



## Europeana Foundation Governing Board Meeting

23 November 2017  
16h30 – 18h00 CET  
[Teleconference](#)

### **Review of the Europeana Data Exchange Agreement - added as the written paper complementing [Paper 6](#), the presentation given to the Aggregators at the Fall 2017 Aggregator Forum in Zagreb**

*Action Proposed: For information*

#### **Foreword**

As part of the DSI3 contract Europeana Foundation together with Kennisland will review a core element of the Europeana Licensing Framework: The Data Exchange Agreement (DEA). The DEA is the standard contract concluded between Europeana Foundation and its Data Partners before they contribute data to the Europeana platform. The DEA contains provisions dealing with copyright and neighbouring rights related to metadata and previews as well as provisions dealing with liability and notice and takedown procedures.

#### **Need for a review of the Data Exchange Agreement**

The DEA has been in use since 2011 and Europeana has concluded DEA's with more than 3000 data partners over the years. While the DEA continues to serve the basic requirements for running the Europeana service there are two reasons for reviewing (and possibly modifying) the DEA:

1. Certain provisions in the DEA, most importantly those related to the use of previews and other content provided to Europeana are starting to diverge with the operational reality of running the Europeana service.
2. The DEA is one of the assets that need to be included in a possible transfer of undertaking that would result from another operator being awarded the Europeana service. In anticipation, the current (DSI3) service contract between the European Commission and the Europeana Foundation contains a requirement to make the DEA "independent from the operator of the Europeana DSI":





*The existing consent system of the Data Exchange Agreement (DEA), as a principal element of the Europeaana Licensing Framework, between Europeaana Foundation and each content provider will be reviewed during the contract period. This will be done with the objective of making it independent from the operator of the Europeaana DSI, to enable a transfer of assets as required under the tender specifications (task 1.8 and 7.1).*

Based on these two requirements Europeaana Foundation has started working on the DEA review. The guiding principle for this review is to keep changes to the DEA to the minimum. We will strive not to substantially alter the scope or the effects of the DEA.

Based on initial conversations with outside legal counsel, the affected teams within Europeaana and data partners, we have identified the following approach for ensuring that the DEA meets both the changed operational requirements of the Europeaana service and requirements expressed in the DSI 3 tender specifications.

### **Assignment clause**

After exploring a number of options for making the DEA operator independent with outside legal counsel we have come to the conclusion that this can be best achieved by introducing an assignment clause into a new version of the DEA.

Such an assignment clause would give Europeaana Foundation the ability to assign all the rights and obligations that it flows from the DEA to another entity. The ability to assign the rights and obligations would be made conditional on the selection of another operator for the Europeaana DSI and would only allow Europeaana to assign the right and obligation to the entity selected as the new operator. The assignment clause needs to be structured in such a way that it can only be invoked as part of a transfer of undertaking that includes all assets and liabilities of the Europeaana Foundation. In addition data partners would be granted the right to terminate their Data Exchange Agreement in the case that Europeaana Foundation invokes the assignment clause.

By adding such an assignment clause the new version of the DEA would become operator independent insofar as it would allow Europeaana to assign all rights and obligations to a new operator. This would enable the new operator to continue publishing and maintaining the Europeaana database including all previews that have been made available to Europeaana by its existing data partners under the conditions established by the DEA.

### **Use of previews and other content by Europeaana**

The current version of the DEA limits what Europeaana can do with preview and other content that it receives from its data partners. When the original DEA was drafted a



substantial proportion of the data partners did not want to authorize Europeana to use previews and other content for purposes other than displaying them together with search results. This is reflected in the considerations and in article 4 of the existing DEA.

We intend to modify these provisions so that they will allow Europeana Foundation to use previews and other content for any purpose that is authorized by the rights statements contained in the metadata related to the content. This would allow Europeana to use Public Domain objects and objects that are freely licensed freely licensed for purposes such as exhibitions and collections and well as on its social media channels. Initial discussions with representatives of data partners indicate that this change should be largely uncontroversial.

We also intend to use the opportunity presented by this review to make a few technical corrections to the DEA and change the signing process so that it can be effectuated online as part of the Europeana ingestion workflow.

### **Timeline**

The review process needs to be finalized by June 2018. We are therefore working on an aggressive timeline. We foresee a first draft of the updated DEA at the beginning of December 2017 to be shared with a selected group of data partners for initial feedback. We will then launch a network wide consultation in February 2018. We expect to have an updated version ready for Board approval by May 2018.

Once the new version of the DEA has been approved we will use that version for all new data partners, we will also start an outreach campaign to get existing data providers to sign an updated version of the DEA.

**Circulation:**

Europeana Foundation Governing Board Members & Observers

**Classification:**

Public