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D5.3 Strategic Recommendations to Increase the Amount of Audiovisual Content in Europeana V1

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A INTRODUCTION

In the unique context of a network focused on making audiovisual heritage materials available online, EUscreenXL 's work package 5 works on a long-term goal. It strives to identify and challenge existing barriers to bringing more archival media to the web. The work package identifies the issues at hand and recommends practical policies that can resolve them. In order to come to such a workable set of recommendations, this report explores the preconditions that would need to be met in order to facilitate an increase of audiovisual heritage online. The preconditions outlined in this document tackle some of the tensions that exist within the audiovisual archival domain – and, with it, the EUscreenXL network itself. We intend to turn these from an abstract and conceptual level into a number of practical steps that will be taken during the coming fourteen months. Their intended outcome is a set of recommendations, which will be reported in deliverable D5.4 – version 2 of this document.

Work package 5 started its work in month four of the EUscreenXL project. After planning for the establishment of a pan-European research policy, we set up a stakeholder survey that took place in November and December of 2014. In conjunction with the surveys, we held a number of interviews with stakeholders to enrich the answers gathered in the survey. In January and February, much of the work package's attention was focused on answering the European Commission's consultation on copyright. A strategic workshop, the outcomes of which serve as the basis for this deliverable, took place at the Europeana offices in The Hague. Subsequently, the work package delivered its final research report. In between, the work package took part in several forums where the aspects of online heritage accessibility were discussed. Besides sector conferences, a few of the important meetings were the **Europeana Licensing Workshop** in Luxembourg, the final gathering of the **Licenses for Europe** effort in Brussels and the first meeting of the **Europeana IPR working group** in June 2014.

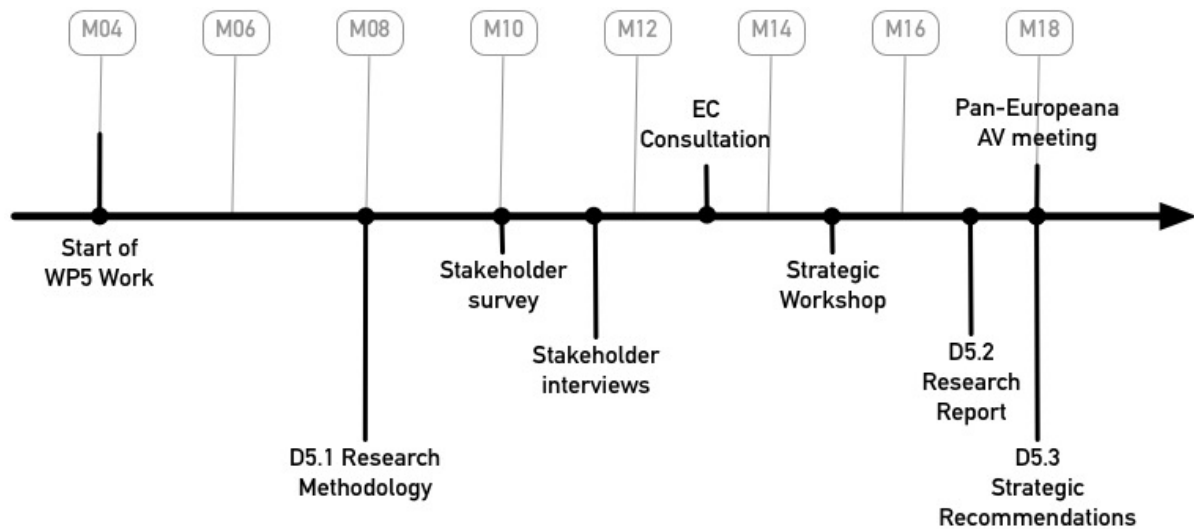


Image 1: Schematic overview of the work done in WP5, M04 - M18

The starting point for EUscreenXL's advocacy work is the public's needs for online accessibility. Audiences not only have a genuine interest, but also a certain right to know about and access their audiovisual heritage. The past decade has shown that audiences have an enormous interest in historical media sources. Personal collections have at times been central to the survival of audiovisual records. For example, when TV stations were blanking out tapes for re-use, home users who saw the value of the material salvaged entire Doctor Who episodes by home taping.¹ Individuals are oftentimes willing to take on the task of sharing pieces of audiovisual memory themselves. In a connected world, home taping is replaced with home sharing: Individual

¹ Mark Jefferies, 'Doctor Who Missing Episodes: Recovery Expert Hints More Lost Episodes Set to Be Returned', *Mirror*, 2014 <<http://www.mirror.co.uk/tv/news/doctor-who-missing-episodes-recovery-3895624>> [accessed 4 August 2014].

recordings are being put online by the millions, most often regardless of who owns the copyright. The advent of the web has brought down numerous gates that kept people from doing so uncontrollably; which feeds unease that is felt with collection holders across the cultural and creative domains. Loss of income, loss of control and loss of ownership are all threatening evolutions that loom over the heads of both the creative industries and cultural institutions. However many initiatives encourage trust in the power of the crowd, the love for the cultural object that sharing means or the support for a collection holder's mission that any form of re-watching, re-using and re-exploring means.

The media world, the creative industries and the public's expectations have all been in flux for the past decade - and collection holders are still busy catching up. EUscreenXL is a platform to leverage this catching up: A laboratory for international collaboration and research in exploring the tactics, limitations, and possibilities of allowing an a priori international public access to our shared audiovisual past. What is needed to understand this past is part of the set of questions we are trying to answer. The main question we aim to respond to, is what resources need to be in place in order for public bodies such as archives and broadcasters to be able to adequately respond to new challenges. Some of the topics are blatantly clear: We have language & cultural differences that need to be explained, we have tactics to measure the use and benefit of accessibility that need to be addressed, and we must measure the impact and value to complement the business requirements of the different organisations that are involved in this effort.

EUscreenXL's mission is closely connected to that of Europeana, which gives the project a pan-European vantage point that allows it to place audiovisual institutions squarely inside of Europe's cultural heritage domain. Europeana itself states that it is a 'catalyst for change in the world of cultural heritage'² with a mission to 'create new ways for people to engage with their cultural history, whether it's for work, learning or pleasure'. In the audiovisual domain, there is a large overlap between the mission of safekeeping and of reusing materials. Broadcast institutions traditionally have both been the gatekeepers and salvagers of their own legacy productions. Even today, audiovisual archives that sprung forth from a broadcasting rather than a museum or archival background are geared towards the findability of their materials with the aim of reuse in new productions rather than showing the cultural object in other contexts. There is a marked difference between the types of access archives will allow. It depends greatly on national infrastructure, rules and regulations as well as the kind of mandate of the organisation the archive belongs to. The mission from which an organisation approaches opening up its collections, is necessarily connected to the positions it will take on topics such as levels of access, how much it will invest in possibilities for public reuse, or what type of copyright reform should be supported. After experiencing the diversity of perspectives present at the EUscreenXL IPR workshop in May, we investigated some of our partner's mission statements.

Org	Country	Mission statement
KAVA	FI	The National Audiovisual Institute Library is the country's largest film industry's data centre, which is freely available to everyone.
INA	FR	At the time of foundation of INA a number of roles was assigned: the preservation of French radio and television archives, the production of original programmes, research and professional training. 2004 saw the launch of Inamediapro.com. It is used by audiovisual professionals to conduct research, select and order archives. Inamediapro.com facilitates access to the world's largest audiovisual archive database. And the launch of the ina.fr website gave the general public access to over 100,000 radio and television programmes was in 2006.
NAVA	HU	The conception of National Audiovisual Archives of Hungary lists its function: NAVA systematically collects and stores AV material, works it up, adds metadata and ensures public access to it for educational and scientific aims.
Luce Cinecittá	IT	Cinecittá Luce Institute intends to become a fundamental reference point for the Italian film industry and as a centre for proposals, arrangements and enhancement of talents and initiatives to give the importance of the Italian cinema that it deserves.

² <http://pro.europeana.eu/foundation> <accessed July 28, 2014>

Sound and Vision	NL	The Netherlands Institute for Sound and Vision is a cultural-historical organization of national interest. It collects, preserves and opens the audiovisual heritage for as many users as possible: media professionals, education, science and the general public.
NInA	PL	The aim of the institute is to become a leading cultural institution in the field of digitisation and publishing of archives documenting Polish Audiovisual heritage.
National Library of Sweden	SE	The National Library of Sweden has been collecting virtually everything printed in Sweden or in Swedish since 1661. They also collect TV and radio programmes, movies and videos distributed in Sweden, Swedish music and computer games. Their collections can be accessed by visiting the library or in certain cases through online services.
BUFVC	UK	The BUFVC promotes and supports the use of moving images and related media in UK higher and further education, and the use of moving images in research generally. It achieves this through delivery of services, databases, publications and a variety of other activities.

Table 1: Audiovisual heritage organisation's mission statements

Most of EUScreenXL's partner mission statements contain some reference to public access as an aim. It can be direct, such as in the case of KAVA, Sound and Vision, Ina or NAVA, or indirect, f.i. referring to publishing that actually bears access. Public broadcasters' archives have a clear public service mission. The devotion to public access as a mission can however be found at quite a different level at different organizations - a difference that cannot be disregarded. In the survey made by WP5³ the following statements were the most agreed upon:

- Making our archive materials available online supports our organisation's mission to make archive materials publicly available (4,36)
- Making our archive materials available online contributes to public knowledge (4,59)

At the same time the least agreed of all was:

- We fear that publishing our collections online will cause a loss of revenue. (2,1)

All EUScreen partners have a clear interest in making more materials accessible online. This can however only work with regard to all the interests of members and stakeholders. Therefore, EUScreenXL invests in understanding the complex rights issues in an online environment, as well as new emerging user cultures and media practices from a creative industry and user point of view. A shared mission for audiovisual archives is to store audiovisual materials and make accessible as much information about them as possible. The playing field EUScreenXL tries to widen is the amount of audiovisual productions that can be made accessible publicly under this mission. As precondition 1, 4 and 5 of this document (see part C below) indicate, in order to widen this feature of their work, an imperative needs to come not only from the organisations and collection holders themselves, but from outside sources as well.

This report begins with an update of the IPR discussions EUScreenXL has taken part in over the past few months. Subsequently, it discusses eight preconditions that need further investigation in order to be rolled into practical recommendations on a national and international level.

³ Erwin Verbruggen and others, *D5.2 Research in Online-Publication of Audiovisual Heritage in Europe* (Utrecht, 30 June 2014), p. 2.

The work schedule outlined in the description of work and in D5.1 focused on a first workshop around the topic of IPR. The topic is prevalent in discussions around online accessibility and is reaching a certain momentum within policy circles, where questions around the feasibility of large copyright reform are on the table. On May 13, EUscreenXL invited a group of policy and intellectual property experts from audiovisual archives across Europe at the Europeana offices in The Hague. The aim of the one-day EUscreenXL strategic workshop on IPR regulations was to discuss persistent IPR barriers that prevent audiovisual archives from bringing large numbers of audiovisual collections online. The intended outcome of the workshop was an inventory of (shared) views on directions for solutions.

The groundwork that had been done before was, firstly, a pan-European survey on the benefits and barriers of online access and secondly, the EC consultation on copyright⁴, to which the EUscreen network sent in one of the 11,117 submissions on March 5th.⁵ The EUscreen network constitutes a unique gathering of voices across the audiovisual heritage domain, which all have varying viewpoints on and positions in the copyright debate(s). The consultation process itself showed some of the boundaries between the various network members. Many broadcasters worked on a separate response in collaboration with EBU while others sat in on the Europeana task force dedicated to formulating a response and some prepared their own individual response. Nobody in the consortium was left untouched by the EC survey, as it is of importance to the heart of all of our daily activities. In this respect, EUscreenXL is not alone in the wider network of Europeana projects: Legal issues influence most digital heritage projects. For this reason, a Europeana IPR task force was set up in the wake of the consultation process. The aim of this working group is to coordinate IPR-related deliverables and activity across Europeana's diverse range of activities. By forming a cross-project coordination group, this new initiative aims to deliver better and more cohesive outcomes, and to strengthen the voice of heritage in the discourse on IPR regulations. The first meeting took place in Copenhagen, one month after the EUscreenXL workshop, and involved several IPR experts from different Europeana-related projects.⁶ What follows is a report on the EUscreenXL workshop, which was dedicated to audiovisual stakeholders.⁷

1 A Shopping List of Exceptions

The workshop opened with two short keynote presentations - from Francisco Cabrera of the European Audiovisual observatory, and Eleonora Rosati, UK-based IP consultant and blogger.⁸ They directed the mind-set towards two strands: one's *perspectives* (a solution for one can be a barrier to another) and the issue of *territoriality*: the fragmented character of European IP laws, and the myriad of exceptions and limitations. Rosati brought in Bernt Hugenoltz's metaphor that Article 5 of the InfoSoc directive works somewhat like a "shopping list" of exceptions member states can choose from'.⁹

Cabrera provided an introduction into the continuous efforts by the European Union to review and modernize EU copyright. First he presented the relevant outcomes of the Licenses for Europe thematic working groups. His view on the stakeholder dialogue was that it was more important as a step towards identifying shared solutions, then to actually make them happen. He then spoke of the Public Consultation on the review of EU copyright rules, which invited stakeholders to present their opinions on and solutions to the main issues of territoriality in the Internal Market (harmonisation, limitations and exceptions to copyright in the digital age); fragmentation of the EU copyright market; improving the effectiveness and efficiency of enforcement while

⁴ http://ec.europa.eu/internal_market/consultations/2013/copyright-rules/index_en.htm [accessed 24 August 2014]

⁵ The full text of the response can be found in Annex A.

⁶ Europeana Cloud, Europeana Space, Open-up, Europeana Sounds, Europeana Photography and EUscreenXL

⁷ The list of organisations present can be found in Annex B.

⁸ Francisco Javier Cabrera Blázquez, 'Recent Developments Concerning Copyright Law in the EU' (presented at the EUscreenXL Strategic Workshop on IPR Regulations for Audiovisual Heritage, The Hague, 2014) <<http://www.slideshare.net/EUscreen/20140513-euscreenxl-iprworkshopcabrera>> [accessed 2 August 2014]; Eleonora Rosati, 'Bringing Audiovisual Works Online: (No) Sooner Said than Done?' (Presented at the EUscreenXL Strategic Workshop on IPR Regulations for Audiovisual Heritage, The Hague, 2014) <<http://www.slideshare.net/EUscreen/20140513-euscreenxl-iprworkshoprosati>> [accessed 2 August 2014].

⁹ P. Bernt Hugenoltz and Martin Senftleben, *Fair Use in Europe: In Search of Flexibilities* (Amsterdam: IViR, Vrije Universiteit Amsterdam, 2011) <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1959554> [accessed 28 January 2014].

underpinning its legitimacy in the wider context of copyright reform. The status on May 13 was that the EU was still processing the submissions, although a leaked *draft* Impact Assessment of the Commission on the modernisation of the EU copyright *acquis* was already circulated.¹⁰

Rosati took the topics a step further by describing the hurdles in copyright rules by presenting legal IP disputes in the three basic options out-of-copyright, orphaned or in-copyright works. What are the peculiarities of audiovisual works? The combination of multi-authorship and multi-layeredness, in her words:

- A Different rightholders
- B Legal treatment of underlying works and soundtracks
- C Temporal difficulties

Her argument focused on the extra complexities created by exceptions and limitations, with *territoriality* as the elephant in the room.¹¹ In order to create online access to archival audiovisual works on the European level, organizations not only have to deal with the basics, but also with all the different national legal regimes. For intrinsically non-commercial organizations like public archives and public broadcasters to increase access substantially in this context, would require a currently non-existent inflow of funds - an argument that was much heard during the workshop, and understood by the European Commission in its latest communication.¹²

Rosati's options for change were, in order of feasibility and reverse order of impact:

- a) Leave it to market and courts
- b) Soft law and support for market initiatives (Licences for Europe)
- c) Legislative intervention (5-10 years)
- d) A European copyright code that would replace national titles by means of regulation *ex Art 118 TFEU* (10-12 years).

2 The Hungarian Example

In the months before the workshop, research and a pan-European survey on this topic showed that IPR barriers still withhold public (broadcast) archives from putting large numbers of old and new audiovisual collections online.¹³ Réka Markovich, from Hungarian EUscreenXL partner ELTE, presented the outcomes of this research. Many AV archives with a public mission try create access to as much materials as possible, but are limited by copyright rules.¹⁴ Precisely which barriers are highest, is less clear because it depends heavily on the national legal framework and funding structures of an institution. The Article 5 of the InfoSoc directive, as a shopping list, is allowing different solutions for differing operational scopes. Krisztina Rozgonyi, Hungarian-based IP consultant, presented the particular Hungarian solutions to opening up their audiovisual heritage – by means of a combination of a legal deposit infrastructure and strong technical control to access points.¹⁵

Rozgonyi and Markovich discussed how the Hungarian model could be seen as a national best practice for audiovisual archives to make their collections publicly accessible. An elaborated description of the Hungarian regulatory model on AV archive and the access for it stressing its feasibility and operability could potentially serve as a great tool in national argumentations where the current legislation enables less access but the resolution is present – either at the professional or the governmental side – to extend it. Nevertheless, as it has been presented above, this system has some necessary conditions, e.g. certain copyright exceptions have to be implemented. Rozgonyi and Markovich are convinced that the named exceptions: Article 5, 2.(c) and 3.(n). of the InfoSoc Directive should be mandatory to implement as a vital condition to enable European

¹⁰ Eleonora Rosati, 'Full Text of Leaked IA on Review of EU Copyright Now Available: But Is It Current?', *The IPKat*, 2014 <<http://ipkitten.blogspot.nl/2014/05/full-text-of-leaked-ia-on-review-of-eu.html>> [accessed 4 August 2014].

¹¹ Rosati, 'Bringing Audiovisual Works Online'.

¹² 'Towards an Integrated Approach to Cultural Heritage for Europe' (Brussels, 2014) <http://ec.europa.eu/culture/library/publications/2014-heritage-communication_en.pdf> [accessed 23 July 2014].

¹³ Verbruggen and others.

¹⁴ Réka Markovich, 'Answers, Questions, Legal Issues' (presented at the EUscreenXL Strategic Workshop on IPR Regulations for Audiovisual Heritage, The Hague, 2014) <<http://www.slideshare.net/EUscreen/20140513-euscreenxl-iprworkshopmarkovich>> [accessed 2 August 2014].

¹⁵ Krisztina Rozgonyi, 'Legal Deposit of Audiovisual Works - Copyright Matters: The Hungarian Solution' (presented at the EUscreenXL Strategic Workshop on IPR Regulations for Audiovisual Heritage, The Hague, 2014) <<http://www.slideshare.net/EUscreen/20140513-euscreenxl-iprworkshoprozgonyi>> [accessed 2 August 2014].

countries to create wider public access to audiovisual heritage. Under precondition 4 we further discuss the mandate that would be needed to establish such a system.

The Hungarian regulation model has been successful for the last ten years, which have passed with no reclamation, resist or conflict. Of course the Hungarian situation cannot be considered as general: the Hungarian Audiovisual Archive was created by the same act that worked up the current legal situation. In countries where (national) archives have been already working for decades—and have considerable business model—need different viewpoints and arguments. It does not mean that the solution that has been worked out based on the Hungarian model could not work, it just means that we would need to be able to exploit the model and explain why it could be adequate in all countries where the purpose of EUscreenXL is conceptually accepted.

3 Proposed Challenges in Business and IPR

When comparing the amount of openly audiovisual material in Europeana with other forms such as text and images it becomes clear that not a lot of objects can be classified as open. In the graph below the ‘can I use it’ filter facet of the Europeana portal is used. This filter includes all the material that is either without any copyright restrictions, or available under a CC-BY or CC-BY-SA license. More restrictive licenses are not included.

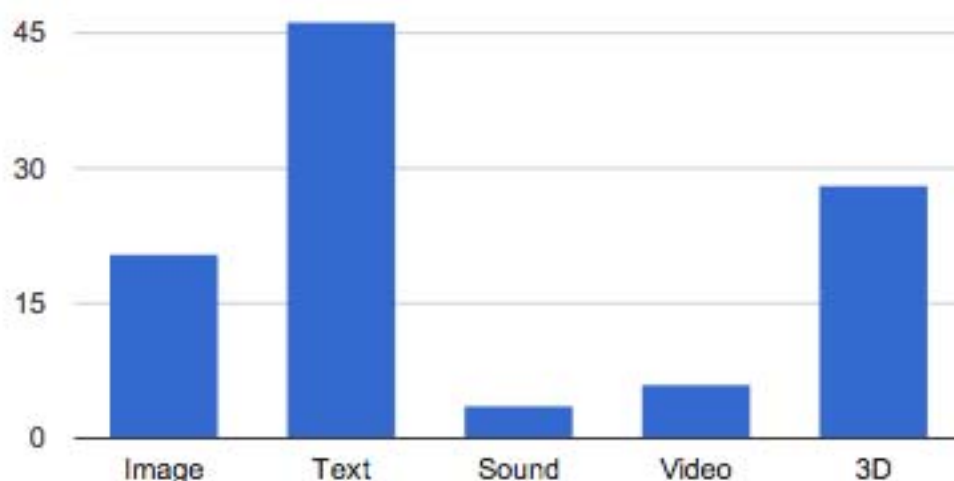


Image 2 Openly available material on Europeana

The graph clearly shows the big differences between audiovisual material and other types of content. The main reason for this is that this is mostly copyright from the last century and therefore some form of copyright probably still applies. This means that under EU law, audiovisual archives and broadcasters are only able to show the material under certain conditions to the user. When a user wants do more with the material is not up to the institution to decide as they are not the main rights holders. Still, even when if the institution is the rights holder as we concluded during the workshop, there is not necessarily a lot of willingness to publish the material openly for re-use without any restrictions. After the morning presentations, the group turned to key copyright topics related to provide free access to AV archives through EUscreen and Europeana. The group was divided over three topics:

- Educational exceptions
- Hungarian context of a legal deposit
- Fundamental change of the EU copyright regime towards harmonisation

The outcome of the discussions was ambivalent. Although everyone acknowledged the existence of copyright barriers and the need for change, the directions for solutions was less unified. The important question arising from the tables was whether a common ground for the EUscreenXL consortium could be established and

whether all involved could commit to start finding shared solutions. Partly, settling on the framework in which to address these topics turned out to be more complicated than expected. What seem like neutral terms to one party, for example, can potentially be worrisome to others. The concept of *out of commerce* works, for example, can be an important concept to defend why archival materials should not be withheld from public access, as there seems to be no way to turn certain broadcast items into a form of revenue. For a footage sales firm, however, the very concept itself is debatable. An important part of the debate surrounds the *public mission* and the extent to which this mission covers opening up on archival access to heritage productions. All of the participating audiovisual archives considered themselves to be cultural heritage institutions or to have a public preservation task, but often they also function as rights and content holders – with public service broadcasters right in the middle of this gradient.

Everybody EUScreenXL member has a public mission. That much is clear. The network has been a space for exploration of public access methods for years. The tension comes from organisations with a public mission, that increasingly need to fend for their sources of revenue. Some network members need the money coming from licensing to stay in existence. All are willing and interested to provide for educational purposes, but education is at the same time an important revenue source. A common goal is to share collections under one's own terms. No archive wants to create a vault in lock-down, but all have the primary goal to safeguard AV archival works. It is for this purpose that a balance is needed between the public's interest and sensible ways of keeping control over the ways in which the archives can be accessed.

C PRECONDITIONS TO INCREASING THE AMOUNT OF AV IN EUROPEANA

This chapter takes an in-depth look at eight preconditions. These are the proposed, underlying motivations that, in our view, are needed to fulfil the mission and practice of making audiovisual heritage increasingly accessible and available online through Europeana. They are explorations of themes that we need to address in order to come to a more practical level of building and proposing domain-wide recommendations for the sector.

The selection of these topics has come out of the research as reported in D5.2 and the comments of stakeholder participants in the strategic workshop on IPR. We discussed its implications and outcomes for IPR in section B of this document. This section digs deeper into the aspects of online accessibility that play at different levels. IPR issues are not solely financial issues and in reverse, the financing of a public archive cannot necessarily wholly solve the demands of IP law. The only time when finances can solve IPR issues is when an archive keeps AV materials that involve no *neighbouring rights*. Very few partners in the EUscreenXL consortium have this sort of collection. Some big archives do possess such material, but most typically this represents only a little portion of their holdings – i.e. newsreel materials, for example. Broadcast materials cannot be older than fifty years, so none of these materials could have passed to public domain, and very few of it is free of neighbouring rights. In our view, it is key that EUscreenXL and its partner organisations keep working in a committed effort with policy makers and neighbouring domains to solve existing copyright inhibitions and inconsistencies.

In many cases, rights holding public archives are obliged to monetize their holdings for two reasons:

1. General funding of the institution
2. Paying for neighbouring rights.

The situation is very different with archives that are not rights holders. Other than the financial issues, in this case the issue is clearly one of copyright. This could be eased at least in part with the help of legal deposit or the principle of cultural heritage, because non-rights-holding archives can only work following the exception principles stipulated in copyright acts, such as the exception for education and research purposes.

Besides finding a voice to represent the audiovisual heritage sector in debates on IPR, we see eight other topics that need to be addressed in order to come to improved access for audiovisual heritage.

1. Audiovisual collection holders and policy makers need to be aware of audiovisual materials constituting a part of cultural heritage
2. Audiovisual collection holders need to have a shared interest in allowing public online access (internationally)
3. Alignment between national and cross-national outlook of collection holders
4. Clear call on a political level to open AV heritage collections
5. Organisations need to define a clear attribution policy, given their mission to provide access
6. Low-cost tools for multilingualism
7. Evidence of the impact that Europeana has on the EU creative industries
8. Guaranteeing stable income for preservation and accessibility actions on a political level

The following sections explore these preconditions in further detail. In Chapters 4 and 5, we will lay down our time frame and work trajectory for coming to grips with them.

1 Precondition 1: Audiovisual collection holders and policy makers need to be aware of audiovisual materials constituting a part of cultural heritage

A recently published communication from the European Commission mentions the various means of support the EU currently offers to improve access to cultural heritage. Member states are recommended to “systematically collect, preserve and restore our film heritage and facilitate its cultural and educational uses.”¹⁶ EUscreenXL unites a conglomerate of public organisations, national institutions, regional archives and university collections. All these contain heritage collections - parts of which have been stored on film reels of various formats. There is, one could say, a more or less clear division to the contents that can be found within the EUscreen collections and that of film archives across Europe, denoted with the term film heritage. The network started with a group of broadcasters around Europe in the MEDIA-funded *BIRTH* project (2003-2006).¹⁷ The earliest items that can be found in their collections are often the newsreels of preceding news eras. These are also the items most often found online, both in various instances of the *European Film Gateway* project, on reuse-oriented platforms such as *Open Images* and *Wikimedia Commons* and in the EUscreen core collection: newsreels seldom contain music, have a strict, known production context, and are old enough to be found in the public domain. They are the heirlooms of many forms of cinematography and audiovisual storytelling - short and documentary films, news items, stand-up talks, *visions du réel*. What makes the non-cinematographic collections so compelling is their direct link to daily life. Orphan films, amateur films, newscasts and other television programmes, educational productions and films made as assignments for companies. All these types of content are currently seeing an age of explosive growth and for digital archivists in this day and age (as, increasingly, for home users) the process of selecting what will and what won't be preserved for future generations will be a core task. Some say, a task that needn't happen, as storage capabilities increase and costs lower and retrieving everything will be easier and easier.

Meanwhile, the institutions that throughout the twentieth century have arisen to take care of audiovisual heritage collections are facing a brunt of challenges today. Across Europe, the public broadcasting system is facing heavy budget cuts.¹⁸ To give a few examples: The Netherlands kept a worldwide radio broadcasting service in place for its citizens and oversees worldwide since 1927. The channel produced documentaries and radio news in about 6 different languages. When the decision came in 2012 that the Dutch cultural sector would have to reduce by 200m, RNW was amongst its casualties. As budget cuts seldom leave room for funding other archives to take care of the legacy of the slimmed-down institution, the organisation had a difficult time finding proper storage for its different radio- and audio-collections. The national audiovisual archive, Sound and Vision, could only take care of those parts that fit its collection policy (and corresponding budget). Greece used to have a national archive for audiovisual materials: HeNAA was disbanded in 2011 and its contents brought to safety under the roof of public broadcaster ERT. Who, in turn, experienced a much-contested full closure when the government shut down all its activities in 2013. Luckily, the organisation is slowly getting back on its feet under a new name, NERIT, but the affair shows how rapid the tide can turn for employees, buildings, collections and all the memories they hold. In Spain, another austerity regime is leaving media casualties in its path. Valencian public newscaster Canal 9 was shut down in a matter of weeks in November 2013. The situation is less dramatic, but unrest has nonetheless been building in the Catalan region, where the financial crisis joins forces with botched contract negotiations and worries of privatisation for the public broadcasting mother ship of TV3, the Catalan Corporation for Audiovisual Media (CCMA). And in May the EBU announced reports of an Israeli government plan, to close the country's public service broadcaster in March 2015 and to abolish the license fee. Archives have a habit of disappearing.

As the contents have a somewhat material form, things can be rescued. In Amsterdam, Dutch film lab Cineco called for bankruptcy in 2013. The film lab housed a number of vaults where film materials produced by a wide range of Dutch filmmakers - professional and private alike - was stored. In a frenzy of only a few weeks, all were called upon to retrieve their valued possessions. Both the neighbouring archives EYE Film Institute and

¹⁶ Recommendation 2005/865/EC on Film Heritage and the Competitiveness of Related Industrial Activities, cited in: “Towards an Integrated Approach to Cultural Heritage for Europe”.

¹⁷ <http://www.birth-of-tv.org/birth/> [accessed 28 August 2014]

¹⁸ Erwin Verbruggen, ‘Do Broadcast Archives Go to Heaven?’, *PrestoCentre*, 2014 <<https://www.prestocentre.org/blog/do-broadcast-archives-go-heaven>> [accessed 28 August 2014].

Sound and Vision took in cans that went unclaimed for. Cineco had physical assets. In a future where all our media are on managed storage spaces, pulling the plug when an archive can't afford its electricity bills can have effects comparable to floods, storms, a heat wave. If we want to ensure survival for our archives, we need to keep account of all these situations.

Most European countries have a dedicated housing and infrastructure for film heritage - operations that store 100 years of film cans and make their way into the news cycle when 'discoveries' of films thought long gone are made. Not every country has a dedicated AV archiving infrastructure. In some cases, national libraries have taken on the task of providing access to audiovisual heritage content - the KB in Sweden for example stores massive amounts of low-resolution broadcast video. In most countries the task is up to broadcasters themselves, and television productions from recent or long gone eras are stored in a production archive, not necessarily meant for public production and consumption. In the case of Belgian French language television RTBF the archive is digitised and exploited by a third, commercial party. In the UK, public broadcast heritage is stored in part by regional archives, in part by the BFI and thousands of hours of broadcasting materials are made accessible through a dedicated organisation, the British Universities Film and Video Council. Only in a handful of European countries does the (non-cinematographic) audiovisual record have a home to call its own - NAVA, in Hungary, Ina in France, Sound and Vision in The Netherlands and NInA in Poland. All very young organisations that find themselves exploring uncharted terrain that has evolved so much since the time of their inception - when digitisation was the most pressing matter - and the current media scape, that is in constant flux and where digital accessibility is an assumption, not an end-goal.

It is no wonder then, that trying to create an advocacy to fulfil the premise of making audiovisual content more accessible online is a rocky science - with a myriad of collection types stored in a variety of organisations gathered in overlapping but distinct professional organisations. It is precisely what makes the EUScreen network, with scholars, educators, technology providers and collection holders, a unique set-up to focus on this specific aspect of the equation: what steps can we and should we take as caretakers of audiovisual heritage materials to make that material relevant and useful to audiences in an environment where media exploration is taking place at all times, in all places, and on all sorts of devices?

Audiovisual archive collections have come to fruition in very differing contexts, in organisations with differing missions and vantage points. Media items can be seen as mere *assets* to be traded and reused. On the other hand, they are cultural products - items of the public service information flow. In this capacity, they can be considered part of a region's, a nation state's, Europe's or even global cultural heritage. Organisations such as the CAAA, the Co-Ordinating Council of Audiovisual Archives Associations, have for years made the case that audiovisual media constitute much of the cultural heritage of the 20th century.¹⁹ It is a heritage that is fragile and most often invisible – as archives haven't found their way around opening access online or even coming to the early stages of digitisation.²⁰ From the perspective of this working group, it is imperative to regard archival audiovisual collections as a structural part of Europe's cultural heritage – and we must hammer home this conception. Because it is a view that has a profound impact on the ways a collection holder approaches its tasks of preservation and providing access and policy makers approach these collections. The UNESCO definition of 'cultural heritage' reads: „*Cultural heritage may be defined as the entire corpus of material signs – either artistic or symbolic – handed on by the past to each culture and, therefore, to the whole of humankind. ... The preservation and the presentation of the cultural heritage are therefore a corner-stone of any cultural policy*“.²¹ In this definition, which has been accepted as the basis of dealing with cultural heritage in the EU, the two key activities to apply to cultural heritage are *preservation* and *presentation*. From our point of view the aspect of “presentation” is of paramount importance, as it brings to the fore the visibility of these important collections and broadens the social support for investments in preserving audiovisual heritage.

¹⁹ Jacqueline von Arb, 'Audiovisually Yours! Audiovisual Media: The 20th Century's Contribution to Cultural Heritage' (presented at the Third UNESCO International Memory of the World Conference, Canberra, Australia, 2008) <http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/mow/mow_3rd_international_conference_jacqueline_von_arb_en.pdf> [accessed 28 August 2014].

²⁰ CAAA, 'World Call for the Preservation of Broadcast Archives', *CCAAA Policies & Standards*, 2014 <http://www.caaa.org/paper_worldcall.html> [accessed 28 August 2014].

²¹ UNESCO, 'Draft Medium-Term Plan (1990-1995)', 1989, p. 57 <<http://unesdoc.unesco.org/images/0008/000825/082539eb.pdf>> [accessed 9 July 2014].

The need to restrict access to archival media items used to stem from a preservation perspective. In the analogue world, content was inextricably linked to its support. Preservation of the content therefore meant diminishing open, and potentially damaging forms of access. In a digital environment, this barrier is lifted. Content preservation is reduced to a question of migration, and access has become an issue theoretically intertwined with but practically separate from preservation. A digital copy does not deteriorate due to its usage, so access is now limited by other factors. Our shared cultural heritage is meant to be seen, admired, and learnt from in all sorts of contexts - provided that the given usage does not harm its physical or intellectual integrity. The cultural heritage status of a document stipulates that it should be available for access by anyone, leaving aside the question of whether reuse is granted, and whether or not this access should always be free of charge. As a basic principle one could reasonably argue for a general free access of all cultural heritage digital document. However, three factors have to be taken into account in this respect.

- The legal status of the document
- The legal status of the archive
- The financial policy of the archive keeping it

The clear case of free access cultural heritage document is the public service program produced by a public broadcaster. In this case it is very hard to argue for any legal limitation that would result in requiring fees. The programme is produced with public money; its purpose is public information. However, even in this case in most archives special rights have to be assigned to the archive to allow it to provide free access to such documents. For example, INA in France is granted producer rights of such documents, which is the basis of their free online publication. NAVA in Hungary has to have special individual agreements with the public broadcaster allowing providing free online access to these documents.

However, the specialty of audiovisual documents is the legal status that always applies to these documents. It regards neither the producer nor the main creator, but several other creators, and is therefore called *neighbouring rights*. This means that anyone rightfully claiming creatorship of the audiovisual item is entitled to a certain fragment of copyright. Neighbouring rights are not universal, but apply in all European countries.²² If the document involves neighbouring rights it is very difficult to argue for free access, regardless of its cultural heritage status. Neighbouring rights are payable even if even if the archive's legal status grants it producer or owner's rights. Thus, it is the third factor, the archive's financial policy, that will be decisive in the question of free access. The freedom of access to public domain documents in an archive having the owner's rights of it is solely determined by the fact whether or not the sufficient financial funds are at the disposal of the given archive.

INA for example pays a fee to author's societies for all documents bound by neighbouring rights that are not public domain and to which it grants access whether paying or not. This is a flat rate that has to be negotiated yearly. The agreement regards a certain amount of publicly available programs. According to INA representatives²³ clearing the rights for all of their material with the authors' societies could lead to a general free access to non public domain material only in principle. However, this would be unlikely to happen. Since INA's paying service is constantly growing, authors' societies would in all likelihood raise their demands for the level of flat rate, which would reach the limits of financial feasibility anyway. The institution of neighbouring rights alone prevents pursuing a policy of open (free) access to audiovisual archived material and turns IPR into a financial issue - which can make the whole policy unpredictable. For example, in Hungary authors' society of television and filmmakers considers even public service broadcast programs (such as the news program) where the creators produce the program for a salary with public money as items involving neighbouring rights.

Clearly, the fact that a document is considered cultural heritage does not determine its status of access. However, because access to cultural heritage according to UNESCO definition is supposed to be eased to the maximum extent, this status is an argument for motivating archives and governments to revise unnecessary legal barriers and to assure financial means necessary for the cultural heritage to fulfil its function. In consequence, we think that arguing for the cultural heritage status of audiovisual documents helps to foster the cause of open access.

²² 'Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations', *WIPO-Administered Treaties* <http://www.wipo.int/treaties/en/text.jsp?file_id=289757> [accessed 28 August 2014].

²³ Personal conversation

2 Precondition 2: Audiovisual collection holders need to have a shared interest in allowing public online access on an international level

Audiovisual works are everywhere. Audiovisual methods improve knowledge uptake in distance learning. 66% of the world's web traffic is video content²⁴ (with Netflix being accountable of one third of the US's traffic)²⁵. Debates are going on about whether or not audiovisual works are the new way of writing: a basic skill one needs to expand on an argument. Whether or not the video camera will do away with pen and writing pad is not necessarily at stake here. What is at stake is the visibility and accessibility of earlier forms of audio-visual writing. In any form of cultural expression, it is of utmost importance that a history can be traced and forms of progress can be laid out. In the case of the performing arts, what constitutes an archive is a tricky matter, as what exists in the moment becomes, once recorded, something different. In the audiovisual domain, what is recorded is, by default, the archival object itself. The audiovisual market today is encroaching on the concept of the archive. Media Asset Management systems promise a triple return on the same investment media companies have been making for decades, but now one product can be re-packaged, re-accessed and re-sold via a plethora of platforms and formats. The media lifecycle sees archival materials as cheap base materials to build upon and for a producer it is of interest to keep as many historical materials as close to hand as possible, for easy refurbishment.

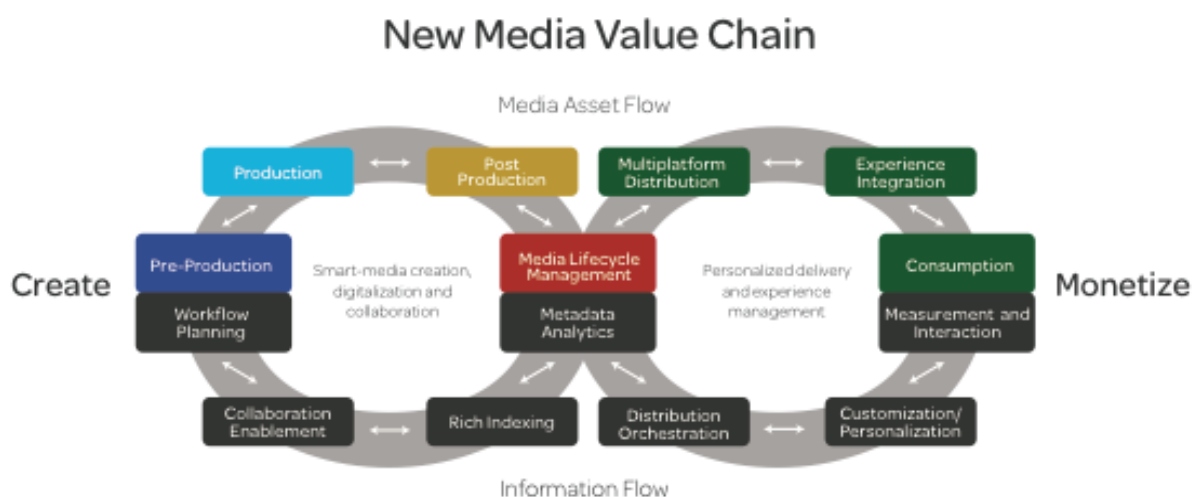


Image 3: The New Media Value Chain²⁶

This is of course the producer's perspective and needn't necessarily coincide with that of the audiovisual archivist (who is trying to make materials survive into the next century), that of the academic (who needs to explore historical sources in depth), that of the teacher (who needs to get across knowledge), that of the general public (with a wide array of interests to be met) or of other players in the creative industries, for whom historical audiovisual materials are the raw material to build upon and play with in new settings. For the academic community, the digitisation activities started over the past few years have been a fascination development, as it makes research possible that before had been virtually impossible. One such example is that of a PhD who started in her research on the way asylum seekers and immigrants had been portrayed in the media in 2006, then focused on all the ways this type of research was difficult and near impossible - whilst

²⁴ 'Cisco Visual Networking Index: Forecast and Methodology, 2013–2018 - Cisco', 2014
<http://www.cisco.com/c/en/us/solutions/collateral/service-provider/ip-ngn-ip-next-generation-network/white_paper_c11-481360.html> [accessed 28 August 2014].

²⁵ Stephanie Mlot, 'Netflix Dominates Web Traffic as Cord Cutters Gobble Data', *PCMag.com News & Opinion*, 2014
<<http://www.pcmag.com/article2/0,2817,2458032,00.asp>> [accessed 28 August 2014].

²⁶ From: Avid, *A Vision for the Future of the Media Industry*, 2014
<http://www.avid.com/static/resources/common/documents/whitepapers/Avid_Everywhere.pdf> [accessed 16 July 2014].

a mere 7 years later all of these resources had been digitised. Barriers to an optimal research process that is as clear-cut and standardised as with textual sources were still in place, but the process itself had become endlessly more feasible. In the meantime, through initiatives such as CLARIN and DARIAH, audiovisual sources are becoming available to researchers as part of a broader research infrastructure, and the turn towards the digital humanities opens up a variety of new approaches towards these sources. New groups spring up in the meantime to explore the benefits for the parties involved - while the EUScreen network has fed a longstanding relationship between archivists and scholars, the EBU has now twice successfully organised a day about the crossover between archives and academics, and new research groups, such as that focusing on the history of socialist and Eastern-European television, are showing the variety of relevant research topics that can now be researched.

Teachers across Europe are inventing a variety of ways to bring media education to a next level of innovation and usefulness to youngsters. Where on the one hand debates are starting about whether or not children should start computer programming from a young age onwards, on the other hand the concept of media literacy, the meaning of which differs a little across the continent, is an important term in many national and regional educational teaching curricula. Digital screens and tables in the classroom facilitate a proliferation of media sources and for many historical events the link can now be shown via audiovisual sources. Teachers are increasingly looking for audiovisual aids to, on the one hand, illustrate the concepts and stories they are bringing to the classroom and, on the other hand, improve student's understandings of the various ways in which media work.

Europeana usability sources point out that users are ten times more likely to select video materials over other content.²⁷ Heritage sources give a framework of recognisability for older generations, and can colour the stories of old that exist for younger generations. They make the past feel closer and more tangible, and illustrate seemingly distant cultures as a close understanding. In the digital media, the language of older media is also being copied over as a means of recognition: photography and video filters that refer to analogue development techniques, filters that bring back the scratches of over-used film reels, or new productions being shot on U-matic tape all show a sort of playfulness in references to the past that people recognise and intend to keep alive. Furthermore, when archives such as British Pathé take a decision to publish a modest amount of archival materials on YouTube, the public reaction is overwhelming - and understandably so. The archival materials that show our pasts are the closest we can get to time travel.

For the creative industries, the archive as a concept is becoming increasingly important. Digital and Media Asset Management systems have become crucial to all sorts of creative organisations. DAM or MAM systems are a sort of blanket term for management systems for illustrative, audiovisual, photographic and all sorts of media an organisation has access to or wants to use. The difference between a DAM and a MAM and for instance collections management systems used in the museum sector or repositories used by university libraries, lies in the specificities of their being geared towards a specific type of media - journal articles, art catalogue collections, moving image media. While the system itself is agnostic towards what type of content is being stored in it, their rise and importance - the market has been growing rapidly, with big market players moving into this market - show how important it is for organisations to be aware of and take care of their raw and final production contents, in order for them to be easily repackaged, reformatted and reused in various formats. In the media cycle, the archive is taking an increasingly growing role, which recognises the value that archival work - preserving and making accessible legacy recordings - intrinsically has.

2.1 Shared mission

Interest in and of the public means one thing. The question is how it should translate to an infrastructure where the web can be a gateway to our shared audiovisual heritage. How does a large public interest translate into shared modes of operation? The past ten years have seen a wide array of experiments with the accessibility of cultural productions and artefacts. Parties involved have been organisations with a clear-cut public mission, but also publishers, and for-profit archives have sought out ways to increase their relevance in the digital age by opening up their archives without losing an eye on the possibility of using it as a revenue

²⁷ D. J. Clark, D. Nicholas and I. Rowlands, *Publishable Report on Best Practice and How Users Are Using the Europeana Service*, 2011 <http://www.europeanacconnect.eu/documents/D3.1.3_eConnect_LogAnalysisReport_v1.0.pdf>.

source. Both publishing powerhouse Condé Nast and The New York Times have invested in exquisite user experiences to browsing their archives, which go back to the early 20th century. It is this level of findability that audiences expect and embrace. The audiovisual domain knows more restrictions and we are well aware of them - the purpose of this document and the wider advocacy activity in EUscreenXL is precisely to document these restrictions and propose the various ways in which we can overcome them.

In this sense, EUscreenXL is a laboratory. It is a pan-European mix of larger and smaller institutions, producers and archives that have collections going well back to the early 20th century, that have varying degrees of public missions to fulfil, and that face parallel questions: no matter the size of our collections, how can we keep them relevant and accessible to audiences today and in the future, and how can we sustain the operation that supports the safeguarding of these assets? For some, this effort is closely tied in with the creation of new materials (i.e.. Broadcasters). For others, this is more closely related with the provision of audiovisual materials as a service for contextualisation and repurposing by others (footage archives). For yet others, the repurposing can only take place in a context of teaching and learning, as libraries and archives traditionally cater to. What EUscreenXL offers to these various consortium participants, is a space to explore the possibilities - the three pilots held within the projects are finger exercises in providing to the general user, to the academics and to the creative industries how it is that we can serve them better. The research done in WP6 is investigating whether or not we can create sensible business models out of the unique proposition that this conglomerate of network partners consists of. What brings all these parties together is a shared interest in the possibilities of reaching out to various types of users in a decidedly transnational context, and finding the space to discuss and experiment with various forms of access. In the meantime, partners are undertaking their own projects, which oftentimes build on work and knowledge done in EUscreenXL, or feed back into it.

2.2 (Mission and) position of EUscreenXL

EUscreenXL is a place to experiment with new ways of online access. This experimentation currently takes place under a set of rules and safety regulations. Videos are made available under a stringent no-download policy. A very small selection of materials is available in a pilot project to provide creative-commons licensed materials to creatives.²⁸ Based on reuse investigations in the EUscreen project, contextualisation projects are welcomed, but need to have stringent security measures in place. In this regard, the EUscreenXL consortium reflects concerns that are at play in the wider media world. For instance: When the popular browser Firefox accepted the possibility for HTML5 to accept various types of DRM, this was a shock for many in the so-called open video movement - and a relief for many content holders.²⁹ As we've seen before, in IPR there is a large divide between the reasoning of users and the reasoning of content holders.³⁰ This divide has been brought about by technological changes and developments and in this respect it comes as no surprise that parties on both sides of the argument take to technological development to facilitate a further roll-out of this or that position and possibility.

The EUscreenXL consortium unites a number of varying voices that cross this divide, which is what makes the network unique. EUscreen was one of the first organisations to sign up to the new Europeana Data Agreement. EUscreen developed exhibition tools and a scholarly journal to provide context to the many sources available on the platform and uses linked open data to link its contents to a cloud of knowledge. EUscreenXL is, due to its collaborators, its multi-thranged nature and its wide European coverage, an important laboratory where organisations can bundle and get a taste for further developments in the online cultural field. All the organisations in the consortium have a public mission that they are doing the best to their current ability to fulfil. EUscreenXL is there to help the further their decision making and experiment with terms of access in the online sphere, aligning as much as possible with the organisation's missions and goals. The audiovisual domain is immense.

²⁸ <http://euscreen.openimages.eu> [Accessed 28 August 2014]

²⁹ Peter Bright, 'Driven by Necessity, Mozilla to Enable HTML5 DRM in Firefox', *Ars Technica*, 2014 <<http://arstechnica.com/information-technology/2014/05/driven-by-necessity-mozilla-to-enable-html5-drm-in-firefox/>> [accessed 4 August 2014].

³⁰ Leonhard Dobusch, 'EU Commission's Consultation Report Shows: Current Copyright Is Unbalanced', *Governance across Borders*, 2014 <<http://governancexborders.com/2014/07/25/eu-commissions-consultation-report-shows-current-copyright-is-unbalanced/>> [accessed 4 August 2014].

The public missions of broadcasters and archives may have been developed in a very different setting from that of museums and libraries, but the end goal of their undertaking is highly parallel: to preserve what has been created and make sure it keeps within reach of future generations. The web allows us to enable and increase this reach - if it holds true that the web means “the end of forgetting”,³¹ this should most definitely also be true for our audiovisual heritage.

2.3 (Mission and) position in Europeana

Europeana is an important factor for the cultural heritage domain in Europe. It has motivated and dynamised a wide number of discussions in the domain and is an important place where discussions are taking place as to where the web development should be taking this sector of social, public life. EUscreenXL intends to enlarge the audience reach for AV collections by joining the Europeana infrastructure. EUscreenXL is one of the thematic aggregators because audiovisual materials and audiovisual organisations have specific needs and requirements to be addressed in an online context.

EUscreenXL, together with Europeana Sounds and the European Film Gateway, covers the European domain of audiovisual works. Music, film and video recordings are made accessible and findable via Europe’s cultural platform and the sector finds its voice and relevance in a wider cultural field. Most importantly, audiovisual collections can in this way participate in a broader debate about the future of cultural heritage in Europe and point to its specific characteristics of the AV context: a large industry behind with, with a high production value and intense expectations for returns on investment, a large amount of creative muscle working together to realise productions, and thus an often complicated web of rights holders, and a massive overlap of interests but diffuse responsibility when it comes to the responsibility of safeguarding the materials for future generations. The audiovisual heritage domain, because of its versatility and the wide arrange of stakeholders involved, is a complex one, with tentacles and reverberations in all aspects of the heritage world. The Presto4U project uses nine denominations to tackle the preservation problems of various subdomains,³² but voices that many more could be added to that list - and different cross-sections could be created.

Fact is, that the digital age, has taken down the barriers that earlier collections were based on: The format the moving images and / or sound were recorded on. In an age where photographers have become videographers, journals start experimenting with video recordings of experiments instead of papers, and museum exhibits all too often begin with a video laying out the particularities of this or that collection and news outlets use a mix of video reportage, data analysis and text to contextualise what is going on, the moving image is everywhere. But in this massive stream of producing, re-contextualising, retelling, the challenge is ours to keep alive the roots and sources of this particular form of human communication - both the works of art that grand cinematographers have left us and the everyday stories that, surviving in often perilous circumstances, are able to give us a direct view on life in earlier times - and perhaps even more importantly, the way those looking through those lenses looked upon life in that day and age. The mediator is the message.

³¹ Jeffrey Rosen, ‘The Web Means the End of Forgetting’, *The New York Times*, 21 July 2010, section Magazine <<http://www.nytimes.com/2010/07/25/magazine/25privacy-t2.html>> [accessed 4 August 2014].

³² Music and sound; TV, radio and new media broadcasting; Video production and post-production; Film collections and film makers; Video art, art museums and galleries; Footage sales libraries; Research and scientific collections; Learning and teaching repositories; Personal audiovisual collections.

3 Precondition 3: Alignment between national and cross-national outlook of collection holders

3.1 Local Context of Collections in Relation to European culture

Broadcast collections, home movies, educational films, are all created in a particular context: a specific time frame, a specific lifetime. This is what makes historical materials relevant and interesting: you can find overlap a contemporary place with the images of what once was and investigate the gaps that exist, the differences. The past is indeed a foreign country.³³ This foreignness can picque our interest and rouse are desires. This foreignness can also shut down all interest from the onset. In film production it can be a heated debate: should a film reflect a homogenised language (I.e. Hollywood storytelling and film style) or does a small budget film actually benefit from a super local approach? Many examples have shown us the latter. In the case of how audiovisual heritage - as a blanket term for a wide variety of styles and stories - it is the local that draws people in: what makes them connect to the past of their regions, their social circles, their interests, their values.

Thus far, this is reflected in the behaviour of audiences visiting the EUscreen collections: Belgians want to revisit Belgian TV moments, Czech users in the majority of visits stick with the faces and places they recognize. In part, this is to be expected - in part, it's a technological challenge: content coming from RTÉ and BBC, which broadcast in English, the language of the World Wide Web, as well as generally understood silent newsreels, are more popular across different territories. Currently, there is no quick solution to solve the problem of subtitles with one quick fix - and more recent footage has lost some of its visual appeal to the power of the voice.

The latest issue of the VIEW Journal tries to mend another gap that runs across Europe - by reflecting on the television histories of post-journalist Europe, it brings a bit closer the audiovisual histories that were hidden behind the iron curtain.³⁴ The issue coincides with the rise of various networks that dissect and bring closer to an international level of understanding the screens of the (post) socialist countries, namely the European (Post) Socialist Television History Network and the Screening Socialism research project.³⁵

3.2 National Mission versus Pan-European Outlook

On the archival side, the question, again, often lies squarely with the mission of the organisation that is dedicated to the care of the materials. Regional archives often have high stakes to go into their communities and draw interest from people around, which form the living history themselves. Broadcasters and national institutions operate on a higher-up level, with the potential of reaching further and cooperating with national press bodies, establishing connections to national funding bodies and ministries, etc. Save for the German-French collaboration Arte, broadcasters have a primary mission to reach, entertain, educate, and empower the public of one nation state. The core activity of reaching beyond borders and formulating a European edifice is rarely, if ever, found in its missions. On the contrary, cases have been known about parliamentary questions on sharing national broadcast materials in a European context.³⁶

Ample examples of European collaborations do exist. The Transnational Radio Encounters project³⁷ is rather akin to the effort EUscreenXL is putting on. It's a combination of six radio archives and researchers from Finland, the UK, Germany and the Netherlands – amongst which the alma mater of the project, Utrecht University. In six research groups, the researchers investigate five different aspects of the radio spectrum: How trans-border radio reception influences the construction of identity; what challenges the changes in public service broadcasting bring to European radio cultures; how transmissions and collaborative institutions have played a role in the development of European radio; the technical media scape of international broadcasting and the focused radio transmissions for minority groups: local radio stations focused on arts, LGBT, or minority ethnic communities. As a part of its research agenda, it researches the origins of transnational undertakings,

³³ L. P. Hartley, *The Go-Between*, Reprint edition (New York: Berkeley, CA: NYRB Classics, 2002).

³⁴ <http://journal.euscreen.eu/index.php/view/issue/view/5> [accessed 2 August 2014]

³⁵ <http://www.lboro.ac.uk/departments/socialsciences/screening-socialism> [accessed 2 August 2014]

³⁶ Geert Bourgeois, 'Antwoord Op Schriftelijke Vraag Nr. 47 van 28 Februari 2007', 2007 <<http://docs.vlaamsparlament.be/docs/schv/2006-2007/BOURGEOIS/47/antw.047.doc>>.

³⁷ <http://transnationalradio.org/> [accessed 2 August 2014]

such as the EBU, which started out as the IBU, the International Broadcasting Union, regulating bandwidth and technology. After the world wars, the organisation arose from its ashes as EBU-UER and still regulates technological underpinnings of broadcasting systems around and beyond the continent. For the archival domain, various professional organisations do exist, but carry less of a mandate on accessibility and visibility of collections.

4 Precondition 4: Clear call on a political level to open AV heritage collections

Public service is an idea that is aimed at serving the public interest. Declaring a public right to access to AV documents that have been created of public funds for public interest is the starting point of the PSI directive, the scope of which currently has been widened. This shows that a regulation on legal deposit surrendering public service programmes would fit into EU legislation policy. Which matches EUScreen's approach: the gathered and published programmes by EUScreen correspond with the scope of public service programs. This is also the usual scope of national legal deposits, therefore a European legal deposit would not mean a quality change or overflow for countries in which national archives already work.

Several archive groups have called for a legal deposit situation, created in a new directive. This directive could rely on the possibilities ensured by the Infosoc Directive mandatory exceptions mentioned above and the morale applied recently in PSI directive scope widening. This means the scope of this legal deposit regulation should be for public service programmes. This is the range of programmes that already has the dedicated status of being important for a public service mission. Furthermore, these are programmes that seldomly find a commercial use. It is really not typical that people buy the 8 o'clock news of yesterday or cultural programme from last week. This means that a European legal deposit regulation that would yield access to surrendered content would probably not cause revenue loss for broadcasters or for archives. It is in any case mandatory that a strong signal from funders and policy makers is sent that says opening access to heritage collections is imperative to the workings and future of audiovisual collection holders.

5 Precondition 5: Organisations need to define a clear attribution policy, given their mission to provide access

For cultural institutions that publish their collection on the web, attribution is crucial.³⁸ Not only do they feel they deserve to be credited for the work and effort that has been put into the collection, but it also adds to the value of the collection itself. By making it clear the provided data comes from an expert institution makes the metadata and content trustworthier for the user. Besides that, institutions deserve recognition for the effort that is put into the digitisation and preservation of the cultural heritage material. When showing audiovisual material within the space of the institution, both offline in the physical building, or online on their own website, it is clear to the user where the material comes from and the institution can influence in what kind of context the material is being experienced. This restricted way of accessing material results in limited public reach that does not grasp the full potential of the Internet. EUScreenXL and Europeana therefore explore the possibilities of making digital objects findable and usable through other platforms and databases in order to reach a far wider public. Where one can easily see the potential to reach more users, it also raises concerns about the role of the institution and the attribution.

When institutional content is available on the web, it is hard for institutions to track what is happening with it. There is a big tension between on the one hand the public mission of a cultural institutions and fear of losing control of the data. With the possibilities of the web, institutions can reach out to a huge potential audience. By making the material available with as little restrictions as possible it is easier for the user to share and copy the material to other platforms such as the online encyclopaedia Wikipedia or educational websites. This results in a far greater outreach than the institution would ever be able to reach with their own website. At the same time this conflicts with the wish of many institutions to keep some form of control over their digital collection. When publishing online users can copy the material and place it elsewhere on the web without attributing the providing institution, or place it in a different context than the institution intended.

When making data available through large projects with multiple partners such as EUScreenXL and Europeana, the data travels through different nodes. The data from a regional archive is for example aggregated by a national archive, which then sends it to EUScreenXL, which finally is harvested by Europeana. Every project or institution wants to be credited for its work, but this is less helpful for the user. In some cases there is only a limited amount of space in the metadata where the providing institution can be mentioned, which leads to some institutions not being credited properly. For both the user as well as the holder of the material, proper attribution is beneficial. Further research on how to best achieve this in the easiest way for both groups would therefore be very much needed.

In order to prevent losing control, or misuse of the data, institutions can decide to restrict access to their online works. This can be done by legal restrictions by for example creating certain terms of use and imposing copyright restrictions. Another way is more technical by for example locking the material in a web-based viewer, which does not allow the user to save the file. Another option institutions have is to watermark the material or to only release lower quality versions of the digital object.

To what extent the institution is damaged by inappropriate use of their material, or the absence of any attribution. In the museum sector a lot more material is published without restrictions and in a high quality (see for example the recently published Rijksmuseum case study).³⁹ A major difference between these institutions and the audiovisual domain is that there are a lot fewer issues with copyright. Museums often have material that is in the public domain and can therefore be published without the fear that rights holders will claim copyright. At the same time the EUScreenXL workshop showed that even if the institution is able to publish material, copyright is still used to protect the work. This will be further addressed in chapter 3.f.

Naturally, these restrictions are not in the favour of the user, who ideally gets unlimited access to the highest quality material that can be used for anything without any restrictions. This tension between the needs and of

³⁸ Harry Verwayen, Martijn Arnoldus and Peter B. Kaufman, *The Problem of the Yellow Milkmaid. A Business Model Perspective on Open Metadata* (Den Haag: Europeana, November 2011) <<http://version1.europeana.eu/web/europeana-project/whitepapers/>>.

³⁹ Joris Pekel, *Democratising the Rijksmuseum: Why Did the Rijksmuseum Make Available Their Highest Quality Material without Restrictions, and What Are the Results?* (Den Haag: Europeana Foundation, July 2014), p. 15 <<http://pro.europeana.eu/documents/858566/858665/Democratising+the+Rijksmuseum?version=1.1>> [accessed 2 August 2014].

use communities such as educators, historians and creative industries, and those of the institutions is very present and institutions are looking for more examples from the sector to see how a more open approach towards publishing data to the web will affect them. The approach of the EUscreen portal is very open and aims to publish as much data as open data as possible. It could therefore serve as a good case where providing institutions can experiment with making available open content and see what the results are, both positive and negative. It is therefore recommended that this role of 'experimentation platform' becomes more present within the project.

6 Precondition 6: Practical and interoperable solutions for online publishing

The fact that digitisation and preservation is costly, in particular in the AV domain, is one of the main reasons that there is a potential tension with making digitised cultural objects available without any restrictions. This was also one of main topics for discussion during the last EUscreenXL workshop. Cultural budgets around Europe are being cut and more and more institutions are expected to become less dependent on public funding and find new ways of making profit. Sale of the digital objects is one potential source of income which institutions are hesitant to give up. This results in a constant tension between the public task of the institution to increase access to its material as widely as possible and the requirement to generate income to compensate for tight budgets.

During the EUscreenXL workshop it was concluded there is a difference in approach between audiovisual archives, which are often publicly funded, and broadcasters. As the archives are publicly funded, it comes much more natural for them to live up to their public mission. Their goal is to make the cultural content available and known to an as wide audience as possible. For this reason it is easier for them to generate an open access policy where, if copyright allows, the user is able to re-use the material without restrictions, also for commercial use. The broadcasters however, although often publicly funded in some way, have to think more commercially in order to fund their digitisation and preservation activities. For that reason using open licenses when publishing their material is not very common. A user is often able to see the movie clip, but not allowed to download, copy modify etc.

Finding a balance between serving the public and remaining sustainable is a question for the entire cultural heritage sector. For this reason the Europeana Network works on the one hand to look for ways to reduce costs for institutions, and on the other hand for new business models which make use of the advantages of openly licensed material that can be freely shared and re-used. In an effort to bring together cultural heritage from more than 30 countries, language quickly becomes an issue which needs to be addressed on both the metadata and as well as the content side. When talking about the metadata the issue is relatively similar as for other cultural institutions such as libraries and museums. When the descriptive data is in different languages it becomes difficult to search for a particular topic across borders. Europeana tries to solve this by using semantic vocabularies and subject headings that lead to a stable place on the web where the term is translated into multiple languages. This allows users to find material from different languages using one search term in their language. As this problem is present for the entire cultural heritage sector it is recommended that EUscreenXL provides feedback on this process but is not in the position to lead on this, as it is not the core of the project.

A larger problem for the audiovisual sector specifically is multilingualism in the content itself. Having material in different languages from all over Europe is an issue that is prevalent everywhere within Europeana, but the audiovisual archives seem to suffer most from this as there is no equivalent for sound available of optical character recognition (OCR), such as there is for text. Combining different audiovisual clips together from different countries often requires translations and / or subtitles, which quickly becomes a costly and cumbersome task. As can be seen in the current virtual exhibitions on the EUscreen website, not many subtitles have been made available, which make them less usable. It is therefore recommended that EUscreenXL will keep looking into the possibilities for institutions to make it easier for institutions to generate translations. One could think for example about the crowdsourcing of subtitles and translations, or speech to text technologies. By making the material truly useful to use by users all over the world it the material can combined can make a true impact on society.

The Europeana Foundation has in the summer of 2014 organised a Task Force on metadata quality. Goal of this Task Force was to define metadata quality and to find out what the difficulties are for institutions to provide good metadata. The Task Force also included members of the EUscreenXL project. One of the goals of the EUscreenXL project is to make the metadata records it harvests from its partners available in the Europeana database. This means that all this data will be available without copyright restrictions using the CC0 public domain waiver. For basic metadata and facts such as the name of the author, year of creation etcetera, this is not a problem for the providing institution. It becomes more difficult when the metadata consists of data where the institution has put more effort into such as extensive descriptions, interpretations, translations and transcriptions. Institutions have indicated that they are concerned that without the requirement to attribute,

the information will be taken out of context or lose its trustworthiness. Institutions are therefore not comfortable giving the metadata that is required by EUscreenXL and Europeana to deliver the best product. This refers back to the previously discussed tension between publishing data to the web, and remaining visible as an organisation and needs a balanced approach in order to come to a solution which both benefits the user, as well as the institution.

Another issue defined by the Task Force was the problem of interoperability. In order to make the metadata coming from a variety of institutions interoperable in the Europeana database, a standardised metadata model was developed. This Europeana Data Model (EDM) incorporates several other metadata standards such as LIDO (museums), EAD (archives) and EBUcore (European broadcasters). The conversion from these standards to EDM needs additional work and tools. This sometimes might lead to the institution to 'dumb down' their metadata in order to fit in the EDM categories. This means that certain metadata fields that are present in the institutional database, are not mapped to the new metadata model. This greatly reduces the findability of the content and therefore has less impact on society. The EUscreenXL project will therefore keep working with the developers of the mapping tools to EDM in order to make sure the interoperability is as high as possible. As the EUscreenXL partners largely work with EBUcore, making the data interoperable on the EUscreen platform is not a major issue. The project has also developed an EBUcore to EDM mapping which has resulted in one of the higher quality sets of metadata coming from projects that can be found in Europeana.

7 Precondition 7: Evidence of the impact that Europeana has on the EU creative industries

The goal of the EUscreen portal is to give public access to thousands of items of film and television clips in nineteen different languages. It brings together clips and programmes about politics, fashion, music, lifestyle, cooking, culture and more from the early 20th century to the present day. The EUscreen portal enables educators, researchers and media professionals to find audiovisual content from across Europe. It provides a platform to delve into history and explore television programmes that focus on the everyday experience.

But to what extent has EUscreen and EUscreenXL succeeded to achieve this? And more importantly, how can this be measured? When can the project be seen as a success? For a for-profit enterprise it is fairly straightforward to measure success by measuring if the desired financial profit has been made. For a non-profit this is less obvious. In the case of EUscreenXL, public funding is used to create an impact in the audiovisual heritage sector, but also for potential users and re-users of the material made available by the audiovisual institutions.

In order to understand and agree on what success means to the EUscreenXL project, the 'impact' that can be expected needs research. By impact we mean the positive effects of our activities for the stakeholders of EUscreenXL and Europeana. The framework that was used for this is inspired by the approach described by Digital Humanities academic Dr Simon Tanner, King's College London in the 2013 paper 'Value Based Scorecard Approach to Impact Assessment'. The Europeana Foundation has also recently used this approach in order to look at the impact that the Europeana project as a whole can make.⁴⁰ While EUscreenXL largely has the same goals and objectives as the Europeana project, its specific focus on audiovisual material makes the impact it can have somewhat different.

The Balanced Value Impact model as described by Tanner challenges us to think beyond the measurable direct output of our activities towards a new conceptual framework that is based on our own core values. The methodology follows a five-stage process that starts with identifying the context, undertaking stakeholders' analysis and identifying the indicators, methods and techniques that would be most effective to define the outcomes of the activities. Once implemented, the outcomes are evaluated from a number of pre-defined and carefully balanced perspectives, before the final stage of reporting the results.

This whole process stresses the importance of distinguishing between actions, the output of these actions, the outcome of these actions, and ultimately the impact this all has on real people. In particular, it encourages us to look beyond the immediately measurable 'output' of our actions towards the demonstrable outcome, which leads to defining the real impact.

Following the approach Europeana took, this section will look into three areas where EUscreenXL is able to make impact: On a social, economic and innovation level.

7.1 Social and cultural impact

Audiovisual archives hold key information and recordings about basically every event of the past century. This material is of enormous value for researchers, historians, educators, or simply people with an interest in a particular topic. Getting access to this wealth has become radically easier with the adoption of the web and it allows users to get access to sources from multiple institutions from one single access point.

EUscreen is a large pan-European attempt to connect material from the different archives and broadcasters in a meaningful way. This allows the users to look at these events from different perspectives and to find new contexts and stories with the use of the material. The virtual exhibitions that the EUscreen portal offers are an example that show this potential. Various topics are being presented that are being analysed with a wide variety of material from different countries.

Besides having impact on the user experience, the project also aims to achieve impact in the cultural sector. This is done by connecting the audiovisual archives and broadcasters with each other and allowing them to share experiences and work together on a shared goal. Besides that EUscreenXL connects broadcasters and

⁴⁰ 'Europeana Strategy 2015-2020, Impact', 2014 <<http://pro.europeana.eu/documents/858566/0610b04a-8100-4c8a-8043-114515001043>> [accessed 16 July 2014].

audiovisual archives with the wider European cultural heritage sector. By adding material to Europeana, the material can be more easily combined with other sources such as images and text from memory institutions all over Europe. This flows back into the impact it has on the user as it allows them to create a richer experience and do more thorough research.

7.2 Economic impact

As the project is a best practice network, no direct revenue generation is to be expected. Instead, EUscreenXL has enabled several European broadcasters and audiovisual archives to explore the possibilities of their digital content. At the same time the consortium was able to start the discussion on intellectual property rights in the European audiovisual domain. In this area there are still many questions unanswered and it is therefore expected that the results of the discussion and produced research papers can greatly help further work being done and help the audiovisual institutions to profit from the knowledge that was generated.

The EUscreenXL consortium also actively explores new business models for audiovisual institutions that struggle with the tension between their public mission to make their material available to a wider audience, and the requirement to remain self-sustaining while cultural budget are being cut everywhere. As the EUscreenXL project is not expected to generate any direct revenue, it can be used to explore other types of value such as more visibility for the institution and crowdsourcing additional information.

7.3 Innovation level

Besides making more audiovisual material available to the public, a core goal of the EUscreenXL project is to innovate the sector. By allowing public broadcasters and audiovisual archives to identify and work together on common goals and issues it becomes easier to come to a solution that is usable for the sector as a whole. Together with the network topics such as intellectual property rights and sustainability are being explored within workshops and research papers.

Besides that there is a major interest in the potential of cloud-based technologies. Within the wider Europeana project it is explored how these technologies can greatly reduce the costs of data storage for cultural institutions and at the same time allow an easier flow of metadata between several institutions. Instead of harvesting and storing metadata in one centralised repository, this would allow the institutions to link their servers directly with others. The aggregation toolset developed within EUscreenXL will therefore be deployed in the cloud to support this scalable storage and computing.

8 Precondition 8: Guaranteeing stable income for preservation and accessibility actions on a political level

Audiovisual archives travelled long and dusty roads before they became the power-sparked, lean workflow machines that some of them are today. There is a marked difference between the technical advanced machinery of some institutions that have found the luck and expertise and knowledge to have become part of the high-volume audiovisual industry's workflows, while many collection owners worldwide struggle to find the proper funding to perform even the most modest approaches to collections conservation, and long for the possibility to conserve their materials.

The first audiovisual collections gathered were those of film - by enthusiasts and curators seeing film as part of a larger cultural form of expression that needed to be kept and rescued. Individuals such as Iris Barry in New York and Henri Langlois in France spearheaded a movement of storing whatever cinemas wouldn't keep, followed by the erection of national film archives around the world and the dawn of the international federation of film archives FIAF in 1938. Other formats have piled up since those days, and whatever the advances may have been in portability, transmission possibilities, storage capacity, signal quality, storytelling support, it seems that the one thing that has kept on diminishing over time became durability. Carriers that were used to record the earliest moving images known to man are readable still, today - haphazardly, sometimes, and not always from their original source.⁴¹ The teeth of time have gnawed away at much more recent recording devices - with much help from untrained human. The great push for formalisation of audiovisual archivist training did not heed before the late 1990s and have led to multiple specialist training courses - temporary workshops, such as SOIMA, or specialised Masters curricula such as those in New York, Madrid, Lisbon, Amsterdam. The new battles archivists have been taking on focus on the question: can we make it digital? Many archives - both globally and around Europe - struggle to find appropriate funding for digitisation methods. At the same time, devices that can play out video formats from the 1970s and 1980s are drying up fast - actions are being taken to salvage whatever is left - or maybe even 3D—print those parts that have become unavailable.

The New York-based SME Audiovisual Preservation Solutions recently came out with a free tool to help those collections owners who have a hard time defending further investments on digitisation works to come up with further reasoning as to why higher management circles should invest in digitisation efforts. The cost-of-inaction meter allows to calculate for any size of collections to what extent a collection holder is actually losing money by holding off a digitisation effort - the tool allows to calculate how digitising even a small part of a collection allows a collecting organisation to support all of the investments that have been made in the past. This is probably the most important aspect of our gathered audiovisual collections. Although the rate at which collections can now potentially grow is tenfold that of the analogue age, it has taken an incredible amount of work and decisions to build up the collections of moving image materials that we have today. The audiovisual domain is a hydra head of different approaches, institutions, and formats - within the EUScreenXL consortium, massive, fast-paced broadcast organisations sit side to side with traditional national libraries and archives and small operations run within the confines of universities. A few countries have the lucky situation in which they can work in a national audiovisual institution - organisations that have a main mission that supports accessibility and spending parts of their budgets on investigating technological innovations and international networking and support. Others need to defend the principles of audiovisual archives within the confines of a different business logic.

The big question is how, throughout the ages, audiovisual archives have managed access to their collections. In the footnotes to her seminal work *Memoirs of Hadrian*, Belgian-born French novelist Marguerite Yourcenar laments the locks that have been put on public knowledge: she had to be a member of several libraries, prove why she needed access to the collections, wave her member badge of the *Académie Française* and travel around the world to see all the pieces connected to her object of study. A devout explorer of audiovisual documents often needed more credentials even: a stout knowledge of how a Steenbeck editing machine worked, in the case of film researchers who wanted access to every single frame, or sit down in front of a VCR, if available, and if catalogue information was there. Things have changed, for the better, we believe.

⁴¹ Most famous are the D.W. Griffiths reels that were recovered from paper copiers deposited at the US Library of Congress

EUscreenXL is an on-going initiative to improve the access to knowledge and experiences stored on moving image formats. Whether those are made for artistic, proprietary or public information purposes, the stories they tell and the imagery they contain can be telling, moving, uplifting, life-changing even. It completes the picture of an era we were once part of. On micro and macro levels, its study can teach us more about how the world has been changing throughout the twentieth and early twenty-first century. For all these reasons, partners in the consortium are willing and wanting to increase public access to their collections - while at the same time keeping on looking for opportunities to increase the revenue stream that can help them pay off rights holders and sustain the necessary investments to keep audiovisual materials on life support for the full extent of their possible lifetime period.

D TOWARDS AN ADVOCACY AGENDA FOR AV IN EUROPEANA

The audiovisual domain is large and varied. Currently, no single party is advocating the needs of the audiences that have come to expect lean access to the recordings of the past. It is not good enough to advocate for better infrastructure or for harmonisation of IP regulations alone. The awareness that providing access to archives involves a chain of action and care needs to deepen. The preconditions set the opportunities and limits for the subsequent parts of this chain. To increase access to AV through Europeana requires a broad approach and requires advocacy towards multiple groups. EUScreenXL is a voice in the debate that brings to the table a wide and varied network of heritage holders, content creators and access providers. The community needs to reach out to policy makers on national level, but more so on the European stage. The Europeana eco-system supports and underpins this entire endeavour. EUScreenXL will increasingly facilitate the dialogue between the community and its stakeholders. It will be crucial that the dialogue goes two ways, as the preconditions described here are geared towards multiple sides. An important part is directed outwards towards policy makers and stakeholders on different levels, but also inwards, towards the community itself. The focus has to shift towards what unifies and connect the audiovisual heritage domain in terms of positive and achievable goals.

Nr. & grouping	Precondition	Policy geared towards
0 - POLICY	Shared commitment to solving cross-border barriers in IPR	Institutions
1 - MISSION	Audiovisual collection holders and policy makers need to be aware of audiovisual materials constituting a part of cultural heritage	institutions, national and EU government
2 - MISSION	Audiovisual collection holders need to have a shared interest in allowing public online access on an international level	institutions
3 - POLICY	Alignment between national and cross-national outlook of collection holders	govern and inst
4 - MISSION	Clear call on a political level to open av heritage collections	EU govern
5 - ORGANISATION	Organisations need to define a clear attribution policy, given their mission to provide access	inst and bit nstional governm
6 - ORGANISATION	Practical and interoperable solutions for online publishing	europeana/euscreen
7 - ORGANISATION	Evidence of the impact that Europeana has on the EU creative industries	europeana/euscreen
8 - ORGANISATION	Guaranteeing stable income for preservation and accessibility actions on a political level	national governments, EU policy (f.i. PPP)

Table 2: Overview of proposed preconditions, leading up to the final recommendations

In the run-up towards deliverable D5.4, which as a follow-up to this report rounds up the recommendations for increasing the amount of AV content in Europeana, we have put the following steps in place. In **August**, 2014, a first meeting was held between the Europeana Advocacy Group and stakeholders from neighbouring AV projects – being the European Film Gateway and Europeana Sounds. In **October** 2014, the EUScreenXL

conference marks the occasion for a dedicated follow-up workshop as an update on IPR issues. It will also be the start of a period in which EUscreenXL will publish, on a quarterly basis, three position papers on the topics discussed in this document. They will serve as the steering wheels for an internal discussion, on the basis of which the wider network can stand behind specific recommendations truly made in its name.

During the following years, a central stakeholder of our efforts will be Europeana. This advocacy agenda is drafted to increase access to AV via Europeana. The previous year an important part of the efforts has been directed to align the goals of EUscreenXL continuously closer to the goals of Europeana and to assist Europeana in identifying the characteristics and needs of the audiovisual domain. It is of the utmost importance to align our goals with the wider framework of the Europeana advocacy task, clearly a two-way conversation as well. Through its community, Europeana becomes a more visible public asset for the audiovisual domain and the public domain is promoted – a shared history carried out.

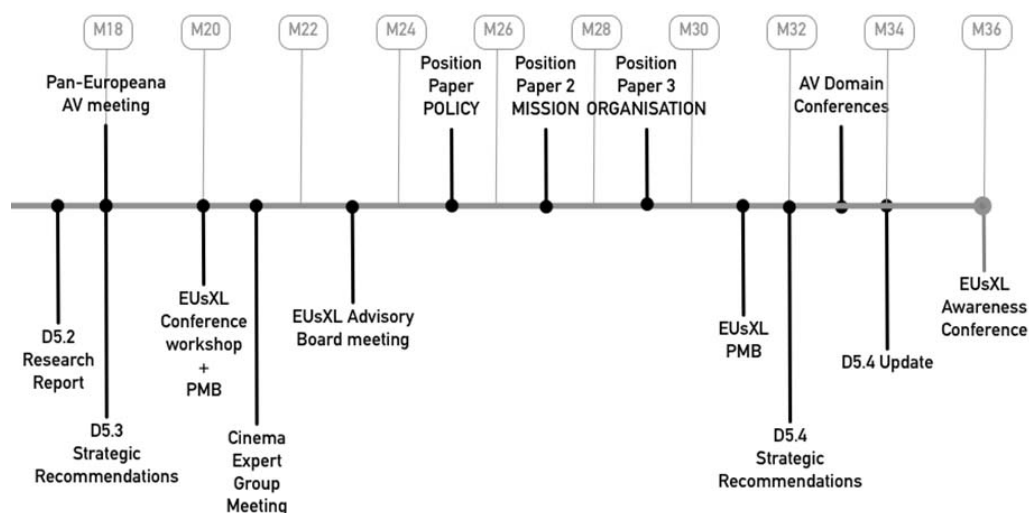


Image 4: Schematic overview of the work planned in WP5, M18-M36

The end-goal is to have clear measures in place that make it clearer for audiovisual heritage institutions to open up their audiovisual collections, for policy makers to attune to the needs of collection holders and for end-users to gain accessibility to content stored away. These are highly long-term goals, well beyond the scope of the current project. For the remaining period until February 2016, there are steps that can be taken in its direction - and the time appears to be ripe: a flurry of activities on the (copyright) policy domain demand that audiovisual archives step in and make their voice heard, if we want our collections to remain relevant in a connected society. The boundaries of institutions become less clear and we should be embracing the demands to access that the people we serve are met.

Through its community, Europeana becomes a more visible public asset for the audiovisual domain and the public domain is promoted – a shared history carried out. The end-goal is to have clear measures in place that make it clearer for audiovisual heritage institutions to open up their audiovisual collections, for policy makers to attune to the needs of collection holders and for end-users to gain accessibility to content stored away. These are highly long-term goals, well beyond the scope of the current project. For the remaining period until February 2016, there are a steps that can be taken in its direction - and the time appears to be ripe for it: a flurry of activities on the copyright policy domain demand that audiovisual archives step in and make their voice heard, if we want our collections to remain relevant in a connected society. The boundaries of institutions become less clear and we should be embracing the demands to access that the people we serve are met. The Europeana eco-system supports and underpins this entire endeavour. It is of the utmost importance to align our goals with the wider framework of the Europeana advocacy task. Meanwhile, we support the embedding of the Europeana infrastructure in a stable funding structure, as the feeding ground for further access and reuse projects and possibilities.

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- **Do you represent an organisation?**

- EUscreen Foundation, registration number 217307412669-09

- **Type of respondent**

- Institutional user
- Publisher/Producer/Broadcaster

The EUscreen foundation is a gathering of audiovisual and broadcast archives and related networks who have worked on and contributed to the Video Active and EUscreen portals – web platforms where educational, creative industry and general users can access audiovisual and broadcast archival content from across Europe. Some of the partners in the foundation have prepared their proper responses to the copyright consultation – in particular, the European Broadcasting Union and its members⁴² and Ina, which should be read separately from this response.

Rights and the Functioning of the Single Market

Territorial scope

2. Have you faced problems when seeking to provide online services across borders in the EU?

From an intellectual property point of view, audiovisual heritage materials are probably the hardest to publish online. Rights for programme materials are varied and complex, residing with a range of stakeholders including (but not restricted to) actors, performers, writers, directors, composers, production companies and, at times, broadcasters themselves. Rights not only vary across different European countries, but also - for historical and commercial reasons - widely within each country.

Whereas single state broadcasters in television's early years may have negotiated directly with individuals or agents and unions representing the range of stakeholders working in television, recent deregulation and expansion of products, services and channels means that independent production companies now not only have a commercial stake in the television industry but also add a layer of negotiation and ownership.

All these different factors mean that the clearance of rights for audiovisual materials, and television programming in particular, can be both costly and time consuming. The situation is complicated enough when reusing or repurposing archive materials on television itself, whether for repeat transmission or for use in, for example, news, documentary or clip compilation programming. The problem becomes even more acute, however, when clearing rights for use on the Internet. The web had not even been conceptualised when many rights between broadcasters and the wide range of stakeholders were agreed. Even in those instances where rights had been cleared on programming forms for (re-)use on television, they often have to be negotiated again for the internet. Finally, in some cases, rights holders cannot be identified or, if they can be identified, they cannot be located.

Massive conservation and digitization efforts have allowed cultural and memory institutions, public broadcasters and audiovisual archives to preserve their collections and expand public access to their holdings. In many cases, however, these organizations can only provide restricted access and use to their collections due to the IPR issues indicated above.

⁴² In the EUscreen foundation, these include RTBF, CT, DR, ERT, RTÉ, RAI, RTP, RTVSLO, BBC

Archives participating in EUscreenXL deal with IPR and other rights issues on several levels, which makes selecting audiovisual archival content to showcase publicly online a complex undertaking. The differences in national legislations make an international exchange of audiovisual material even harder. Archival agreements for open educational use that exist in certain countries are limited to that territory only. One such example is the type of online access Hungarian archive NAVA provides to educational institutions. Scandinavian and UK partners are bound by geo-blocking regulations to make their national audiovisual histories available online to fellow Europeans.

3. How often are you asked to grant multi-territorial licences? Please indicate, if possible, the number of requests per year and provide examples indicating the Member State, the sector and the type of content concerned.

EUscreen developed a highly interoperable platform that allows global exploration of European audiovisual heritage content and metadata. It makes materials from over 20 EU member states publicly available to researchers, educational users, the creative industries and general users alike. The content is integrated into and harmonized with Europeana and made available online under differing archive agreements and local legislations.

Archives and broadcasters are investing in on-line services that provide selective access to their own archive material, but many of them are reluctant to 'lease' this material to other sites for public access. The EUscreen project has demonstrated that it is possible to clear the rights for online access for thousands of hours of in-copyright content without undue expense. Rights to a large range of factual material, covering news, current affairs and documentaries have been cleared. Meanwhile, content providers have found it very challenging to contribute popular archival materials such as drama, music (pop, traditional and classical) and sport.

To provide an example of the resources spent on providing access we provide the numbers of EUscreen. Unfortunately for our purpose, the IPR activities were integral part of the work package on content provision, so the numbers are quite indicative. The selected works from the collections and archives were presumed to be digitally available. An indicative calculation of the costs of providing access in the EUscreen project, from 2009-2012:

- Total amount of PM was 1110,53
- Total amount of PM supported financially by the EC was €3.944.845,60 (80% x €4.931.057)
- An average PM throughout the project was € 4.440,- gross (€4.931.057 / 1110,53 = € 4.440,27)
- Content provision was organized in work package 3 Information and Access, including selection, annotation and researching and clearing rights
 - The amount of *person months* for this work package was estimated up to 338 PM
 - In total the specific activities of *content provision* consumed €1.500.720, - this is almost 1/3 of the total EUscreen budget
 - Excluded here are PM devoted to researching and solving IPR questions on a project and policy level.

It must also be noted here that content selected by archivists was deemed feasible to clear, i.e. the costs stated above might have been very different if more challenging, proprietary or revenue-expecting collections had been selected.

4. If you have identified problems in the answers to any of the questions above – what would be the best way to tackle them?

Increased use of digital technologies has prompted a corresponding increase in the public's expectations regarding access to content. The EUscreenXL consortium responded to these expectations by gathering European broadcasters and audiovisual archives to develop a platform with a dedicated, international scope. In the set-up of this endeavour, copyright law structures are clearly in play and influence many of the relationships among users, creators, and distributors of copyrighted content. Working with such a varied consortium of stakeholders across the field, we support the view that they should represent a balance among

the legitimate interests of the different entities working with copyrighted materials.⁴³ We believe that copyright should be adapted to the digital world we live in, that national rules should be harmonised and that, as the Satellite and Cable Directive (93/83/EEC) lays out, there should be no digital borders within the single market. For both users and service providers across the continent, there should be clear and coherent ways to know if what they do is legal or not. As the CEPS Digital Forum report states, unification through a EU regulation that establishes uniform copyright titles throughout the EU would be an appropriate choice for this.⁴⁴

7. Do you think that further measures (legislative or non-legislative, including market- led solutions) are needed at EU level to increase the cross-border availability of content services in the Single Market, while ensuring an adequate level of protection for right holders?

For audiovisual archives and public broadcasters the further harmonisation of copyright rules is needed. To fulfil and strengthen their public function and reach, they need to be able to adapt to the changing needs of users and user communities, both of which are by default not bound by EU borders. The opportunities that arise in terms of new content services are rarely ever limited to EU borders. To participate in the development and innovation of content services (in a competitive way) and to be able to address user demands appropriately, the further integration of cross-border availability is highly necessary.

Need for more clarity

8. Is the scope of the “making available” right in cross-border situations – i.e. when content is disseminated across borders – sufficiently clear?

The objectives of the EUscreen foundation are to collect and make available audiovisual content related to the cultural history of Europe for purposes such as education, creative reuse and comparative scientific research, in order to increase the knowledge of and involvement in European cultural heritage. The foundation achieves this objective by creating and managing an online environment that gives access to a unique and vast transnational collection with translations and contextual data.

With the limited and publicly funded resources that are available to audiovisual archives and public broadcasters to spend on rights clearance, the most acceptable way to provide more clarity with regards to the scope of the 'making available' right would be to apply a country of origin principle.⁴⁵ An approach based on targeted audiences would create increased burdens since dissemination through platforms such as EUscreen or Europeana is explicitly targeted at users in all member states. Applying a targeted approach would therefore make it more difficult for archives and cultural heritage institutions to make their works available via transnational projects.

⁴³ Dulong de Rosnay, Melanie, and Juan Carlos De Martin, eds. *The Digital Public Domain: Foundations for an Open Culture*. Cambridge: Open Book Publishers, 2012. http://www.communia-association.org/wp-content/uploads/the_digital_public_domain.pdf.

⁴⁴ Mazziotti, Giuseppe. *Copyright in the EU Digital Single Market: Report of the CEPS Digital Forum*, 2013. <http://www.ceps.eu/ceps/dld/8192/pdf>.

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⁴⁵ Hargreaves, Ian, and P. Bernt Hugenholtz. *Copyright Reform for Growth and Jobs: Modernising the European Copyright Framework*, May 29, 2013. http://www.lisboncouncil.net//index.php?option=com_downloads&cid=847.

Linking and browsing

11. Should the provision of a hyperlink leading to a work or other subject matter protected under copyright, either in general or under specific circumstances, be subject to the authorisation of the rightholder?

No, it should not. Linking to online resources does not constitute an act of making available. Requiring authorisation to link to works that are available online would undermine the fundamental principles of the web, which is especially true for platforms such as EUscreen and Europeana, which link to works published on the websites of audiovisual archives and public broadcasters and increase awareness about the existence and the findability of relevant cultural and archival sources. Requiring authorisation from rights holders would introduce significant legal uncertainty.

12. Should the viewing of a web page where this implies the temporary reproduction of a work or other subject matter protected under copyright on the screen and in the cache memory of the user's computer, either in general or under specific circumstances, be subject to the authorisation of the right holder?

It should not. Requiring the authorisation of the rights holder for viewing and reading content that is already available online creates legal uncertainty for Internet users and would undermine a core functionality of the web, that is: to make information and culture accessible.

Registration of work

15. Would the creation of a registration system at EU level help in the identification and licensing of works and other subject matter?

No opinion.

16. What would be the possible advantages of such a system?

Although audiovisual content is now being digitised and some of it is already available online, access to audiovisual archives, television in particular, remains fractured and scattered. An international registry of archival materials available in audiovisual archives would facilitate the work of researchers, scholars and the general public in retrieving audiovisual documents more easily. On the other hand, audiovisual and broadcast archives are often also right holders to a huge amount of works; thus, registration would require additional administrative tasks, staff and costs for a sector that struggles with issues of funding.

A registration system would increase the amount of information about rights holders available to all types of users, including cultural heritage institutions, which would make it easier for users to check the copyright status of a work and obtain permission for use from the rights holders. One of the biggest problems facing cultural heritage institutions attempting to make their collections available online is the lack of comprehensive, easily (ideally automatic) accessible information about the copyright status of works, and the identity and location of rights holders. Introducing a registration system at a European level would be a massive step in ensuring that such information is more readily available in the future.

17. What would be the possible disadvantages of such a system?

It would require extra effort from rights holders to register their works, create extra costs caused by regulation, administration and monitoring, would need to be mandatory, which requires changes to international agreements that the EU has signed up to and would in itself not retroactively solve the existing problem with orphan works and mass digitisation.

How to improve the use and interoperability of identifiers

19. What should be the role of the EU in promoting the adoption of identifiers in the content sector, and in promoting the development and interoperability of rights ownership and permissions databases?

The European Union could play an important role in promoting identifiers. If it does take up this role, it should ensure: (1) that identifiers as well as rights ownership and permission databases are based on open standards, available to all content creators and that they can be read by all market participants free of charge; (2) that all identifiers as well as rights ownership and permission databases are interoperable and work across all of Europe (and beyond).

Any system that is developed would have to be developed in a true multi-stakeholder approach (e.g. not only by rights holders and intermediaries) and should be reflective of work already undertaken. Rights ownership and permission databases in particular should be publicly accessible via machine-readable interfaces. They should also include the ability to store information on out-of-copyright (Public Domain) and openly licensed works.

Access to content in libraries and archives

28(a) [In particular if you are an institutional user:] Have you experienced specific problems when trying to use an exception to preserve and archive specific works or other subject matter in your collection?

Whilst the consultation document limits itself to activities of libraries and archives, the questions in this section are equally relevant for museums and other cultural heritage institutions. In fact, the relevant exceptions and limitations explicitly apply to 'publicly accessible libraries, educational establishments or museums, or [...] archives'. The 2012 Orphan Works directive clarifies this to include 'film or audio heritage institutions and public-service broadcasting organisations'. In line with this, the following answers should be read as applying to all cultural heritage institutions falling within this scope.

EUScreen provides access to audiovisual works as a service for and by pan-European audiovisual archives and public broadcasters. It is essential for the functioning of EUScreen and the mission of the partnering institutions that they can digitise all works in their collections regardless of their copyright status. Institutions increasingly digitise works in their collections not only to prevent harm to the work, but also to be able to better fulfil their missions. Digital copies of cultural heritage works provide many advantages such as being (automatically) indexable, being easier to access and having lower storage costs.

29. If there are problems, how would they best be solved?

The best solution would be to broaden the existing exception in article 5(2)c of the copyright directive, so that it allows audiovisual archives and public broadcasters to make reproductions of all works in their collection, as long as these are not intended for direct commercial advantage. This exception should be made mandatory for all member states. Also Art. 6 of the InfoSoc directive should be revised in order to enforce exceptions and limitations and to ensure legitimate utilisations of protected works, regardless of format or mode of dissemination.

30. If your view is that a legislative solution is needed, what would be its main elements? Which activities of the beneficiary institutions should be covered and under which conditions?

The main element would be a broadening of the existing exception in article 5(2)c of the copyright directive. Instead of only allowing specific acts of reproduction, it should allow all acts of reproduction necessary for publicly funded audiovisual collection/content holders to achieve aims related to their public-interest missions. This should include reproductions made as part of mass digitisation efforts, back-up copies and reproductions for format shifting.

Reproductions should be limited to internal use which is not for direct commercial or economic advantage or use in line with other exceptions and limitations allowed for by the directive (such as the broadened version of the exception foreseen in article 5(3)n that we propose in answer to question 34). Reproductions would explicitly be allowed for the purposes of increasing the operational efficiency and reducing costs of the beneficiary institutions. The exception should only apply to works that are part of the permanent collection of an institution and not to works that have been loaned from other institutions (such as interlibrary loans or loans from museum exhibitions).

Broadening the scope of the extension along these lines mirrors the recommendations made as part of the European Commission commissioned 'Study on the application of directive 2001/29/EC on copyright and related rights in the information society' from December 20138.

Also Art. 6 of the InfoSoc directive should be revised in order to enforce exceptions and limitations and to ensure legitimate use of protected works, regardless of format or mode of dissemination.

Off-premises access

32. (a) [In particular if you are an institutional user:] Have you experienced specific problems when trying to negotiate agreements with rights holders that enable you to provide remote access, including across borders, to your collections (or parts thereof) for purposes of research and private study?

33. If there are problems, how would they best be solved?

The EUscreen foundation agrees with the approach supported by various European cultural institutions in that the best solution would be to broaden the existing exception in article 5(3)n of the InfoSoc directive, so that it allows institutions to make available digital copies of out-of-commerce works in their collections via electronic networks such as the internet for non commercial purposes. This is also in line with the recommendations found in the 'Study on the application of directive 2001/29/EC on copyright and related rights in the information society' that was commissioned by the European Commission in 2013.

34. If your view is that a legislative solution is needed, what would be its main elements? Which activities of the beneficiary institutions should be covered and under which conditions?

The main element would be a broadening of the existing exception in article 5(3)n of the InfoSoc directive. Instead of limiting the making available to dedicated terminals on the premises of the institutions it should also apply to making the works available online via public networks such as the internet. The scope of the exception should further be expanded to not only include 'the purpose of research or private study' by 'individual members of the public' but should apply to all non-commercial uses.

Furthermore, it seems reasonable to limit the scope of the exception to 'works and other subject-matter not subject to purchase or licensing terms' as long as they are still commercially available. This should be

combined with an opt out-clause that would allow rights holders to either prevent the making available of their works or to negotiate licensing terms with the institutions (either on an individual basis or collectively).

These conditions are crucial to ensure that the new broadened exception meets the requirements of the three step test. The fact that the exception would be limited to non commercial uses of the works made available and that authors can decide to opt-out of the exception would ensure that 'the legitimate interests of the author' are not necessarily prejudiced. In fact, many authors would benefit from improving online access to out-of-commerce works because works that they have created are kept available via cultural heritage institutions and audiovisual archives and are available to them to build upon or to do research. As a result citizens, researchers and educators also greatly benefit, because they are granted access to works that wouldn't be available through market players.

This solution would also be in line with the relevant recommendations made in the 'New Renaissance' report. The report recommended that 'National governments and the European Commission should promote solutions for the digitisation of and cross-border access to out of distribution works' and that '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'.⁴⁶

Mass digitisation

40. Would it be necessary in your country to enact legislation to ensure that the results of the 2011 MoU (i.e. the agreements concluded between libraries and collecting societies) have a cross-border effect so that out of commerce works can be accessed across the EU?

The 2011 Memorandum of Understanding is by nature limited. It focuses on not commercially available academic books and articles - books and 'learned' articles out of commerce. The MoU does not bind the Member States and will not bind them in the future, nor does it impose strict obligations on the signatories.⁴⁷

For the scope of the undertaking EUScreen has dedicated itself and its consortium partners to, both this question and the following are too limited. The issue of mass digitization is broader than what can be addressed with the 2011 MoU and the 2012 Orphan works directive (the other relevant European policy instrument in this area). Copyright issues related to the mass digitization of collections and the subsequent making available of digitized works require a comprehensive approach that cannot be based the principles of due diligence search and licensing. If we want to enable European audiovisual archives and cultural heritage institutions to transfer their collections into the digital age, we need a far more comprehensive approach.

Both the 2012 directive on certain permitted uses of orphan works and the 2011 MoU on out of commerce works are insufficient to address the copyright issues arising from mass digitisation projects. In addition, the extremely slow uptake of the MoU clearly illustrates that even in the library world the MoU is not a suitable mechanism for enabling mass digitization on a large scale.

The Orphan Works Directive, which has a bigger focus on audiovisual collections, is ill-suited to enable mass digitisation projects. While it will enable publicly accessible libraries, museums and archives to make orphan works available after a due diligence search has been carried out for specific works, the requirement of carrying out due diligence search makes it effectively unusable for mass digitisation projects as this would require an huge additional investments in both time and money - resources already scarce for a costly undertaking.

⁴⁶ Niggemann, Elisabeth, Jacques De Decker, and Maurice Lévy. *The New Renaissance. Reflection Group on Bringing Europe's Cultural Heritage Online*. Brussels: European Commission, January 10, 2011.

http://ec.europa.eu/information_society/activities/digital_libraries/doc/reflection_group/final-report-cdS3.pdf.

⁴⁷ Oostveen, Manon A. A. "European Cross-Border Copyright Clearances for Cultural Heritage Institutions," June 9, 2013.

The inadequacies of both the OW directive as well as the Memorandum of Understanding can be addressed by an extension of the scope of the exception created by article 5(3)n of the InfoSoc directive as outlined in the answer to question 34 above. Doing this would provide audiovisual archives, public broadcasters and cultural heritage institutions a clear legal framework for operating in the digital environment that would allow us to achieve the aims related to our public-interest missions. Under this approach the online activities of audiovisual archives and cultural heritage institutions would be covered by:

- An exception covering the making of reproductions (an expanded version of the current exception defined in 5(2)c)
- An exception covering the making available online of out-of-commerce works (an expanded version of the current exception defined in 5(3)n)

41. Would it be necessary to develop mechanisms, beyond those already agreed for other types of content (e.g. for audio- or audio-visual collections, broadcasters' archives)?

This is certainly necessary. The public has a legitimate interest in having online access to the collections of all publicly accessible libraries, museums and (audiovisual) archives across Europe (see article 27.1 of the Universal Declaration of Human Rights). There is no good reason for limiting mechanisms that create such access to certain types of content. The approach proposed in reaction to questions 40 and 34 above, would cover all types of works and other subject matter that are held by these institutions.

This solution would also be in line with the relevant recommendation made in the 'New Renaissance' report of the Commission appointed 'Comite de Sages' that was published in 2011. The report recommended that 'solutions for orphan works and out of distribution works must cover all the different sectors: audiovisual, text, visual arts, sound.'⁴⁸

⁴⁸ Niggemann, Elisabeth, Jacques De Decker, and Maurice Lévy. *The New Renaissance. Reflection Group on Bringing Europe's Cultural Heritage Online*. Brussels: European Commission, January 10, 2011.
http://ec.europa.eu/information_society/activities/digital_libraries/doc/reflection_group/final-report-cdS3.pdf.

ANNEX B: PARTICIPANTS LIST AT THE STRATEGIC WORKSHOP

Organisation	Country of residence	EUsXL Partner Status	Participants
Croatian Radio Television	Croatia	-	0
Czech Television	Czech Republic	Partner	1
European Audiovisual Observatory	France	-	1
Ina	France	Partner	1
German National Library of Science and Technology (TIB)	Germany	-	1
ELTE	Hungary	Partner	2
Regulatory Visions	Hungary	-	1
RTÉ	Ireland	Partner	1
Cinecittá Luce - Istituto Luce	Italy	Partner	2
Europeana	Netherlands	Subcontractor	2
Kennisland	Netherlands	-	1
Netherlands Institute for Sound and Vision	Netherlands	Partner	2
Universiteit van Amsterdam	Netherlands	-	0
Utrecht University	Netherlands	Coordinator	1
NInA (Narodowy Instytut Audiowizualny)	Poland	Partner	2
RTP	Portugal	Partner	1
EBU	Switzerland	Partner	1
IP Kat	UK	-	1