



EUROPEAN COMMISSION

Brussels, XXX
[...](2011) XXX draft

COMMISSION RECOMMENDATION

of XXX

on the digitisation and online accessibility of cultural material and digital preservation

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292 thereof,

Whereas:

- (1) The Digital Agenda for Europe seeks to optimise the benefits of information technologies for economic growth, job creation and the quality of life of European citizens, as part of the Europe 2020 strategy. The digitisation and preservation of Europe's cultural memory which includes print (books, journals, newspapers), photographs, museum objects, archival documents, sound and audiovisual material, monuments and archaeological sites (hereinafter 'cultural material') is one of the key areas tackled by the Digital Agenda.
- (2) The EU's strategy for digitisation and preservation builds on the work done over the last few years in the digital libraries initiative. The European actions in this area, including the development of Europeana, Europe's digital library archive and museum were supported by the European Parliament and the Council, most recently in a Parliament resolution of 5 May 2010 and the Council Conclusions of 10 May 2010. The Workplan for Culture 2011-2014 established by the Council at its meeting of 18 and 19 November 2010, highlights the need for a coordinated effort in the area of digitisation.
- (3) On 28 August 2006, the Commission issued a Recommendation to the Member States with a view to optimising, by means of the internet, the economic and cultural potential of Europe's cultural heritage. The Member States' reports on the implementation of the Recommendation of 2008 and 2010 show that progress has been made. However, progress is not consistent across the Member States and is uneven for the different points of the Recommendation.
- (4) Moreover the context for digitisation efforts and for collaboration at European level has changed considerably over the last few years. New elements include the launch of Europeana in November 2008, the publication of the report 'The New Renaissance' by the 'Comité des Sages on bringing Europe's cultural heritage online' of 10 January 2011 and the Commission's proposal for an Orphan Works Directive of 24 May 2011.
- (5) Therefore, an updated set of measures for digitising and bringing cultural heritage online and for digital preservation should be recommended to the Member States. In that context, the development of digitised material from libraries, archives and museums should be further encouraged in order to ensure that Europe maintains its

place as a leading international player in the field of culture and creative content and uses its wealth of cultural material in the best possible way. As underlined by the ‘*Comité des Sages on bringing Europe’s cultural heritage online*’, Europe needs to act now to reap the benefits of digitisation and digital preservation. If Member States do not step up their investments in this area, there is a risk that the cultural and economic benefits of the digital shift will materialise in other continents and not in Europe.

- (6) The online accessibility of cultural material will make it possible for citizens throughout Europe to access and use it for leisure, studies or work. It will give Europe’s diverse and multilingual heritage a clear profile on the internet, and the digitisation of their assets will help Europe’s cultural institutions to continue carrying out their mission of giving access to and preserving our heritage in the digital environment.
- (7) Moreover, the digitised material can be re-used – for both commercial and non-commercial purposes – for uses such as developing learning and educational content, documentaries, tourism applications, games, animations and design tools, provided that this is done with full respect for copyright and related rights. This will give an important input to the creative industries, which account for 3.3% of EU GDP and 3% of employment. These industries are faced with a digital transition that is shaking up traditional models, transforming value chains and calling for new business models. Digitising and providing wider access to cultural resources offers enormous economic opportunities and is an essential condition for the further development of Europe’s cultural and creative capacities and of its industrial presence in this field.
- (8) Digitisation is an important means for ensuring greater access to and use of cultural material. Concerted action by the Member States to digitise their cultural heritage would lend greater coherence to the selection of material and would avoid overlap in digitisation. It would also lead to a more secure climate for companies investing in digitisation technologies. Overviews of current and planned digitisation activities and quantitative targets for digitisation would contribute to achieving those objectives.
- (9) The cost of digitising the whole of Europe’s cultural heritage is high and cannot be covered by public funding alone. Private sector sponsoring of digitisation or partnerships between the public and private sectors can involve private entities in digitisation efforts and should be further encouraged. In order to be fair and balanced, these partnerships should comply with a number of key principles. In particular it is necessary to set time-limits for the preferential use of the digitised material. The ‘*Comité des Sages on bringing Europe’s cultural heritage online*’ indicated that the maximum time for preferential use of the material digitised in public-private partnerships should not be longer than seven years.
- (10) The EU Structural Funds can be and are being used to co-fund digitisation activities as part of projects having an impact on the regional economy. However, such use could be more widespread and systematic. Mass digitisation processes can gain in efficiency due to scale. Therefore, the efficient use of digitisation capacity and, where possible, the sharing of digitisation equipment between cultural institutions and countries should be encouraged.
- (11) Only part of the material held by libraries, archives and museums is in the public domain, in the sense that it is not or is no longer covered by intellectual property

rights, while the rest is protected by intellectual property rights. Since intellectual property rights are a key tool to stimulate creativity, Europe's cultural material should be digitised, made available and preserved in full respect of copyright and related rights.

- (12) On 24 May 2011 the Commission made a proposal for a Directive for orphan works. In order to have its full effect it should be rapidly adopted and implemented to ensure a harmonised approach to the issue of orphan works throughout the EU. For the large-scale digitisation of out-of-commerce works, legislative backing for licensing solutions voluntarily developed by stakeholders may be needed in the Member States, taking into account the need to ensure a cross-border effect. In this context, the approach followed in the stakeholders' dialogue, sponsored by the Commission, on out-of-commerce books and learned journals which resulted in a Memorandum of Understanding signed in Brussels on 20 September 2011 should be seen as a model for further dialogues to facilitate agreements for the digitisation of as much of the out-of-commerce material as possible. Rights information databases connected at European level can bring down transaction costs for rights clearance. Such mechanisms should therefore be encouraged in close cooperation with all stakeholders.
- (13) In order to allow wide access to and use of public domain content, it is necessary to ensure that public domain content remains in the public domain once digitised. The use of intrusive watermarks or other visual protection measures on copies of public domain material as a sign of ownership or provenance should be avoided.
- (14) Europeana, Europe's digital library, archive and museum, was launched on 20 November 2008. The further development of the Europeana platform will depend to a large extent on the way the Member States and their cultural institutions feed it with content, and make it visible to citizens. Measures to achieve this effect should be encouraged.
- (15) Currently, Europeana gives direct access to more than 19 million digitised objects. Only 2% of these objects are sound or audiovisual material. Increasing the content accessible through Europeana, including types of material that are currently underrepresented, will make the site more interesting for the users, and should therefore be encouraged. The overall target of 30 million objects by 2015 is in line with Europeana's strategic plan, and a stepping stone for getting Europe's entire cultural heritage digitised by 2025. The availability of all public domain masterpieces (key cultural or historical works and objects, as determined and selected by the Member States) through Europeana will enrich the content of the site, in line with the expectations of the users. Provisions in the Member States ensuring that all material digitised with public funding is made available through Europeana would boost the development of the platform and create a clear framework for the content contribution by cultural institutions, and the introduction of such provisions should therefore be encouraged.
- (16) Digital material has to be managed and maintained, otherwise files may be unreadable when the hardware and software used to store them becomes obsolete, material may be lost when storage devices deteriorate over time, and storage devices could be overwhelmed by the sheer volume of new and changing content. In spite of progress made across the EU on the preservation of digital material, in several Member States no clear and comprehensive policies are in place on the preservation of digital content.

The absence of such policies poses a threat to the survival of digitised material and may also result in the loss of material produced in digital format (born digital material). The development of effective means of digital preservation has far-reaching implications that go beyond cultural institutions. Questions of digital preservation are relevant for any private or public organisation, which is obliged or which wishes to preserve digital material.

- (17) Digital preservation poses challenges of a financial, organisational, and technical nature and sometimes requires an update of legislative provisions. Several Member States have introduced or are considering legal obligations requiring producers of digital material to make one or more copies of their material available to a mandated deposit body. Efficient provisions and practices for legal deposit can minimise the administrative burden on content holders and deposit institutions alike, and should therefore be recommended. Effective collaboration between Member States is necessary to avoid a wide variation in the rules governing the deposit of digital material and should be encouraged. Web-harvesting is a new technique for collecting material from the internet for preservation purposes. It involves mandated institutions actively collecting material instead of waiting for it to be deposited, thus minimising the administrative burden on producers of digital material, and national legislation should therefore make provision for it.
- (18) In as far as cinematographic works are concerned the present Recommendation complements the Parliament and Council Recommendation of 16 November 2005 on film heritage and the competitiveness of related industrial activities¹ on a number of aspects,

HEREBY RECOMMENDS THAT MEMBER STATES:

Digitisation: organisation and funding

1. further develop their planning and monitoring of the digitisation of books, journals, newspapers, photographs, museum objects, archival documents, sound and audiovisual material, monuments and archaeological sites (hereinafter ‘cultural material’) by:
 - (a) setting clear quantitative targets for the digitisation of cultural material, in line with the overall targets mentioned under point 7, indicating the expected increase in digitised material which could form part of Europeana, and the budgets allocated by public authorities,
 - (b) creating overviews of digitised cultural material and contributing to collaborative efforts to establish an overview at European level with comparable figures;
2. encourage partnerships between cultural institutions and the private sector in order to create new ways of funding digitisation of cultural material and to stimulate innovative uses of the material, while ensuring that public private partnerships for digitisation are fair and balanced, and in line with the conditions indicated in the Annex;

¹ OJ L 323, 9.12.2005, p.57.

3. make use of the EU's Structural Funds, where possible, to co-finance digitisation activities in the framework of regional innovation strategies for smart specialisation;
4. consider ways to optimise the use of digitisation capacity and achieve economies of scale, which may imply the pooling of digitisation efforts by cultural institutions and cross-border collaboration, building on competence centres for digitisation in Europe;

Digitisation and online accessibility of public domain material

5. improve access to and use of digitised cultural material that is in the public domain by:
 - (a) ensuring that material in the public domain remains in the public domain after digitisation,
 - (b) promoting the widest possible access to digitised public domain material as well as the widest possible re-use of the material for non-commercial and commercial purposes,
 - (c) taking measures to limit the use of intrusive watermarks or other visual protection measures that reduce the usability of the digitised public domain material;

Digitisation and online accessibility of in-copyright material

6. improve conditions for the digitisation and online accessibility of in-copyright material by:
 - (a) rapid and correct transposition and implementation of the provisions of the Directive on orphan works, once it is adopted, with consultation of interested parties ahead of adoption in order to facilitate a rapid implementation; a close monitoring of the Directive's application once it is adopted,
 - (b) creating the legal framework conditions to underpin licensing mechanisms identified and agreed by stakeholders for the large scale digitisation and cross-border accessibility of works that are out-of-commerce,
 - (c) contributing to and promoting the availability of databases with rights information, connected at the European level, such as ARROW;

Europeana

7. contribute to the further development of Europeana by:
 - (a) encouraging cultural institutions as well as publishers and other rightholders to make their digitised material accessible through Europeana, thus helping the platform to give direct access to 30 million digitised objects by 2015, including two million sound or audiovisual objects,
 - (b) making all public funding for future digitisation projects conditional on the accessibility of the digitised material through Europeana,

- (c) ensuring that all their public domain masterpieces will be accessible through Europeana by 2015,
- (d) setting up or reinforcing national aggregators bringing content from different domains into Europeana, and contributing to cross-border aggregators in specific domains or for specific topics, which may bring about economies of scale,
- (e) ensuring the use of common digitisation standards defined by Europeana in collaboration with the cultural institutions in order to achieve interoperability of the digitised material at European level, as well as the systematic use of permanent identifiers,
- (f) ensuring the wide and free availability of existing metadata (descriptions of digital objects) produced by cultural institutions, for re-use through services such as Europeana and for innovative applications,
- (g) establishing a communication plan to raise awareness of Europeana among the general public and notably in schools, in collaboration with the cultural institutions contributing content to the site;

Digital preservation

8. reinforce national strategies for the long-term preservation of digital material, update action plans implementing the strategies, and exchange information with each other on the strategies and action plans;
9. make explicit and clear provision in their legislation so as to allow multiple copying and migration of digital cultural material by public institutions for preservation purposes, in full respect of European Union and international legislation on intellectual property rights;
10. make the necessary arrangements for the deposit of material created in digital format in order to guarantee its long term preservation, and improve the efficiency of existing deposit arrangements for material created in digital format by:
 - (a) ensuring that rightholders deliver works to legal deposit libraries without technical protection measures, or that, alternatively, they make available to legal deposit libraries the means to ensure that the technical protection measures do not impede the acts that libraries have to undertake for preservation purposes, in full respect of European Union and international legislation on intellectual property rights,
 - (b) where relevant, making legal provision to allow the transfer of digital legal deposit works from one legal deposit library to other deposit libraries that also have the right to these works,
 - (c) allowing the preservation of web-content by mandated institutions using techniques for collecting material from the Internet such as web harvesting, in full respect of European Union and international legislation on intellectual property rights,

11. taking into account developments in other Member States, when establishing or updating policies and procedures for the deposit of material originally created in digital format, in order to prevent a wide variation in depositing arrangements;

Follow-up to this Recommendation

12. inform the Commission 24 months from the publication of this Recommendation in the *Official Journal of the European Union*, and every two years thereafter, of action taken in response to this Recommendation.

Done at Brussels,

For the Commission
Neelie Kroes
Vice-President of the Commission

ANNEX I

Public-private partnerships for digitisation

In order to make rapid progress on the digitisation of our cultural heritage, public funding for digitisation needs to be complemented by private investment. Therefore, the Commission encourages public-private partnerships for the digitisation of cultural material.

It calls on the Member States to stimulate such partnerships, which should comply with the following key principles:

1) Respect for intellectual property rights

Public-private partnerships for the digitisation of collections in cultural institutions should fully respect the European Union and international legislation on intellectual property rights.

2) Non-exclusivity

The agreements for digitising public domain material should be non-exclusive in the sense that any other private partner should have the possibility to digitise the same material under comparable conditions.

A period of preferential commercial use or preferential commercial exploitation may be necessary in order to give the private partner the possibility to recoup its investment. This period should be limited in time and as short as possible, in order to respect the principle that public domain material should stay in the public domain once it is digitised. The period of preferential use should not be longer than 7 years.

Agreements should be fully compliant with EU competition rules.

3) Transparency of the process

Agreements for the digitisation of collections held by cultural institutions should be awarded after an **open competition** between potential private partners.

4) Transparency of agreements

The content of agreements between cultural institutions and private partners for the digitisation of cultural collections should be made public.

5) Accessibility through Europeana

The conclusion of a public-private partnership should be conditional on the accessibility of the digitised material through Europeana.

6) Key criteria

Key criteria for assessing proposals for a public-private partnership are the following:

- The total investment to be made by the private partner, taking into account the effort required by the public partner,

- The accessibility of the digitised material for the general public, including through Europeana. Partnerships models where the end-user has free access to the digitised material should be encouraged over models where the end-user has to pay for accessing the material,
- Cross-border access. Partnership agreements must result in cross-border access for all,
- The length of any period of preferential commercial use of the digitised material by the private partner. This period should be as short as possible,
- The envisaged digitisation quality, and the quality of the files that will be given to the cultural institutions. The private partner should provide cultural institutions with digitised files of the same quality as the ones it uses itself,
- The use that the cultural institutions can make of the digitised material in non-commercial contexts. This use should be as wide as possible, and not limited by technical or contractual restrictions,
- The time-scale of the digitisation project.

ANNEX II

Indicative targets for minimum content contribution to Europeana per Member State

| | Number of objects in Europeana per MS* | Indicative Target 2015** |
|----------------|--|--------------------------|
| AUSTRIA | 282,039 | 600,000 |
| BELGIUM | 338,098 | 759,000 |
| BULGARIA | 38,263 | 267,000 |
| CYPRUS | 53 | 45,000 |
| CZECH REP | 35,490 | 492,000 |
| DENMARK | 67,235 | 453,000 |
| ESTONIA | 68,943 | 90,000 |
| FINLAND | 795,810 | 1,035,000 |
| FRANCE | 2,745,833 | 4,308,000 |
| GERMANY | 3,160,416 | 5,496,000 |
| GREECE | 211,532 | 618,000 |
| HUNGARY | 115,621 | 417,000 |
| IRELAND | 950,554 | 1,236,000 |
| ITALY | 1,946,040 | 3,705,000 |
| LATVIA | 30,576 | 90,000 |
| LITHUANIA | 8,824 | 129,000 |
| LUXEMBOURG | 47,965 | 66,000 |
| MALTA | 56,233 | 73,000 |
| NETHERLANDS | 1,208,713 | 1,571,000 |
| POLAND | 639,099 | 1,575,000 |
| PORTUGAL | 28,808 | 528,000 |
| ROMANIA | 35,852 | 789,000 |
| SLOVAKIA | 84,858 | 243,000 |
| SLOVENIA | 244,652 | 318,000 |
| SPAIN | 1,647,539 | 2,676,000 |
| SWEDEN | 1,489,488 | 1,936,000 |
| UNITED KINGDOM | 944,234 | 3,939,000 |

* October 2011. Further objects are contributed by a number of non EU-countries (in particular Norway and Switzerland), or come from EU-wide projects and are therefore not attributed to a particular Member State.

** The indicative targets per Member State are calculated on the basis of a) the size of the population and b) GDP, in line with the overall target of making 30 million digitised objects available through Europeana by 2015. For Member States which would already have reached or would be close to reaching the indicative target now, the calculation is based on the current number of objects they contribute to Europeana plus 30%. All Member States are invited to look also at the qualitative aspects, taking into account the need to make all public domain masterpieces available through Europeana by 2015.