

6th Communia Workshop: Memory Institutions and the Public Domain 1-2/10/09, Barcelona, Spain

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Digital libraries and copyright : towards balanced legal certainty in Europe. (non-exclusive license)

Policy recommendations:

Building on the Green Paper “Copyright in the Knowledge Society” the Commission and the European Parliament should take urgent action in the following fields:

- The existing exception for libraries and archives should explicitly be extended to the digital environment for the sake of maintaining the balance of interests (right of creators/access to information and culture) which is at the very basis of copyright legislations and also enshrined in art. 27 (.1 and .2) of the Universal Declaration of Human Rights.

- The scope of this exception for publicly accessible libraries should cover :

1. The current exception for libraries included in art. 5.3.n) of the Directive¹ that allows public communication in terminals located in the libraries’ own premises should be extended to on-line access. This access should nevertheless be limited to holders of a Library research card in a web area protected by a specific password.

2. Legally guaranteed digital preservation across Europe. Due to rapid obsolescence, digital objects have to be periodically migrated to new formats and upgraded versions. Libraries are aware that those migrations affect the right of reproduction. It is, however, important to stress that they are not made for new modalities of use of the works, but rather to maintain the possibility of their consultation along time. Since this is a technological requirement, no limit to the number of reproductions should be fixed for purposes of preservation.

3. Legal digitization of orphan works. Library holdings include an impressive number of orphan works that, although still protected, cannot be found in the market. They represent an undeniable wealth for research and have started to be digitized by Google. The famous Google Settlement will legally cover digitization of orphan works in the USA under the principle of an “opt-out clause”. This solution is heavily contested in Europe considering that it gives Google a *de facto* monopoly on orphan works to the benefit of a private non-European company. The current European solution based in the “due diligence clause” has in fact not proved effective. A harmonized European opt-out clause could be introduced as a library exception and exercised by right holders upon appropriate proof of ownership. Should no agreement be achieved, the library could be compelled to retire the “ex”-orphan work of its digital collection. Such an exception to the benefit of digitization by - and public access through - European digital libraries, seems to be a reasonable practical solution that could help Europe to be soon on equal foot with the USA. Libraries are respected public institutions and are best placed to ensure respect to cultural diversity and freedom of publishing.

4. Preservation of digital heritage. In order to accomplish their mission of collecting the national heritage, National Libraries require a specific legal exception allowing them the systematic archiving of born-digital materials of their countries to be found in the Internet, and its selective dissemination both in terminals at their premises and in their web sites. This is very important for

¹ Directive 2001/29/EC on the harmonization of certain aspects of copyright and related rights in the information society

research in the years to come since a major part of creative expressions since 2000 is born digital and will most probably never published on physical supports. Current experience shows that Internet is about to become a prominent source for research on the arts and literature, history, sciences, economy, sociology, etc.

- On the contrary, libraries should accept that the digitization of protected works, available in the market, and their inclusion in on-line digital libraries, be subject to collective licences negotiated with appropriate collecting societies. These licences should, however, not be limited in time but rather cover the use of the licensed works as long as they remain included in the digital collections of the library. In turn, libraries should release them to the public under a new European kind of free license allowing full access for private use but limiting re-use.

- Other aspects appropriate for agreements between libraries and right holders could concern archival materials (newspapers, photos, audiovisual programmes, etc.) where libraries could well offer their services as documentation centers for the enterprises that hold the rights and obtain, in exchange, authorization to include them in the library's digital collections.

12:00 Session 2: Progressions from open access to the public domain: in museums, archives and film institutes

Introduction and chair: Prodromos Tsiavos London School of Economics - London, UK

Georg Eckes, Deustches Filminstitute – Frankfurt, Germany

EFG – The European Film Gateway - A Gateway to Film Heritage in Europe (BY SA 3.0)

Abstract:

European film archives have gained valuable expertise over the years in many technical, legal and operational aspects of meeting the digital challenges within their framework of the Association des Cinémathèques Européennes (ACE), an affiliation of 38 national and regional film archives from all over Europe. ACE is a founder member of the EDL Foundation, the governing body of Europeana. Recognising that film is essentially trans-national in character and that challenges of access and preservation can not be solved at national level alone, ACE has successfully undertaken cooperative projects in the fields of classical analogue restoration, the building up of a joint European filmography, defining recommendations for the digitisation of films and other audiovisual content (FIRST), providing a gateway to information about existence, location and copyright of documented material (MIDAS) and taking a leadership in standardisation processes (CEN) on metadata for cataloguing and indexing of cinematographic materials.

These are the building blocks for the European Film Gateway, the EU funded project uniting 20 ACE partner institutions from 14 European countries, the key that will begin to unlock the content of Europe's film archives and museums for the users of Europeana, the European Digital Library, by providing access to several hundred thousands of digital items by the end of 2011.

In order to build this gateway, the project has to address two key technical issues :

Interoperability

Technical interoperability: In contrast to large parts of the European library sector, common interoperability standards have not yet spread widely in the film archival community. While many libraries and also many non-film archives have already put into place and effectively enforced common cataloguing and metadata standards as well as interoperability protocols, most of the film archives lack these basic preconditions for technical interoperability. By involving a large number of European film institutions, EFG will develop a comprehensive strategy to close the gap which currently exists between the library and the film archival sector in terms of interoperability of content and catalogues.

IPR issues: In many European countries, works of film are especially affected by copyright regulations rendering digital preservation and especially digital access a highly difficult and legally complex task. Notwithstanding European copyright directives, a great variety of legal regulations exist for non-commercial and educational use of cultural material located in film archives and cinémathèques. Furthermore, if access is to be provided to works considered "orphans", film heritage institutions are faced with the complex and time-consuming task of trying to find and contact the creator or his successors. As a result, the vast majority of films and film-related objects held in Europe's film archives are effectively inaccessible. EFG will develop guidelines and best practices supporting film archives in avoiding legal pitfalls.

As an aggregator of aggregators, Europeana depends on the spadework that is being done within the four domains: libraries, museums, archives and audio-visual archives. As a leading aggregator project, EFG will enable Europe's film archives and cinémathèques to enrich user experience with a

popular form of cultural expression by making their rich and valuable collections accessible through Europeana.

The EFG project has started in September 2008 and will run for three years. It will launch its public operational service in 2010. EFG is co-funded by the eContentplus programme of the European Commission and co-ordinated by Deutsches Filminstitut – DIF.

<http://www.europeana.eu>

<http://www.europeanfilmgateway.eu>

<http://www.filmarchives-online.eu>

<http://www.driver-community.eu>

Policy Recommendations:

- Public investment in the preservation and restoration of cinematographic works should result in free access to these works at least for non-commercial purposes
- The publicly funded restoration of cinematographic works in the public domain should not change its copyright. Works in the public domain should remain in the public domain
- Public film funding should also come with (a) financial support for its archiving and preservation as well as (b) contractual or legal provisions allowing digital archiving, including migration between formats and carriers, to avoid the archiving institutions being in danger of committing copyright infringements
- Legislative measures on copyright on the European level should duly take into account the objectives of the European Parliament's Recommendation on film heritage and the competitiveness of related industrial activities of 16 November 2005: To improve conditions of conservation, restoration and exploitation of film heritage and remove obstacles to the development and competitiveness of the European film industry
- Contractual arrangements between right holders and users towards copyright exceptions may not be sufficient. Clear definitions and reliability of legal acts leading to harmonization in the EU are needed. "Public interest establishments" have to be assured in fulfilling their public tasks.
- In General, exceptions for the non-commercial use of cinematographic works for archival purposes, study, research, educational and exhibition purposes should be mandatory. Works digitally preserved by one public interest institution should be permitted to be transferred to another public interest institution to avoid duplication of digitization efforts.

Joan Boadas i Raset, Servei de Gestió Documental, Arxius i Publicacions (SGDAP). Council of Girona - Girona, Spain

From private to public: strategies and actions developed by SGDAP

Abstract:

The goal of this paper is to present the strategies and actions developed by SGDAP to create a repository that holds the documentation subject to intellectual property law that proceed from private local media (El Punt; Diari de Girona; Televisió de Girona, Ràdio Girona-Cadena Ser, Onda Rambla) and from photographers and filmmakers related to Girona city.

Johan Oomen & Maarten Brinkerink, Netherlands Institut for Sound and Vision – Hilversum, The Netherlands
Images for the Future: Realising Maximum Accessibility to Audiovisual Heritage (BY SA 3.0)

Abstract:

The audiovisual collections of the Netherlands Institute for Sound and Vision (Sound and Vision) in Hilversum, of the Filmmuseum in Amsterdam, and of the National Archive in The Hague document our shared history of the past hundred years. Films, documentaries, radiobroadcast, and television programmes comprise more than 700.000 hours worth of material. The costs for creating this oeuvre have run into the billions. The educational, cultural, and economical value of this material is enormous.

Spread over a period of seven years, the FES (Fund for the reinforcement of Economic Structure) is providing a budget of 154 million Euros to digitise a large portion of the Netherlands' audiovisual memory. With this project, the imminent threat of decay and loss of vulnerable films and video- and audiotapes is being taken away. During the project, a total of 137.200 hours of video, 22.510 hours of film, 123.900 hours of audio, and 2.9 million photos from these archives will be restored, preserved, digitized, and disclosed through various services.

The Images for the Future consortium assumes that the collections represent great value. It has asked the Foundation for Economic Research (SEO) to test this assumption, resulting in the set-up of an area code prefix costs and benefits analysis. In doing so, the SEO followed the customary OEI-guideline (OEI = Infrastructure Effects Research). These guidelines show how the costs and benefits of roads, railways, and the likes, can be stipulated for the 'Netherlands Ltd.' The environment and other 'soft' effects are also being taken into consideration. In addition to stipulating total costs and benefits, the analysis also shows where the effects end up: with users, intellectual property rights holders, the government, or the consortium.

The calculations of – current and future – user benefits are based on several assumptions regarding the use of audiovisual content. It thereby neglects the more abstract project goals, which are difficult to express in monetary terms. One example is the preservation of cultural historical heritage and the increase in multimedia literacy. Despite a subsequent underestimation of total benefits, the analysis proves the quantifiable benefits to surpass the costs.

The main goal of the project is realising maximum accessibility to the audiovisual material for the targeted user groups (educational institutions, the general public, and the creative sector). One of the five end products outlined in the project plan to meet this goals is: "Provision of access to a core collection of digital film and audio, either devoid of intellectual property rights, or licensed under Creative Commons."

The project was kicked off on 1st July 2007 and has a running time of seven years.

Images of the Future is a project from the Filmmuseum, Netherlands Institute for Sound and Vision, Centrale Discotheek Rotterdam, National Archives, Association of Public Libraries and KnowledgeLand.

Policy Recommendations:

1. Digitization efforts paid with public money should never be spent only on restoration, preservation and digitization, but also strategies to make as much material available to various user groups. This includes rights clearance, research on the actual rights status of the works, providing services and exploring new business models.

2. In the case of term extensions endangering the access to (public domain) material that has already been made openly available to the public, cultural heritage institutions must use their influence to point out the harm on culture and society to their policy makers.

For both recommendations the public funding that goes to (mass) digitization of cultural heritage certainly makes a good argument. Cultural heritage institutions should actively communicate this argument.

Laurence Rassel, Fundació Antoni Tàpies – Barcelona, Spain
From an art history case to free software and free license archive (BY SA 3.0)

Abstract:

The presentation will be based on a work in progress of delivering a digital and web archive of an art center inscribed in art history and a reflection and the practical questions on the necessity, the utopia and its consequences, of the use of free software and free license in this context.

Following an introduction to Fundació Antoni Tàpies specificities, and in this context, the following points will be proposed for discussion, and the way we approached them practically in our institution:

- The use of free software,
- The use of free licence,
- The awareness that the free licenses and mostly cultural production are based on copyright, and then both are inscribed in certain economical conditions of production.

Rosa M^a Gregori i Roig & Ramon J. Pujades i Bataller, Arxiu de la Corona d'Aragó – Barcelona, Spain
The Archive of the Crown of Aragon. Experiences on the open on-line access to the archival fonds (non-exclusive licence)

Abstract:

The creation of the possibility of acceding by Internet to the archival information and to the digital reproductions of the documents kept in the archives for centuries has meant a true revolution in the world of the social diffusion of the archival sources: on one hand, it has let the general direct access by the non specialized public to both, description instruments and digital images, and it has provided to the specialized researchers an unlimited consultation timetable; on the other, this increase in the number of readings has been possible without increasing the level of physic pressure on the original sources. The tool that has made it possible in the Spanish state archives is the platform of the Spanish Archives Portal, known by its acronym PARES.

It is now almost two decades that it was inaugurated a system of access to the digitalized documents in the Spanish state archives. Everybody was conscious then that it represented the beginning of a new era, but it was still generally considered that the microfilm would be the long term preservation instrument, while the digital image just would be the most suitable resource for offering an immediate substitutive way of access to the information contained on the original archival documents, in order to avoid the progressive deterioration that always implies their daily direct use. Nowadays, although still persistent, the initial panic to the ghost of the technologic obsolescence has become quite smaller, and the incredible improvement of the hardware and software, the much faster velocity of electronic transmission of the information, and, above all, the absolute social triumph of Internet, have accelerated enormously everywhere the tenuous tendencies started 20 years ago. At the moment, the electronic access by Internet to the instruments of archival description (guides, inventories and catalogues) and to the digital images of the documents is

already numerically much more important than their direct consultation in the reading rooms of the archives, although just a part of their archival fonds has been already digitalized and published by Internet, what means that this difference still will increase sensibly if it is kept in the future the constant progress of the digitalization and electronic publication of their fonds.

For the Spanish state archives, PARES means a platform where the information of the databases containing our archival description of our documentary fonds can be offered to the whole society in its most actualized state, and where medium resolution digital images are permanently available to the public as a very good substitute of the original documents. Nevertheless, in order to transform the original possibility in a true reality, as institutions with a background of centuries of tradition as we are, we have had to put in a lot of effort into the job of converting the ancient description instruments made by the previous generations of archivists in modern and normalized databases, and into the job of preparing the original ancient documents, physically and intellectually, for their digitalization process. The archival sources preserved from the pre-statistical period are not at all normalized products as can be modern printed books or contemporary administrative expedients. A very important part of them still have their folios unnumbered, and an important amount of these old registers and accountancy books are crowded with interleaved notes and original documents that must be also individually identified, because a non exactly identified digital image is a lost image when put among millions of similar digital images. It means lots of additional work that must be invariably done by the archivists previously to the beginning of their digitalization process, what slows down sensibly the possible development rhythm in comparison with the velocity that can be achieved in other kind of institutions, like libraries, for example. And, from these peculiar and specific reasons comes out also the biggest disadvantage that for all the archival institutions can have all this modernization process. As institutions with very limited human resources as we are, all this amount of work obligates to reduce or even stop temporary the progress in the archival classification and description process of our still many insufficiently described archival fonds, and without a complete and erudite archival description, the task of trying to find the archival documents which contain information on a specific subject or person will be really, really hard for the researcher, specially if not a professional historian, independently if the consultation is direct or indirect, across the digital images published by Internet. Thus, perhaps it is the moment for a professional reflection on the way of balancing newly the three social functions that must be always developed by the historical archives: conservation, description and social diffusion of the archival patrimony.

Policy recommendations:

The potential advantages of the process that we are describing can become a real danger if, because of being in a hurry in the progress of the last one, we forget the necessity of keeping a basic balanced connection among all these three social functions. It is not just the quantity, but also the quality, what is important when evaluating if a cultural institution or group of institutions has gotten on the bus of the modernity or not when speaking on the social diffusion of its fonds and collections.

**Introduction and chair: Alice Keefer, Universitat de Barcelona - Barcelona, Spain
Developing the public domain of the future: Introduction (CC BY 3.0)**

Policy recommendations:

Research institutions should provide mechanisms and active guidance to contribute to the longevity of documents produced by members of their communities:

- standardizing to the extent possible the software / version being used;
- promoting the use of preferred formats that would enable mid- to long-term preservation;
- configuring software at researchers workstations in order to enable metadata to be created automatically:

* automatic generation of descriptive, structural and technical metadata where possible: eg., author name; department; software type and version; etc.

* prompting the author for additional metadata through the use of pull-down menu options;

- capturing copyright holder authorization for preservation and access procedures soon as possible in the life cycle of the document.

**Victoria Reich, Director LOCKSS Program, Stanford University, San Francisco, California
Preserving the Public Domain (BY SA 3.0)**

Abstract:

In the print environment, libraries took possession of scholarly content and through the simple act of keeping the material on shelves, in multiple independent institutions, the materials were for the most part, preserved for all time. Access to this print content did not depend upon paying ongoing fees to publishers or third party services.

In the Web environment, libraries lease access to scholarly content. A large quantity of content is not under the custody of the community it is in private hands. Access to a significant amount of content depends upon continued, ongoing payment of fees to publishers or third party services. Access to this content is limited now and in the future to only those who pay.

Scholars also access open access content in the Web environment. The vast majority of content is not being held in libraries, nor is it being held in independent multiple institutions. While access to this content does not depend upon continued, ongoing fees to publishers or third party services the community should not take for granted that this would always be true. The content may not always be freely available.

Using an open access title that is no longer available from the publisher as an example, this presentation will illustrate how the community is using the distributed digital preservation LOCKSS Program (www.lockss.org) to take custody of and preserve important scholarly materials. Leveraging the LOCKSS technology and Creative Commons licenses give the community the power to ensure open access content remains open access into the future. This presentation will also present the CLOCKSS Archive (www.clockss.org), a community governed archive that makes archived content, that is no available from any publisher, freely available to all.

Policy Recommendations:

To adequately preserve public domain content there are three major policy issues: legal; technical and social/business.

1. Legal. Encourage Creative Commons (CC) licensing of all public domain content. The CC license provides a legal framework that crosses copyright regimes, permits preservation action by

any interested party, permits archiving through time, and facilitates archive interoperability.

2. Technical. The cultural memory community should use open source preservation technology. Unlike proprietary software, open source software provides the community with transparency, the power to ensure technology continues to evolve over time, and negates the possibility that content is locked up inside any one system.

3. Social/business: It is important to preserve public domain content in a community governed, distributed, archive to ensure today's open access content does not become toll gated content in the future.

David Giaretta, Co-ordinator CASPAR project, DCC/STFC Rutherford, Appleton Laboratory, UK

Future demands on memory institutions in the digital world

Abstract:

It seems likely that libraries and other memory institutions will wish, and indeed will be expected, to broaden their preservation responsibilities to include many different types of digitally encoded information, beyond digital documents and images. Some libraries already are beginning to do this.

A number of fundamental threats to the preservation of our digital capital, scientific, cultural and social, are being widely recognised and plans are being made to establish infrastructure components to help institutions to share the effort of preservation as well as to gain greater benefit from digital holdings through increasing re-use. Nevertheless it does seem that some of the fundamental differences between documents and scientific data, and the threats to both, are not sufficiently widely understood. For this reason and also to ensure that our intellectual capital is in good hands we need to seek ways to judge whether memory institutions, no matter how well respected they are in their traditional domain, are doing a sufficiently good job in the digital domain.

This presentation will seek to clarify these differences between different types of digitally encoded information and the threats which must be countered. It will be emphasised that artefacts which are created in the process of preservation, for example digital rights associated with a digital object, must themselves be preserved so that they may be used in the proper way in future. The presentation will also describe the ways in which the preservation and re-use effort can be shared and the types of infrastructure components which will facilitate this. Finally the efforts to create an international audit and certification process will be outlined.

The presentation will draw on experiences gain in the CASPAR (www.casparpreserves.eu) and PARSE.Insight (www.parse-insight.eu) European projects and in the standards efforts undertaken to develop OAIS and the Audit and Certification process.

Policy recommendations:

Memory institutions and their sponsors should:

- prepare in a coordinated way for the expansion of their remit to include many types of digital objects, data as well as documents,
- plan for and seek internationally recognised audit and certification when it is available,
- plan for the possibility of their own demise – or at least the demise of their ability to look after their digital holdings – by identifying their successors in the chain of preservation,
- play an active role in the development of preservation and re-use infrastructure definition and implementation,
- seek to integrate such infrastructure into their workflows.

16:30 Closing session:

Anna Rovira, Director of Library Services, Universitat Politècnica de Catalunya - Barcelona, Spain

Adelaida Ferrer, Director of CRAI, Universitat de Barcelona - Barcelona, Spain