



D4.1.1

Public Consultation Draft of Europeana Licensing Framework with Background Justification

Contains

- Data Provider and Data Aggregator Agreements as provided to Europeana v1.0 for the stakeholder consultation in December 2009
- Background justification (preamble to agreements)
- Evolution of the Licensing Framework until February 2010
- First results from the Stakeholder consultation
- Preliminary conclusions



co-funded by the European Union

The project is co-funded by the European Union, through the **eContentplus** programme

<http://ec.europa.eu/econtentplus>



ECP-2008-DILI-528001

EuropeanaConnect

Public Consultation Draft of Europeana Licensing Framework with
background justification

Deliverable number/name	<i>D4.1.1</i>
Dissemination level	<i>Public</i>
Delivery date	
Status	<i>Final</i>
Author(s)	<i>Patrick Peiffer (BNL), Lucie Guibault (UVA), Paul Keller (KL)</i>



eContentplus

This project is funded under the eContentplus programme,
a multiannual Community programme to make digital content in Europe more accessible, usable and
exploitable.



Österreichische
Nationalbibliothek

EuropeanaConnect is coordinated by the Austrian National Library



Distribution

Version	Date of sending	Name	Role in project
0.1	19.02.2010	VPZ	Project Manager
0.1	24.02.2010	Martin Gordon, Birte Christensen-Dalsgaard	WP6, WP3
0.1	09.03.2010	VPZ	Project Manager
0.1	24.03.2010	VPZ	

Approval

Version	Date of approval	Name	Role in project
1.0	09.03.2010	Martin Gordon	WP6
1.0	24.03.2010	Birte Christensen-Dalsgaard	WP3
1.0	19.04.2010	Patrick Peiffer	WP4

Revisions

Version	Status	Author	Date	Changes
0.1		Patrick Pfeiffer	17.02.2010	initial
0.1		Martin Gordon	09.03.2010	No changes, only comments
0.1		Birte Christensen-Dalsgaard	24.03.2010	No changes, only comments
1.0		Patrick Peiffer	19.04.2010	Added public domain charter url (released



Table of Contents

Introduction	5
Evolution of the Licensing Framework	5
Europeana Plenary 2009	5
Europeana IPR Group meeting Paris.....	5
First results from the Stakeholder consultation.....	6
Preliminary conclusions	6
Next Steps.....	7
Data Provider Agreement v4.5.9 (incl. Preamble)	8
Data Aggregator Agreement v4.5.9 (incl. Preamble)	17



Introduction

This deliverable describes the evolution of the Licensing Framework up to early February 2010, including the agreements that were provided to Europeana v1 and sent out to stakeholders in December 2009. Additionally, a preamble is added to explain the motivations of the agreements.

Since then, feedback has been received from stakeholders and EuropeanaConnect WP4 started changing the agreements accordingly. These new agreements, including the corresponding end user licence, will be provided in the next deliverable.

Evolution of the Licensing Framework

Since May 2009, several iterations of the Licensing Framework were developed, starting from the simple initial plans during the EuropeanaConnect kickoff meeting in May 2009 which evolved into increasingly complex models up until autumn 2009, as various stakeholders' requirements were integrated.

It is worth stressing that the main component of the Licensing Framework concerns metadata, actual digital content licensing is left entirely at the discretion of the Europeana Data Providers.

Europeana Plenary 2009

In September 2009, after absorbing the input from the Europeana Plenary in The Hague, the list of licensing choices had reached its maximum: Data Providers could choose whether to grant or withhold commercial use rights to Europeana as well as third parties, respectively for Previews and Metadata. Furthermore, Data Providers were able to pick any one of two different transformation choices for each preview and metadata set: These choices were based on Creative Commons licence elements, namely: Share-Alike or Non-Derivative. Nine different rights combinations were possible per preview and metadata set.

This level of choice posed practical problems for Data Providers related to the production of such detailed rights information. This issue can be offset by allowing Data Providers to apply their choices at collection level and thus avoid detailed mark-up at the metadata and individual preview level. But this only shifts the burden on the Data Aggregators or Europeana who have to deal with heterogeneous choices by the many Data Providers they aggregate and are forced to apply the detailed rights information on the preview and metadata element level. Apart from the transaction costs to generate and apply such detailed rights information, an explosion of complexity emerged, not only for producing the multilingual and semantically enriched Europeana metadata but also for end-users wishing to re-use such metadata. The further risk of non-compliance led to the scrapping of the "many choices" approach for metadata licensing.

Europeana IPR Group meeting Paris

At the Europeana IPR Group meeting (Europeana v1, WG 1.2) in Paris on 23 November 2009, a new "one size fits them all" model for metadata licensing was presented to stakeholder representatives, based on Creative Commons BY-SA licences (the same as used by Wikipedia). The difficult task was to find a balance between the Data Provider's desire for fine-grained permissions and Europeana and Data Aggregators need for a simple solution, including simplicity



of re-use for end-users. The Creative Commons solution was adopted and with the feedback from the meeting, the agreements were updated and supporting documentation was produced. These agreements were the basis for the large stakeholder consultation in December 2009 that resulted in over 250 individual remarks and proposals.

Note: The requirement for Data Providers to include the basic rights information about how end users can access digital content at their sites was maintained, as it gives a powerful way to filter search results for end users. Example: teachers who need to know the re-use options for content for class room activities. Preview licensing is simply deducted conservatively from the rights information of the original content, so no additional encoding costs for marking up Previews with rights information are incurred for Data Providers.

First results from the Stakeholder consultation

The agreements in this deliverable were the basis for the December 2009 stakeholder consultation. As such they do not contain any of the results of this consultation. The new agreements are being drafted as this deliverable is in April 2010, therefore only the most important changes that will be undertaken can be sketched:

- The new agreements will adopt a default “non-commercial use only” regime;
- The durations of the agreements will be reduced to one year;
- The obligations of Europeana will be defined more clearly;
- The win-win situation for Data Providers to participate in Europeana will be emphasised;
- Creative Commons will be abandoned as the sole licensing mechanism due to its limited enforceability with non-copyrighted metadata.

Preliminary conclusions

On a more general level, the following first conclusions can be drawn from WP4’s work since the start of EuropeanaConnect:

1. Not only are there different motivations to impose limitations on metadata re-use, but the underlying legal justifications brought forward to support those motivations are also heterogeneous. A similar situation was analysed in depth by BnF in France: Library licensing practices of digitised printed matters and their justifications (in French):

<http://www.slideshare.net/calimaq/bibliothques-numriques-et-mentions-igales-un-aperu-des-pratiques-en-france>.

2. The same heterogeneous opinions apply to some extent to the concept of the Public Domain. End users expect legal certainty for re-use if content is marked as “public domain” in Europeana. Therefore a process was started at the first Europeana IPR meeting in summer 2009 in Prague, to gain a consensual opinion on what the Public Domain “means” in operational terms. The result of this process will be the “Europeana Charter on the Public Domain” and has been added to the



deliverable D4.1.3 of EuropeanaConnect. (The Public Domain Charter is available here: <http://version1.europeana.eu/web/europeana-project/publications/>)

3. The pooling and sharing of metadata is to some extent an emergent practice in the cultural heritage sector and thus laden with all the difficulties of exploring a new territory. As an example of the former, one can cite the Library software company ExLibris, who is moving into metadata services with their “Primo Central” offer, the latter is demonstrated by the long and difficult process for the OCLC Cooperative to update their licensing terms for metadata re-use. On a positive note, the practice to share data with Wikipedia or directly engage communities like Oxford University’s “Great War Community Collection” have proven to create value in a sustainable fashion.

The emergence of homogeneous and interoperable licensing practices would certainly benefit undertakings such as Europeana and may prove to be the catalyst for value innovations that sharing practices can bring.

Next Steps

The Europeana Provider and Aggregator Agreements will be finalised and released for signature by the Partners (April 2010 deliverable). A good indication of foreseeable changes are in the initial results from the Stakeholder consultation as described above.

Terms of Use for the Europeana website (Rhine release) will be defined.

A User Generated Content policy will be developed.

Steps will be undertaken to generate buy-in for more liberal licensing terms for metadata (where useful) to demonstrate the benefits of sharing (network effects).

Europeana Data Provider Agreement

Europeana Connect WP4

v.4.5.9, 04.01.2010

Parties

European Digital Library Foundation (EDL Foundation)

Address, Phone, Fax, Email, URL

On behalf of EDL Foundation

Name of authorised Person, Title/Role in organisation, Work Phone, Work Email

Hereafter named: 'EDL Foundation'

And

Name of organisation

Address, Phone, Fax, Email, URL

On behalf of the Data Provider

Name of authorised Person, Title/Role in organisation, Work Phone, Work Email

Hereafter named: 'Data Provider'

Preamble

Considering that :

1. Europeana.eu is the window to Europe's cultural and scientific heritage. It is meant to spread ideas, spur inspiration and creativity, enable innovation and economic growth. Europeana.eu will link users to millions of digital Content items, some born digital, others digitised, ranging from images to texts, sounds and videos. Many of these items are world famous; others are hidden treasures from Europe's museums and galleries, archives, libraries and audio-visual collections;
2. A necessary step towards making Europe's cultural and scientific heritage available to the public, is making available the Metadata, related to the digital Content in the Data Provider's collection, through Europeana.eu under standardized terms; yet leaving Data Providers free to decide under which terms to make available the digital Content itself to the public;
3. Taking part in Europeana.eu puts no obligation whatsoever on the Data Provider to make available for free digital Content, if for example, rights could not be cleared or Content is intended for commercial exploitation. Indeed, Data Providers are entirely free to choose which terms suit their Content dissemination strategy best;
4. There is no obligation either for Data Providers to make available *all* their Metadata and expose them through Europeana.eu and its standard Metadata terms. Simply withholding Metadata or some Metadata elements is enough, if for example, rights could not be cleared or Metadata is intended for commercial exploitation;

5. The most tangible benefit for Data Providers, which choose to make available Metadata and Previews through Europeana.eu, is the worldwide exposure for their collections, ultimately driving traffic to the digital Content on their websites;
6. The greatest benefit is the added value of contextualizing collections within a larger set of Europe's cultural and scientific heritage: Through finding and relating Content from one collection to another, across nations and across domains, Europeana.eu is a concrete demonstration of the reality of Europe's shared cultural heritage;
7. Keeping the implementation and transaction costs for Data Providers and, more importantly, for Data Aggregators to a minimum requires a streamlined mechanism for handling rights. The terms of the Agreement have to be simple in order to scale to, potentially, thousands of Data Providers and Data Aggregators;
8. The Agreement also has to take into account that online re-use is not a one-to-one practice but many-to-many, so that re-use of Metadata could not be restricted to private use only; for the same reason, restricting the re-use of Metadata to "teaching and scientific use" only, disregards the fact that lifelong learning takes place on the public Internet. Finally, the Agreements also have to ensure that Metadata can be used and enhanced by commercial entities, thus enabling economic growth and innovation, while at the same time guaranteeing that any enhancements must be shared back.
9. The Agreement establishes a relationship between individual Data Providers and Europeana, respectively between individual Data Aggregators and Europeana, defining standardized terms a) for the use of Metadata and Previews as far as needed for the provision of the website Europeana.eu and b) for the use of Metadata by Third Parties, including the Metadata provided by Data Providers/Aggregators as well as the semantic Metadata generated by Europeana.eu and the contributions of Europeana.eu's users;
10. The Agreement does not contain any terms related to the use of the digital Content items themselves by either Europeana.eu or Third Parties, except for an optional provision on indexing full-text to enhance search for textual Content;
11. Enabling Europeana.eu to develop compelling and successful services, that will draw end users to the collections of the Data Providers, Europeana.eu cannot be burdened with restrictions concerning the uses it can make of the Metadata and Previews submitted by the Data Providers/Aggregators;
12. The only restriction that this Agreement places on Europeana.eu is to always give attribution to the original Data Provider so that end users will be able to access digital items in their original context;
13. For Europeana.eu to become a primary source of information to Europe's cultural and scientific heritage, Third Parties must be able to use the Metadata exposed via Europeana without restrictions such as preventing use by a specific group or for a specific purpose. This is achieved by making all Metadata available under a "Creative Commons - Attribution - Share Alike" licence;
14. Under this license, any Third Party using Metadata provided by Europeana.eu is required to a) give attribution to Europeana.eu, thereby pointing others towards Europeana and ultimately the digital Content items in their original context and b) make available any Metadata under the same terms ("Share Alike") to everybody, thereby allowing for maximum outside innovation and at the same time preventing exclusive capture of enhanced Metadata;
15. The use of the "Creative Commons - Attribution - Share Alike" license ensures that Metadata exposed through Europeana.eu can be combined with data and content from wikipedia and many other community driven projects, as well as with Open Access scientific content;

The Parties, wishing to cooperate in order to fulfil the mission of Europeana.eu, agree to the following:

Article 1 Definitions

1. Audio preview: Short, lower resolution extract of audio content.
2. Content: Content is digital information defined by its individuality and cultural or artistic expression. Content has a reference to an individual object of the real world or is born digital. Examples: Photographs, books, letters, films, paintings, television, etc. Note: In online delivery, Content excludes the peripheral packaging/platform.
3. Context Resources: Catch-all term for resources which help to provide context and enrich Europeana.eu Data like linked data, ontologies, vocabularies, thesauri, classifications, taxonomies, etc.
4. Data: Catch-all term including Metadata, Thumbnails, Audio and Moving Image previews.
5. Data Aggregator: Organisation that collects, formats and manages Data from Data Providers before submitting Data to Europeana.eu.
6. Data Provider: Organisation that submits Data to Europeana.eu.
7. Derivative: Data is considered derivative (data) if it is based upon one or more pre-existing Data, such as a translation, musical arrangement, dramatisation, condensation, or any other form of transformation or adaption.
8. EDL Foundation: The legal entity in charge of Europeana.eu.
9. End Users: Members of the public, using Europeana.eu, covered by the « Europeana Terms of Use ».
10. Europeana.eu: The Europeana website, its infrastructure and machine interfaces (APIs, JSON, RDFa, Linked Data, etc). Note: The specific URL may change in later iterations of the site.
11. Europeana.eu Data: The semantically enriched and merged Data, accessible via Europeana.eu, based on Data from Data Providers.
12. Europeana Office: The organisation that creates Europeana.eu on behalf of EDL Foundation.
13. Metadata: Metadata are facts or fact-like information, describing Content, containing little individual artistic/creative expression, often produced using authority files or controlled vocabularies. Examples: Bibliographic or filmographic data, temporary and spatial data, etc.
14. Moving image preview: Short, lower resolution extracts of moving image content. Can be as short as one frame and functionally equivalent to a thumbnail.

15. MyEuropeana: Collections of Data from within Europeana.eu, arranged and shared by End Users.
16. Preview: General term including Thumbnail, Audio and Moving Image Preview.
17. Public Domain: Metadata, Content or Previews for which copyright protection has expired or which never was subject to copyright protection because of lack of originality.
18. Thumbnail: Smaller, lower resolution version of still image content.
19. Terms of Use: The conditions, obligations and restrictions upon which legitimate use of Europeana.eu is contingent.
20. URI: Uniform Resource Identifier, URLs (Uniform Resource Locators) are URIs.
21. User generated content: Catch-all term for any comment, tag or other description as well as Content, Previews or Metadata; or comments, tags and descriptions thereof that is provided by End Users to Europeana.eu
22. Documents:
 - a. « Europeana Data Provider Agreement » This document.
 - b. « Europeana Data Agreement Guidelines » Defines workflow and relationship between parties. (Not part of this agreement)
 - c. « Europeana Terms of Use » Legitimate use of Europeana.eu is contingent upon their acceptance.

Article 2 Licence of rights for Metadata from Data Provider to EDL Foundation

1. Metadata submitted to EDL Foundation is used to produce Europeana.eu Data, which is accessible on Europeana.eu.
2. In order to make this possible, the Data Provider hereby grants EDL Foundation a non-exclusive, worldwide, royalty free licence on copyright, related rights and the sui generis database right for the term of this Agreement, whereby EDL Foundation shall have the right:
 - a. to publish, make available, reproduce, distribute, display, transmit, and store the Metadata and its derivatives in all forms, formats and media whether now known or hereafter developed (including without limitation in print, digital and electronic form) throughout the world;
 - b. to translate the Metadata (or authorise others to do so) into other languages, create adaptations, summaries or extracts of the Metadata or other derivative works based on the Metadata and exercise all of the rights set forth in (a) above in such translations, adaptations, summaries, extracts and derivative works;
3. EDL Foundation must give proper attribution on Europeana.eu of the Data Provider submitting the Metadata.

Article 3 Licence of rights for Previews from Data Provider to EDL Foundation

The Data Provider may submit Previews to EDL Foundation.

1. If no Preview is submitted, none will be accessible on Europeana.eu and none will become part of Europeana.eu Data.
2. If the Preview is submitted as URI pointing to an embeddable player or viewer, the embedded player or viewer will be made accessible on Europeana.eu and the URI will become part of Europeana.eu Data. EDL Foundation shall have the right to make available the embedded Preview. The Preview itself will not be stored and will not become part of Europeana.eu Data.
3. If the Preview is submitted as a file or as a URI pointing to a file which is correctly sized for a Preview, it will be stored as is by EDL Foundation. If the file is not correctly sized, a resized Preview will be created and the original file discarded. The Preview will be accessible on Europeana.eu and become part of Europeana.eu Data, whereby EDL Foundation shall have the right to publish, make available, reproduce, distribute, display, transmit, and store the Preview and its derivatives in all forms, formats and media whether now known or hereafter developed (including without limitation in print, digital and electronic form) throughout the world.
4. EDL Foundation must give proper attribution on Europeana.eu of the Data Provider submitting the Previews.

Article 4 Licence of rights for Metadata from Data Provider to third parties

1. With respect to Metadata of the Data Provider, the Data Provider grants EDL Foundation the right, to allow third parties to:
 - a. to publish, make available, reproduce, distribute, display, transmit, and store the Metadata in all forms, formats and media whether now known or hereafter developed (including without limitation in print, digital and electronic form) throughout the world;
 - b. to translate the Metadata into other languages, to create adaptations, summaries or extracts of the Metadata or to make other derivative works based on the Metadata and exercise all of the rights set forth in (a) above in such translations, adaptations, summaries, extracts and derivative works;

The rights from 1.a) and b) are communicated to third parties through a Creative Commons licence (CC-Attribution-Sharealike,

<http://creativecommons.org/about/licenses/>) or another licence containing similar licensing elements.

It is understood that EDL Foundation cannot grant more rights to third parties than what this agreement confers, and that the scope of limitations and exceptions of copyrights will not be affected by additional restrictions in the Europeana.eu Terms of Use.

2. Where the Data Provider supplies attribution information with respect to the Metadata (including but not limited to the name of author/institution, year of publication etc.), then EDL Foundation must require that third parties give proper attribution to the appropriate person. Where the Data Provider supplies no attribution information, the default attribution should be given to Europeana.eu.
3. EDL Foundation must require that third parties exercising the rights granted under paragraph 1a) or b) above include a copy of, or the Uniform Resource Identifier (URI) for, the appropriate license with every copy of the Metadata, or of an adaptation thereof, that they distribute, display or transmit. Third parties may not sublicense the Metadata and must keep intact all notices that refer to the license with every copy of the Metadata, or of an adaptation thereof, that they distribute, display or transmit.

Article 5 Licence of rights for Content from Data Provider to EDL Foundation

1. Unless otherwise agreed, the Data Provider does not submit Content to Europeana.eu, nor does Content become part of Europeana.eu Data.
2. To increase discoverability/searchability of textual documents made available on Data Provider's site, Data Provider may submit full texts, tables of contents, etc. to Europeana.eu. For the specific purpose of indexing textual documents, Data Provider shall grant EDL Foundation the same rights in the full texts, table of contents etc. as specified for Metadata in Article 2.2 above, it being understood that such full text is not to be shared with third parties and is only used for search on Europeana.eu.
3. To facilitate search and filtering of search results, Data Provider must indicate the rights information corresponding to the copyright status of the Content, as specified in the "Europeana Data Agreement Guidelines". This rights information will become part of Europeana.eu Data.

Article 6 Licence of rights for Previews from Data Provider to third parties

1. The rights for Previews are governed by the same terms as those indicated for the original Content, as communicated in relation to that Content.
2. If the Data Provider expressly marks the Previews as public domain material (either because the term of protection has lapsed or because the Preview does not meet the requirement for protection), then it is understood that EDL Foundation and third parties are entitled to make adaptations and commercial use of such Previews.

Article 7 Other rights of Data Provider

All other rights of the Data Provider, other than copyright, related rights and sui generis database rights in the Data, shall remain unaffected, such as patent and trademarks rights.

Article 8 Moral rights

This agreement does not affect any moral rights of the Data Provider or any other party that may persist in or to the Data. More specifically, the Data Provider and the appropriate party assert their right to be identified as the author and the right to object to derogatory treatment.

Article 9 Obligations of the Data Provider

1. The Data Provider agrees to abide to the timeframe, the "Europeana Data Agreement Guidelines" and other indications of Europeana Office.
2. The Data Provider warrants that the creation and use of Thumbnails and Audio and Moving Image Previews, based on Content from the Data Provider's website, do not constitute:
 - (a) A violation of the intellectual property rights of third parties;
 - (b) An infringement of personality, privacy, publicity or other rights (slandering, private life, etc.);
 - (c) An infringement of public order or morality (hate speech, obscenity, etc.).
3. The Data is deemed accepted whenever Europeana Office is of the opinion that the Data meets the specific or usual quality requirements and conditions.
4. The Data Provider must make best efforts to ensure the correctness of rights information, including machine readable rights information and mark-up.
5. Data Providers must make best efforts to identify Content which is in the Public Domain, as such.

Article 10 Liability Disclaimer

1. Except to the extent required by applicable law, in no event will the EDL Foundation be liable on any legal theory for any special, incidental, consequential, punitive or exemplary damages arising out of this agreement or the use of the Data, even if the EDL Foundation has been advised of the possibility of such damages.
2. In particular, the EDL Foundation will not be liable for the following:
 - (a) Accuracy, completeness, etc. of Data or Europeana.eu Data;
 - (b) Mistakes, omissions, interruptions or suppression of Data representations within Europeana.eu Data or the search results on Europeana.eu;
 - (c) Any infringement of privacy, publicity or other rights;
 - (d) Any use by third parties that goes beyond the rights expressed in this agreement;
 - (e) Re-use by third parties of material in obscene material, hate speech, etc.

3. The Data Provider holds EDL Foundation free and harmless of any action, recourse or claims made by any third party due to the non-observance by the Data Provider of its declarations and guarantees written in the above article.

Article 11 Duration of the Contract

The initial term of the agreement is 4 years from the 1st January following the date of signature by both parties. The agreement will be renewed automatically for a period of one year every 1st January, unless terminated by one of the parties. Written notice is required at least three months before the end of a calendar year.

Article 12 Termination

1. The rights granted by the Data Provider to the EDL Foundation end when this Agreement is terminated or no longer renewed.
2. Either party may terminate this Agreement at any time on the material breach or repeated other breaches by the other of any obligation on its part under this Agreement by serving a written notice on the other identifying the nature of the breach. The termination will become effective thirty (30) days after receipt of the written notice unless during the relevant period of thirty (30) days the defaulting party remedies the breach.
3. This Agreement may be terminated by either party on written notice if the other party becomes insolvent or bankrupt, if the Data Provider's project ends or if the Data Provider withdraws or ceases operations. In such circumstances, Europeana.eu may continue to use the Data provided under the conditions specified by this Agreement. Data Providers should inform Europeana Office prior to such an event and strive to ensure seamless transition.
4. It is EDL Foundation's responsibility to remove the Data from Europeana.eu within a reasonable timeframe from the date of termination of the agreement. In the event that the Agreement is not renewed by the parties or in case it is terminated for reason of breach of contract by one party, it is EDL Foundation's responsibility to remove the Data from Europeana.eu within a reasonable timeframe from the date of termination of the agreement.
5. Termination of this agreement does not affect any prior valid agreement made by EDL Foundation with third parties.

Article 13 Miscellaneous

1. Severability

If any term of this agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

2. Mandatory national law

Nothing in this agreement shall be deemed to require the Data Provider to breach any mandatory statutory law under which the Data Provider is operating.

3. Language

This agreement is drawn up in English, which language shall govern all documents, notices, meetings, arbitral proceedings and processes relative thereto.

4. Applicable law

This agreement shall be construed in accordance with and governed by the laws of the Netherlands.

5. Settlement of disputes

All disputes arising out of or in connection with this agreement, which cannot be solved amicably, shall be referred to mediation. The outcome of the mediation process will be binding on the parties.

The place of mediation shall be The Hague if not otherwise agreed by the conflicting parties.

Nothing in this agreement shall limit the Data Provider's right to seek injunctive relief in any applicable competent court of law. The commencement of mediation will not prevent the concerned Data Provider from commencing or continuing court proceedings.

Article 14 Final clause

This Agreement enters into force as of the date of signature of the parties.

Signed both parties:

Date, Data Provider

Date, EDL Foundation

Europeana Data Aggregator Agreement

Europeana Connect WP4

v.4.5.9, 04.01.2010

Parties

European Digital Library Foundation (EDL Foundation)

Address, Phone, Fax, Email, URL

On behalf of EDL Foundation

Name of authorised Person, Title/Role in organisation, Work Phone, Work Email

Hereafter named: 'EDL Foundation'

And

Name of organisation

Address, Phone, Fax, Email, URL

On behalf of the Data Aggregator

Name of authorised Person, Title/Role in organisation, Work Phone, Work Email

Hereafter named: 'Data Aggregator'

Preamble

Considering that :

1. Europeana.eu is the window to Europe's cultural and scientific heritage. It is meant to spread ideas, spur inspiration and creativity, enable innovation and economic growth. Europeana.eu will link users to millions of digital Content items, some born digital, others digitised, ranging from images to texts, sounds and videos. Many of these items are world famous; others are hidden treasures from Europe's museums and galleries, archives, libraries and audio-visual collections;
2. A necessary step towards making Europe's cultural and scientific heritage available to the public, is making available the Metadata, related to the digital Content in the Data Provider's collection, through Europeana.eu under standardized terms; yet leaving Data Providers free to decide under which terms to make available the digital Content itself to the public;
3. Taking part in Europeana.eu puts no obligation whatsoever on the Data Provider to make available for free digital Content, if for example, rights could not be cleared or Content is intended for commercial exploitation. Indeed, Data Providers are entirely free to choose which terms suit their Content dissemination strategy best;
4. There is no obligation either for Data Providers to make available *all* their Metadata and expose them through Europeana.eu and its standard Metadata terms. Simply withholding Metadata or some Metadata elements is enough, if for example, rights could not be cleared or Metadata is intended for commercial exploitation;

5. The most tangible benefit for Data Providers, which choose to make available Metadata and Previews through Europeana.eu, is the worldwide exposure for their collections, ultimately driving traffic to the digital Content on their websites;
6. The greatest benefit is the added value of contextualizing collections within a larger set of Europe's cultural and scientific heritage: Through finding and relating Content from one collection to another, across nations and across domains, Europeana.eu is a concrete demonstration of the reality of Europe's shared cultural heritage;
7. Keeping the implementation and transaction costs for Data Providers and, more importantly, for Data Aggregators to a minimum requires a streamlined mechanism for handling rights. The terms of the Agreement have to be simple in order to scale to, potentially, thousands of Data Providers and Data Aggregators;
8. The Agreement also has to take into account that online re-use is not a one-to-one practice but many-to-many, so that re-use of Metadata could not be restricted to private use only; for the same reason, restricting the re-use of Metadata to "teaching and scientific use" only, disregards the fact that lifelong learning takes place on the public Internet. Finally, the Agreements also have to ensure that Metadata can be used and enhanced by commercial entities, thus enabling economic growth and innovation, while at the same time guaranteeing that any enhancements must be shared back.
9. The Agreement establishes a relationship between individual Data Providers and Europeana, respectively between individual Data Aggregators and Europeana, defining standardized terms a) for the use of Metadata and Previews as far as needed for the provision of the website Europeana.eu and b) for the use of Metadata by Third Parties, including the Metadata provided by Data Providers/Aggregators as well as the semantic Metadata generated by Europeana.eu and the contributions of Europeana.eu's users;
10. The Agreement does not contain any terms related to the use of the digital Content items themselves by either Europeana.eu or Third Parties, except for an optional provision on indexing full-text to enhance search for textual Content;
11. Enabling Europeana.eu to develop compelling and successful services, that will draw end users to the collections of the Data Providers, Europeana.eu cannot be burdened with restrictions concerning the uses it can make of the Metadata and Previews submitted by the Data Providers/Aggregators;
12. The only restriction that this Agreement places on Europeana.eu is to always give attribution to the original Data Provider so that end users will be able to access digital items in their original context;
13. For Europeana.eu to become a primary source of information to Europe's cultural and scientific heritage, Third Parties must be able to use the Metadata exposed via Europeana without restrictions such as preventing use by a specific group or for a specific purpose. This is achieved by making all Metadata available under a "Creative Commons - Attribution - Share Alike" licence;
14. Under this license, any Third Party using Metadata provided by Europeana.eu is required to a) give attribution to Europeana.eu, thereby pointing others towards Europeana and ultimately the digital Content items in their original context and b) make available any Metadata under the same terms ("Share Alike") to everybody, thereby allowing for maximum outside innovation and at the same time preventing exclusive capture of enhanced Metadata;
15. The use of the "Creative Commons - Attribution - Share Alike" license ensures that Metadata exposed through Europeana.eu can be combined with data and content from wikipedia and many other community driven projects, as well as with Open Access scientific content;

Whereas Data Aggregator obtains the Data from one or more Data Providers pursuant to the terms of separate agreements between Data Aggregator and each Data Provider;

Whereas such Data is meant to be made available via the Europeana.eu website;

Whereas Data Aggregator is an intermediary between Data Provider and EDL Foundation;

The Parties, wishing to cooperate in order to fulfil the mission of Europeana.eu, agree to the following:

Article 1 Definitions

1. Audio preview: Short, lower resolution extract of audio content.
2. Content: Content is digital information defined by its individuality and cultural or artistic expression. Content has a reference to an individual object of the real world or is born digital. Examples: Photographs, books, letters, films, paintings, television, etc. Note: In online delivery, Content excludes the peripheral packaging/platform.
3. Context Resources: Catch-all term for resources which help to provide context and enrich Europeana.eu Data like linked data, ontologies, vocabularies, thesauri, classifications, taxonomies, etc.
4. Data: Catch-all term including Metadata, Thumbnails, Audio and Moving Image previews.
5. Data Aggregator: Organisation that collects, formats and manages Data from Data Providers before submitting Data to Europeana.eu.
6. Data Provider: Organisation that submits Data to Europeana.eu.
7. Derivative: Data is considered derivative (data) if it is based upon one or more pre-existing Data, such as a translation, musical arrangement, dramatisation, condensation, or any other form of transformation or adaption.
8. EDL Foundation: The legal entity in charge of Europeana.eu.
9. End Users: Members of the public, using Europeana.eu, covered by the « Europeana Terms of Use ».
10. Europeana.eu: The Europeana website, its infrastructure and machine interfaces (APIs, JSON, RDFa, Linked Data, etc). Note: The specific URL may change in later iterations of the site.
11. Europeana.eu Data: The semantically enriched and merged Data, accessible via Europeana.eu, based on Data from Data Providers.
12. Europeana Office: The organisation that creates Europeana.eu on behalf of EDL Foundation.
13. Metadata: Metadata are facts or fact-like information, describing Content, containing little individual artistic/creative expression, often produced using authority files or controlled vocabularies. Examples: Bibliographic or filmographic data, temporary and spatial data, etc.
14. Moving image preview: Short, lower resolution extracts of moving image content. Can be as short as one frame and functionally equivalent to a thumbnail.

15. MyEuropeana: Collections of Data from within Europeana.eu, arranged and shared by End Users.
16. Preview: General term including Thumbnail, Audio and Moving Image Preview.
17. Public Domain: Metadata, Content or Previews for which copyright protection has expired or which never was subject to copyright protection because of lack of originality.
18. Thumbnail: Smaller, lower resolution version of still image content.
19. Terms of Use: The conditions, obligations and restrictions upon which legitimate use of Europeana.eu is contingent.
20. URI: Uniform Resource Identifier, URLs (Uniform Resource Locators) are URIs.
21. User generated content: Catch-all term for any comment, tag or other description as well as Content, Previews or Metadata; or comments, tags and descriptions thereof that is provided by End Users to Europeana.eu
22. Documents:
 - a. « Europeana Data Aggregator Agreement » This document.
 - b. « Europeana Data Agreement Guidelines » Defines workflow and relationship between parties. (Not part of this agreement)
 - c. « Europeana Terms of Use » Legitimate use of Europeana.eu is contingent upon their acceptance.

Article 2 Licence of rights for Metadata from Data Aggregator to EDL Foundation

1. Metadata submitted to EDL Foundation is used to produce Europeana.eu Data, which is accessible on Europeana.eu.
2. In order to make this possible, the Data Aggregator hereby grants EDL Foundation a non-exclusive, worldwide, royalty free licence on copyright, related rights and the sui generis database right for the term of this Agreement, whereby EDL Foundation shall have the right:
 - a. to publish, make available, reproduce, distribute, display, transmit, and store the Metadata and its derivatives in all forms, formats and media whether now known or hereafter developed (including without limitation in print, digital and electronic form) throughout the world;
 - b. to translate the Metadata (or authorise others to do so) into other languages, create adaptations, summaries or extracts of the Metadata or other derivative works based on the Metadata and exercise all of the rights set forth in (a) above in such translations, adaptations, summaries, extracts and derivative works;
3. EDL Foundation must give proper attribution on Europeana.eu of the Data Aggregator submitting the Metadata.
4. Data Aggregator understands that the rights on the Metadata conferred by the Data Provider pursuant to the Data Provider/Aggregator Agreement are meant to enable Data Aggregator to fulfil its role as intermediary between Data Provider and EDL Foundation and that such rights shall only be exercised by Data Aggregator within the framework of this Agreement and the "Europeana Data Agreement Guidelines".

Article 3 Licence of rights for Previews from Data Aggregator to EDL Foundation

The Data Aggregator may submit Previews to EDL Foundation.

1. If no Preview is submitted, none will be accessible on Europeana.eu and none will become part of Europeana.eu Data.
2. If the Preview is submitted as URI pointing to an embeddable player or viewer, the embedded player or viewer will be made accessible on Europeana.eu and the URI will become part of Europeana.eu Data. EDL Foundation shall have the right to make available the embedded Preview. The Preview itself will not be stored and will not become part of Europeana.eu Data.
3. If the Preview is submitted as a file or as a URI pointing to a file which is correctly sized for a Preview, it will be stored as is by EDL Foundation. If the file is not correctly sized, a resized Preview will be created and the original file discarded. The Preview will be accessible on Europeana.eu and become part of Europeana.eu Data, whereby EDL Foundation shall have the right to publish, make available, reproduce, distribute, display, transmit, and store the Preview and its derivatives in all forms, formats and media whether now known or hereafter developed (including without limitation in print, digital and electronic form) throughout the world.
4. EDL Foundation must give proper attribution on Europeana.eu of the Data Aggregator submitting the Previews.
5. Data Aggregator understands that the rights on the Previews conferred by the Data Provider pursuant to the Data Provider/Aggregator Agreement are meant to enable Data Aggregator to fulfil its role as intermediary between Data Provider and EDL Foundation and that such rights shall only be exercised by Data Aggregator within the framework of this Agreement and the "Europeana Data Agreement Guidelines".

Article 4 Licence of rights for Metadata from Data Aggregator to third parties

1. With respect to Metadata of the Data Aggregator, the Data Aggregator grants EDL Foundation the right, to allow third parties to:
 - a. to publish, make available, reproduce, distribute, display, transmit, and store the Metadata in all forms, formats and media whether now known or hereafter developed (including without limitation in print, digital and electronic form) throughout the world;
 - b. to translate the Metadata into other languages, to create adaptations, summaries or extracts of the Metadata or to make other derivative works based on the Metadata and exercise all of the rights set forth in (a) above in such translations, adaptations, summaries, extracts and derivative works;

The rights from 1.a) and b) are communicated to third parties through a Creative Commons licence (CC-Attribution-Sharealike,

<http://creativecommons.org/about/licenses/>) or another licence containing similar licensing elements.

It is understood that EDL Foundation cannot grant more rights to third parties than what this agreement confers, and that the scope of limitations and exceptions of copyrights will not be affected by additional restrictions in the Europeana.eu Terms of Use.

2. Where the Data Aggregator supplies attribution information with respect to the Metadata (including but not limited to the name of author/institution, year of publication etc.), then EDL Foundation must require that third parties give proper attribution to the appropriate person. Where the Data Aggregator supplies no attribution information, the default attribution should be given to Europeana.eu.
3. EDL Foundation must require that third parties exercising the rights granted under paragraph 1a) or b) above include a copy of, or the Uniform Resource Identifier (URI) for, the appropriate license with every copy of the Metadata, or of an adaptation thereof, that they distribute, display or transmit. Third parties may not sublicense the Metadata and must keep intact all notices that refer to the license with every copy of the Metadata, or of an adaptation thereof, that they distribute, display or transmit.

Article 5 Licence of rights for Content from Data Aggregator to EDL Foundation

1. Unless otherwise agreed, the Data Aggregator does not submit Content to Europeana.eu, nor does Content become part of Europeana.eu Data.
2. To increase discoverability/searchability of textual documents made available on Data Aggregator's site, Data Aggregator may submit full texts, tables of contents, etc. to Europeana.eu. For the specific purpose of indexing textual documents, Data Aggregator shall grant EDL Foundation the same rights in the full texts, table of contents etc. as specified for Metadata in article 2.2 above, it being understood that such full text is not to be shared with third parties and is only used for search on Europeana.eu.
3. To facilitate search and filtering of search results, Data Provider must indicate the rights information corresponding to the copyright status of the Content, as specified in the "Europeana Data Agreement Guidelines". This rights information will become part of Europeana.eu Data.

Article 6 Licence of rights for Previews from Data Aggregator to third parties

1. The rights for Previews are governed by the same terms as those indicated for the original Content, and as communicated in relation to that Content.
2. If the Data Aggregator expressly marks the Previews as public domain material (either because the term of protection has lapsed or because the Preview does not meet the requirement for protection), then it is understood that EDL Foundation and third parties are entitled to make adaptations and commercial use of such Previews.

Article 7 Other rights of Data Aggregator

All other rights of the Data Aggregator and Data Provider, other than copyright, related rights and sui generis database rights in the Data, shall remain unaffected, such as patent and trademarks rights.

Article 8 Moral rights

This agreement does not affect any moral rights of the Data Aggregator or Data Provider or any other party that may persist in or to the Data. More specifically, the Data Aggregator or Data Provider and the appropriate party assert their right to be identified as the author and the right to object to derogatory treatment.

Article 9 Obligations of the Data Aggregator

1. The Data Aggregator agrees to abide to the timeframe, the "Europeana Data Agreement Guidelines" and other indications of Europeana Office.
2. The Data Aggregator warrants that the creation and use of Thumbnails and Audio and Moving Image Previews, based on Content from the Data Aggregator or Data Provider's website, do not constitute:
 - (a) A violation of the intellectual property rights of third parties;
 - (b) An infringement of personality, privacy, publicity or other rights (slandering, private life, etc.);
 - (c) An infringement of public order or morality (hate speech, obscenity, etc.).
3. The Data is deemed accepted whenever Europeana Office is of the opinion that the Data meets the specific or usual quality requirements and conditions.
4. The Data Aggregator must make best efforts the correctness of rights information, including machine readable rights information and mark-up.
5. Data Aggregators must make best efforts to identify Content which is in the Public Domain, as such.

Article 10 Liability Disclaimer

1. Except to the extent required by applicable law, in no event will the EDL Foundation be liable on any legal theory for any special, incidental, consequential, punitive or exemplary damages arising out of this agreement or the use of the Data, even if the EDL Foundation has been advised of the possibility of such damages.
2. In particular, the EDL Foundation will not be liable for the following:
 - (a) Accuracy, completeness, etc. of Data or Europeana.eu Data;
 - (b) Mistakes, omissions, interruptions or suppression of Data representations within Europeana.eu Data or the search results on Europeana.eu;
 - (c) Any infringement of privacy, publicity or other rights;
 - (d) Any use by third parties that goes beyond the rights expressed in this agreement;
 - (e) Re-use by third parties of material in obscene material, hate speech, etc.

3. The Data Aggregator holds EDL Foundation free and harmless of any action, recourse or claims made by any third party due to the non-observance by the Data Aggregator of its declarations and guarantees written in the above article.

Article 11 Duration of the Contract

The initial term of the agreement is 4 years from the 1st January following the date of signature by both parties. The agreement will be renewed automatically for a period of one year every 1st January, unless terminated by one of the parties. Written notice is required at least three months before the end of a calendar year.

Article 12 Termination

1. The rights granted by the Data Aggregator to the EDL Foundation end when this Agreement is terminated or no longer renewed.
2. Either party may terminate this Agreement at any time on the material breach or repeated other breaches by the other of any obligation on its part under this Agreement by serving a written notice on the other identifying the nature of the breach. The termination will become effective thirty (30) days after receipt of the written notice unless during the relevant period of thirty (30) days the defaulting party remedies the breach.
3. This Agreement may be terminated by either party on written notice if the other party becomes insolvent or bankrupt, if the Data Aggregator's project ends or if the Data Aggregator withdraws or ceases operations. In such circumstances, Europeana.eu may continue to use the Data provided under the conditions specified by this Agreement. Data Aggregators should inform Europeana Office prior to such an event and strive to ensure seamless transition.
4. It is EDL Foundation's responsibility to remove the Data from Europeana.eu within a reasonable timeframe from the date of termination of the agreement. In the event that the Agreement is not renewed by the parties or in case it is terminated for reason of breach of contract by one party, it is EDL Foundation's responsibility to remove the Data from Europeana.eu within a reasonable timeframe from the date of termination of the agreement.
5. Termination of this agreement does not affect any prior valid agreement made by EDL Foundation with third parties.

Article 13 Miscellaneous

1. Severability

If any term of this agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

2. Mandatory national law

Nothing in this agreement shall be deemed to require the Data Aggregator to breach any mandatory statutory law under which the Data Aggregator is operating.

3. Language

This agreement is drawn up in English, which language shall govern all documents, notices, meetings, arbitral proceedings and processes relative thereto.

4. Applicable law

This agreement shall be construed in accordance with and governed by the laws of the Netherlands.

5. Settlement of disputes

All disputes arising out of or in connection with this agreement, which cannot be solved amicably, shall be referred to mediation. The outcome of the mediation process will be binding on the parties.

The place of mediation shall be The Hague if not otherwise agreed by the conflicting parties.

Nothing in this agreement shall limit the Data Aggregator's right to seek injunctive relief in any applicable competent court of law. The commencement of mediation will not prevent the concerned Data Aggregator from commencing or continuing court proceedings.

Article 14 Final clause

This Agreement enters into force as of the date of signature of the parties.

Signed both parties:

Date, Data Aggregator

Date, EDL Foundation
