

## II

(Acts whose publication is not obligatory)

## COMMISSION

## COMMISSION RECOMMENDATION

of 24 August 2006

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

(2006/585/EC)

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 <sup>(1)</sup>, 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 <sup>(2)</sup> 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 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.

<sup>(1)</sup> COM(2005) 465 final.

<sup>(2)</sup> OJ L 323, 9.12.2005, p. 57.

- (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<sup>(1)</sup>. 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.
- (12) Council Resolution C/162/02 of 25 June 2002 on preserving tomorrow's memory — preserving digital content for future generations<sup>(2)</sup> 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;

<sup>(1)</sup> OJ L 167, 22.6.2001, p. 10.

<sup>(2)</sup> OJ C 162, 6.7.2002, p. 4.

5. promote a European digital library, in the form of a multi-lingual 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,
    - (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;
- (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*

Viviane REDING

*Member of the Commission*

#### **Digital preservation**

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