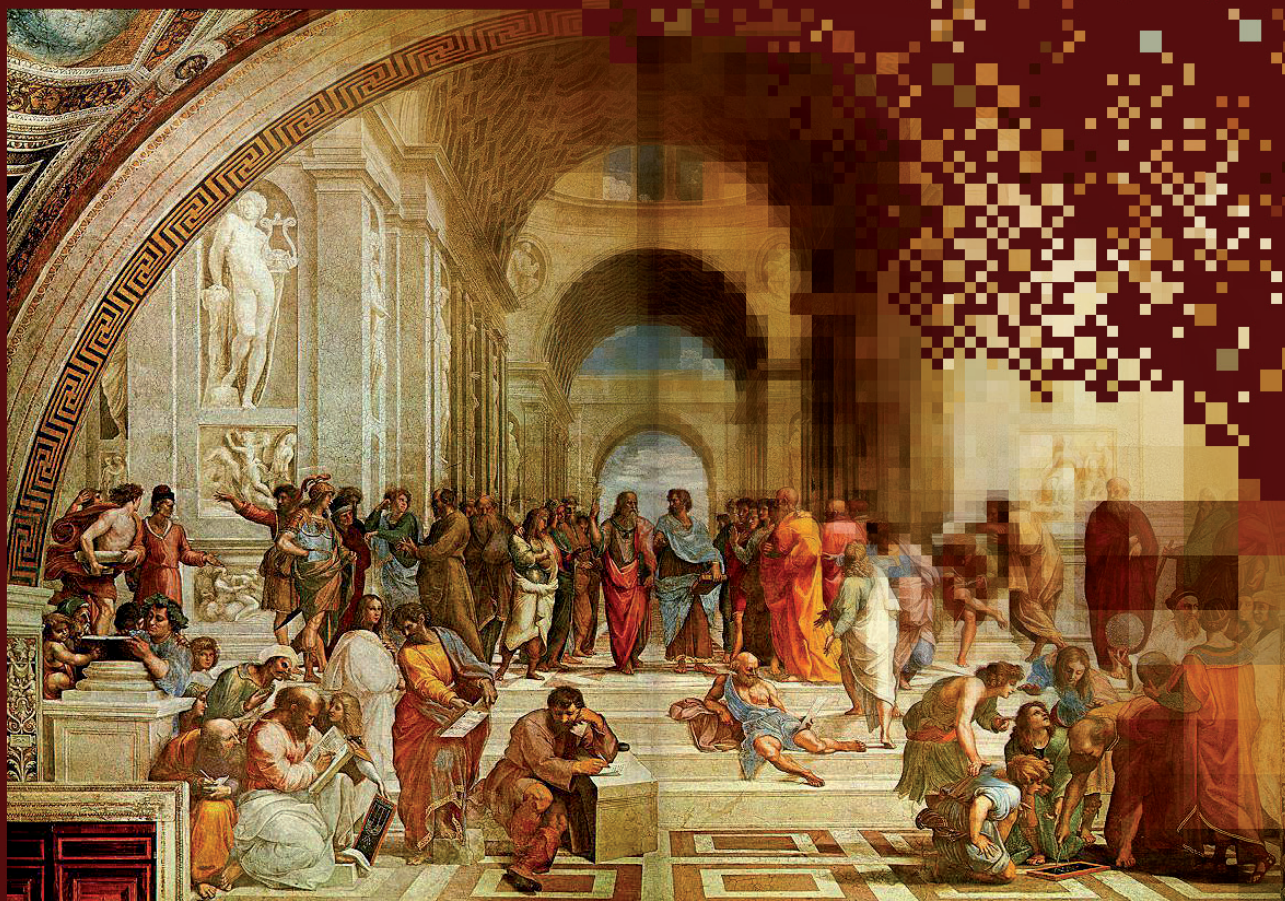


THE NEW RENAISSANCE



REPORT OF THE 'COMITÉ DES SAGES'

REFLECTION GROUP ON BRINGING EUROPE'S
CULTURAL HERITAGE ONLINE

Foreword

There is probably no greater ambition than to perpetuate our rich cultural heritage. It is therefore in full consciousness of our responsibility towards past and future generations and in deep humility that we have approached our mission.

As Jean Monnet said, if "*Europe were to be reconstructed, I would begin with culture rather than the economy*". The cultural heritage of the old continent nourished the education, the formation, the spirit of the generations which preceded us and we feel the responsibility to transmit this rich (indeed, one of the richest in the world) heritage to future generations and to make sure it will be preserved, enriched and shared.

With no exaggeration, we can state that what is at stake is a common good of humanity and not just of Europe.

We therefore looked for solutions which would allow:

- To protect this invaluable asset that is our culture, the heritage of which we are the guardians and which it is our duty to pass on.
- To make it accessible to the greatest number of people without distinction or barrier.
- To ensure that this inheritance can remain a living asset over time and that it is as widely shared as possible.
- To make sure that the creators and all those working to produce and broadcast their work can enjoy the fruits of their labours and that creativity can blossom without hindrance.
- Not to impose selection for protection and preservation. On what grounds would we have the right to lay down selection criteria for what should or should not deserve to be protected? We did not feel we had the right to set criteria for selection.
- To ensure that the financing meets the fundamental principle of accessibility for all (hence the necessity of requesting public funding), but also the reality which confronts us today (the acute lack of public resources, not to mention sovereign debts). And consequently the necessity of defining what could be the guidelines for public-private partnerships, and other forms of financing.
- To envisage the commercial, economic or growth opportunities which digitisation could produce for Europe and how it could generate jobs.

We have conducted our mission with the greatest respect for the works, the authors, the producers/publishers and the public. We have sought to promote the most open-minded approach towards all parties involved and, above all, the greatest ambition for our rich heritage.

We were proud to undertake this mission. Unfortunately we had to finish our report by a set date, and we are conscious that, while it does address some of the key issues mentioned in the

mandate given to us by Commissioners Kroes and Vassiliou, we could have worked much longer and dug deeper to cover some of the thorny challenges that the evolution of technology poses: authors' rights versus copyrights, user-generated content, downloads, etc.

We would like to express our thanks to Commissioners Kroes and Vassiliou and to the European Commission for their confidence, with the hope that this report, which reflects the view of the Comité, will help the European Union and Member States to further define policy in these fields.

We would also like to express our thanks to the experts of Cap Gemini who have worked *pro bono* for the Comité des Sages. They have assessed the technology used by Europeana to see whether it can be considered as "future-proof". Their point of view has helped the Comité to determine the most effective recommendations for the next steps for Europeana.

Finally we would like to warmly thank the following persons who helped us navigate through the complexity of the issues and provided us with invaluable support: Yvo Volman, Anna Athanasopoulou and Valérie Panis, working for the European Commission, Britta Woldering of the Deutsche Nationalbibliothek and Maxime Baffert working for Publicis Groupe.

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Brussels, 10 January 2011

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EXECUTIVE SUMMARY

For centuries, libraries, archives and museums from across Europe have been the custodians of our rich and diverse cultural heritage. They have preserved and provided access to the testimonies of knowledge, beauty and imagination, such as sculptures, paintings, music and literature. The new information technologies have created unbelievable opportunities to make this common heritage more accessible for all. Culture is following the digital path and "memory institutions" are adapting the way in which they communicate with their public.

Digitisation breathes new life into material from the past, and turns it into a formidable asset for the individual user and an important building block of the digital economy.

We are of the opinion that the public sector has the primary responsibility for making our cultural heritage accessible and preserving it for future generations. This responsibility for and control over Europe's heritage cannot be left to one or a few market players, although we strongly encourage the idea of bringing more private investments and companies into the digitisation arena through a fair and balanced partnership.

Digitising our cultural heritage is a gigantic task that requires large investments. According to a study, in total some €100bn will be necessary over time to bring our complete heritage online. This type of effort needs time and the investment will need to be carefully planned and co-ordinated in order to get the best results.

We think that the benefits are worth the effort. These benefits are in the first place related to the wider access to and democratisation of culture and knowledge, as well as the benefits for the educational system - both schools and universities. Other major benefits lie in the economic sphere and concern the development of new technologies and services for digitisation, for digital preservation and for interacting in innovative ways with the cultural material. The digitised material can in itself be a driver of innovation and be at the basis of new services in sectors such as tourism and learning.

We make our recommendations with these potential benefits in mind and with the aim to promote an environment that will help to:

- share our rich and diverse common heritage
- link the past with the present
- preserve this heritage for future generations
- protect the interests of European creators
- nurture creativity, including creative efforts by non-professionals
- contribute to education, and
- spur innovation and entrepreneurship.

The recommendations concern all the areas identified by the terms of reference for our work, and address situations where we think that a stimulus is necessary or barriers need to be removed.

1) Ensuring wide access to and use of digitised public domain material

- Cultural institutions should make **public domain material digitised with public funding as widely available as possible for access and re-use**. This cross-border access should be part of the funding conditions for digitisation across Europe. The use of intrusive watermarks or other means that limit the use of the material should be avoided.

- Where cultural institutions charge private companies for the re-use of the digitised public domain material, they should **comply with the rules of the European Directive on the re-use of public sector information**.
- The European Commission should consider ways and means to **eliminate the differences in the rights status of digitised material between the Member States** in a context where cross-border access and use is the norm. In principle the mere digitisation process should not generate any new rights.
- **Metadata** related to the digitised objects produced by the cultural institutions **should be widely and freely available for re-use**.

2) Stimulating the digitisation and online accessibility of in-copyright material

- A **European legal instrument for orphan works needs to be adopted as soon as possible**. The instrument should **comply with the 8-step-test** as defined by the Comité.
- **Future orphan works must be avoided**. Some form of registration should be considered as a precondition for a full exercise of rights. A discussion on adapting the Berne Convention on this point in order to make it fit for the digital age should be taken up in the context of WIPO and promoted by the European Commission.
- National governments and the European Commission should promote solutions for the **digitisation of and cross-border access to out of distribution works**.
- **Rights holders should be the first** to exploit out of distribution works.
- For cultural institutions **collective licensing solutions and a window of opportunity** should be backed by legislation, to digitise and bring out of distribution works online, if rights holders and commercial providers do not do so.
- Solutions for orphan works and out of distribution works must **cover all the different sectors**: audiovisual, text, visual arts, sound.

3) Reinforcing Europeana as *the* reference point for European culture online

- Europeana should be further developed to become **the** reference point for European cultural content online. This requires **a concentration of financial efforts and political capital** at European and at the national level for the development of the Europeana site and the underlying structures.
- Member States should ensure that **all public funding for digitisation is conditional on the subsequent free accessibility** of the digitised material **through Europeana**. They should also ensure that, **by 2016**, they have brought **all their public domain masterpieces into Europeana**.
- In the coming few years, **Europeana should add to its portal an application platform**, and main activities related to the digitisation and preservation of Europe's cultural heritage should be linked to the site. In the technical development of the site particular attention should be paid to multilingual aspects. Europeana should also explore the opportunities of cloud computing in the future.
- For the medium term, it should be considered to **give Europeana a key role in the preservation of Europe's heritage** and to turn it into a European deposit site for public

domain digitised cultural material and into a dark archive¹ for born digital cultural material.

- Europeana must be **actively and widely promoted** by the cultural institutions, by the European Commission and by the Member States.

4) Guaranteeing the sustainability of digitised resources

- **Preservation** is a key aspect in **digitisation efforts**. Digital preservation is also a **core problem for any born digital content**. The organisational, legal, technical, and financial dimensions of long term preservation of digitised and born digital material should be given due attention.
- The **preservation of digitised and born digital cultural material** should be the **responsibility of cultural institutions** - as it is now for non-digital material.
- To guarantee the preservation of the European digital cultural heritage, **a copy of digitised or born digital cultural material should be archived at Europeana**. For in-copyright works the deposit site would be a dark archive functioning as a safe harbour.
- To avoid duplication of effort by companies operating across borders and by the cultural institutions, **a system** could be envisaged by which any **material that now needs to be deposited in several countries would only be deposited once**. This system would include a workflow for passing on the copy to any institution that has a right to it under national deposit legislation.
- **Copyright and related legislation** have to **enable the cultural heritage institutions** responsible for preservation to **create archival copies and to make file conversions** for archival purposes.
- **Persistent identifiers** must be implemented in each digital object archived in cultural institutions. A reliable resolution service for **persistent identification** of digital objects must be developed and maintained on European level, preferably linked to Europeana.

5) Finding sustainable financing for digitisation and Europeana

- The **public sector has the primary responsibility to fund digitisation**, and **Member States will need to considerably step up their investments in digitisation**. The current financial crisis cannot be ignored, but equally cannot be a reason for not acting.
- The **involvement of private partners should be encouraged**. Private funding for digitisation is a **complement to the necessary public investments** and should not be seen as a substitute for public funding.
- **Digitisation** should in principle be funded at the **national or regional level, not at the European level**. However, the Member States should be strongly encouraged to use the funding possibilities from the European Structural Funds for digitisation activities. Also, some targeted digitisation efforts with a clear cross-border scope (e.g. cross-border collections) could be co-funded at European level.
- Given Europeana's character as a common good, **public funding should cover the largest part of Europeana's operational costs, also after 2013**. The **funding of digitisation and of Europeana should be seen as a package**, where **MS are broadly**

¹ A dark archive is an archive to which access is restricted

responsible for funding the digitisation of their cultural heritage and creating national aggregators and where the **funding of the Europeana portal should come predominantly from the budget of the European Union.**

- Member States should **promote ways to turn digitisation into new development opportunities for European firms**, for example through regional clusters of businesses in partnership with cultural institutions, knowledge partnerships between cultural institutions and universities, or through strategic partnerships at European or international level in the area of new technologies and applications in relation to cultural heritage.

6) Complementing public funding through public private partnerships for digitisation

- In order to protect the interests of public institutions entering into a partnership with a private partner a **set of minimum conditions** should be respected:
 - The **contents of the agreement** between a public cultural institution and a private partner should be **made public**.
 - The **digitised public domain material should be free of charge for the general public** and **available in all EU Member States**.
 - The private partner should provide cultural institutions with **digitised files of the same quality** as the ones it uses itself.
- The **maximum time of preferential use** of material digitised in public-private partnerships **must not exceed 7 years**. This period is considered adequate to generate, on one hand, incentives for private investment in mass-digitisation of cultural assets, and, on the other, to allow sufficient control of the public institutions over their digitised material.
- Policy makers at European and national level should **create favourable conditions** for the involvement of European players. In particular:
 - **Encourage digitisation in new areas** that have not received much attention thus far, such as audiovisual material, newspapers, periodicals or museum objects.
 - In the medium term, subject to an improvement of the financial situation in the Member States, **create incentives for the investment of private funds through taxation**.
 - **Encourage the use of public funds matching private funds** invested in digitisation. Public funds may be given to cultural institutions which have secured a partnership for the digitisation of their collection with a private entity, on a matching basis with the private funds invested.
 - **Encourage Europeana** and its contributing institutions to **expand their digital contents by building partnerships with European businesses**.

Can Europe afford to be inactive and wait, or leave it to one or more private players to digitise our common cultural heritage? Our answer is a resounding 'no'. Member States, Europe's cultural institutions, the European Commission, and other stakeholders will all have to take up their responsibilities in order to ensure that Europe's citizens and economy fully benefit from the potential of bringing Europe's cultural heritage online.

Our goal is to ensure that Europe experiences a digital Renaissance instead of entering into a digital Dark Age.

CHAPTER ONE: THE MISSION

- 1.1. In April 2010, Neelie Kroes, Vice President of the European Commission for the Digital Agenda, and Androulla Vassiliou, European Commissioner for Education, Culture, Multilingualism and Youth, appointed the Comité des Sages (Reflection Group) on bringing Europe's cultural heritage online. The creation of the Comité followed a suggestion made by the French Minister of Culture and Communication during the debate on digitisation policies in the Education, Youth and Culture Council meeting of 27 November 2009.
- 1.2. This initiative was prompted by the need to reconcile the traditional mandate of cultural institutions, which give access to our common heritage and preserve it for future generations, with the opportunities and challenges emerging in the digital era. Managing the "digital shift" requires a strategic approach that will ultimately define how access and use of digitised cultural resources can be facilitated in the European Union, and, eventually, how European creativity will be preserved and promoted for future generations.

These considerations lie at the core of the mandate guiding the work of the Comité.
- 1.3. The Comité was invited to provide a set of recommendations for the digitisation, online accessibility and preservation of Europe's cultural heritage in the digital age, looking in particular at the issue of public-private partnerships for digitisation in Europe.
- 1.4. Its mandate covered in particular the following areas:
 - the overall financial cost and level of public funding available to European cultural institutions for digitising their collections in Europe;
 - the best models to maximise access and use of digitised material for the economy and society at large, in particular the fundamental conditions that should be respected in public-private partnerships for digitisation of works that are in the public domain;
 - the role and responsibilities of private and public organisations for digitising orphan works as well as material that is in-copyright but no longer commercially available, with a view to tackling the risk of a '20th century black hole' in *Europeana* and on the Internet in general;
 - promoting the widest access to the digitised material across borders;
 - ensuring sustainability of the digitised resources for long term preservation purposes.
- 1.5. The members of the Comité were asked to conduct their mission under their sole responsibility and to report back to the Commissioners within 8 months after their first meeting.

CHAPTER TWO: THE VISION

- 2.1 If one word should encompass and summarise the vision of the Comité des Sages, it would be « access ». When it comes to our common cultural heritage, there is no bigger challenge, there is no more urgent question than to secure the access of current and future generations to this heritage. Access to the largest population, both European and non-European. And access to one of the richest cultural heritages in the world, a universal common good.
- 2.2 Giving access to the European works and productions must become the yardstick of all initiatives taken in this field. And the many questions that have arisen with digitisation should be analysed through this prism and solved with the objective of making our heritage increasingly accessible to all. For instance, the proposals of the Comité regarding Europeana must be understood as a way to increase access to digitised goods, as Europeana is today one of the common tools of the European Union to serve this goal.
- 2.3 The principle that everything must be done to guarantee access to our cultural heritage has led to three other principles, which have guided the Comité in its work.
- 2.3.1 First, our cultural heritage is not only the legacy of the past, but is a body of knowledge, imagination and creativity which is constantly evolving and growing every day. Today's wealth of cultural expressions and knowledge will be our common cultural heritage tomorrow. Therefore, although the recommendations focus on digitisation and the cultural heritage from the past, they always include what is added in the present because the past and the present must be available to future generations. One of our core missions is to ensure full access to cultural expressions and knowledge of the past, the present and the future.
- 2.3.2 Second, digitisation is more than a technical option, it is a moral obligation. In a time when more and more cultural goods are consumed online, when screens and digital devices are becoming ubiquitous, it is crucial to bring culture online (and, in fact, a large part of it is already there). If we don't pursue this task, we run the risk of progressively eroding and losing what has been the foundation of European countries and civilization in the last centuries. It must be clearly understood that if access is the final objective, a tall order, it can only be achieved through preservation of the work.
- 2.3.3 Third, the Comité believes that the main responsibilities for digitising and preserving our cultural heritage should be assumed by the public sector. In fact, it is the task of public authorities and cultural institutions to make sure that our heritage is properly digitised and then preserved in order to guarantee access to the largest possible audience today and tomorrow. This is too important a responsibility to lie solely in the hands of private interests, which do not necessarily have the same long-term approach and public interest as governments. As culture is Europe's most important common good, governments and their cultural institutions have the duty to be at the forefront of the digitisation effort.
- 2.4 Yet, two caveats should immediately be added to these principles.
- 2.4.1 First, even if the Comité des Sages is firmly convinced that digitisation is mainly a task for public authorities, this does not mean that the private sector should not be involved. Going back to our

main objective to enlarge access to our cultural heritage, partnering with the private sector can be a good option to speed up the digitisation of works and collections from the public domain, at a time when public funding is scarce. Moreover, digitisation can also be taken as an opportunity to nurture and develop a whole new range of private activities and initiatives, through the new technologies and processes that have been (and will be) developed, and contribute to job creation in Europe.

- 2.4.2 Second, the fact that cultural goods should be accessible on line does not mean they should necessarily be available for free. Digitisation should not be a pretext to downgrade the protection that has been granted to authors and creators in most European countries. In fact, digitisation and protection of the creators' rights are more intertwined than most people think: digitisation protects the artists from the past, while authors' rights and copyright protect the artists of today and tomorrow. Hence, when works are still in copyright, it is obvious that authors and creators are compensated for their talent and their effort when their work is brought online. Even in the cases of orphan works or out-of-distribution works, the "imperative of access" does not mean that all protection and compensation for the creators should be forgone. On the contrary, digitisation represents a new opportunity to give a new life to these works.
- 2.5 The Comité worked on the understanding that culture is not only limited to the traditional field of arts and letters, but also encompasses science and the entire body of knowledge and experience which our societies have been consolidating over the centuries. This is our heritage and our culture which we need to preserve and make accessible to all in the digital era.
- 2.6 This is the vision, the framework that the Comité has used to answer the questions raised in its terms of reference. The Comité believes that the implementation of these principles and of the recommendations of the report can help European countries to transform a challenge – how to avoid the disappearance of our heritage – into an opportunity for cultural development, artistic creation and economic growth.

CHAPTER THREE: THE PROCESS

- 3.1 The work of the Comité started after its official establishment on 23 April 2010 and was structured around a series of 8 working meetings,² which were complemented by many interactions with stakeholders. In order to fulfill its mission, the Comité has organised an inclusive process, widely consulting the stakeholders and the general public.
- 3.2 Between 18 August and 30 September 2010 the Comité held a public consultation through the website of the European Commission, covering all the aspects of its mandate. The consultation yielded 1258 replies from 42 different countries. More than half of the replies came from private citizens, which shows the broad interest in the topic. 17% of the replies came from private companies or associations of companies and 14% from cultural institutions. An overview of the replies to the consultation is annexed to this report.
- 3.3 A public hearing took place in Brussels on 28 October and was attended by more than 100 stakeholders. 34 organisations submitted position papers in the context of the hearing, while 23 of them intervened during the session and exchanged views with the members of the Comité.³
- 3.4 On 18 November 2010, the members of the Comité had a working lunch with the EU Ministers responsible for culture and audiovisual matters in the context of the Education, Youth and Culture Council. The same day the Comité had an exchange of views with the Culture and Education Committee of the European Parliament.
- 3.5 Furthermore, the members of the Comité had a series of formal and informal meetings with stakeholders either collectively or individually (authors and creators, publishers, technology firms, public authorities).
- 3.6 The Comité commissioned two external assignments to underpin its work. The first assignment consisted of a study on the cost of digitising Europe's cultural collections.⁴ The second assignment was a technical audit of the Europeana site.⁵ In the course of its discussions the Comité has also drawn upon earlier analytical work conducted at EU level and in the different Member States, upon the final report of the High Level Group on Digital Libraries of December 2009, as well as the reports submitted to the Commission by all the Member States on the digitisation, online availability and preservation of their cultural heritage.
- 3.7 Furthermore, the work of the Comité has been informed by a number of recent political documents such as the resolution of the European Parliament on 'Europeana, the next steps' (Truepel report) adopted on 5 May 2010, the Council Conclusions on 'Europeana, next steps' adopted on 10 May 2010, and the Commission's Communications on "Europeana next steps" (28-8-2009), "Copyright in the knowledge economy" (19-10- 2009), and "A Digital Agenda for Europe" (29-5-2010).

² The meetings took place at the following dates and locations: 10 May Brussels, 17 June Madrid, 23 July Frankfurt, 31 August Paris, 24 September Paris, 18 November Brussels, 25 November Paris, 14 December Brussels.

³ The position papers, a video of the hearing and summary minutes can be found at the following web-page: http://ec.europa.eu/information_society/activities/digital_libraries/comite_des_sages/

⁴ The study results are annexed to this report

⁵ The audit results are annexed to this report

CHAPTER FOUR: ACCESS AND USE MODELS FOR DIGITISED PUBLIC DOMAIN MATERIAL

4.1 The issue

- 4.1.1 Cultural institutions across Europe have started digitising their collections of books, newspapers, maps, sound and video material, manuscripts, photographs and museum objects and making them available online. Large parts of the digitised works are in the public domain⁶ - that is no longer covered by intellectual property rights. They can therefore in principle be accessed and used for free by everyone.
- 4.1.2 The present chapter deals with material digitised with public money, coming from the budgets of the cultural institutions or from digitisation projects funded at national, regional or local level. The case of public private partnerships for digitisation is treated in chapter 8 of this report.
- 4.1.3 The cultural sector has adopted a wide range of practices in giving access to or allowing the use of public domain material digitised with public money. Many of the institutions make the material freely available online, but some charge for downloading and sometimes for accessing digitised items.

The following examples are drawn from the practices of cultural institutions contributing content to Europeana.

- *Several institutions clearly indicate that material is in the public domain. They allow free access and download by non-commercial users. Some of them charge for the commercial re-use of the material. When users download material, they are asked to confirm that they will use the material only for non-commercial purposes.*
- *Some institutions charge for accessing their collections on a subscription basis, including for accessing the public domain material. One institution charges for viewing the historical material on the basis of a subscription for a few hours or for a longer period.*
- *There are also examples where the user is allowed to see the full content on the screen, but a fee is charged for downloads of the public domain material.*
- *Several contributing institutions add intrusive watermarks to their digitised public domain objects, to avoid unauthorised re-use. This practice is for example followed for old manuscripts and incunabula and for images. The problem is that this type of watermarks makes the material unusable, even for schoolwork.*
- *Some of the cultural institutions, in particular museums, only make images available in a low resolution (normally good enough for private use, e.g. schoolwork). They charge for the access to and use of the same images in a higher resolution.*

- 4.1.4 In practice, the limitations on the use of the material are determined by the use conditions of the site where the material can be found. In other cases, the material is simply stored behind a pay-wall.
- 4.1.5 Many cultural institutions from across Europe claim rights on digitised material that is in the public domain. In other words, they assert new rights that would have been created by the digitisation of the material. The basis for such claims is, however, not always solid, and the situation may vary

⁶ In the EU copyright lasts for 70 years after the death of the author. After this period, works are in the public domain

from one Member State to the other, depending on the copyright legislation of the country concerned. This can lead to a situation where digitised objects are protected in one country and not in another, which is particularly problematic in a cross-border context.

Metadata

- 4.1.6 Cultural institutions add considerable amounts of information to digitised objects (metadata), describing for example the author, the provenance and age of the work, giving contextual information, as well as technical information on the formats used and characteristics allowing search engines to locate the object. This metadata is essential to provide the user with a useful background to the work, and also to allow search-engines such as Europeana to locate the digitised objects relevant in the context of a specific search.
- 4.1.7 In some cases cultural institutions charge for or impose other conditions for the re-use of this metadata and they tend to be particularly wary of the commercial use of the data. This commercial use is broadly defined, and can for example include the indexing by commercial search engines. The conditions imposed on the use of the metadata can in turn pose problems for services such as Europeana, which want to open up the metadata they harvest in order to get the broadest possible exposure.

4.2 General considerations

- 4.2.1 The Comité feels that, in order to tackle the issue of access to and use of digitised public domain material, its work should draw in the first place upon basic principles of access to culture. People have the right to access culture and knowledge, and wide access and use also serve the public interest to preserve cultural diversity.
- 4.2.2 At the same time one should take into account the reality in which cultural institutions operate (*'principe de réalité'*), including financial constraints, which are likely to become more stringent in the coming years.
- 4.2.3 Differences in the rights status of digitised material between the Member States should be eliminated in a context where cross-border access and use is the norm. In principle the mere digitisation process should not generate any new rights.

4.3 Access to the digitised material

- 4.3.1 The Comité feels strongly that public domain material digitised with public money should be freely accessible for all. This should be part of the funding conditions for the digitisation of public domain material across Europe.
- 4.3.2 This is a matter of principle and also rooted in practical considerations. Google has set a standard of free access for the end-user to major collections of digitised public domain books through Google Books. Models in which cultural institutions charge the end-user for accessing the public domain resources they have digitised are therefore unlikely to be sustainable, since non competitive in market terms.
- 4.3.3 If cultural organisations have to generate part of their operating costs by monetising their digitised public domain content, they should consider alternative revenue streams – such as sponsoring,

partnerships, advertising and/or services related to the use of cultural material - rather than charging for online access to the material.

- 4.3.4 The Comité considered the question of whether restrictive practices by cultural institutions should have consequences, for example the exclusion of the material from Europeana. The Comité is of the opinion that material from cultural organisations which charge for accessing the public domain material should not be excluded from the site, since Europeana has the vocation of giving access to the widest possible range of digitised cultural material. There should, however, be a possibility for the user to filter searches in Europeana in order to obtain only material that can be accessed for free.
- 4.3.5 At the same time cultural institutions should be encouraged to comply with the Europeana public domain charter and make their digitised public domain content available for free.

4.4 Re-use of the digitised material

- 4.4.1 Public domain material digitised with public money should be freely available for non-commercial re-use by citizens, schools, universities, non-governmental and other organisations.
- 4.4.2 The Comité also recommends that cultural institutions make their digitised material available as widely as possible for commercial entities to build upon. This will stimulate the use of the material for new information products and services.
- 4.4.3 Cultural institutions can, however, ask private companies to pay for the commercial re-use of the material, in order to recoup the digitisation costs and finance further digitisation. This could be done on the basis of a one-off payment or through revenue-sharing models. Specific partnerships between cultural institutions and smaller companies or universities could be considered, in order to stimulate the re-use of the digitised material for innovative information services.
- 4.4.4 This should not lead to exclusive arrangements or market discrimination. In general, cultural institutions allowing the re-use of their digitised material should comply with the rules of the EU Directive on the re-use of public sector information. This Directive regulates the behaviour of public sector bodies when they influence the information market by selling information or making it available for re-use. The Directive builds on two of the pillars of the internal market, transparency and fair competition. Currently, cultural institutions are excluded from the scope of the Directive.
- 4.4.5 The Comité considers the use of intrusive watermarks on digitised objects to be a particularly bad practice, and cultural institutions using this type of watermark should be asked to reconsider their policy. This does not apply to smaller watermarks at the bottom of a digital object indicating the origin of the material, which do not present any problem.

4.5 Use of metadata

- 4.5.1 The Comité is of the opinion that metadata related to the digitised objects produced by the cultural institutions should be widely and freely available for re-use. If conditions are imposed (e.g. a reference to the producer of the metadata), these should be standardised across the board.

Key Recommendations

- 1) Cultural institutions should make public domain material digitised with public funding as widely available as possible for access and re-use. This should be part of the funding conditions for digitisation across Europe. The use of intrusive watermarks or other means that limit the use of the material should be avoided.
- 2) Where cultural institutions charge private companies for the re-use of the digitised public domain material, they should comply with the rules of Directive 2003/98/EC on the re-use of public sector information.
- 3) The European Commission should consider ways and means to eliminate the differences in the rights status of digitised material between the Member States in a context where cross-border access and use is the norm. In principle the mere digitisation process should not generate any new rights.
- 4) Metadata related to the digitised objects produced by the cultural institutions should be widely and freely available for re-use.

CHAPTER FIVE: DIGITISATION AND ONLINE ACCESSIBILITY OF IN-COPYRIGHT MATERIAL

5.1 The issue

- 5.1.1 Copyright covers all forms of expression – ranging from personal letters to commercially produced material such as films, music and books as well as radio and television broadcasts produced by private companies and public sector broadcasters. All of these types of material are held by cultural institutions in Europe.
- 5.1.2 The ease with which today's users can access big search engines and platforms and find an overwhelming offer of information, books, newspapers, websites, archival material, pictures, music or movies naturally leads to expectations towards cultural institutions. Accustomed to the comfort of search engines and new services, they expect to find everything on the web. "What is not on the web, does not exist" is the core of their belief and behaviour. What is on the shelves, in the archives, in the exhibition halls of cultural institutions will soon fall into oblivion, if it is not digitised and offered alongside the born digital works and all the other internet services.
- 5.1.3 Therefore, cultural institutions have been trying to digitise as much of their holdings as possible. For financial and practical reasons, they started by digitising their out-of-copyright holdings. Obviously, before digitising in-copyright works and offering them on the internet, rights have to be cleared. This is time consuming and extremely costly. As an indication, at the public hearing organised by the Comité, the German broadcaster ZDF estimated the number of contracts related to its archives at 3 million - something that makes individual renegotiation practically impossible - and mentioned that the BBC has calculated that clearing rights for the whole BBC archive would cost 72 million pounds for staff costs alone.⁷
- 5.1.4 Today's publishers, music, film and TV producers have been creating attractive offers for their born digital material. What is missing, though, is the in-copyright-material, that is not on offer by the respective distributors and right owners. There is a „*black hole of the 20th century*“, in which the majority of the traditional works of the last century falls, because they are not digital, they are out of distribution and quite often they are orphan works.
- 5.1.5 Orphan works, works where the rights holder cannot be identified or located, form a barrier to mass digitisation projects. Orphan works exist in all domains, text, music, film etc and increase in number the further back in time one goes, or the more complex the layers of rights become. The Association des Cinémathèques Européennes estimates that 21% of films held in audiovisual archives are orphaned, with 60% of these being over 60 years old. The British Library estimates that 40% of its in-copyright collections are orphan. The 'In from the Cold' report estimated approximately 90% of the photographic record in UK cultural institutions as orphaned.
- 5.1.6 There are quite a number of studies from the cultural sector highlighting the issues of rights clearance focussing specifically on the issue of orphan works in the field of books, audio recordings and audiovisual material. As the High Level Expert Group on Digital Libraries

⁷ http://ec.europa.eu/information_society/activities/digital_libraries/comite_des_sages/

recommended in 2008 there is a need to develop legal solutions to adequately address this issue in order to create legal as well as reputational certainty for the digitising partners.

- 5.1.7 Europeana has been founded to be the platform for Europe's cultural heritage. But a European digital library, archive and museum which lacks the works of the 20th century is useless because it is misleading. Something has to be done to close this dangerous knowledge gap.

5.2 General considerations

- 5.2.1 Given the diversity of collections in cultural institutions, digitisation raises many complex problems. However in order to encourage the digitisation of our cultural heritage, and build upon creativity for the benefit of future generations, all the varying issues raised by these differing kinds of works need to be addressed.

- 5.2.2 In order to comply with the norms that exist in intellectual property laws, digitisation requires the clearance of each and every copyright and related right. Therefore mechanisms have to be developed that recognise the rights and interests of the rights holders, but at the same time facilitate the digitisation that in turn will lead to greater innovation and creativity. Given the cost of rights clearance, it is in the public as well as private interest of European society to streamline rights clearance in a manner that is fair and balanced.

To this end, any solution must legally as well as morally and ethically address the following:

- 5.2.2.1 The interest of the copyright holder who has invested time and money in creating copyright works and seeks to be remunerated for his or her investment.
- 5.2.2.2 The interests of the rights holder who never created a work with commercial intent in mind, or has no further interest in commercialising his or her work, and simply wishes to share it with society.
- 5.2.2.3 The moral rights of the creator who requires acknowledgement, and wishes his or her work to be used in line with the intent and purpose for which it was created.
- 5.2.2.4 Cultural, political and religious sensitivities that are reflected in creative works produced by individuals or communities but lie outside of legally codified intellectual property laws.
- 5.2.3 The Comité did not try to cover the whole copyright debate, but decided to focus on the elements from its mandate: bringing orphan works and out of distribution works online. The recommendations presented here cover only these two issues.
- 5.2.4 For the orphan works, the Comité went beyond the terms of reference by also taking into account the need to avoid future orphan works and not just recommend a solution for existing orphan works.

5.3 Orphan works

- 5.3.1 There has been a lot of debate in the European Parliament and beyond about the best model to handle orphan works across the European Union. In addition, there has been a lot of debate in the Member States. Rather than promoting a specific model (exception to copyright, mutual recognition, European collective licensing), the Comité defined the conditions that need to be

materially covered by a European instrument on orphan works and its implementation in the Member States.

5.3.2 The Comité believes that:

5.3.2.1 A **European legal instrument needs to be adopted as soon as possible** to tackle the issue of orphan works. It welcomes the fact that such an instrument is in preparation by the Commission and has been announced in the Digital Agenda.

5.3.2.2 In order to be effective, the legal instrument needs to fulfil all conditions of the following "8-step-test". Under this "8-step-test" the instrument should simultaneously:

- i) ensure that a **solution for dealing with orphan works is in place in all the Member States**. Where no national instrument is in place, national legislation needs to be implemented.
- ii) cover **all the different sectors**: audiovisual, text, visual arts, sound.
- iii) ensure **cross-border recognition of orphan works**: An orphan work recognised as such in one Member State on the basis of a search in the country of origin, should be recognised as orphan across the EU. The Member State of origin is to be defined based on today's geography, not on the basis of the historical borders at the time of publication. If there is no obvious country of origin, a search has to be conducted until a satisfactory solution is found.
- iv) ensure the **cross-border effect of this recognition**: an orphan work that is made accessible online in one Member State should also be made accessible online in all Member States or even globally.
- v) be **compatible with the implementation of PPPs for digitisation**.
- vi) foresee, in the case of commercial use, a **remuneration for the rights holders** if after some time they are found or make themselves known. This remuneration can be kept in an escrow account. Also in the case of non-commercial use by cultural institutions the payment of an appropriate fee can be expected. For example, a one-off payment could be envisaged if the work is licensed under an extended collective license and the collecting society has to indemnify the rights holders if they are found or make themselves known.
- vii) ensure **reasonable transaction costs for dealing with orphan works**, commensurate with the commercial value of the work. This implies for example that a search for rights holders of older works can be less intense than for more recent works.
- viii) be supported by rights information databases, such as the Arrow system currently under construction. These databases and a European list of established orphan works should be linked to Europeana as a key reference point for Europe's cultural heritage.

5.3.3 **Preventing orphan works in the future** is a main concern. In order to avoid orphan works in the future in an environment where creative production is exploding online (e.g. user generated

content) without a clear indication of how to contact the creator, some form of registration should be considered as a precondition for a full exercise of rights.

5.3.4 The Comité realises that this would require a change in the Berne Convention and related instruments. Its members consider that a discussion on “refreshing” the Convention should be taken up in the World Intellectual Property Organisation, and promoted by the European Commission.

5.3.5 Solutions based on registration also need to take into account privacy concerns of the creators, and need to be accompanied by awareness-raising amongst creators about the way in which they handle their rights.

5.4 Out of distribution works

5.4.1 The Comité believes that out of distribution works **need to be digitised** as part of Europe’s cultural digital heritage.

5.4.2 The Comité favours solutions that provide the **widest possible online access** to out of distribution works for the users.

5.4.3 The solution must **cover all the different sectors**: audiovisual, text, visual arts, sound.

5.4.4 **Rights holders should be the first** to exploit out of distribution works.

5.4.5 The Comité distinguished three different cases:

- i) the material is **digitised for preservation purposes** by the cultural institutions and is available for consultation **on site**;
- ii) the material is **digitised for preservation purposes** by the cultural institutions and made **widely accessible online**;
- iii) the material is **digitised and commercially exploited by the rights holders**. In this case a digital copy should be deposited with the cultural institution that is responsible for preservation.

5.4.6 On funding the digitisation of out of distribution works the Comité distinguished between

- i) **investments in digitisation** for commercial exploitation of out of distribution works. These should be made primarily **by the rights holders**. There should be no direct public funding for digitisation in view of commercial exploitation. Incentives like tax breaks for parties with commercial interest could be envisaged.
- ii) investments in digitisation from the public sector. If the rights holders do not digitise the out of distribution works, **digitisation should be paid for with public money**. The digitised material should become freely available online, against an adequate remuneration for the rights holders.

5.4.7 Implementation issues:

- i) In many cases the **rights for digitisation and online distribution will have reverted to or lie with the creators**. Therefore the distributors must not automatically be seen as representing the rights holders. In some cases it can be the creators' agents who must be addressed.
- ii) in order to arrive at reasonable transaction costs for the digitisation of out of distribution works, it may be necessary to collectively **manage the rights to older out of distribution works**. This type of scheme should be backed by legislation. A date should be fixed to determine which works would fall under the collective management, which can be different from one sector to another.
- iii) an **adequate remuneration** for the rights holders must be provided for and rights holders must always have **the possibility to opt out** from such collective schemes.
- iv) in case rights holders do not exploit their material directly, collectively, or in collaboration with a private partner, cultural institutions should have **a window of opportunity to digitise the material and make it available**. This should be backed by legislation, e.g. those facilitating collective licensing solutions.
- v) whenever out of commercial distribution material is licensed to cultural institutions it should be **freely accessible online**. The rationale is that the public sector should not be seen as a competitor to the commercial distribution of in copyright works.
- vi) whenever there is a choice between a solution where the material is licensed to libraries and **freely accessible online**, and a solution where the material is available against payment behind a pay-wall, the first solution is to be preferred.
- vii) **licences** between cultural institutions and rights holders for bringing out of distribution works online should cover **cross-border access, unless the extra cost for ensuring pan-EU access is disproportional**.
- viii) the solutions should be compatible with the **implementation of PPPs for digitisation**.
- ix) solutions should be supported by **rights information databases** such as the ARROW system. These databases and a European list of licensed out of distribution works should also be linked to Europeana.
- x) **solutions** must also be foreseen for **born digital material that is out of distribution**.

Key recommendations

- 1) A European legal instrument for orphan works needs to be adopted as soon as possible and comply with the 8-step-test defined above.
- 2) Future orphan works must be avoided. Some form of registration should be considered as a precondition for a full exercise of rights. A discussion on adapting the Berne Convention on

this point in order to make it fit for the digital age should be taken up in the context of WIPO and promoted by the European Commission.

- 3) National governments and the European Commission should promote solutions for the digitisation of and cross-border access to out of distribution works, taking into account the principles expressed above.
- 4) Rights holders should be the first to exploit out of distribution works.
- 5) For cultural institutions, collective licensing solutions and a window of opportunity should be backed by legislation to digitise and bring out of distribution works online, if rights holders and commercial providers do not do so.
- 6) Solutions for orphan works and out of distribution works must cover all the different sectors: audiovisual, text, visual arts, sound.

CHAPTER SIX: EUROPEANA

6.1 The issue

- 6.1.1 Europeana, Europe's digital library, archive and museum, is probably the most ambitious cultural project ever undertaken at a European scale, bringing together cultural institutions from different sectors and from all the Member States. Europeana was launched as a prototype in 2008, giving access to some 2 million digitised objects, including books, maps, newspapers, journals, photographs, sound and video. In the span of less than two years, its collections have grown to more than 15 million digitised objects, thereby surpassing the initial target of 10 million digitised objects by the end of 2010. Currently, some 1500 cultural institutions contribute works to the site.
- 6.1.2 While Europeana receives strong support by the European institutions and individual Member States, it is fair to mention that contributions per Member State are still uneven. At the launch of the site, more than 50% of the objects came from French collections. Now France is still the largest contributor with 18% of the digitised objects, followed by Germany with 17% of the digitised objects. From some Member States there are only very few digitised objects accessible through the site and for many the key works defining their cultural and intellectual heritage are missing.
- 6.1.3 Europeana has had an important effect on discussions in the Member States on bringing cultural heritage online. The creation of the German Digital Library to be launched at the end of 2011 is for example a direct consequence of the development of Europeana. The site has also accelerated discussions between rights holders and cultural institutions in different countries on the best ways to bring in-copyright works online.
- 6.1.4 The Europeana site works as a portal and aggregator that gives access to the content stored decentrally in the cultural institutions. Currently it does not host any content. The Europeana platform is based on open source software. In order to improve its services, Europeana is collaborating with a range of innovative European partners.
- 6.1.6 In the coming years, Europeana intends to develop its activities on the following priorities: 1) aggregating more content, 2) supporting the cultural heritage sector through knowledge transfer, innovation and advocacy, 3) distributing cultural heritage to the users wherever they are, whenever they want it, 4) helping users engage with their cultural heritage in new ways.
- 6.1.5 The knowledge about Europeana amongst European citizens, teachers and other potential users is still very limited.

6.2 General considerations

- 6.2.1 The Comité underlines the central place of Europeana in the strategy to bring Europe's cultural heritage online and to make cultural material available for work, education or leisure. It stresses the need to turn Europeana into **the** European cultural reference point online. This requires a concentration of financial efforts and political capital at European and at the national level for the development of the site. No parallel processes, projects or infrastructures should be funded at European level.

- 6.2.2 The Comité confirms the orientation of Europeana as a public project giving access to a wide range of trusted content from different types of cultural institutions. The site was not conceived as a competitor for digitisation projects in the private sector. Nevertheless, Europeana's development should be evaluated against the background of the development of a private offer based on digitised material from cultural institutions across the world.
- 6.2.3 In a short time, Europeana has achieved excellent results. These results should be the basis for stepping up the ambition level for Europeana and transforming it into an endeavour on an industrial scale. In this context the Comité believes that Europeana will need to develop progressively and offer the services of an application platform rather than simply remaining a portal.
- 6.2.4 Furthermore, all main activities related to the digitisation and preservation of Europe's cultural heritage should be linked to Europeana. An example is the ARROW database currently under development for orphan works which should be incorporated into the Europeana service. Europeana should also consider providing services to Member States that do not have all the tools in place.

6.3 Enhancing the Europeana service

- 6.3.1 The Comité commissioned an audit into the technical setup of Europeana, asking in particular whether the technologies underpinning the site and the technological development plan are adequate and future proof. The auditors concluded that the Europeana project is based on a robust technology foundation that includes open standards, architecture, and security. They suggested that Europeana looks into the possibilities of cloud computing and improves software measurement metrics, as well as the documentation of its software architecture.
- 6.3.2 The Comité feels that multilingualism is an essential area for development. Currently the Europeana interface is available in all the languages of the Member States. Cross-language search and automatic translation features should be incorporated in the medium term. It is also important to make translations of key works in different languages available. Furthermore there should be a clear link between works that go back to the same original, for example translations, adaptations or different editions of the same work.
- 6.3.3 European research and innovation projects in the area of research, multilingualism, digitisation technologies and social media should be encouraged to cluster around Europeana and contribute to the development of the site. In this way Europeana can become an important test bed for innovation and new ideas.
- 6.3.4 The Comité calls for a concerted effort by cultural institutions from all Member States to bring more digitised objects into Europeana. At the same time, the service should be enriched with other content such as bibliographical data, tables of content and abstracts. In this case, it should be possible for the users to differentiate in the search results. They should for example have the possibility to get only results for digitised works that are fully accessible.
- 6.3.5 The Comité considers that it is equally important to make in-copyright content offered by private providers against payment searchable through Europeana. This offer would complement the material freely available. Partnerships between Europeana and private companies active in online distribution (e.g. publishers) should be encouraged. Also here, the users should have the possibility

to filter the results for specific searches, if they prefer to find only the material that is fully and freely accessible.

6.4 The Europeana infrastructure

- 6.4.1 At the moment, Europeana does not store any material, but gives access to material stored de-centrally. It should be considered to give Europeana its own repository and archive, where it can host public domain digitised material (e.g. of institutions that have stopped their online activity). This has considerable cost implications, since storing information is expensive.
- 6.4.2 In the medium term, the Member States and the European Commission should consider turning Europeana into **a deposit site** for Europe's digital heritage, keeping a digital copy of all digitised or born digital material produced in the European Union. For in-copyright works Europeana could be a dark archive functioning as a safe harbour.
- 6.4.3 In the short term, the repositories infrastructure funded through the EU Capacities Programme (e.g. the Driver project) could be mobilised in order to ensure that there are default repositories in each Member State feeding into Europeana.

6.5 Recommendations to the Member States

- 6.5.1 An efficient way to strengthen Europeana's position as **the** reference point for providers of cultural content would be to channel funding for digitisation through the site. However, the Comité realises that Member States want to keep direct control over digitisation spending. The Comité is of the opinion that Member States should, as a minimum, ensure that all public funding for digitisation is conditional on the subsequent availability of the digitised material through Europeana.
- 6.5.2 Furthermore Member States should ensure that all public domain masterpieces of their cultural heritage are digitised and made available through Europeana within the coming 5 years. The Comité therefore strongly supports the ongoing development of a roadmap, undertaken jointly by the European Commission, the Member States and Europeana that will set a calendar for the Member States' content contributions to Europeana and will help to monitor progress across Europe.
- 6.5.3 The Comité considers that the implementation of national aggregators feeding into Europeana is a positive step. All Member States should consider the creation of such aggregators.

6.6 Promoting Europeana

- 6.6.1 The Comité is of the opinion that a considerable effort is necessary to promote Europeana among the general public and in schools. To this end a specific part of the Europeana budget should be earmarked for the promotion of Europeana.
- 6.6.2 This is, however, not enough. The active promotion of Europeana is a responsibility for all, including cultural institutions, the European Commission and the Member States. In this context, the Comité notes that currently the websites of many cultural institutions which contribute content to Europeana do not link to the site. Such a link from the homepage of the website of cultural institutions is a minimum that can be expected.

6.6.3 The Comité notes that currently Europeana search results do not show up in searches in main search engines. Europeana should continue its talks with the search engines in order to rapidly overcome the barriers that are at the origin of this issue, since accessibility through the search engines will generate considerable supplementary traffic.

Key Recommendations

- 1) Europeana should be further developed to become **the** reference point for European cultural content online. This requires a concentration of financial efforts and political capital at European and at national level for the development of the Europeana site and the underlying structures.
- 2) Member States should ensure that all public funding for digitisation is conditional on the subsequent free accessibility of the digitised material through Europeana. They should also ensure that by 2016 they have brought all their public domain masterpieces into Europeana.
- 3) In the coming few years, Europeana should add to its portal an application platform, and main activities related to the digitisation and preservation of Europe's cultural heritage should be linked to the site. In the technical development of the site particular attention should be paid to multilingual aspects. Europeana should also explore the opportunities of cloud computing in the future.
- 4) For the medium term, it should be considered to give Europeana a key role in the preservation of Europe's heritage and to turn it into a European deposit site for public domain digitised cultural material and into a dark archive for in-copyright cultural material, both digitised and born digital.
- 5) Europeana must be actively and widely promoted by the cultural institutions, by the European Commission and by the Member States.

CHAPTER SEVEN: SUSTAINABILITY OF EUROPE'S CULTURAL HERITAGE ONLINE

7.1 The issue

- 7.1.1 Digital preservation is a key challenge for the digital age. Digital materials have become an integral part of our cultural and scientific heritage. Due to rapid technical change, however, digital objects are more endangered than they appear. They are functional and meaningful only in specific hard- and software environments. When these environments change, the digital materials “age” rapidly and are soon threatened by obsolescence and ultimately by loss.
- 7.1.2 The issue of digital preservation is very relevant in the context of digitisation projects. Today, only 22% of the cultural heritage institutions⁸ which digitise collections have long-term preservation plans in place.⁹ This means that the European investments in digitisation are in danger. Funding for digitisation that does not lead to sustainable digital assets can become a lost investment in the long term.
- 7.1.3 Digital preservation goes, however, far beyond digitisation and is also a core problem for any content produced in digital format. It therefore concerns practically all information produced today. Digital preservation issues cover the entire spectrum of digital objects, including raw data from research, text, websites, archival documents, art, film, music, databases and more.
- 7.1.4 The long term preservation of digitised and born digital material has four dimensions: organisational, legal, technical, and financial.

7.1.5 Organisational issues

- 7.1.5.1 It is the planning for the long term, for the “indefinite future”, which makes high demands on organisation and planning. Preservation consists of a series of decisions that are made by different actors over time, e.g., the creator of a digital object, the provider, the curator. As short-term interests are often opposed to long-term goals, it is essential to clarify responsibilities at different stages throughout the lifecycle of a digital object.
- 7.1.5.2 Projects have delivered proofs of concept on national and on EU-level as to the technical framework conditions for digital preservation (e.g. PLANETS, CASPAR¹⁰). There is general consensus on the building blocks of long-term preservation systems, the principles of which are expressed in the OAIS standard¹¹. Lately, four large European national libraries have agreed on a description of the technical services needed for digital preservation.¹²
- 7.1.5.3 Several Member States have digital preservation plans in place. Some Member States have established mechanisms to advise data creators on preservation aspects (Great Britain: Digital

⁸ In this context 'cultural heritage institutions' means those cultural institutions that have a long term preservation task in their vision or legal obligations.

⁹ Numeric final report, p. 40. URL: http://cordis.europa.eu/fp7/ict/telearn-digicult/numeric-study_en.pdf

¹⁰ PLANETS: <http://www.planets-project.eu/> CASPAR: <http://www.casparpreserves.eu/>

¹¹ OAIS: Reference Model for an Open Archival Information System (SO 14721:2003). URL of public draft: <http://public.ccsds.org/publications/archive/650x0b1.pdf>

¹² http://www.kb.nl/hrd/dd/dd_links_en_publicaties/publicaties/KB_Long_Term_Preservation_Services_2010-08-05.pdf

Curation Centre¹³) and some Member States already have initiatives to coordinate opportunities for cross-sector cooperation and division of labour (UK: DPC¹⁴, Netherlands, NCDD¹⁵, Germany: nestor¹⁶).

7.1.5.4. However, much work remains to be done in turning these strategies and principles into practice, even in the countries that are most advanced in this area. The countries that are lagging behind risk losing large quantities of digital content that will no longer be available for future generations.

7.1.6 *Legal issues*

7.1.6.1 Legal deposit legislation has been or is being adapted to the digital revolution in a number of Member States. In many cases, however, gaps are left if not all sectors are covered. In Germany, there is, for example, a legal deposit obligation for online distributed digital text and music, including digitised material. Other sectors are not covered. In several countries the legislation does not yet foresee the possibility for web-harvesting, a process whereby the cultural institutions make a copy of the web in a certain domain in order to preserve the content.

7.1.6.2 Companies which operate across borders are often faced with the obligation to deposit the same content in several Member States. This content is then stored for preservation purposes by different cultural institutions across Europe. This raises questions about the cost, the administrative burden for the companies and the duplication of effort by the deposit organisations.

7.1.6.3 National copyright legislation does not always allow multiple copying for preservation purposes, which makes the work of deposit institutions in the digital age impossible. The digital preservation work is dependent on the migration of the content from one format to another in order to keep it alive and this is not possible if the number of copies the institutions can make is limited.

7.1.7 *Technical issues*

7.1.7.1 Digital objects need persistent identification to guarantee their sustainable accessibility and avoid links leading to a void. Currently there is only a limited number of cultural institutions which use persistent identifiers. This poses risks for the long term preservation of the material and for its use by services such as Europeana.

7.1.7.2 Commercial content often functions only in combination with proprietary software, creating a major problem for archival institutions. Standardised and well documented file formats can be handled more easily than proprietary formats, but open documentation is not always in the interest of software companies.

7.1.7.3 The need to handle and preserve increasingly large volumes of dynamic data poses new technological challenges for institutions responsible for digital preservation.

¹³ Digital Curation Centre: <http://www.dcc.ac.uk/>

¹⁴ DPC: Digital Preservation Coalition, <http://www.dpconline.org>

¹⁵ NCDD: Netherlands Coalition for Digital Preservation, <http://www.ncdd.nl/en/index.php>

¹⁶ nestor: <http://www.langzeitarchivierung.de/eng/index.htm>

7.1.8 *Financial issues*

- 7.1.8.1 Digital preservation is expensive. The acquisition of digital material creates a long-term obligation on the host institution, which must be accounted for.
- 7.1.8.2 The emergence of cloud computing and other technical solutions can bring storage costs down in the coming years, but considerable financial and security challenges remain.
- 7.1.8.3 The Blue Ribbon Task Force on Sustainable Digital Preservation and Access has considered digital preservation from an economic perspective and come up with a set of recommendations, for example to strengthen incentives for digital preservation activities.¹⁷

7.1.9 *Sustainability of portals*

- 7.1.9.1 When national or thematic cultural heritage portals are created, sustainable funding is not always ensured. A subsequent lack of funding for the portals can lead to their disappearance, which may have consequences for the visibility of cultural resources and may also have an effect on the development of Europeana that relies on thematic and sectoral aggregators.
- 7.1.9.2 The preservation of digital library environments such as portals is threatened by obsolescence, just as digital objects are. Adhering to open, widely distributed standards at the point of creation, documentation of design decisions, monitoring of technological change, and active enhancement and curation of the technology in use is important.

7.2 **General Considerations**

- 7.2.1 The private sector cannot be expected to take responsibility for the long term preservation of its content, once the commercial exploitation has ended. The Comité is therefore of the opinion that preserving our past and present cultural heritage is a public responsibility where cultural institutions have a central role to play.
- 7.2.2 Nevertheless, the companies which are driving the technological change must recognise their role in contributing to the obsolescence problem and work together with the cultural heritage institutions responsible for preservation.
- 7.2.2 Barriers preventing the institutions from carrying out their preservation tasks need to be tackled. There is no “final” digital preservation solution, but a need to constantly monitor the technological environment and enhance preservation solutions to preserve digital data over the long term.

7.3 **Organisational issues**

- 7.3.1 In the view of the Comité, digital preservation requires additional and sustained effort on the part of policy makers, creators, publishers, producers, software companies and cultural institutions. Comprehensive preservation policies on European and Member State level are needed to protect the investment in Europe’s digital cultural heritage. All necessary framework conditions for digital preservation should be anchored in the respective national preservation policy.

¹⁷ Sustainable Economics for a Digital Planet (2010). URL: http://brtf.sdsc.edu/biblio/BRTF_Final_Report.pdf

- 7.3.2 National preservation strategies must address cross-sector cooperation and division of labour between possible custodians (e.g. National Libraries, National Archives, Data Preservation Centres) regarding the lifecycle management of all kinds of digital material, including audio and video.
- 7.3.3 Digital preservation strategies must be supported by the necessary organisational and technical infrastructures to be developed and implemented on the national level by all Member States.
- 7.3.4 In order to guarantee the preservation of the European digital cultural heritage, a system whereby a copy of all deposited cultural heritage material from the Member States is kept in a dark archive at Europeana should be considered.

7.4 Legal issues

- 7.4.1 The Comité stresses that copyright and other legislation has to enable the cultural heritage institutions responsible for preservation to create archival copies and to make file conversions for archival purposes.
- 7.4.2 The automatic process of harvesting needs a clear legal foundation on European level to enable efficient workflows.
- 7.4.3 To avoid duplication of effort by companies operating across borders and by the cultural institutions, a workflow could be envisaged by which any digital legal deposit copy that now needs to be deposited in several countries could be deposited only once. This system would include a workflow for passing on the copy to any institution that has a right to that copy under its respective national deposit legislation. Technical harmonisation measures on digital preservation at European level would facilitate the exchange of the content.

7.5 Technical issues

- 7.5.1 All digital objects in European digital libraries should be persistently identifiable. Member States should encourage cultural institutions to use persistent identifiers in digitisation projects. This will contribute to preserving the digitised content and to improving the search (by overcoming the problem of broken links in Europeana and by creating the possibility to establish connections between the objects). Reliable resolution services like the Europeana Resolution Discovery Service are of the utmost importance in this context. A reliable resolution service for persistent identification of digital objects must be developed and maintained on European level, preferably linked to Europeana.
- 7.5.2 Reliable technical information about the digital objects helps in planning preservation actions. The development of file format registries supports this process and must be intensified to support preservation planning.
- 7.5.3 All digital preservation solutions should be transparent and scalable in order to adapt to the continuous technological development and the growing amount of data.

7.5.4 Mechanisms have to be developed to solve the conflict of interest in open documentation between the software industry and the cultural heritage institutions responsible for preservation.

7.5.5 Research & Development initiatives with a strong reference to practical user needs have to be supported on national and European level to constantly monitor the technological environment and to enhance preservation solutions. In addition, further research into solutions for handling large volumes of dynamic data is necessary.

7.6 Financial issues

7.6.1 During the planning phase of digitisation projects the cost of preserving the digital assets must already be duly taken into account.

7.6.2 Digital preservation requires continuous effort and adequate financial resources are needed at national and European level. In addition to funding targeted research projects, sustainable digital preservation budgets have to be in place. Although there is a high recognition of the importance of digital preservation research in several Member States and on the European level, the need for financing the day-to-day process of digital preservation is not yet appropriately reflected in institutional budgets.

7.6.3 The area of digital preservation should not only be considered from the point of view of cost. It also has an enormous economic potential. The efforts and experience of the cultural institutions in improving the efficiency of preservation can be an important asset in the fast growing market for storing digital data.

7.7 Sustainability of cultural portals

7.7.1 The sustainability of digital library portals, especially the national and/or sectoral aggregators feeding into Europeana must be ensured.

Key recommendations

- 1) Preservation is a key aspect in digitisation efforts. Digital preservation is also a core problem for any born digital content. The organisational, legal, technical, and financial dimensions of long term preservation of digitised and born digital material should be given due attention.
- 2) To guarantee the preservation of the European digital cultural heritage, a copy of digitised or born digital cultural material should be archived at Europeana. For in-copyright works the deposit site would be a dark archive functioning as a safe harbour.
- 3) To avoid duplication of effort by companies operating across borders and by the cultural institutions a system could be envisaged by which any material that now needs to be deposited in several countries would be deposited only once and then passed on to every cultural institution that has a right to it under its respective national deposit law.
- 4) Copyright and related legislation has to enable the cultural heritage institutions responsible for preservation to create archival copies and to make file conversions for archival purposes.
- 5) Persistent identifiers must be implemented in each digital object archived in cultural institutions. A reliable resolution service for persistent identification of digital objects must be developed and maintained on European level, preferably linked to Europeana.

CHAPTER EIGHT: FUNDING DIGITISATION AND EUROPEANA, COSTS AND OPPORTUNITIES

8.1 The issue

8.1.1 *The cost of digitisation*

8.1.1.1 The terms of reference of the Comité underlined the need to assess the overall financial cost of digitising Europe's cultural heritage. To this end, the Comité engaged the help of a specialised contractor. The report of the contractor is presented as an Annex. It builds on earlier extensive work done in this area at European and at national level.

8.1.1.2 The report concluded that the estimated cost of digitising the total collections of Europe's museums, archives and libraries, including the audiovisual material they hold, is approximately €100 billion. The Comité does not have the ability, competencies or means to assess the accuracy of the numbers.

8.1.1.3 This type of calculation is necessarily based on a series of hypotheses and extrapolations.¹⁸ Nevertheless it indicates a plausible order of magnitude of the funding needed to digitise the whole of our cultural heritage, commensurate with the richness of European culture and civilisation over the last centuries.

8.1.1.4 The €100 billion can be divided as follows over the collections of the different types of cultural institutions.

	Total estimated mean cost of digitisation (in Bn €)
Library collections	19,77
Museum collections	38,73
National Archives	41,87
Audiovisual archives	4,94
Gross total	105,31
Cumulative efficiency gain (if digitisation takes place over 10 years)	-5,3
Net total	100

8.1.1.5 The figure includes the digitisation of 77 million books, 24 million hours of audiovisual programmes, 358 million photographs, 75.43 million works of art, 10.45 billion pages of archives. The collections that have already been digitised or that have been excluded from digitisation for a specific reason are not integrated in this number. According to the report this is what needs to be digitised.

¹⁸ These are explained in the methodological part of the report on the cost of digitisation.

- 8.1.1.6 The report notes that, although comparisons should be made with caution, investments of this type are common in other policy areas. For instance, the Research & Development Budget for the Joint Strike Fighter programme is estimated at €40.34bn, which represents 40% of the amount needed to digitise the whole of Europe's cultural heritage. Equally, the funding needed for building 100 km of main road is equivalent to the cost of digitising every piece of audio content in EU cultural institutions, or of 16% of all books (individual titles) in EU libraries.
- 8.1.1.7 The report also underlines that mass-digitisation is an industrial process, and hence very susceptible to efficiency gains due to scale. Furthermore the return on investment in large-scale digitisation tends to be higher where there is ongoing strategic investment in digitisation as a core activity of the cultural institution, rather than as a project-funded activity.
- 8.1.1.8 It is difficult to give an accurate overall estimate of the current investments in digitisation across the European Union. All Member States have reported to the European Commission on their plans for and investments in digitisation.¹⁹ However, the figures concern mostly the digitisation effort at national level, without necessarily taking into account the funding by the individual institutions or at local and regional level, or the private funds invested in digitisation in the context of public-private partnerships.
- 8.1.1.9 As underlined in the preceding chapter, the acquisition of digital material creates a long-term obligation on the host institution. Preserving information and keeping it accessible is an expensive activity.

8.1.2 *Funding Europeana*

- 8.1.2.1 In its start-up phase, the Europeana service has been largely driven by project-financing from the Community programmes covering some 80% of the costs. The 'Europeana 1.0' project was co-funded with €6.2 million from the *eContentplus* programme and will run until mid-2011. Several Member States are providing co-funding: the Netherlands, Germany, France and Spain are the main contributors, with smaller contributions coming from a range of other Member States, as well as Norway and Switzerland.
- 8.1.2.2 In the period until 2013 the Commission will continue co-funding Europeana through projects (some 80% of the costs). An amount of €9 million has been allocated through the CIP programme for a major project that will support the further development of Europeana in the period mid-2011-end 2013. For this period further co-funding by Member States or from other sources will be necessary. Several Member States have already indicated that they will contribute.
- 8.1.2.3 Funding an endeavour such as Europeana through a myriad of projects, complemented by voluntary funding by the Member States presents serious problems in terms of continuity of development. Therefore the Commission has announced in the Digital Agenda for Europe that, by 2012, it will make a proposal for a sustainable funding model for Europeana. The Resolution of the European Parliament and the Council Conclusions on the next steps for Europeana - both texts were adopted in May 2010 - reaffirmed the need for a thorough reflection and a clear proposal on funding Europeana after 2013.

¹⁹ These reports can be found at the following web-address:

http://ec.europa.eu/information_society/activities/digital_libraries/other_expert_groups/mseg/reports2010/index_en.htm

8.1.3 *Economic benefits of digitisation*

- 8.1.3.1 Digitisation represents a considerable financial investment. At the same time it will be at the basis of large economic opportunities. There are three main areas where digitisation can help nurture and stimulate economic growth and job-creation.
- 8.1.3.2 The first is, of course, the digitisation process itself and the technologies directly linked to it. Part of the digitisation tasks will probably be outsourced to private companies. And these tasks will require equipment such as advanced scanners (e.g. for 3D rendering), as well as enhanced software, for example for optical character recognition. If European companies can develop the most efficient technologies and working methods, they will be the first to benefit from public contracts for digitisation. The process of digitisation, however innovative or advanced the tools, will be labour intensive and would result in job creation in large numbers.
- 8.1.3.3 Second, the value of the digitised material should not be underestimated. Digitised cultural content can become an important raw material for services and products in areas such as tourism, education and new technologies. In an environment where the market for mobile applications is growing rapidly - some estimations expect the global market for apps to grow to \$32 billion in 2015²⁰ - widely available cultural material will be a key asset for new services. Although not all the potential usages of the digitised material can be predicted today, we can reasonably expect that the arrival of millions of new digitised cultural works online will spur a wave of innovation and new business models for companies specialised in various stages of the digitisation chain, as well as in creative content.
- 8.1.3.4 An example of such emerging business models was presented at the public hearing on 28 October 2010. Arkhopôle, based in the French Aquitaine region, is a cluster of 125 SMEs specialised in the creation and commercialisation of cultural content, collaborating with cultural institutions and universities. Its vision is to develop in France and Europe a new market for digital heritage material.
- 8.1.3.5 The economic value of the digitised material lies not only in the possibility to directly integrate it into new services, but also in the associated new knowledge and information. An example is the new insights necessary for developing language technologies gained by Google as a result of the Google Books project. Other players may join this and related areas tomorrow and create value through the digitised content.
- 8.1.3.6 The third area that represents a considerable economic potential is related to the storage, preservation, and processing of digital material. These activities face a new step in their evolution, as cloud computing is gaining speed and companies are managing bigger and bigger databases. One indication is a recent bidding war in this area.²¹ It is likely that the importance of this sector will grow tremendously in the coming years and the handling of digitised and born digital cultural material by heritage institutions and private companies is an important field for experimentation and innovation.

²⁰ Juniper Research

²¹ In a recent bidding war between Dell and HP over 3Par, a data storage company, the firm with only 650 employees was bought by HP for \$2.35 billion. *The Economist*, 6 November 2010, 'A special report on smart systems', p. 12.

8.2. General considerations

- 8.2.1 Before setting out its position on the funding of digitisation and Europeana, the Comité would like to reiterate that all the material available for digitisation should be digitised as long as it can be considered part of our cultural heritage.
- 8.2.2 In addition, the Comité would like to underline again that it favours the widest possible access to the digitised items.
- 8.2.3 The financial challenges of bringing our cultural heritage online are huge, but so are the potential rewards. These rewards should not only be defined in terms of better access to cultural content, but also in economic terms, even though they cannot be accurately measured or forecasted .

8.3 Funding digitisation

- 8.3.1 A first question relates to the respective responsibilities of the public and private sectors for digitising our cultural heritage. Considering that access is the main ground for digitisation, the position of the Comité is that the public sector has the primary responsibility for making our cultural heritage accessible and preserving it for future generations. It should therefore bear the largest part of the costs involved. The control over Europe's heritage cannot be left to one or a few market players.
- 8.3.2 However, the task of digitising Europe's cultural heritage is gigantic and therefore the Comité thinks that the private sector must be involved in funding the digitisation effort. In fact, a wide range of private players could potentially be interested in (co-)funding digitisation: media companies, the digitisation industries (a rapidly growing market), internet, telecoms and IT companies interested in new digital content and services, the tourism and learning sectors, not forgetting other companies which would like to be associated with culture for reasons linked to their image. Conditions for such public-private partnerships for digitisation are treated in the next chapter.
- 8.3.3 Another question is whether the public digitisation effort should take place at national and regional level or whether there should also be a major investment at the European level. The Comité believes that the digitisation of collections in the Member States is primarily the responsibility of national or regional governments. Hence funding should be made available from budgets within Member States. However, Member States should be strongly encouraged to use the funding possibilities from the European Structural Funds for digitisation activities. Also, some targeted digitisation efforts with a clear cross-border scope (e.g. cross-border or multilingual collections) could be co-funded at European level.
- 8.3.4 Neither the size of the task of digitising our common heritage, nor the current financial crisis can be an excuse for not acting. The Comité therefore calls on all Member States to increase their budgets for digitisation and to reduce the gap between the investments needed to digitise cultural collections and the current level of funding.
- 8.3.5 The available budgets must be used in the most efficient way. This requires in the first place avoiding that the same object is digitised several times. Moreover, instead of leaving each cultural institution alone with its obligations, digitisation should be organised and strategically planned at

national level in order to maximise efficiency gains and facilitate synergies and the exchange of good practices. Each Member State should be required to elaborate a strategic plan and these should be shared at the European level.

- 8.3.6 The Comité decided not to impose selection and not to encourage choosing among the different categories which type of works is more entitled to digitisation than another for the sake of cost reduction. Nevertheless it is obvious that priorities will have to be defined and the task will have to be organised and scheduled over several years, or even decades. Information on the priorities should be exchanged at the European level in the existing Member States' Expert Group on Digitisation and Digital Preservation, in order to achieve synergies.
- 8.3.7 The cost of preserving the digitised material must be accounted for and addressed from the outset in programme budgets.

8.4 Funding Europeana

- 8.4.1 The cost of Europeana is extremely low compared to the budgets needed for digitisation and taking into account its potential to make the digitised material representing our common heritage more visible and accessible to all.
- 8.4.2 Given Europeana's character as a common good, the Comité is of the opinion that public funding should cover the largest part of Europeana's operational costs, also after 2013. To this end, the funding of Europeana should be considered together with the investments of Member States in digitisation and in setting up national aggregators. In other words: The funding of digitisation and of Europeana should be seen as a package, where Member States are broadly responsible for funding the digitisation of their cultural heritage and where the funding of the Europeana portal should come predominantly from the budget of the European Union in view of its European added value.
- 8.4.2 Because of the financial crisis, this is not the best moment to attract private sponsors or investments for Europeana. Companies would expect a business return based on hard visitor numbers and profiles and/or a clear link between the site and the brand. However, for the medium term, complementing the public funding for Europeana with some form of sponsorship or partnerships with business seems to be a realistic perspective, e.g. sponsorship by Telco or IT companies operating on a Europe-wide basis, or companies who want to be associated with culture.
- 8.4.3 A clear vision and plan - going beyond a mere business plan - is necessary for the further development of Europeana. The vision and plan should include the objectives to be achieved for the medium term and indicate the steps that will be taken to turn the site into an indispensable reference point for European culture online.

8.5 Reaping the economic benefits of digitisation

- 8.5.1 Digitisation activities must be undertaken with an open eye for the business opportunities involved. It is the conviction of the Comité that the organised combination of public funding and private investment could lead to unlocking new growth opportunities that make digitisation an economic opportunity.

- 8.5.2 Implementing innovative economic models for digitised cultural material is an area deserving special attention. For instance, local and regional clusters of SMEs specialised in the creation and exploitation of digital heritage, in partnership with cultural institutions, could help create a niche for local growth and development, ranging from digitisation of cultural assets to the re-use and exploitation of the digitised assets. SMEs can contribute specific competences in the digitisation chain.
- 8.5.3 Fostering ‘knowledge’ partnerships between cultural institutions and universities in order to boost research and innovation in digitisation of cultural assets is another area that should be further explored.
- 8.5.4 Developing strategic partnerships at European and international level in the area of new technologies and applications in relation to cultural heritage can help transfer knowledge and build capacities at local, regional and national level.
- 8.5.5 One of the areas that have a great economic potential is digital preservation. The emergence of strong European players in this rapidly growing area should be encouraged.
- 8.5.6 Bringing out the full value of the digitised assets and the new opportunities linked to digitisation and preservation activities presupposes that the actors in the private and public sectors have the necessary skills. Identifying the training needs of professionals involved in the digital economy and creative content on line and providing specialised professional training can help to develop competences matching current and future needs.

Key Recommendations

- 1) The public sector has the primary responsibility to fund digitisation, and Member States will need to considerably step up their investments in digitisation. The current financial crisis cannot be ignored, but equally cannot be a reason for not acting.
- 2) The involvement of private partners should be encouraged. Private funding for digitisation is a complement to the necessary public investments and should not be seen as a substitute for public funding.
- 3) Digitisation should in principle be funded at the national or regional level, not at the European level. However, the Member States should be strongly encouraged to use the funding possibilities from the European Structural Funds for digitisation activities. Also, some targeted digitisation efforts with a clear cross-border scope (e.g. cross-border collections) could be co-funded at European level.
- 4) Given Europeana’s character as a common good, public funding should cover the largest part of Europeana’s operational costs, also after 2013. The funding of digitisation and of Europeana should be seen as a package, where Member States are broadly responsible for funding the digitisation of their cultural heritage and creating national aggregators and where the funding of the Europeana portal should come predominantly from the budget of the European Union.
- 5) Member States should promote ways to turn digitisation into new development opportunities for European firms, for example through regional clusters of businesses in partnership with cultural institutions, knowledge partnerships between cultural institutions and universities, or through strategic partnerships at European or international level in the area of new technologies and applications in relation to cultural heritage.

CHAPTER NINE: PUBLIC-PRIVATE PARTNERSHIPS FOR DIGITISATION OPPORTUNITIES, CHALLENGES AND PITFALLS

9.1 The issue

- 9.1.1 Different models of public-private partnerships for digitisation of cultural assets exist in Europe. They range from direct investment of funds in return for exclusive commercial exploitation of the digitised material to classical sponsorship schemes for advertising/marketing purposes.
- 9.1.2 Thus far, private funds have been largely directed at the digitisation of books and concern public domain material. A closer look at the situation on the ground reveals some subtle, yet quite persistent, messages as regards the conditions of public-private partnerships for digitisation in Europe.
- 9.1.3 Google has emerged as a major player globally through its massive investment in digitisation of books, but also in Europe through a number of partnerships with European libraries. In general, Google estimates that, out of 130 million unique books existing in the world, it has digitised 15 million since the launch of the 'Google book' project in 2004. Google digitises only public domain material in Europe (earlier than 1870). There has been no disclosure as regards the exact funds invested or the nature of agreements with libraries. Nonetheless, on the basis of public statements linked with two recent agreements some indications arise:
- 9.1.3.1 Under the agreement with the Austrian National Library, 400,000 books will be digitised by Google. An investment of €30 million (around €75 per book) was reported by the Austrian side.
- 9.1.3.2 Under the agreement with the Italian government, 1 million books will be digitised. The Italian side estimated the investment by Google at around €100 million (€100 per book), while Google has argued that the invested amount would be 'much, much less' and 'six to ten times lower than what other potential partners have envisaged'.
- 9.1.4 Access to digitised material is free for the end-users and all material may be used for non-commercial purposes. Libraries receive copies of the same quality. The period of preferential use of the digitised material is discussed on a case by case basis depending on the size and type of collection. Some agreements (ie. Lyon library) foresee 25 years, but this has progressively come down to 15 years.
- 9.1.5 Although Google has not been explicit about its business model, enhancing the quality of its services as a search engine seems to be a core business objective. The recent launch of 'Google e-books' - based on agreements with publishers for bringing in-copyright works online - casts a new light onto Google's ambitions in the digital book market.
- 9.1.6 The British/American publishing group ProQuest has been active in the digitisation of public domain books as part of their project Early European books until 1700. Agreements have been signed with libraries in the UK and the National Library of Denmark (2009). According to the agreed business model with the latter, ProQuest maintains the database for sale (target audience: universities and researchers) and the library receives a copy for immediate dissemination within

Denmark (controlled by IP addresses). Ten years after its publication by ProQuest, the digitised material can be made available to everybody.

- 9.1.7 Another type of public-private partnership concerns agreements between cultural institutions and private partners who are not interested in exploiting the digitised content, but in enhancing their corporate image. For example, sponsoring by Telefónica for the digitisation of the collections of the Spanish national library was reported to amount to €10 million (for the digitisation of 25 million pages). It is worth noting that tax incentives for this kind of partnership exist in Spain, as well as in other EU Member States.

9.2. General considerations

- 9.2.1. Stimulating the flow of private funds for the digitisation of cultural assets through equitable public-private partnerships appears as a viable and sustainable way of tackling the pressing question of making Europe's cultural wealth accessible online and preserving it for future generations. This affirmation becomes all the more acute in the wake of the current financial downturn and the growing pressure on public budgets.
- 9.2.2 The key question is not whether public-private partnerships for digitisation should be encouraged, but 'how' and 'under which conditions'. Which conditions and principles should apply in order to reconcile the legitimate interests of the parties involved, namely the cultural institutions, the commercial parties, and the right holders in case of digitisation of in-copyright material? How to promote a level playing field and stimulate involvement of European actors? How to help build strategic partnerships for digitisation at local, regional and cross-regional level?

9.3 Which conditions and principles for public-private partnership for digitisation in Europe?

- 9.3.1 Access to Europe's cultural resources for all is also relevant in the case of public-private partnerships and this principle should not be compromised by the necessity of promoting Europe's global competitive edge in the digital era.
- 9.3.2 As guardians of cultural heritage, aggregators of cultural content and educators, cultural institutions are obliged to safeguard their core mission, whilst reshaping their traditional role against the backdrop of the digital shift. Making their collections accessible on line enables them to seize the opportunities of the digital era. Nonetheless, entering into a partnership with a private entity should not result in compromising the core mission of cultural institutions, but rather further allow them to reap the full benefits from the digitisation of their collections in terms of online accessibility, preservation and re-use.
- 9.3.3 On the other hand, private partners are a crucial part of the digitisation chain. They bring funding, technology and expertise. It is logical that they wish to see returns on their investment.
- 9.3.4 Striking the right balance in public-private partnership agreements is a question of fine negotiation between cultural institutions and private partners and varies from one case to another. Cultural institutions often enter partnerships with commercial entities 'unprepared' or 'unequipped'.

9.3.5 In this environment, it is useful to set out **basic conditions and principles** that could apply when private funds are invested to digitise and make accessible on line collections of European public cultural institutions:

- i) **respect for right holders:** public-private partnerships should be established within the applicable EU and national copyright legal framework.
- ii) **transparency:** both the process for reaching the agreement and the contents of the agreement between a public cultural institution and a private partner should be made public. This is a minimum requirement for the digitisation of public cultural assets.
- iii) **access:** partnership models where the end-user has **free access** to the digitised material should be clearly encouraged over models where the end-user has to pay for accessing the material. This should apply both to public domain and in-copyright material. When entering into public-private partnerships for digitisation, the cultural institutions should ensure **cross-border access** to the material. Partnership models giving citizens from one EU Member State more favourable access conditions to the digitised material than citizens from another Member State should be strongly discouraged.
- iv) **quality of copies:** the private partner should provide cultural institutions with digitised files of the same quality as the ones it uses itself.
- v) **re-use:** the cultural institution should be able to use the files without restrictions in non-commercial contexts.
- vi) **revenue sharing schemes:** in the context of public-private partnerships, cultural institutions could negotiate revenue sharing schemes in relation to the commercial exploitation of the digitised material (ie. advertising).
- vii) **exclusivity:** in principle there should be **no exclusive partnerships**. In other words, public domain material that is the subject of a public-private partnership may be also be digitised by other private companies.

9.3.6 **Preferential use or preferential commercial exploitation:** it is logical that the private partner seeks a period of preferential use or commercial exploitation of the digitised assets in order to avoid free-rider behaviour of competitors. This period should allow the private partner to recoup its investment, but at the same time be limited in time in order to avoid creating a one-market player situation. For these reasons, the Comité set the maximum time of preferential use of material digitised in public-private partnerships **at maximum 7 years**. The seven-year time span is considered adequate to generate, on one hand, incentives for private funds' investment in mass digitisation of cultural assets and, on the other, allow sufficient control of the public institutions over their digitised material.

9.4 How to stimulate a flow of private funds and create a level playing field in the digitisation of Europe's cultural heritage?

9.4.1 Despite the varied landscape of options and possibilities, in some areas, such as the digitisation of public domain books, some players have a more dynamic presence than others. Global players

have a lot to offer, but they should not be seen as a one-way solution to the digitisation of Europe's cultural assets. A search for a European solution means seeking innovative ways of attracting private funds, building expertise and creating the conditions for growth.

9.4.2 Policy makers should consider enabling the involvement of European players through different means and measures:

- i. Encouraging digitisation in areas that have not received much attention thus far, such as audiovisual material, newspapers, periodicals or museum objects (as opposed to books) may help diversify the landscape of digitisation in Europe.
- ii. In the medium term, subject to an improvement of the financial situation in the Member States, creating incentives through taxation is to be considered.
- iii. The use of matching public funds for digitisation is another avenue to explore. Public funds may be given to cultural institutions which have secured a partnership for the digitisation of their collection with a private entity, on a matching basis with the private funds invested, thereby strengthening the scope and output of the digitisation project.
- iv. Encourage Europeana and its contributing institutions to expand their digital contents by building partnerships with European businesses.

Key recommendations

- 1) In order to protect the interests of public institutions entering into a partnership with a private partner a set of minimum conditions should be respected:
 - a) The contents of the agreement between a public cultural institution and a private partner should be made public.
 - b) The digitised public domain material should be free of charge for the general public and available in all EU Member States.
 - c) The private partner should provide cultural institutions with digitised files of the same quality as the ones it uses itself.
- 2) The maximum time for preferential use or preferential commercial exploitation of material digitised in public-private partnerships must not exceed 7 years. This period is considered adequate to generate, on one hand, incentives for private investment in mass digitisation of cultural assets and, on the other, to allow sufficient control of the public institutions over their digitised material.
- 3) Policy makers at European and national level should create favourable conditions for the involvement of European players. In particular:
 - a) Encourage digitisation in new areas that have not received much attention thus far, such as audiovisual material, newspapers, periodicals or museum objects.

- b) In the medium term, subject to an improvement of the financial situation in the Member States, create incentives for the investment of private funds through taxation.
- c) Encourage the use of public funds matching private funds invested in digitisation. Public funds may be given to cultural institutions which have secured a partnership for the digitisation of their collection with a private entity, on a matching basis with the private funds invested.
- d) Encourage Europeana and its contributing institutions to expand their digital contents by building partnerships with European businesses.

CHAPTER TEN: CONCLUSION

- 10.1 Having reached the conclusion of the present report, we hope that we have been able to illustrate how important it is for Europe to collectively ensure that our cultural and intellectual heritage is accessible to all by means of new information technology.
- 10.2 A danger looms on the horizon: that we lose parts of our heritage for the simple reason that it cannot be consulted with the methods and tools used today and which we can expect to further expand in future. This danger is particularly preoccupying for Europe. For the role of Europe in the world, whilst endangered by economic, let alone political regression, will remain a motor in the cultural domain – provided that culture keeps pace with current and future developments .
- 10.3 A poet said: “*Europe, thy name is memory.*” Europe was constructed with the notion of evolution, thought, creation, research and ingenuity. No one will disagree: each phase of this process is worthy of conservation and study. It presupposes today a gigantic translation of this collective heritage to ensure that it will not become as impenetrable for future generations as have been the hieroglyphics throughout the centuries! It is above all the duty of the public sector to ensure that this heritage is available to everyone.
- 10.4 A number of initiatives have been taken, of course. They are the results of sporadic, dispersed measures adopted with a piece meal approach. But there is one initiative that has emerged, resulting from the converging efforts of different countries and a large number of institutions: Europeana. It has proved to be a useful, timely and adequate initiative, but has so far remained modest in its development.. Wherever Europeana takes root, the network provides excellent services. These efforts however are unfortunately still too fragmented, and overly dependent on the goodwill of its stakeholders. Europeana should have greater means, coming from the European institutions and the Member States, taking account of the principles of subsidiarity and representativity.
- 10.5 There is another reason to support the efforts made by Europeana so far: the respect of some fundamental principles, of which Europe is the guarantor in the area of culture. They are principles that represent its contribution to civilisation: first, the specific status of cultural activities which should not be entirely subject to market rules; and, second, the protection of the rights of the creator, too often neglected or even disdained nowadays, and left to a large extent unprotected from abusive practices of unauthorised exploitation.
- 10.6 So what would happen if we did nothing to preserve our heritage in the digital era? What if we decided to leave the cultural works as they are without transforming them into digital formats and without entering into any concerns of preservation and sustainability? Would our inaction have a ‘cost’ ?
- 10.7 First, protecting and promoting culture and heritage as a public value is a shared responsibility and one founded in the EU Treaty: this means championing our cultural diversity and bringing our common heritage to the fore; bridging tradition and modernity; reconciling youth with the past, thereby paving the way for the future; providing a solid basis for education and knowledge dissemination; enhancing the social fabric and strengthening social cohesion; contributing to knowledge dissemination in the information society.

- 10.8 Moving beyond the moral register, culture and heritage in the digital era represent a set of opportunities for European economies and societies. Digitisation relies on technological progress, but, in turn, may also spur innovation and creativity. It can contribute to job creation, growth and business development in sectors linked to technology, culture, creativity and innovation. Addressing the economic dimension of the digitisation of our cultural heritage does not undermine the symbolic dimension, but rather helps us make the most of the enormous wealth we have in our hands, which is too often left untapped. Our heritage and culture can reinforce Europe's competitive edge in the era of the digital revolution and globalisation. Innovative business models, smart investments, collaboration between sectors (ie. public-private, cultural-business, creative-technological), policies adapted to the needs of stakeholders (ie. cultural institutions, creators, private partners, the general public) can help tackle the transition to the digital era in a dynamic and forward-looking way.
- 10.9 Time is of the essence. Global competition is harsh and Europe risks missing out on the infinite opportunities offered by the digital shift.
- 10.10 A final thought: our reflection focused on the conservation and valorisation of our heritage, but it is not looking solely at the past. By honouring our heritage, we prepare fertile ground for future growth.

ANNEXES

- 1) Terms of reference of the Comité des Sages on bringing Europe's cultural heritage online
- 2) Overview of the results of the online consultation
- 3) Summary of the public hearing
- 4) Results of the Cap Gemini technical audit of Europeana
- 5) Report of the study into the cost of digitisation by the UK Collections Trust