history institutions, university repositories and medical museums.

--In order to encourage Europeana to flourish, and by extension, to encourage digitisation programmes and online access to knowledge, it is vital to revisit EU copyright laws in relation to the web. Allied to this are issues around funding for cultural institutions and their digitisation programmes. Pressure on funding digitisation has two consequences which run counter to the Commission's intention in funding Europeana. The first is that institutions set up exclusive licensing deals on long-term contracts in order to get material digitised; the second is that they are forced to maximise the revenue for re-use of digitised material. Charging for all types of re-use acts as an effective barrier to innovation and start-up creative enterprise.

### **Question 2**

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

--Europeana should therefore focus on prioritising functionalities rather than features. A priority list must include the following.

--Work needs to be done on improving access through search and browse.

--Multilingualism has to remain a high priority.

--One of the most interesting side effects of digitising and making freely available content in many languages is that this will result in large bodies of material that can be used to teach search engines to translate on the fly.

--Using crawling technologies for full text material in order to index automatically.

--Cleaning and enriching data so it can be used for geographic and temporal search and browse.

### **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?*

--The balance seems reasonable at the moment. Europeana's branding at the search level gives way to the content provider's branding at the item level. It is unlikely that providers would so enthusiastically make content available were they to lose their branding opportunity.

--It is important to find ways to show and prove ownership of the digital item when it is re-used via APIs. Users need to know where the content comes from to reference the item properly and to clear further rights of reuse should they need them.

### **Question 4**

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

--Europeana has a fairly strong brand image.

--The EU can help to build Europeana's brand identity by ensuring that all funded projects associated with Europeana reinforce the central brand.

### **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?*

Minimum requirements for content should be defined by Europeana in consultation with content providers.

Europeana should work with content holders to achieve consensus on the minimum requirements.

All data should comply with one of the current world standards for Library, Museum, Archive and Audiovisual materials.

All digitised content should contain a persistent identifier and European-level resolving services are needed to make use of these effectively.

Organisations or aggregators submitting data to Europeana should use OAI-PMH or OpenSearch as an update mechanism as it will allow low maintenance and automatic update of their content regularly.

The metadata and thumbnails contributed to Europeana should be reusable in web services provided by Europeana.

The proposed Public Domain Charter of the EDL Foundation should be used as a guiding principle for organisations to find other ways, where possible, to earn revenue rather than from the digitisation of their content. As a principle, material that was in the public domain in analogue form should remain in the public domain in digital form.

Public Private Partnerships contracted in order to digitise content should be licenced for short timescales.

### **Content for Europeana**

#### **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?*

The most important categories are:

- written/literary works
  - artistic works of all kinds
  - audiovisual works
  - photographic works (original photographs and photographs of objects, held by museums and archives, 3D pictures of objects)
  - multimedia works
  - fixations of performances and choreographies
- sheet music

### **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?*

**The question sets out a problem which is practically impossible to solve merely on a basis of agreements between cultural institutions which digitize contents and make it available (public libraries, museums, archives) and authors and rights holders. Thorougher reforms are necessary – not only reformation of copyright law and its harmonization within the EU, but also reformation of the currently deficiently functioning collective rights management. Inoperative cross-border licensing between sister collective organizations, which is an imperative for cross-border content offering, is only one of the consequences that hinder effective operation of cross-border and global content offering models in the EU in a number of fields – namely in all those where the market giants have not yet accumulated the respective rights (e.g. music works, iTunes).**

**For EUROPEANA to operate efficiently it has to be understood that new technologies, expanding since the end of the last century, enable libraries to perform numerous new activities, but which are restricted by strict copyright legislation. Libraries are very exact identifying the problems occurring in the course of digitization projects that obstruct EUROPEANA-like projects.**

For efficient operation of a pan-European digital library it would be primarily necessary to provide pan-European solutions concerning harmonization of basic copyright provisions regarding libraries and research. Current practical effects of the implementation of exceptions and limitations, provided in the Directive on copyright in the information society, which was supposed to harmonize copyright legislation within the EU, differ from one country to another, as the Directive does not ensure a unified basis for preservation of culture, for stimulation of cultural diversity and for access to knowledge all across the EU.

Reformation of copyright law and its harmonization is therefore of primary essence, followed by urgency to reform collective management. Both facts are expressly emphasized by NUK, although it is completely aware how politically difficult it is to reform copyright law on the EU level - with reformation of the current collective management system being even more demanding.

#### **1. Reformation of copyright law and its harmonization:**

The most effective measure providing legal certainty as well as reducing transaction costs would be introducing a new exception on behalf of libraries (for example an exemption to the right of making available for research purposes). Firstly, a Pan-European solution in the form of a uniform legislative instrument should be adopted at least for orphan and out of print works. It is further desired for the entire copyright law system to be harmonized.

As regards existing exceptions, the following should be assured: a) exceptions, especially those regarding research and preservation of cultural heritage, should be binding in the sense of being incapable of

contractual exclusion, latter being currently a common practice, and b) exceptions and limitations regarding preservation and archiving of works, along with web harvesting, should apply to all kinds of authorial works, without limitations regarding the number of copies or format and medium types. Circumvention of technical measures in the course of archiving and web harvesting should be explicitly legalized.

New exceptions and limitations should be introduced: alongside the above-mentioned there should also be an exception regarding text/data mining, a technique for reviewing and reading the text using a special algorithm. Exceptions should be adapted to such modern ways of digital contents “reading”, as these constitute a base for new kinds of research and cooperation amongst researchers. In many branches of knowledge, e. g. in natural science, researchers do not read anymore, they just extract the relevant data using algorithms.

## **2. Reformation of collective management**

Libraries and other institutions are aware that a solution in form of an exception/limitation is not very likely to be initiated in the near future, as it could cause the libraries to become competition against commercial content providers on the internet. Therefore, libraries will be forced to find the solution in form of extended collective management, a combination of voluntary collective management and force of law, which extends the effects of the agreement, made between a representative collective organization and a user, to also cover users which did not take part in negotiations, except if they expressly disagreed and opted out. Solution’s weakness is that extended collective management systems are still national and as such do not resolve the problem of unfunctional cross-border licensing.

Internet, being a global medium, indicated the weaknesses regarding cross-border licensing and mutual rights management by sister collective organizations. For example, the national library of a member state acquires rights for digitization and making available of works from a domestic collective organization. Amongst those works are foreign works as well and the foreign collective organization brings a suit against the national library. Situation clearly occurred owing to unarranged relations with the domestic collective organization which initially transferred the rights to the library. This is why a Pan-European solution for rights management should be found.

Neither Google nor Europeana can clear the rights regarding literary works in one place and make the clearance valid all across the EU. In addition, in many countries there are no appropriate collective organizations at all. It is obvious that clearing the copyrights during mass digitization projects will have to be done by clearance centers. It would be reasonable to consider an all member states’ joint clearance center for a particular category or for multiple categories of works (similar to Google Book Registry), even though the execution of cultural policy regarding the redistribution of funds (funds for stimulation of young artists, ponderation of different types, social funds) would be administered by national collective organizations. It is essential that the clearance of rights and collection of fair remuneration would take place in one spot, common for all EU members.

### **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)?*

A pragmatic solution should be adopted regarding orphan and out of print works. Setting a milestone date presents an example.

Above all, it would be sensible to establish a system which would allow the digitizing institution to use the works after it proves due diligence. If a legitimate rights owner later reappears he has the right to choose whether he will claim withdrawal of the work or fair remuneration for the use. It is the only way to enable republishing of works where it is practically impossible to find the rights owners.

Additionally, possible registration of works should be discussed in order to prevent appearance of new works of this kind.

### **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?*

Sole digitization of public domain works can and should not constitute a reason to prolong the duration of exclusive rights in the work itself. No new copyright arises nor does some new related right (e.g. similar to performance right). A work which is no longer copyright protected cannot regain protection merely by publication in digital form. Consequently, no remuneration can be discussed, not even in form of a compulsory license with an option of fair remuneration.

The question sets out a problem of the sui generis database right which is a specialty in the exclusive rights system, established by the EU. In this case a clear and unified EU policy should assure that a database as such would be made available according to terms which would enable as wide as possible access to the works and a possibility to use the public domain contents in different ways.

By no means should it be allowed to use such digital databases for commercial purposes.

### **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?*

Legislative instruments or model licenses should be used to determine that public domain contents shall be accessible in a way allowing users to use it for various purposes and in various ways in order to stimulate creativity and cultural diversity.

The wish to bring it near to users by digitization should not exclude the public domain contents from being free to use. Accessing the public domain contents should not consist only of viewing and reading, but also of its use for various purposes.

Forms of funding for digitization need further scrutiny. Cultural institutions seek money to digitize so that they may fulfill their public role and emulate equivalent institutions in other countries. They may be forced into closed-access revenue models unless alternative funding is available.

### **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?*

In the interests of public access to Europe's cultural and scientific heritage in the long-term, and the sustainability and independence of Europeana, the funding model should be 100% financed by the European Union, including overhead costs.

Individual Member States' primary responsibility in this area should be to fund national digitization and national digital libraries to aggregate content for Europeana.

The financing model agreed should not impose problems that make it difficult for Europeana to compete with the private sector.

Sectoral or National Aggregation should be encouraged as this creates a workable business model based on the principle of subsidiarity. Each content contributor, however small, has a responsibility to provide clean, usable, standardised metadata.

### **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?*

Europeana's potential role in the development of the European identity is a significant aspect of its value to Europe's citizens. Countries already pay into the Community budget for the promotion of European cohesion and social unity. Some deployment of this budget to a development such as Europeana would serve well.

Europeana has clear potential for adding further value, thereby justifying sustained long-term funding. A 100% funding model with overhead allowance is the appropriate model.

Europeana also provides the European Union with a flagship demonstration of the desirability of digitisation and freedom of access to information for all, and offers a model for other nations and continents.

### **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 governance of Europeana should come from its major, long term, persistent stakeholders, the content providers. They have the public responsibility – usually enshrined in their founding charters - to give access to their collections and maintain them for future generations.

### **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)?*

Through links from Europeana to the sites of publishers and other right holders where the user can buy in-copyright content.

Open source software should be deployed wherever feasible to promote take-up and sharing of resources created by Europeana by the national portals that are being developed.

### **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)?*

Some forms of promotion could be directly beneficial to content holders giving increased access to their material and possibilities for revenue.

Digitisation on demand services connected to bibliographic references could lead to revenue and digitised products.

Overall it is felt that sponsorship, insofar as it is possible, should be encouraged.

### **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?*

Europeana must be operational first, and then the opportunities for this type of linkage can be explored.

Revenue opportunities such as affiliate income should be explored.

## **PART II**

Overview of the contribution of Member States to Europeana in % of the total number of objects (situation end July 2009).

<b>EU countries</b>	
France	47%
Germany	15.4%
Netherlands	8%
United Kingdom	7.9%
Sweden	5.2%
Finland	4%
Greece	1.6%
Italy	1.2%
Belgium	1.1%
Slovenia	0.7%
Spain	0.6%
Estonia	0.4%
Luxembourg	0.4%
Poland	0.3%
Romania	0.3%
Austria	0.2%
Portugal	0.2%
Hungary	0.1%
Latvia	<0.1%
Cyprus	<0.1%
Bulgaria	<0.1%
Czech Republic	<0.1%

Denmark	<0.1%
Ireland	<0.1%
Lithuania	<0.1%
Malta	<0.1%
Slovakia	<0.1%

<b>Non EU countries</b>	
Norway	4.3%
Switzerland	0.4%