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COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

ON THE DIGITISATION AND ONLINE ACCESSIBILITY OF CULTURAL MATERIAL AND DIGITAL PRESERVATION

COMMISSION RECOMMENDATION

of 24 August 2006

on the digitisation and online accessibility of cultural material and digital preservation
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COMMUNICATION FROM THE COMMISSION

ON THE DIGITISATION AND ONLINE ACCESSIBILITY OF CULTURAL MATERIAL AND DIGITAL PRESERVATION

1. INTRODUCTION

The present Communication outlines the context of the Commission Recommendation on the digitisation and online accessibility of cultural material and digital preservation. The Recommendation aims at bringing out the full economic and cultural potential of Europe's cultural and scientific heritage through the Internet. It is part of the Commission's strategy for the **digitisation, online accessibility and digital preservation** of Europe's cultural and scientific heritage as set out in the Commission Communication 'i2010: digital libraries' of 30 September 2005, COM(2005)465 final.

2. WHY IS THIS AREA IMPORTANT?

The digital libraries initiative aims at enabling all Europeans to access Europe's collective memory and use it for education, work, leisure and creativity. The efforts in this area will **contribute to Europe's competitiveness** and will **support European Union action in the field of culture**:

– The online presence of material from different cultures and in different languages will make it easier for citizens to appreciate their own cultural heritage as well as the heritage of other European countries. The recommended measures will contribute to presenting Europe's rich and diverse heritage on the Internet and to protecting cultural assets from irretrievable loss.

– Beyond its fundamental cultural value, cultural material is an important resource for new added value services. The measures recommended will contribute to enhancing growth in related high value-added sectors such as tourism, education and media. High-quality digital content is a key driver for large scale industrial activities (hence the interest on the part of major search engines). Digitisation and digital preservation are knowledge-intensive activities that are likely to grow considerably in the coming years.

The measures put forward in the Recommendation should lead to a more coordinated approach in the Member States to key issues for digitisation, online accessibility and digital preservation, and help create a multilingual common access point to Europe's distributed digital cultural heritage.

3. GENERAL CONTEXT OF THE COMMISSION RECOMMENDATION

In their letter of 28 April 2005 to the Presidents of the European Council and of the Commission, six Heads of State and Government advocated the creation of a virtual European library. In his letter of 7 July 2005, Mr Barroso gave a positive reply to this suggestion, indicating the willingness of the Commission to work towards such a virtual European library and pointing to the work already undertaken in this area at European level.

The Recommendation on the digitisation and online accessibility of cultural material and digital preservation is part of the i2010 initiative, aiming at optimising the use of information technologies for economic growth, job creation and quality of life.[1] One of the key policy objectives of the initiative is to make European content more widely available and more productive for new information services and products.

As part of i2010, the Commission adopted on 30 September 2005 the Communication 'i2010: digital libraries', outlining the structure of the digital libraries initiative and dealing with the digitisation, online accessibility and digital preservation of cultural content. The Communication indicated that, although there are currently many digitisation initiatives in the Member States, efforts are still fragmented. Several challenges exist for the digitisation and subsequent online accessibility of cultural content. They are of an economic nature (who will pay for the digitisation), organisational nature (how to create synergies and avoid duplication of effort in cultural institutions, and how to secure public-private collaboration), technical nature (how to lower costs for digitisation while maintaining a high quality) and legal nature (how to deal with the copyright aspects in cooperation with rightholders in order to ensure coverage of protected works).

As for the issue of digital preservation, the Communication noted the absence of clear strategies and policies in the Member States, the need for collaboration at European level, and a series of challenges similar to those for digitisation (costs, organisation, technological issues, copyright issues).

This analysis was corroborated and sharpened by the results of a major online consultation, launched together with the Communication and open until 20 January 2006. The online consultation has highlighted a number of concrete issues where action and a better coordination at European level will be beneficial.

The Communication 'i2010: digital libraries' also set out how the Commission would contribute to the initiative by reinforcing its coordinating role, by discussions with stakeholders and through existing funding programmes, such as *e*Content*plus*[2] and the research programmes. It moreover announced the present Recommendation.

The Communication 'i2010: digital libraries' was discussed by the Culture Council of 14 November 2005 and was well received. Several Ministers stressed the need to build on existing initiatives, such as TEL (The European Library), which gives integrated access to the decentralised catalogues and digitised resources of a number of European libraries and the MICHAEL project. The Culture and Education committee of the European Parliament has discussed the issues at stake on the basis of a working document by the rapporteur.[3] On 15 June 2006 the Committee of the Regions adopted unanimously a positive opinion on the Commission approach.[4]

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[1]   "i2010 – A European Information Society for growth and employment", Communication of the Commission of 1.6.2005, COM(2005) 229 final.

[2]   Programme Decision No 456/2005/EC of the European Parliament and of the Council of 9 March 2005 establishing a multiannual Community programme to make digital content in Europe more accessible, usable and exploitable, OJ L79, 24.3.2005, p.1.

[3]   Working document by Mrs Deschamps available at
http://www.europarl.europa.eu/meetdocs/2004_2009/documents/dv/610/610755/610755fr.pdf

[4]   CdR 32/2006.

In 2001, an action plan for digitisation was established (the Lund action plan), which was updated in November 2005 under the UK Presidency. A national representatives group has been put in place that will contribute towards the development and implementation of this dynamic action plan and monitor its impact.

Work is currently under way with cultural institutions to create a multilingual common access point to Europe's distributed digital cultural heritage. This access point will build upon the organisational structure of TEL. In the first phase, therefore, the European digital library will mostly offer textual material. At a later stage, other institutions (archives, museums) will also participate, and add other types of content such as audiovisual material.

4.   THE NEED FOR A COORDINATED EFFORT

The Commission Recommendation is expected to contribute to coordinated action by Member States in the areas of the digitisation and online accessibility of cultural material and digital preservation. The following elements are relevant in this context:

– The initiative to create a European digital library is strongly rooted in national and local efforts to digitise and preserve cultural material. Coordinated action at EU level is necessary in view of the European scale and the cross-border nature of the underlying issues.

– Coordinated action at EU level will avoid duplication of effort in the Member States and lead to synergies between national collections. It will scale up national digitisation initiatives, and leverage fragmented investments. A critical mass in digitisation efforts throughout the Union based on clear quantitative targets set by the Member States will trigger private investments in digitisation technologies and applications. Furthermore coordinated action will lead to economies of scale in implementing test beds, to the combining of scattered know-how and to the sharing of best practices in digitisation and digital preservation.

– A common effort to digitise Europe's cultural heritage and to make it available through a preferred access point will raise the visibility of Europe's rich and diverse heritage on the Internet. The European digital library will improve access by citizens and professional re-users to cultural material from other Member States.

– Goods and services based on digital material are essentially trans-national by nature. The individual issues addressed in the Recommendation have a strong cross-border character: interoperability of digital collections between Member States, a common multilingual access point, licensing of material under copyright for online use, etc.

5.   CONTRIBUTION TO AND RELATION WITH DIFFERENT COMMUNITY POLICIES

The measures recommended will contribute to the Lisbon goals of **growth, employment and social cohesion** by combining the potential of new information technologies and cultural content for the creation of new services and products. The Recommendation also contributes to complement and support the objectives of European Union **action in the field of culture**.

The Recommendation is linked to and builds on parts of the European Union's **research agenda** and will foster better exploitation of the industrial potential of policies towards innovation, research and technological development. It addresses technical questions such as

the interoperability of content and organisational issues that stand in the way of bringing out the full potential of new technologies for making cultural content available. Under the 7th Framework programme for research and development the Commission will, amongst other things, co-finance a network of centres of competence for digitisation and for digital preservation.

The future **Cohesion policy** (2007-2013) has innovation and knowledge as an overarching priority. Subject to the initiative of Member States and regions, the use of ICT for the preservation of cultural assets and the support to the development of the e-content industries is recommended within the Community priorities.

Only part of the material held by libraries, archives and museums is in the public domain in the sense that it is not or no longer covered by intellectual property rights. Europe's cultural heritage should be digitised, made available and preserved, while **fully respecting Community and international rules on copyright and related rights**. Particularly relevant in this context is Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society,[5] which stipulates in its Article 5(2) that Member States may provide for exceptions or limitations in respect of specific acts of reproduction by publicly accessible libraries or by archives, where they are not for direct or indirect economic or commercial gain, and goes on to state in Article 5(5) that "the exceptions and limitations provided for in paragraphs 1, 2, 3, and 4 shall only be applied in certain special cases which do not conflict with a normal exploitation of the work or other subject-matter and do not unreasonably prejudice the legitimate interest of the rightholder".[6]

Relevant provisions in related areas include: the Recommendation of the European Parliament and of the Council of 16 November 2005 on film heritage and the competitiveness of related industrial activities (2005/865/CE)[7] and the Recommendation of the Council of 14 November 2005 on priority actions to increase cooperation in the field of archives in Europe (2005/835/EC).[8] These Recommendations contain suggestions for the better use of new information and communication technologies in the specific sectors concerned.

6.   **RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENT**

Consultations

Extensive consultations were held with stakeholders and provided input for the Recommendation.

–   A major online consultation, open from 30 September 2005 to 20 January 2006, yielded 225 responses from organisations and individuals in 21 Member States and 8 countries outside the Union. The replies show that the digital libraries initiative is well received and indicate a great willingness to contribute to it. They also point up a series of issues where

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5   OJ L 167, 22.6.2001, p.10.
6   In this context also article article 5 (3) n of the directive is relevant, as well as its recital 40.
7   OJ L323, 9.12.2005, p.57.
8   OJ L 312, 29.11.2005, p.55.

problems exist in the areas of digitisation, online accessibility and digital preservation of cultural content.[9]

– A number of workshops in 2005 and 2006 with cultural institutions, rightholders, IPR-experts, and research experts in the field, together with a number of bilateral contacts, provided further input for the proposal. A High Level Expert Group on Digital Libraries met for the first time on 27 March 2006, bringing together stakeholders from cultural institutions, rightholders and the information technology industry.[10]

Impact assessment

The present Recommendation was not listed in the Commission's Legislative and Work Programme as one of the proposals subject to an impact assessment. Nevertheless, a limited impact assessment[11] was carried out looking at three different scenarios for intervention by the Commission: wait and see, flexible coordination, strong top-down coordination. The Commission Recommendation best fits the flexible coordination scenario. The assessment furthermore analyses the economic and cultural importance of the issues at stake and gives additional information on the individual parts of the Recommendation.

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[9] An overview of the results of the online consultation as well as the individual replies are available at: http://europa.eu.int/information_society/activities/digital_libraries/consultation/replies/index_en.htm

[10] Minutes of the meeting along with a list of members of the group are available at: http://europa.eu.int/information_society/activities/digital_libraries/high_level_expert_group/index_en.htm

[11] Commission staff working paper accompanying this Communication.

COMMISSION RECOMMENDATION

of 24 August 2006

on the digitisation and online accessibility of cultural material and digital preservation

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 211 thereof,

Whereas:

(1)   On 1 June 2005 the Commission presented the i2010 initiative, which seeks to optimise the benefits of the new information technologies for economic growth, job creation and the quality of life of European citizens. The Commission has made digital libraries a key aspect of i2010. In its Communication 'i2010: digital libraries' of 30 September 2005,[12] it set out its strategy for digitisation, online accessibility and digital preservation of Europe's collective memory. This collective memory includes print (books, journals, newspapers), photographs, museum objects, archival documents, audiovisual material (hereinafter 'cultural material').

(2)   Measures applying that strategy with a view to optimising, by means of the Internet, the economic and cultural potential of Europe's cultural heritage should be recommended to the Member States.

(3)   In that context, the development of digitised material from libraries, archives and museums should be encouraged. The online accessibility of the material will make it possible for citizens throughout Europe to access and use it for leisure, studies or work. It will give Europe's diverse and multilingual heritage a clear profile on the Internet. Moreover, the digitised material can be re-used in industries such as tourism and the education industry, as well as in new creative efforts.

(4)   Furthermore, the Council Conclusions of 15-16 November 2004 on the Workplan for Culture 2005-2006 stress the contribution of creativity and creative industries to economic growth in Europe, and the need for a coordinated digitisation effort.

(5)   The European Parliament and Council Recommendation of 16 November 2005 on film heritage and the competitiveness of related industrial activities[13] already recommended to Member States to adopt appropriate measures to increase the use of digital and new technologies in the collection, cataloguing, preservation and restoration of cinematographic works. In as far as cinematographic works are

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[12]   COM(2005) 465 final.
[13]   OJ L 323, 9.12.2005, p.57.

concerned the present Recommendation complements the Parliament and Council Recommendation on film heritage on a number of aspects.

(6)   Digitisation is an important means of ensuring greater access to cultural material. In some cases it is the only means of ensuring that such material will be available for future generations. Thus, many digitisation initiatives are currently being undertaken in the Member States, but efforts are fragmented. Concerted action by the Member States to digitise their cultural heritage would lend greater coherence to the selection of material and would avoid overlap in digitisation. It would also lead to a more secure climate for companies investing in digitisation technologies. Overviews of current and planned digitisation activities and quantitative targets for digitisation would contribute to the achievement of those objectives.

(7)   Private sector sponsoring of digitisation or partnerships between the public and private sectors can involve private entities in digitisation efforts and should be further encouraged.

(8)   Investments in new technologies and large scale digitisation facilities can bring down costs of digitisation while maintaining or improving quality and should therefore be recommended.

(9)   A common multilingual access point would make it possible to search Europe's distributed - that is to say, held in different places by different organisations - digital cultural heritage online. Such an access point would increase its visibility and underline common features. The access point should build on existing initiatives such as The European Library (TEL), in which Europe's libraries already collaborate. It should where possible closely associate private holders of rights in cultural material and all interested stakeholders. A strong commitment by the Member States and cultural institutions to arrive at such an access point should be encouraged.

(10)   Only part of the material held by libraries, archives and museums is in the public domain, in the sense that it is not or is no longer covered by intellectual property rights, while the rest is protected by intellectual property rights. Since intellectual property rights are a key tool to stimulate creativity, Europe's cultural material should be digitised, made available and preserved in full respect of copyright and related rights. Particularly relevant in this context are articles 5(2)c, 5(3)n, and 5(5), as well as recital 40 of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society.[14] Licensing mechanisms in areas such as orphan works – that is to say, copyrighted works whose owners are difficult or even impossible to locate – and works that are out of print or distribution (audiovisual) can facilitate rights clearance and consequently digitisation efforts and subsequent online accessibility. Such mechanisms should therefore be encouraged in close cooperation with rightholders.

(11)   Provisions in national legislation may contain barriers to the use of works which are in the public domain, for example by requiring an administrative act for each reproduction of the work. Any such barriers should be identified and steps taken to remove them.

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[14]   OJ L 167, 22.6.2001, p.10.

(12)   Council Resolution C/162/02 of 25 June 2002 on preserving tomorrow's memory — preserving digital content for future generations[15] proposes objectives and indicative measures for preserving digital content for future generations. However, at present no clear and comprehensive policies exist in the Member States on the preservation of digital content. The absence of such policies poses a threat to the survival of digitised material and may result in the loss of material produced in digital format. The development of effective means of digital preservation has far-reaching implications, not only for the preservation of material in public institutions but also for any organisation which is obliged or which wishes to preserve digital material.

(13)   Several Member States have introduced or are considering legal obligations requiring producers of digital material to make one or more copies of their material available to a mandated deposit body. Effective collaboration between Member States is necessary to avoid a wide variety in the rules governing the deposit of digital material and should be encouraged.

(14)   Web-harvesting is a new technique for collecting material from the Internet for preservation purposes. It involves mandated institutions actively collecting material instead of waiting for it to be deposited, thus minimising the administrative burden on producers of digital material, and national legislation should therefore make provision for it,

HEREBY RECOMMENDS THAT MEMBER STATES:

Digitisation and online accessibility

1.   gather information about current and planned digitisation of books, journals, newspapers, photographs, museum objects, archival documents, audiovisual material (hereinafter 'cultural material') and create overviews of such digitisation in order to prevent duplication of efforts and promote collaboration and synergies at European level;

2.   develop quantitative targets for the digitisation of analogue material in archives, libraries and museums, indicating the expected increase in digitised material which could form part of the European digital library and the budgets allocated by public authorities;

3.   encourage partnerships between cultural institutions and the private sector in order to create new ways of funding digitisation of cultural material;

4.   set up and sustain large scale digitisation facilities, as part of, or in close collaboration with, competence centres for digitisation in Europe;

5.   promote a European digital library, in the form of a multilingual common access point to Europe's distributed - that is to say, held in different places by different organisations - digital cultural material, by:

         (a)   encouraging cultural institutions, as well as publishers and other rightholders to make their digitised material searchable through the European digital library,

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[15]   OJ C 162, 6.7.2002. p.4.

(b)   ensuring that cultural institutions, and where relevant private companies, apply common digitisation standards in order to achieve interoperability of the digitised material at European level and to facilitate cross-language searchability;

6.   improve conditions for digitisation of, and online accessibility to, cultural material by:

(a)   creating mechanisms to facilitate the use of orphan works, following consultation of interested parties,

(b)   establishing or promoting mechanisms, on a voluntary basis, to facilitate the use of works that are out of print or out of distribution, following consultation of interested parties,

(c)   promoting the availability of lists of known orphan works and works in the public domain,

(d)   identifying barriers in their legislation to the online accessibility and subsequent use of cultural material that is in the public domain and taking steps to remove them;

Digital preservation

7.   establish national strategies for the long-term preservation of and access to digital material, in full respect of copyright law, which:

(a)   describe the organisational approach, indicating the roles and responsibilities of the parties involved and the allocated resources,

(b)   contain specific action plans outlining the objectives and a time-table for the specific targets to be met;

8.   exchange information with each other on the strategies and action plans;

9.   make provision in their legislation so as to allow multiple copying and migration of digital cultural material by public institutions for preservation purposes, in full respect of Community and international legislation on intellectual property rights;

10.   when establishing policies and procedures for the deposit of material originally created in digital format take into account developments in other Member States in order to prevent a wide divergence in depositing arrangements;

11.   make provision in their legislation for the preservation of web-content by mandated institutions using techniques for collecting material from the Internet such as web harvesting, in full respect of Community and international legislation on intellectual property rights;

Follow-up to this Recommendation

12.   inform the Commission 18 months from the publication of this Recommendation in the *Official Journal of the European Union*, and every two years thereafter, of action taken in response to this Recommendation.

Done at Brussels, 24 August 2006

For the Commission
[…]
Member of the Commission