



## **Questions for the public consultation ‘Europeana – next steps’**

November 13, 2009

The International Federation of Film Distributors Associations gathers the national organisations of film distribution companies. Film distributors are the intermediates between film producers and cinema exhibitors and cover the entire range of companies: small and medium size companies specialized in art house films as well as larger companies specialized in mainstream films. They operate in 16 European countries where they achieve from 90% to 100% of the theatrical market.

The International Federation of Film Producers Associations is a trade organisation dedicated to the defence and promotion of the legal, economic and creative interests of film and audiovisual producers. FIAPF’s members are 26 national producers’ organisations from 23 countries across the world.

The members of the International Video Federation comprise companies, which are involved in all areas of the audiovisual industry (development, production, distribution, etc.) as well as entities dedicated to, and specialized in, distribution of audiovisual content on physical carriers and/or over digital networks, including the Internet.

Before answering the questions we would like to thank the European Commission for the opportunity offered to stakeholders to take part in the public consultation on Europeana. Europeana is an important tool for the promotion and the diffusion of knowledge and culture. Clearly it is a major achievement on the part of European decision makers. It is an important factor in bringing the European Union closer to European citizens.

Members of the film industry represent a relatively young sector in the context of European cultural heritage, that is to say just a little more than one hundred years old as film was first conceived in 1895. But films, be it fiction or documentaries, allow European citizens to enjoy stories reflecting the national cultural heritage from European countries and to view elements allowing them better to understand the rich and diverse cultures, ways of life or political debates of our continent.

We suggest that the objective of digitising and providing access to European cultural heritage be focussed on European works. Many European cultural institutions also have non-European works in their collections. The entire process of formulating a future policy and objectives relating to Europeana would be quite different if the initiative were to cover non-European works as well. European cultural institutions focus on European works and we suggest that European should do the same in cooperation with relevant right holder organisations. Should the scope of Europeana be extended to cover works of non-European origin, then

consultations and cooperation with groups representing third-country right holders must be instituted as well.

We would like here to make some preliminary remarks:

- 1) The document 'Europeana – next steps' rightly raises the issue of the cost of digitisation. The principal field of activity of our members is production and distribution of feature-length films. Before undertaking digitisation one must make sure that the master is in suitable condition for digitisation. Very often that leads to expensive restoration of the work which may add up to €40 000 for a feature-length film. Then the cost of digitisation has to be considered and amounts to roughly the same amount. This means that the full cost of restoration and digitisation may come up to a global cost of €80 000 per work.
- 2) As a general matter, we support the promotion of access to the rich European cultural heritage. However, it is also important to respect the ability of film makers and distributors to make a return on their financial and creative investments in the cultural heritage. Thus, it is important to distinguish between the availability of a copyright work, in other words the access to a copyright work, and the payment for the ability to view or purchase a permanent copy. We can make the following comparison: Europeana is a great tool for promoting the viewing of a painting out of the many works shown in museums, either in the public domain or having been bought by the cultural institution. However the public understands that one has to pay to get access to the museum. We have the same situation regarding the presence of copyright cinematographic works on the Internet. This should be considered in reading our answers to the questionnaire.

## 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 be more visible on search engines. Many Internet users are looking for a specific document: when going to a site which they believe can answer their request they should find a link to Europeana.

The programs on media literacy should encourage Internet users to search on sites offering legal content, such as those linked to Europeana, instead of thinking that illicit content is the solution for their request. As a public initiative and considering the current challenge to the European economy, Europeana should maintain its high level of cultural and public interest ambitions, but should also promote access to cultural goods online against payment.

### **Question 2**

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

Access to culturally important works and the promotion of legal online offer should be considered as a priority on Europeana. A seamless infrastructure which promotes a good user experience providing access to high-quality digitised works is important. Equally important is the quality of the accompanying information about the work in a wide range of languages.

### **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?*

We consider the visibility of cultural institutions on the Internet as an encouragement to European citizens to visit the said institutions to view the work concerned in the best possible conditions, the particularity of the film sector being that the cultural institutions (i.e. the film archives) have a focus on preservation and restoration, not distribution of the works in their collections. In that sense the material accessible should be presented in a unified manner as regards the film sector, with mention of the owner of the support used for Europeana and possibly mention of the film archive that takes care of the preservation / restoration of the specific work.

### **Question 4**

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

Europeana should be a reference for the audiovisual works in the public domain as a public interest initiative for supporting the consumption of works online on legal platforms.

### **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?*

We suggest that flexibility with regard to the requirements of the content listed or shown on Europeana will enable a wider selection of works to be referenced on Europeana. Should minimum requirements be considered, then they should be defined in agreement with representatives of the owners of the content referenced on Europeana or present in the cultural institutions whose collections are being referenced in Europeana.

## **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?*

We suggest that the most rare or the most culturally important works at a national level should be the first works considered for reference on Europeana. The cultural institutions are well placed to contribute to this process as this is already an important part of their work. The efforts at national level should be coordinated at European level.

### **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?*

For films there is often the question of different language versions: a user will most of the time look for a version in his own language, dubbed or subtitled, hence the question of cross-border access is somewhat more complex than is the case for content which does not require localisation.

Moreover films, particularly in Europe, are financed by presale of exclusive distribution rights in exchange for the finance brought to the production budget; these exclusivities are limited in time (the release windows) and geographical and/or linguistic scope.

The film producer is the main one-stop point where rights may be cleared: cross-border access means that adequate funding must be available to allow the purchase of rights for several countries to be cleared in the negotiations with the producer: it is not really a legal barrier but a question of financial means allocated to the purpose of purchasing rights. This question is also addressed by the Commission in its document on released on 22 October 2009 'Creative content in a European digital single market : challenges for the future' under point 5.3 which mentions the support offered by the MEDIA programme for this purpose. Probably the best way forward to provide cross-border access is to focus on a smaller group of languages combined with best efforts to enlarge the linguistic choices offered at a later stage so as not to limit the offer by over-ambitious requirements to cover all European languages from the very beginning.

### **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)?*

Creating a level playing field between the US and Europe is a challenge for Europe; however it should not be forgotten that the legal situations on both sides of the Atlantic are different and that for cultural reasons – languages being not the smallest – Europe is not a single market place for the release of cinematographic works but the addition of several individual markets each with their own cultural and linguistic preferences as well as differing commercial and cultural environment. These factors present not only different challenges but also opportunities.

A cut-off date system would be incompatible with European and international copyright law.

There must be no confusion between orphan works whose rights holders may not be determined or locatable and out-of-print works whose rights holders are known and located. As regards films, works are temporarily unavailable on some media and or platforms, resulting from sequential release decisions: that reflects the commercial policy of the right holders and should not lead to the work being considered as 'out-of-print'.

For some works it is not possible to identify the date of creation which is the starting point of the protection: there may be no identification on the work allowing for the establishment of the date or the work may not be named. Hence the difficulty to create solid data bases. In addition, it is our view that data bases while being helpful work tools do not promote legal certainty, unless they are constantly updated to reflect possible changes in ownership of

works. Catalogues of copyright works and/or individual titles are being traded all the time in the commercial sector.

In June 2008, a Memorandum of Understanding was signed by the organisations of right holders and the institutions collecting works or in charge of legal deposit. We understand that the amount of public funding available for the digitisation of works is limited and we suggest that the institutions start by works which are considered rare or culturally important, in agreement with relevant right holders. On the implementation of the MoU we note that in many countries no steps have been taken to implement the MoU. We suggest that review of the implementation of the MoU in practice is crucial both at EU and national level.

### ***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 mater?*

Very often some editing is done during the process of digitisation: addition of music, commentaries in the document released to the public, etc, so new rights are created which must be cleared with the relevant right holders.

### ***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?*

The cost of digitisation is not a minor issue as we mentioned in our preliminary remarks. Policy makers should give consideration to this aspect and ensure that both small and large cultural institutions can participate in Europeana.

## **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?*

- a) We favour public-private partnerships. In some cases private funding will be applied to restoration of works under copyright. Some Member States may wish to contribute public money to make sure that the digitisation of identified works can be undertaken. Each public institution will have to contract with the rights holders and determine with them the policy of access of the works under copyright.
- b) For works which are in the public domain a distinction must be made between the ownership of the rights – which by definition no longer exist – and the ownership of the physical material on which the work is stored . The owner of the material may wish to digitise it and set the conditions for release or organise this as mentioned in the previous paragraph.

- c) For orphan works the diligent research set out in the MoU must be undertaken.

**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?*

In our view it is not for stakeholders to determine which funding instrument should be used for the allocation of public money. However, the MEDIA programme is already well-known and implemented in the audiovisual sector which suggests that it might be the most appropriate vehicle for this particular sector.

**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?*

We suggest that it would be constructive to have the contribution also of the right holder community concerned in order to promote a true private-public partnership.

**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)?*

- a) The need for transparency is a priority, where public money is involved. Technical partnerships and sponsorships have to be clearly identified and defined.
- b) The customer visiting Europeana must be fully aware of the partnerships of the institution as well as the role of any sponsorships

**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)?*

We suggest that a careful approach should be applied. Corporate sponsorship may have other goals than the promotion of cultural policy. The question of the moral rights of the authors of the works also needs to be considered: the presence of sponsorship may be an issue for some authors.

**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?*

We understand that the aim of Europeana is to facilitate the access to European cultural heritage. As we mentioned earlier there should be a distinction between facilitating access (the technical ability to locate and find the content) and to the actual viewing of the work

itself. Some public institutions offer free access for streaming but request payment for downloading. Different models can be envisaged in agreement with the right holders concerned.

In many instances, the European Commission has stressed the economic importance of the development of a strong legal offer online. While many online platforms exist in Europe, the revenues generated are still extremely moderate and remain under expectations to secure the necessary development of these services and the future economic sustainability of the European audiovisual industry. As a public initiative, Europeana could play a role in promoting legal consumption by European citizens of copyright works by creating links to legal online platforms and other means of enjoying legal access to film, e.g. the UK Film Council and film industry initiative “Find-Any-Film”.

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