



INTERNATIONAL ASSOCIATION OF SCIENTIFIC, TECHNICAL & MEDICAL PUBLISHERS

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European Commission
DG Information Society and Media

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**STM submission on the Communication
"Stakeholder Consultation "EUROPEANA – Next Steps"**

The International Association of Scientific, Technical and Medical Publishers ("STM") comprises approximately 100 publishers of journals and reference works, based in 26 countries, including in many Member States of the European Union. EU-based publishers publish 49% of all research articles worldwide (STM's members may originate approximately 2/3 thereof), employing 36,000 staff directly and another 10-20,000 indirectly, and make a Euro 3 billion contribution to the EU's balance of trade. STM publishers disseminate journal content, books and reference works, and databases, in a variety of forms including print and online, and in addition provide systems that enable access to individual articles and contributions (hereinafter: "Content") of a multitude of European and international scientific, medical and technical authors and scholars. This creative Content is available widely in electronic and in print form for access by individuals, whether through academic and corporate libraries or

directly, for use in research, education, in industry the professions and business.

STM welcomes this opportunity to make its submission as part of the consultation following the European Commission Communication "EUROPEANA – Next Steps".

STM answers below questions 6 -11, 13 and 14. STM's interest representative ID number is: 704612025371728109).

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?

Europeana should select rare documents that show-case cultural, societal, and scientific developments in Europe's diverse and multi-faceted societies. In particular, Europeana should seek to "fill the gaps", rather than attempt to be comprehensive. Such an approach will complement, on the one hand, national public sector collections curated and made accessible by Member States, and, on the other hand, private sector (whether non-profit, or commercial and for-profit) cultural and scientific offerings. Europeana should neither duplicate nor attempt to outdo or supplant these offers, but through a series of links and search facilities function as a point of entry to the richness of Europe's culture and scientific-scholarly communication.

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?

A sectoral approach is necessary. Cross-border licensing is, and has been, a familiar and "natural habitat" for publishers of text-based works, and in particular for publishers active in the fields of natural science and social

science publishing. Today, providing on-line access through licensing, whether on a national-geographic or cross-border basis is the life-blood of scientific publishers.

In other areas of the creative market place, the Commission has issued market-based recommendations, such as the recommendation on licensing in the online music market. STM has commended the Commission on several occasions for embracing market-driven solutions that allow for a sustainable growth of Europe's cultural and scientific accomplishments today and tomorrow.

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)?

Europeana should accept that Europe is complex and multi-faceted and simply not amenable to a one-size-fits all cut-off date for in-copyright works. Europeana should accept the choices made under the European Copyright Term Directive (2006/116/EC). That Directive does not provide for a simple cut-off date. More recently 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".¹

It should be noted that the 1923 date for the US originated under a now outdated legal regime (the 1909 US Copyright Act, supplanted by the 1976 US Copyright Act) was exercised in an era of "formalities" such as the requirement for copyright registration. The US has since joined with international conventions in granting authors rights automatically upon creation, and measuring the copyright term starting with the life of the author.

¹ 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.

Finally, a cut-off date is only relevant for the question of orphan works to the extent that works deemed to be in the public domain cease to be orphans (since orphan works are by definition still in-copyright).

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?

It appears that the Commission's point of departure is that copyright and data base protection rights are barriers to achieving "widest possible access". STM does not share this view at all. Interestingly, the questions asked by the Commission as part of this consultation reveal that there are problems with finding a level of sustainability for Europeana. Perhaps applying some charge for database rights may assist to fund Europeana. Applying a charge would moreover encourage dissemination of content that is most requested by users, while keeping content totally free does make it difficult to distinguish content that is in lower demand from content that the market wants to read. In this sense the willingness of the public to pay for Europeana products is also market information which would be lost, if content is invariably free to the user. In other words, pricing content could guide Europeana's future operation and allow some form of prioritisation and this could be seen as an incentive, rather than a hinderance to the dissemination of creative content.

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?

At EU-level, Europeana should put into practice and apply solutions that have been developed and approved by the EC i2010 Digital Libraries High Level Expert Group (HLEG). Europeana could also lend support to digitisation procedures and rights clearance programmes at the level of Member States. This support could be financial as well as technical.

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?

Financing of Europeana raises questions of the role of public sector and the role of the private sector. STM strongly favours market-driven solutions in order to achieve a goal deeply shared by publishers with the Commission: "to give the widest possible access to Europe's cultural heritage". Essentially, public funding should come in to fill the gaps and supplement access for those pan-European sectors that cannot afford access on commercial terms. Similarly, Europeana should focus on filling the content gap with materials either free or for a fee to the end-user that have no or a small market and have not already been made available at a European or national level.

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?

To date, the most successful and advanced creative content delivery mechanism is the copyright system. This system contributes significantly to Europe's Gross Domestic Product and to Europe's competitiveness and innovative capacity. There are many successful models for online accessibility to in-copyright works, which already involve rightholders, such as 'Gallica' in France, 'Ebog' in Denmark, 'Libreka' in Germany or the 'Bookshelf' ("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. For this reason, content providers have a strong role to play and should remain part of the governance structure.

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)?

Europeana best leads the gran-concerto of European cultural and scientific heritage, by allowing the private sector to play its part in bringing in-copyright works to market, by allowing national libraries, archives and museums to display their collections and by filling the gaps where the former two stakeholders are unable to provide access. We refer to the examples provided in the submission of the Federation of European Publishers (FEP) for successful private-public partnerships already in existence that could be useful guide posts for Europeana. On top of that Europeana should contribute to the discoverability and searchability of cultural and scientific heritage, providing links and search tools, indexes and other means to navigate the treasures of cultural Europe.

General Comment & Conclusion

STM supports the Commission's ongoing role in the Europeana project of fostering best practices with a strong emphasis on partnership, co-operation and respect for copyright. Only in this way can a project of the magnitude of Europeana be realised in a Europe rich in cultural diversity. The current proposals of a Google Settlement are not a viable solution for Europe. Instead the European Commission must find its own sustainable way of realising the digitisation of Europe's diverse cultural heritage.

Finally, STM supports the submissions of the Federation of European Publishers (FEP) and of the International Federation of Reproduction Rights Organisations (IFRRO).

STM would be pleased to make further submissions and amplify on the present, should this be necessary or useful.

Respectfully submitted
For and on behalf of the International STM Association
13 November 2009

Very truly yours,

Michael Mabe,
Chief Executive Officer

Cc: Federation of European Publishers (FEP)

International Federation of Reproduction Rights Organisations
(IFRRO)