
EUROPEAN COMMISSION'S PROGRESS REPORTS ON DIGITISATION OF THE EUROPEAN CULTURAL (AND FILM) HERITAGE¹

Svetlana YAKOVLEVA

Master in Law and Economics (LL.M)

Research master student, Institute for Information Law (IViR), University of Amsterdam

- Cet article synthétise deux rapports d'avancement de la Commission européenne dans le domaine de la préservation numérique du patrimoine européen culturel (et filmographique). Le premier rapport révise et évalue les progrès de la numérisation du patrimoine culturel, qui s'est déroulée entre 2011 et 2013, suite à l'adoption en 2011 de la Recommandation de la Commission européenne sur la numérisation et l'accessibilité en ligne du matériel culturel et la conservation numérique. Le deuxième rapport fait suite à la Recommandation du Parlement européen et du Conseil sur le patrimoine cinématographique. Il se concentre sur les progrès, les défis et les risques rencontrés durant le processus de numérisation du patrimoine cinématographique en 2012-2013. Même si les deux rapports démontrent que certains progrès ont été réalisés dans les domaines concernés, ils reconnaissent aussi que ce progrès est encore limité et que la numérisation reste toujours un défi.
- Dit artikel maakt een synthese van twee voortgangsrapporten van de Europese Commissie in het domein van het digitale behoud van het Europees cultureel (en filmografisch) erfgoed. Het eerste rapport herzielt en evalueert de vooruitgang van de digitalisering van het cultureel erfgoed die verliep tussen 2011 en 2013 volgende op de goedkeuring in 2011 van de Aanbeveling (van de Europese Commissie) betreffende de digitalisering en online toegankelijkheid van cultureel materiaal en digitale bewaring. Het tweede rapport geeft gevolg aan de Aanbeveling van het Europees Parlement over het cinematografisch erfgoed. Het concentreert zich op de vooruitgang, de uitdagingen en de risico's die men tegenkomt gedurende het digitaliseringproces van het cinematografisch erfgoed in 2012-2013. Zelfs indien de twee rapporten aantonen dat een zekere vooruitgang gerealiseerd werd in de betreffende domeinen, geven zij ook toe dat deze vooruitgang zeer beperkt was en dat de digitalisering een uitdaging blijft.

Article 2(3) of the Lisbon Treaty² and Article 167 of the Treaty on the Functioning of the European Union (TFEU)³ indicate that culture plays an important role in the politics of the European Union. From 2010 digitisation and preservation of European cultural memory is one of the key areas addressed by the Digital Agenda for Europe, which is one of the seven pillars of the Europe 2020 Strategy⁴.

European institutions have initiated a number of projects and taken a variety of actions in order to, in the words of Article 167(1) TFEU, bring European "common cultural heritage to the fore". They also regularly issue policy documents promoting preservation, digitisation and re-use of the European cultural material.

Two of the most important policy documents in the relevant field are the European Commission's Recommendation on the digitisation and online accessibility of cultural material and digital preservation of 2011⁵ and the Recommendation of the European Parliament and Council on film heritage and the competitiveness of related industrial activities⁶.

Both documents by nature have no legally binding effect. Nevertheless, they play an important role in encouraging Member States to take action, enhancing cooperation between Member States and providing expertise on the means and mechanisms of ensuring a desired outcome. This

role of the Recommendations is to a large extent ensured by the fact that Member States are expected to inform the Commission of actions taken in accordance with the Recommendations every two years. In practice, such information is provided by Member States in response to questionnaires from the European Commission. Data provided by the Member States are analysed and summarised by the Commission and published in the form of working documents.

The aim of this article is to summarise the most recent working documents (progress reports) of the European Commission on the progress of the Member States in the implementation of the above-mentioned Recommendations.

Progress report on cultural heritage

The first progress report "*Cultural Heritage: Digitisation, Online Accessibility and Digital Preservation*"⁷ on the implementation of the 2011 Recommendation on the digitisation and online accessibility of cultural material and digital preservation was published by the European Commission on 24 September 2014. It also follows up on the EU Council Conclusions on digitisation and online accessibility of cultural material and digital preservation of 2012⁸ The report reviews and assesses the overall progress achieved in the EU in this domain from 2011 to 2013.

The report is mainly based on a set of national reports of 32 countries (28 EU Member States, 3 EEA countries (Norway, Iceland, Liechtenstein) and Switzerland) submitted in late 2013, and early 2014. The areas covered by the national reports are: organisation and funding of digitisation, digitisation and online accessibility of public domain material and material protected by copyright (orphan and out-of-commerce works), Europeana (the European digital library) and digital preservation.

The report notes that digitisation of cultural material still remains a challenge, with only approximately 12% on average of the libraries' collections and less than 3% of films digitised so far. This observation reflects the overall assessment of the Member States' progress, which is echoed throughout the report.

The European Commission observes that digitisation strategies have mostly local-, sector- or institution-specific characters. Moreover, the digitisation itself largely relies on public funds, both national and those of European Structural Funds.

As regards cultural material in the public domain, the European Commission concludes that its web visibility has improved. However, statutory and contractual limitations persist for digitisation of public domain works, for example, with legal uncertainty regarding the legal status of their digital reproductions.

The report shows that the part of the 2011 Recommendation on bringing online copyrighted material, as well as the Orphan Works Directive of 2012⁹, have had a very limited effect. The transposition of the Directive and the implementation of legally backed collective licensing solutions for wide-scale digitisation of out-of-commerce works, called upon by the 2011 Recommendation, remain an exception rather than the rule. The same holds for the implementation of rights information databases, such as ARROW¹⁰ or FORWARD¹¹.

With respect to Europeana, the report points out that it has exceeded its 2015 target of 30 million digitised objects ahead of schedule. However, the progress has been much slower in relation to masterpieces and sound or audiovisual material.

In the area of digital preservation of cultural material, the report notes the adoption of a wide variety of long-term preservation strategies or schemes. However, much remains to be done when it comes to legislative provisions for multiple copying, format migration or web-harvesting, elimination of technical hindrances to long-term

preservation of digital-born material or prevention of wide variations of legal deposit arrangements.

In conclusion, the European Commission acknowledges that progress has been made during the first two years of implementation of the Recommendation. However, "the overall picture of cultural heritage digitisation remains fragmented and patchy", "widely dependent" on cultural institution initiative or funding, "with a limited overview of digitisation activities across sectors and borders". The Commission refrains from giving any clear recommendations. It merely identifies the weaknesses, which require further attention and action.

Progress Report on Film Heritage Digitisation

The European Commission published its most recent (fourth) progress report on the implementation of the 2005 Recommendation of the European Parliament and Council on film heritage and the competitiveness of related industrial activities on 7 October 2014. The report is entitled "*Film Heritage in the EU*"¹². The first report on the same topic was published in August 2008¹³, the second in July 2010¹⁴ and the third in December 2012¹⁵.

The report is based on the answers of the Member States to a Commission's questionnaire circulated in September 2013. This provides an overview of the Member States' progress in 2012-2013 in implementing the 2005 Recommendation, as well as the main challenges and risks faced by the Member States along the way to digitising film heritage.

The Commission's findings largely repeat those of the previous report. This supports the Commission's overall conclusion that not much progress has been made during the reporting period. Similar to the 2012 Report, the European digital film heritage is still "at risk of being lost" and the opportunities offered by the digital revolution "are largely being missed". Rare examples of the opposite are the projects funded with EU structural funds, through EFG1914 or through a national policy of digitisation of film heritage, such as the Dutch "Images of the Future" or the British "Film Forever".

The Commission acknowledged that the main obstacles to the digitisation of European film collections and the provision of online access to digitised collections, even for educational purposes, are still in place. During the reference period, the legal framework within which film

heritage institutions (FHI) operate has not changed and clearing copyright and related rights to audiovisual material remains complex and costly. In this respect the publishing by "Licences for Europe" (a stakeholder dialogue on copyright and digital content facilitated by the European Commission) of its *"Statement of Principle and Procedures for facilitating the digitisation of, access to and increased interest of European citizens in European cinematographic heritage works"* is an important step forward. However, its effectiveness is yet "to be assessed over time".

As compared to the findings of the previous report, budget and human resources allocations have remained stable or even reduced. Resources devoted to film heritage continue to represent a very small fraction of the resources allocated to the funding of new film productions by all Member States. New exploitation opportunities for heritage films, such as "long-tail" revenues or mash-ups of film heritage, remain largely unexploited. Although in several countries film heritage material is made available online for mash-up, overall online footage available for mash-up is still very limited.

On a more positive note, the Commission pointed out the increase in the number of film databases accessible and searchable online or which give the possibility to stream the works. FHI became more aware of the need for long-term digital preservation systems that take care of both analogue and digital collections. However, this awareness is not backed by necessary funding and specialised professional training in both digital and analogue competences. The Commission also noted some progress in the field of education, namely an increase in film literacy

activities and the development of cooperation between FHI and universities. However, obstacles posed by rights-clearance procedures still hugely restrain the availability of online material for film literacy.

In conclusion, the Commission does not give Member States any clear recommendations and limits itself to sporadic advice on further desirable action throughout the report. This advice amounts to an encouragement to extend certain good practices (such as making film databases accessible and searchable online or updating archival policies, in order to include digital preservation), recommendations to further explore existing possibilities (such as re-use of catalogue sources for new creation) and develop new mechanisms (for example, facilitating the educational use of films from a rights-clearance perspective), as well as to continue cooperation between different stakeholders (such as FHI and European Film Agency Directors).

The Commission plans to continue to monitor the application of the 2005 Recommendation. Member States are asked to submit their fifth implementation reports by November 2015 in response to the Commission's questionnaire to be circulated mid-2015.

Svetlana Yakovleva

Institute for Information Law (IvIR)

University of Amsterdam

Korte Spinhuissteeg 3

1012 CG Amsterdam

Netherlands

August 2015

Notes

- ¹ This article reproduces two reports published by the same author in IRIS: European Commission: Progress report on cultural heritage digitisation. *IRIS 2014-10/3* [on line] <<http://merlin.obs.coe.int/redirect.php?id=17254>> (consulted on 5 August 2015) and European Commission: Progress Report on Film Heritage Digitisation. *IRIS 2015-1/5* [on line] <<http://merlin.obs.coe.int/redirect.php?id=17324>> (consulted on 5 August 2015).
- ² Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007. OJ C 306, 17.12.2007.
- ³ Consolidated version of the Treaty on the Functioning of the European Union. OJ C 326, 26.10.2012, p. 47-390.
- ⁴ Communication from the Commission. Europe 2020 A strategy for smart, sustainable and inclusive growth Brussels, 3.3.2010. COM(2010) 2020 final.
- ⁵ Commission Recommendation of 27 October 2011 on the digitisation and online accessibility of cultural material and digital preservation (2011/711/EU). OJ L 283, 29.10.2011, p. 39-45.
- ⁶ 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). OJ L 323, 9.12.2005, p. 57-61.

- 7 European Commission, Implementation of Commission Recommendation on the digitisation and online accessibility of cultural material and digital preservation: Progress report 2011-2013, Working document, September 2014 [on line] <http://ec.europa.eu/newsroom/dae/document.cfm?doc_id=9745> (consulted on 5 August 2015).
- 8 Council Conclusions on Digitisation and Online Accessibility of Cultural Material and Digital Preservation of 10 May 2012, OJ C 169, 15.6.2012, p. 5.
- 9 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works.
- 10 ARROW: Accessible Registries of Rights Information and Orphan Works Towards Europeana is a project co-founded by the European Commission in order to facilitate the management of rights in digitisation projects involving text and image based works. *Arrow-net.eu* [on line] <<http://www.arrow-net.eu>> (consulted on 5 August 2015).
- 11 FORWARD: Framework for a EU-Wide Audiovisual Orphan Works Registry is a EU-funded project set out to create an EU-wide, standardized system to assess and register the rights status of audiovisual works with a focus on orphans. *Project-forward.eu* [on line] <<http://project-forward.eu>> (consulted on 5 August 2015).
- 12 European Commission, Report on the Implementation of the European Parliament and Council Recommendation on Film Heritage 2012-2013, Working document, 1 October 2014 [on line] <http://ec.europa.eu/newsroom/dae/document.cfm?action=display&doc_id=6962> (consulted on 5 August 2015).
- 13 Commission Staff Working Document on the implementation of the Recommendation of the European Parliament and Council of 16 November 2015 on film heritage and the competitiveness of related industrial activities, Brussels, 4 August 2008, SEC(2008) 2373 [on line] <http://ec.europa.eu/archives/information_society/avpolicy/docs/reg/cinema/report/swp_en.pdf> (consulted on 5 August 2015).
- 14 Commission Staff Working Document on the challenges for European film heritage from the analogue and the digital era, Brussels, 2 June 2010, SEC(2010) 853 [on line] <http://ec.europa.eu/archives/information_society/avpolicy/docs/reg/cinema/report_2/2010_853.pdf> (consulted on 5 August 2015).
- 15 Commission Staff Working Document on the challenges for European film heritage from the analogue and the digital era (Third implementation report of the 2005 European Parliament and Council Recommendation on Film Heritage), Brussels, 7 December 2012, SWD(2012) 431 [on line] <https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/swd_2012_431_en.pdf> (consulted on 5 August 2015).