Reflection Group on bringing Europe's cultural heritage online

TERMS OF REFERENCE

1. Introduction

The European Union faces the need to address digitisation of Europe's cultural heritage and cultural content in a comprehensive and diligent manner. Following the discussions by EU Ministers at the Education, Youth and Culture Council of 27 November 2009, the Commission has decided to set up a Reflection Group to develop a vision and address the main issues at stake in bringing Europe's cultural heritage online.

A large part of Europe's rich and diverse cultural heritage is held by libraries, archives and museums across the continent. The digitisation and online availability of cultural material - including books, maps, newspapers, sound, archival material, photographs, museum objects and audiovisual material - will make it more accessible for Europe's citizens and easier to use for leisure, work and study. The material can also be an important input for new creative efforts and for a wide range of information products and services, for example in sectors such as education and tourism.

At the same time, Europe's artists and creators are working in an environment increasingly shaped by digital technologies and global communications. The digital shift shakes up traditional models, transforms value chains and calls for new business models. The digital transition raises a number of significant challenges for the creative sectors. They indeed need to adapt to new opportunities brought by digitisation in terms of creation, production, diffusion and exchanges of new cultural expressions to fully benefit from them.

It is therefore crucial to reconcile the traditional mandate of cultural institutions, which give access to our common heritage and preserve it for future generations – with the **transition towards the digital age**. Managing the "digital shift" requires a strategic approach that will ultimately define how European citizens will access and use digitised cultural resources, and eventually how European creativity will be preserved and promoted for future generations.

2. The challenges of putting Europe's cultural heritage online

In 2005, the European Commission launched the **digital libraries initiative**, with the aim to make Europe's cultural heritage accessible to all on the Internet. One of the tangible results of this initiative is the creation of *Europeana* (**www.europeana.eu**), Europe's portal of digital libraries, archives and museums - an unprecedented collaboration between cultural institutions from across the continent.

In order to make this project a success, a number of challenges have to be addressed. One of the key issues is who pays for digitisation and the implications this has for control over and responsibility for our digitised cultural heritage, including the respective roles of the public and private sector. The choice of funding models will have a fundamental impact on the access to the digitised material and the way it can be re-used in the information society.

Public funding for digitisation ensures that libraries, archives and museums keep the control over the digitised material, and that they can use it to fulfil their remit of making information accessible and preserving it for the future. However, digitisation is expensive and the collections to be digitised are vast. Therefore cultural institutions are often required to recover

part of the digitisation costs. They often do so by charging for the commercial re-use of the digitised material, sometimes by charging online access by the public.

When the digitised assets are in the public domain – *i.e.* no longer covered by copyright – this poses a fundamental dilemma. Recuperating (part of) the costs may be necessary for the cultural institutions to engage in further digitisation, but at the same time charging for access and re-use locks up public domain material and limits its usefulness in the information society. Such models run the risk to contradict the basic aim for which the material was digitised in the first place. Alternative models, for example those that involve advertisements on the websites of the cultural institutions to generate some income, could endanger the neutrality of the cultural institutions as information providers.

The situation is equally complicated for in-copyright material, which covers most of the collections of the 20th century. A large part of this material is no longer commercially available, and for many works it is even impossible to locate the rights holders (the so-called "orphan works"). For the digitisation and online accessibility of this material, there are two basic issues. The first one concerns the roles of respectively the cultural institutions and the private sector (both rights holders and technology firms) in digitising this in-copyright material. The second one concerns the transaction costs for digitising older works, which are at present prohibitively high. There is a risk that the uncertainty about what a "fair price" is and/or that the high transaction costs for rights clearance will lead to inertia from the side of the public institutions and or rights' holders. Without more simple rights clearance mechanisms, large scale digitisation of out-of-print works and orphan works is therefore unlikely to happen, which may result in what has been described as a "20th century black" hole in European collections online and more in general on the Internet.

Another source of funding for digitisation is the private sector. Public-private partnerships, complementing public investments in digitisation are a promising way forward to bring Europe's cultural heritage online. They raise, however, a range of new challenges. Public-private partnerships often entail a certain control over the digitised material by the private partner who expects a return on investment through the exploitation of the content. Without this incentive private partners may refrain from investments in digitisation. As a result, material that is no longer covered by copyright may be de facto removed from the public domain by limiting access for the end-user and/or by limiting the use of the digital material by potential competitors. The partnerships raise further questions, for example on exclusive rights granted by public sector bodies to private partners, and on responsibilities for preserving the material over time, which may entail costs that are higher than the actual digitisation costs. Cultural institutions across Europe are struggling with these questions when they are approached by private companies who offer to digitise their collections.

Finally, digitisation - regardless the source of funding - gives rise to important questions on the conditions set to access the material once it has been digitised, and on the format used to ensure its long-term preservation. An overview of best practices in Europe and elsewhere would help avoid the development of fragmented approaches: national silos of online cultural resources could indeed lead to discriminatory conditions of accessibility for European citizens and difficulties in interoperability of the IT systems in place. That could in turn jeopardise the vision and services of *Europeana*, as the common access point to Europe's cultural heritage.

3. Terms of Reference

The Group will 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. The recommendations will need to

consider the variety of ongoing policy initiatives at the EU[1] or Member States' level, including the large scale funding of digitisation by public authorities and, where relevant, legislative initiatives.

It should draw upon analytical work done at the national level and identify best practice examples in the Member States or in Third Countries, to highlight possible solutions for questions of principle as much as for more practical problems of technical compatibility.

The analysis of the Group should build on the work of the *High Level Group on Digital Libraries* that was active between 2006 and 2009, and take into account ongoing discussions at European level, such as the work on public-private partnerships carried out in the context of the *Conference of European National Librarians*.

The work of the Group will cover 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 of 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.

The annex contains a list of more detailed questions in relation to these Terms of Reference.

4. Working Methods

The members of the Group will be appointed by Commissioners Kroes and Vassiliou. The Group will consist of three members, selected on the basis of their knowledge, experience and track record as visionary thinkers in the areas of culture and technology.

The members of the Group will conduct their mission under their sole responsibility. The Group can hold consultations, as appropriate, with members of the European Parliament, the competent authorities of Member States and other stakeholders.

The European Commission will ensure the secretariat of the Group. Where necessary, the Commission will make arrangements to bring in supplementary external technical expertise to support the work of the Group.

The Group will report back in writing to Commissioners Kroes and Vassiliou as often as appropriate. The report addressing the priorities set in this mandate will be finalised as soon as possible and no later than 8 months after the first meeting of the Group.

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[1] The Commission has addressed related issues in a Recommendation on 24 August 2006 on the 'digitisation and online accessibility of cultural material and digital preservation", and more recently in the Communications of 28 August 2009 on "Europeana next steps" and of 19 October 2009 on "Copyright in the knowledge economy". These Communications announce *inter alia* an impact assessment on a European solution for orphan works.

<u>**ANNEX**</u>

Reflection Group on bringing Europe's cultural heritage online

The present annex details a series of questions to be addressed as a starting point for the work of the Reflection Group.

Sources of funding for digitisation

What level of public funding would be necessary to bring to Europe's cultural institutions collections online ? What would be an appropriate balance between public and private funding for such digitisation ? Should the use of European funding be considered to trigger large scale digitisation processes across the Union ?

Maximising the impact of digitisation of in-public domain material for the economy and society

What access and re-use models guarantee the highest impact of investments in digitisation for the economy and society at large ? In particular, should public domain content that is digitised with public and/or private resources be freely accessible and re-usable by all ? Is any form of exclusive control on digitised public domain material by private partners acceptable in exchange for investments in digitisation ? If so, what is the maximum time and other conditions (e.g. according to the types of material) that might qualify the terms of such exclusivity ? Can a difference be made in access and use policies between the commercial use of the digitised public domain material and non-commercial use ? What alternatives can be envisaged for exploitation models that restrict the access to and use of digitised public domain material (e.g. advertising)

Facilitating the digitisation of orphan works and out-of-print works

Are there elements in the copyright framework or in the practical organisation of rights clearance that need particular attention in order to facilitate the large scale digitisation of orphan works and of works that are no longer commercially available ? Who (cultural institutions, private sector digitisers, rights holders themselves) should be responsible for assuring their online access, and what conditions and means would enable them to fulfil this task ? If public funding is used to pay for rights clearance for their digitisation and online accessibility, what mechanisms can be envisaged to arrive at a fair price for clearing the rights ?

Cross border access

Is any form of territorial discrimination between users (e.g. based on IP addresses) in accessing or using the digitised public domain material acceptable (e.g. free access for users in their own country, and access against payment for users from other EU or third countries) ? What are the consequences of an extension of access and use on the costs for clearing rights ?

Long-term preservation

How can the long term preservation of material that is digitised be guaranteed ? What are the responsibilities of the private and public partners for ensuring the long term availability of this material in the context of a partnership ?