



Europeana Foundation Governing Board Meeting

30 March 2016
10h00 – 17h00 CET
Paris, BnF
Quai François-Mauriac
75706 Paris Cedex 13

Overview of Activities as regards Copyright Reform

Action proposed: For information and discussion

Europeana Copyright Policy

This paper provides a brief overview of copyright policy developments relevant for Europeana and the activities Europeana has undertaken in this area.

Introduction

On 9 December 2015 European Commission presented a communication on copyright, titled "*Towards a modern, more European copyright framework*". In this communication the Commission is identifying a number of areas and issues where the Commission will make legislative proposals in 2016. Four of these areas are directly relevant for cultural heritage institutions. According to the Communication, the Commission will come up with proposals that shall:

- 'make it easier to digitise out-of-commerce works and make them available, including across the EU';
- allow public interest research organisations to carry out text and data mining of content they have lawful access to, with full legal certainty, for scientific research purposes;
- provide a clear space for preservation by cultural heritage institutions, reflecting the use of digital technologies for preservation and the needs of born-digital and digitised works;
- support remote consultation, in closed electronic networks, of works held in research and academic libraries and other relevant institutions, for research and private study.

While the exact scope and nature of the legislative proposals is not yet clear, this means that the key issues faced by cultural heritage institutions are part of the upcoming reform proposal. This is at least partially due to the considerable efforts





undertaken throughout 2015 by Europeana and many Europeana Network members as well as friendly organisations such as [IFLA](#), [EBLIDA](#), [LIBER](#), [CENL](#) and [NEMO](#).

The Commission has announced that it will present legislative proposals related to the issues identified in the 9 December communication before summer 2016, at which time we will have a better understanding if the proposals will contain measures that provide a structural solution for the problems related to the online access of out-of-commerce and never-in-commerce works. Europeana is advocating for an exception based solution to this problem.

Current activities

Europeana is currently working on 4 main strands:

- We are continuing our discussions with the European Commission, specifically the Copyright Unit at DG connect. We have provided them with evidence in the form of case studies and data analysis ([the 20th century black hole](#)). We are also engaging in discussion on what an exception based solution for the problem at hand could look like.
- We are talking to the Member States (via the Permanent Representations in Brussels) to raise awareness for the issues we are facing and to inform them of our position. These discussions are also intended to create relationships that we can fall back on once the Commission proposal reaches the Council.
- We are exploring possibilities for another round of awareness raising in the European Parliament, most likely in combination with an event in the European Parliament.
- We have increased our collaboration with other friendly organisations (IFLA, EBLIDA, LIBER, CENL) to ensure that the cultural heritage sector presents a unified voice. In this context we are supporting other organisations in their key objectives related to e-lending, text and data mining, protection from contractual override and cross border access to library services.

The copyright work is carried out by Europeana Foundation with support from [Kennisland](#) and a Brussels based contractor, Helena Lovegrove. This work is funded under the DSI 1 and DSI 2 projects. We expect our activities in this area to continue throughout 2016. Our work is based on the positions identified.

National developments

There are currently developments in two of the member states that are relevant to Europeana as they may have a direct impact on Europeana's operation:

- In France the Sénat has adopted a provision as part of the '[Liberté de création, architecture et patrimoine](#)' law that would require operators of an indexing or search engines service to pay a compulsory remuneration for the use of photographic, visual or artistic works to collective management organisations. While clearly aimed at commercial search engines, this provision is formulated so broadly that it would probably also apply to Europeana, requiring Europeana to pay for the use of thumbnail images of in copyright works. The French government has opposed the addition of this provision to the law and it is expected that this will result in a removal of this provision by the [Assemblée](#)



Nationale. Should the provision become enacted it would set a very damaging precedent for Europeana (although it is difficult now to assess how much of a financial impact the compulsory remuneration requirement would have).

- In Germany the Deutsche Digitale Bibliothek has announced that they will start a juridical procedure against **VG Kunst Bild** (the collective management organisation representing visual artists). The procedure centres around how reasonable is the requirement for cultural heritage institutions, who make works licensed by VG Kunst Bild available online, to implement technical means that prevent framing of these works. The VG Kunst Bild is arguing that such technical means are necessary to prevent the re-use of these works in the light of recent jurisdiction of the Court of Justice of the European Union. The DDB argues that this would put a disproportionate burden on their operation and would prevent its aggregation model from functioning. Given that Europeana's display of visual works relies on the same framing approach, a loss of the DDB in this case could have far reaching consequences for Europeana's ability to display images of in copyright (art)works.

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