

**EUROPEAN DIGITAL LIBRARY INITIATIVE**  
**High Level Expert Group – Sub-group on Public Private Partnerships**

**Draft Report on Public Private Partnerships**

## **1. CONTEXT**

The European Commission has made digital libraries a key aspect of i2010. In its Communication “i2010: digital libraries” of 30 September 2005, it set out its strategy for digitisation, online accessibility and digital preservation of Europe's collective memory. Within this context, Commissioner Viviane Reding said “Member States must work to support innovation, making our vision of a knowledge society a reality ... a strong partnership is needed between all the players involved.”<sup>1</sup>

The third meeting of the High Level Expert Group (HLEG) on European Digital Libraries, held in Brussels 18 April 2007, opened the debate on how best to promote and to make use of public-private cooperation and private sponsorship for the digitisation of Europe's cultural heritage.

The Commissioner pointed to the necessary presence of both public and private players in the digital libraries initiative to solve problems and deliver high quality services. The HLEG was asked to help by “identifying the opportunities and conditions under which PPPs become success stories for all involved parties: private actors, public authorities and citizens.” The Commissioner pointed out that “Public-private partnerships for the digitisation of content should be encouraged to make information available online, as well as the private sponsoring of digitisation projects.”

At the end of the meeting, the HLEG took the decision to appoint some members to work together as the Sub-group on Public Private Partnerships (“the sub-group”), to analyse and discuss issues relating to the use of public-private partnerships, including success factors, choice of partners, business models, IPR and exclusivity issues. The new sub-group was asked to report its findings to the plenary session of the HLEG in autumn 2007. Ms Brindley was appointed as Chair of the sub-group. The members of the sub-group are listed at Annex 1.

The first meeting of the sub-group took place on 11<sup>th</sup> July 2007 in London, and a further meeting was held on 24<sup>th</sup> October 2007. This report is an **interim draft** of the sub-group's findings, to be presented to the HLEG plenary session in November 2007. The sub-group expects to make further changes to the report, in particular to provide additional focus on the added-value to users of digitisation partnerships.

The sub-group aims to present its final report to the plenary session in spring 2008.

## **2. DEFINITION OF PUBLIC PRIVATE PARTNERSHIPS**

The public-private partnerships under discussion in this report have a wide definition and are not limited to a specific definition in law. By PPPs we mean any partnership between a private-sector corporation and a public-sector body, through which the parties contribute different assets to a project and achieve complementary objectives.

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<sup>1</sup> Viviane Reding, European Commissioner for Information Society and Media

This report is intended for use primarily by libraries, archives and museums<sup>2</sup> and private-sector companies considering a partnership with one of these public-sector institutions. It should be noted that public-sector partners may have specific responsibilities, as follows:

- They often have legal deposit responsibilities, which means they are mandated by their government to collect the creative output of the country (if a library, then the published output; if a documentary archive, then the documentary output of public institutions; if a broadcast archive the radio, television and film output, and so on).
- Their remit is to provide maximum access to their specific core audience; their content represents knowledge that is of value to the nation and should be made available to citizens.
- They may also have to store and preserve content, to ensure access by future generations. The responsibility for preservation extends to ensuring all the necessary actions are taken to ensure the object's permanence.
- They work for the long term. There is no fixed time-span for preservation; they must take all the necessary actions in order to impede physical degradation or loss of information.
- Very often, they do not own intellectual property rights in the underlying works; they have a responsibility to respect the intellectual property of rights holders; rights management issues are important and complex.
- Because of their public funding, they may be limited by government or European Union rules in commercialising their activities or the level at which they can be charged for. Priced business models therefore may be difficult to develop.

The specific responsibilities of the public-sector player depend on their activities and jurisdiction.

### **3. SCOPE OF THE SUB-GROUP**

At its first meeting, the PPP sub-group agreed that the scope of its work should be to:

- Explain how PPPs can be used to digitise content and ensure that it is widely accessible and exploited;
- Identify elements of a public-private partnership that make it successful for all parties involved;
- Produce guidelines on terms of public-private contracts including exclusivity, business models, IPR ownership, termination clauses, etc;
- Highlight case studies of good practice and experience - both from member states, public institutions and the private sector.

The subgroup also agreed that the report should cover:

- Examples in specific media sectors based on case studies from libraries, archives, museums and audiovisual archives;
- Protection of public domain content, including both public ownership, public access and the preservation benefits of digitization;
- The balance between the interests of content creators, publishers, users, the remit of public-sector institutions and the commercial considerations of private-sector companies;
- Long term sustainability and timeframe considerations.

The report is not intended to be prescriptive, but it provides as a set of guidelines and identifies issues, to allow public and private players in Member States to draw their own conclusions as to whether public-private partnerships would benefit them. The sub-group has based its findings on a

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<sup>2</sup> Note that as at the date of this draft report we are seeking museum case studies for inclusion in the report.

number of case studies prepared by the participating organisations; the case studies are discussed in section 5 and throughout the report.

The sub-group agreed to exclude from its scope:

- A detailed discussion of the technology issues, because while they are important, they depend on the specifics of the project. This report intends to provide practical guidance in initiating and managing partnerships, rather than the theory and practice of solving technological problems;
- A detailed consideration of the legal issues, as these depend heavily upon statute and case law in the country in question, which may vary widely between Member States;
- A detailed examination of the copyright issues, as these are being dealt with by the HLEG Copyright Sub-group.

#### **4. CONSULTATION**

The work of the sub-group has taken place in consultation with key stakeholders. Feedback from these stakeholders has been incorporated into the relevant sections of the report and is detailed in full at Annex 4. The sub-group would like to thank these stakeholders for their contributions.

#### **5. CASE STUDIES**

The sub-group was asked to consider and highlight examples of public-private partnerships and good practice in libraries, museums and archives, and hence this report is based on evidence from a number of case studies provided by the sub-group participants. The case studies are appended to the report in full at Annex 2. In many cases the projects under consideration are in their early stages and therefore the case studies should not be interpreted as an up-to-date state of play of these projects.

The following paragraphs summarise the case studies in terms of:

- A high-level introduction to the project
- A brief description of the partners and their contributions
- The access model provided for the user.

Full details are provided at Annex 2.

##### **5.1. Biblioteca Virtual Miguel de Cervantes (Cervantes Virtual Library)**

This partnership was established in 1999 to deliver a virtual library of Hispanic literature, science and culture, with the aim of creating a tool to support the expansion of Spanish and Latin American culture across the world. There are nine public sector partners including the Universidad de Alicante, the Ministerio de Cultura, the Ministerio de Educación y Ciencia, the Ministerio de Trabajo y Asuntos Sociales, Secretaría de Estado de Cooperación Internacional, Generalitat Valenciana, Conferencia de Rectores de las Universidades Españolas, Real Academia Española and the Instituto Cervantes. There are 8 private sector partners, including Banco Santander, a major Spanish retail and commercial bank; Telefónica, the telecoms provider; Grupo PRISA, the media company; Repsol YPF, the oil company; the Fundación Marcelino Botín and Fundación Germán Sánchez Ruipérez, both cultural and educational foundations; Federación de Gremios de Editores de España, the publishing association; and Universia, an internet portal for universities. Each of the partners has specific responsibilities, including provision of funding, content, technical expertise, access to audiences, etc. The content is rights-cleared and freely available to the user.

This case study is an example of the creation of a free-to-access digital library for rights-cleared content, with wide participation and co-operation from a large number of private and public sector players. See Annex 2.1 for further details.

### **5.2. Bibliothèque nationale de France and Syndicat National de l'Édition (SNE), France (BnF and French Publishers)**

This partnership was the evolution of a joint BnF-SNE working group on possible business models for including in-copyright content and public domain content within a common search portal. The partnership is proposed between the BnF, publishers who are members of the Syndicat National de l'Édition (SNE), (such as Hachette, Gallimard, Editis, La Découverte, etc), aggregators chosen by the publishers (such as Numilog and Cairn), and online book retailers.

The BnF will develop a prototype for the search engine including both in-copyright and public domain material in a common index, and will work with the publishers and aggregators to agree an homogeneous price structure for accessing e-books online. It will also act as a digitisation service provider for small publishers. The publishers will digitise their own content and clear the necessary rights with the authors. The partnership is still under development and an experimental platform is expected to be launched in March 2008 at the Paris Book Fair.

This case study is an example of an e-books model for both in-copyright and out-of-copyright content. See Annex 2.2 for further details.

### **5.3. British Library and Cengage Gale**

The partnership established between the British Library and Cengage Gale needed to provide a long-term web-based platform for the delivery of digitised historical newspapers into the core customer groups served by the British Library.

The British Library contributed curatorial expertise, project management, digitised content, and additional editorial material such as essays, as well as collaboration in the development of the web service. Cengage Gale provided the web-based database platform, the sales force, technical expertise, customer support and editorial development. A significant part of the digitisation was funded by JISC in the UK and the National Science Foundation in the US. The initial launch to UK Higher Education took place in October 2007; access by this audience is free. The public site will be launched in summer 2008 and will involve some level of pay-per-view access, of which the details are yet to be decided.

This case study provides an example of free-to-access and priced business models via the same platform, to ensure sustainability for further digitisation. See Annex 2.3 for further details.

### **5.4. Google and the University of Michigan (Google – Michigan project)**

This partnership was established in 2004 to digitise certain collections in the University of Michigan's library of 7 million bound copies. The University wanted to make the library's resources more widely available for education and research, including for future generations. Google's contribution is to digitise the works from the University of Michigan's collections, to include in its Google Book Search service, making them available for discovery and research. Both parties worked together to identify the content to be digitised, which includes both in-copyright and public-domain content. This partnership is ongoing. Search is possible through the Google search engine only. Access to the full text is available to the user for free through

Google Book Search for public-domain content; access to an excerpt of the content is available free for in-copyright content. In the latter case, users can decide if they want to purchase the book or access it through library services. The partnership is intended to favour user access to both in-copyright and out-of-copyright books. There are significant differences of opinion between members of the sub-group as to whether making a digital copy of a work and providing access to an excerpt of the digital copy for in-copyright material infringes the publisher's or author's copyright.

In parallel, Google is developing a number of partnerships with publishers willing to make their books searchable and accessible through Google Book Search.

This case study is an example of a mass-digitisation project for in-copyright and out-of-copyright books. See Annex 2.4 for further details.

### **5.5. Institut National de l'Audiovisuel, France (INA)**

INA is one of the world's largest audio-visual archives. The organisation collects, safeguards, digitises, restores and distributes French television and radio archives, with holdings of over 3 million hours of content, and is the legal deposit repository for French broadcast material. In 2000, INA launched a major digitisation and preservation project for its archives, which involved transferring the original analogue contents to digital media, developing a search system, digitising the metadata (such as content creators and production rights) to allow commercial exploitation, and developing a commercial sales and rights management team. A full commercial service to the professional broadcast sector has been available since 2003 which, through a series of partnerships, has evolved to broking and commercial distribution on behalf of external content holders.

This case study provides an example of a priced business-to-business model for archives. See Annex 2.5 for further details.

### **5.6. Library & Archives Canada, Open Text Corporation and the University of Waterloo (The Canada Project)**

The Canada Project is in its early stages and the details of the project are under negotiation. However, the principles of the project are clear. The project aims to digitise Canada's entire extensive published and scientific heritage, including books published in or about Canada, magazines, journals, pamphlets, maps, television and radio programmes, films, music, government publications and content published by universities such as theses. For archival holdings, the project aims to at least digitise the catalogues and other discovery aids, and create an on-demand digitisation service. There are three founding partners – Library and Archives Canada (the country's national library and archives); Open Text Corporation (a commercial provider of electronic content management systems) and the University of Waterloo (one of Canada's leading universities). Discussions regarding participation are ongoing with a number of other public and private sector institutions.

This case study provides an example of a large-scale partnership involving many public and private stakeholders to digitise, provide access to, and preserve, a major part of a country's heritage. See Annex 2.6 for further details.

## **5.7. Open Content Alliance**

The Open Content Alliance was established in 2005 and brings together more than 50 partners of three types:

- Libraries, archives and other cultural institutions willing to make their collections freely available over the internet
- Search engines willing to promote open search and who wish to improve the user experience
- Open repositories to facilitate sharing and replication of content.

Content owners contribute their collections and part-fund the digitisation; search engines contribute their indexing technology and some funding; Internet Archive and other open digital repositories provide their infrastructure for storage, access and processing of digital content. Public access to public domain content is free; solutions are under consideration for sustainable business models for in-copyright content. 200,000 books had been digitised as at October 2007.

This case study provides an example of an open-standard digitisation project for in-copyright and out-of-copyright content, primarily books. See Annex 2.7 for further details.

### **We aim to include the following further case studies:**

- Polish National Archives/ Euridice project
- The National Archives UK
- The Louvre, France
- Libreka, Germany
- BnF and France Telecom
- Some examples from smaller European countries and different language groups.

The case studies will also be updated to include details of the access model and added value for the user. These amendments will be incorporated following the presentation of the interim report to the HLEG plenary session on 27<sup>th</sup> November 2007, and prior to the next meeting of the HLEG in spring 2008.

## **6. WHY PARTNER? OBJECTIVES AND BENEFITS OF PUBLIC-PRIVATE PARTNERSHIPS**

### **6.1. OBJECTIVES FOR PUBLIC PARTNERS**

The primary objective of public-private partnerships for the public institution is access to funding. In certain European countries, as Lynne Brindley noted at the 3<sup>rd</sup> plenary session of the HLEG, “Given the amount of material available, it is simply inconceivable that digitisation is funded entirely out of public money”. In all of the case studies considered, private sector funding which would not be possible from the cultural institution alone is a critical component. Private sector partners also provide access to technology for digitisation and technological expertise, which is not the core competence of cultural institutions. For example, in the Canada Project, the Open Text Corporation will provide software and technical support free of charge. Cengage Gale provides the British Library with a resource discovery solution which the British Library may not have been able to develop on its own, at least without significant investment. The technology solutions employed by partners in our case studies include scanning, optical character recognition (required to convert images to text), access platforms, search and retrieval, rights control and content management.

Providing enhanced access to resources is also important for the public sector. Digitisation has become a necessity for libraries, as younger users are very comfortable with digital resources and tend to make more use of digital material, although evidence points to growing familiarity with digital material across all age groups. Digitisation is therefore emerging as a key enabler of wider access in cultural institutions, particularly libraries and archives, and provides a much richer experience for the user, particularly in search and delivery. In this context the private sector has a crucial role to play in providing its expertise and experience in addressing new users' needs and expectations.

For public partners, digitisation may also have the objective of providing important preservation benefits; particularly for sound and broadcast archives where digital is an accepted preservation medium.

Other benefits include access to product development expertise, sales and marketing from the private sector; enhancing methods and the availability of content for scholarly research; engaging new audiences, particularly young people; and promoting knowledge transfer across disciplines and sectors. Private partners may also provide weight to lobbying efforts to increase government funding.

## **6.2. OBJECTIVES FOR PRIVATE PARTNERS**

The objectives for private partners are much more varied and depend on the specific project and partner, but they fall broadly into two groups: commercial objectives; or demonstrating corporate social responsibility.

Commercial objectives include access to new markets or customer groups, association with strong public brands, and access to out-of-copyright content, (some of which may be rare or unique), all of which may be monetised through commercial revenue streams. For example, BnF and the French publishers, aggregators and online book retailers aim to create a common search portal that will provide free access to public domain content and priced access to in-copyright material, mainly books. The publishers and book retailers aim to increase their exposure to the potential market, and therefore grow their revenues by offering their content online.

The commercial objectives may indirectly benefit the public sector partner if the business model is paid for by the user; however most of the projects investigated ensure some form of free access to the user. Examples are INA, which receives 40% of its total income from commercial activities which in turn fund further digitisation projects to increase access;; and the British Library, which will receive a royalty from commercial revenues earned by Gale from its digital newspaper partnership.

Demonstrating corporate social responsibility and benefits for the "greater good" is also a key outcome for many private companies. For example, the Cervantes Virtual Library has two key private sector partners which have charitable foundations. The Fundacion Telefónica "carries out important work in the field of art and culture. Within this framework, all of the projects promoted by the Foundation are designed with educational and learning objectives"<sup>3</sup>. Banco Santander, through Santander Universities, has established a unique co-operation model with universities in Spain, Portugal and Latin America, providing stable and growing support to 985 universities. "Santander Universities also supports and develops other large and international

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<sup>3</sup> Fundación Telefónica Annual Report 2006

projects arising from its work with universities over the years like the Miguel de Cervantes Virtual Library”.<sup>4</sup>

Private sector partners in the Cervantes Virtual Library can deduct their charitable contributions against profits to reduce their corporation tax liability, as established by Spanish taxation laws.

Other EU countries, such as France and Italy, have also developed legislation aimed at supporting finance of cultural heritage through the provision of fiscal benefits to private partners. The sub-group recommends that this type of existing provision is more extensively applied to digitisation projects.

A distinction is often operated between the concept of donation (the private partner provides support without receiving any direct benefit) and the case of sponsorship (where the private partner receives a benefit in terms of branding/ advertising). Fiscal benefits for enterprises are normally higher in the case of donations, in order to increase the attractiveness of such schemes.

### **6.3. BENEFITS FOR CITIZENS**

The primary benefit for citizens is increased, generally free online access to an unrivalled wealth of digital resources that previously may not even have been accessible in physical form, or only by visiting a cultural institution or local book store. Digitisation of these resources democratises knowledge and unlocks the heritage of great cultural institutions for everyone to enjoy and benefit from.

Some public-private partnerships have ambitious goals for citizens; for example the Canada project aims to digitise all of Canada’s published scientific and cultural heritage, across a wide range of formats. The project’s guiding principles state that the Canada Project shall “provide maximum public access within a framework of respect for copyright” and that it will “reflect Canada’s bilingual and multicultural reality”.

Similarly, the Open Content Alliance was launched in 2005 with the goal of encouraging the greatest possible access to and re-use of collections, while respecting the rights of content owners. With more than 50 participating institutions, it currently holds more than 200,000 books from the public domain that can be read online or downloaded. They also are available to any search engine for indexing and therefore can benefit all citizens regardless of the tool they use to find content online.

The Google-University of Michigan partnership is part of the Google Book Search programme which has the aim of “indexing the world’s books and making them searchable and discoverable”. As stated in the co-operative agreement signed between the parties, it has the strategic objective of “providing world-wide access to information; the public good of the diffusion of knowledge; and (to a lesser extent) the preservation of books”. It should be noted that there are significant differences of opinion between participants of the sub-group as to whether a specific part of the Google Book Search programme also benefits rights holders, as discussed in section 6.4 below.

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<sup>4</sup> Banco Santander Corporate Social Responsibility Annual Report 2006

#### **6.4. BENEFITS FOR RIGHTS HOLDERS**

The main benefit for rights holders is to increase significantly the visibility of their work and potentially the revenue that they can expect from it. This implies that users make some payment to access the works. Rights holders may not be explicit partners in a PPP, although as content owners their co-operation is required.

This larger visibility can be particularly important for works with a smaller target audience, and therefore less traditional exposure. Works which target niche audiences can benefit from the new discovery possibilities that digitisation and indexing offer; this is one of the key economic benefits of the internet. This ability to discover niche works can be hampered by exclusivity on accessing or indexing the digitised copy (see section 10.3 below).

For example, the partnership between the BnF and French publishers is intended to extend the traditional market for books to new audiences and therefore increase the market opportunity for publishers and authors.

There are significant differences of opinion between members of the sub-group as to the whether the Google-University of Michigan partnership provides benefits for rights-holders. In the case study in Annex 2.4, Google states “By making books more discoverable, Google is enhancing the ability of authors and publishers to sell books to an audience beyond the traditional book market”. This view is contested by the Federation of European Publishers, which believes that part of the Google Book Search programme, consisting of scanning in-copyright books of certain US universities, infringes the rights of publishers by not seeking prior permission to digitise and provide online access to in-copyright works. This specific part of the Google Book Search programme is the subject of on-going litigation in the US and France.

#### **7. BUSINESS MODELS**

The business models employed in the case study partnerships are varied and depend on the specifics of the project. They provide interesting examples of what works for the parties involved, and therefore provide a useful source of experience for cultural institutions in Member States to draw from.

- BnF and French publishers – this is a business-to-consumer (B2C) business model. Access to public domain content will be free to the user; access to in-copyright material will be in the form of short extracts, with the specific agreement of the rights holder. Specialised sites will provide online browsing and full access to a protected document according to terms agreed by rights holders.

Publishers will bear the digitisation costs and in most cases will digitise their own content, although the BnF will act as a digitisation service provider for small publishers. Public subsidy may be granted to publishers to digitise their books should the content meet the digitisation strategy of the BnF. Aggregators will have contracts with publishers which will define the prices to the user for online access to in-copyright e-books.

The partnership will generate revenues for authors, publishers, content aggregators and e-book retailers through sales of e-books. The business model is under consideration, but the BnF has considered a range of possible business models as outlined in Annex 3.2. The BnF conducted a study of the range of business models available for e-books, from those applied by e-book

retailer to digital library models. The BnF recommends that an e-book retailer model would be the best suited to access of full text content for a large potential customer base and a growing catalogue of titles. This could include access to the full text of a single title, a “pay per view” model for access to single chapters or pages, or a subscription model enabling access to packages of e-books, organised by subject or author.

The BnF also recommends that the model could be tailored by the publisher and aggregator, but that each publisher chooses only one single aggregator.

- The British Library-Cengage Gale partnership will deliver access to approximately three million pages of digitised newspaper content via the Cengage Gale platform via both business-to-business (B2B) and B2C models. Because some of the content digitisation was funded by JISC<sup>5</sup>, access to this content by users in the UK higher and further education sectors will be free. Cengage Gale is able to commercialise the offering to other markets, for example in the US. It is anticipated that access to the scholarly user community will be via a subscription model. The general public will be charged a modest fee on a pay-per-view basis. The British Library receives a royalty on sales of newspaper content through the Cengage Gale platform, and this will be invested in further newspaper digitisation. As a result of this partnership, the public purse has not had to bear the considerable technical and infrastructure costs which would have been required had the British Library tried to achieve the project on its own. The business model is set out in a commercially confidential contract between the parties.
- The funding, costs and financial incentives to the partners within the Canada Project have not been finalised. Therefore there is no formal written agreement in place at this time. It is expected that a mix of government and private funding will drive the project; access to content will be free. However, the stakeholders recognise that funding, although critical, is only one aspect of the partnership. This is another B2C model.
- Funding of the Cervantes Virtual Library is mainly provided by the private and public institutions that sit on the organisation’s Board. A framework agreement was set up with each of the founding sponsors, and once the Cervantes Virtual Library Foundation was established as a legal entity, similar agreements were established with the additional sponsors. The only financial incentive available to private partners is that they can reduce their corporation tax liability by deducting charitable contributions from their profits, according to Spanish law. Users can access the service for free via a B2C model.
- The B2C business model agreed between Google and the University of Michigan is set out in a publicly available co-operative agreement<sup>6</sup>. The University of Michigan provides its bound print collections to Google for scanning; all direct costs are borne by Google, including scanning costs, conversion and transmission of data, locating and re-shelving material. The University of Michigan bears costs associated with the selection of material and internal project management. There is no payback for the University such as a royalty or revenue share. Google has pledged to make both search and a display of the search results free to the end-user (through its Google Book Search service only; search results will not be available through other search engines).
- INA receives 60% of its income from the French government and earns the remaining 40% through commercial activities for professionals (a B2B model). As explained in the section 3 of

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<sup>5</sup> JISC is the Joint Information Systems Committee in the UK (see [www.jisc.ac.uk](http://www.jisc.ac.uk)). JISC's activities support education and research by promoting innovation in new technologies and by the central support of ICT services.

<sup>6</sup> See <http://www.lib.umich.edu/mdp/umgooglecooperativeagreement.html>

this report, in 2000 it launched a major digitisation and preservation programme for its broadcast archives. This was financed initially through internal budgets. The government then made a significant financial contribution in order to accelerate the project and complete it by 2015. Professional users can search and select through [www.inamediapro.com](http://www.inamediapro.com) for contents hosted by INA. Since 2005 INA has launched broking and distribution agreements with more than 20 partners. Through INA's commercial broking services, the contents are available on INA's portal; INA receives a commission on transactions through the portal, but the responsibility for invoicing, rights management and content delivery remains with the external archive.

External archives can also deposit their assets with INA for commercial exploitation, effectively a distribution agreement. The distribution services provided range from complete management of the content from preservation to digital exploitation, to simpler forms such as storage and commercialisation only. INA is responsible for clearing rights, invoicing and content delivery. The revenues earned by INA are much more substantial and depend on the commercial agreement with the distribution partner. Public access to a selection of the content is available through [www.ina.fr/archivespourtout](http://www.ina.fr/archivespourtout).

- The Open Content Alliance has a B2C business model but there is no revenue stream to publishers or rights holders because it focuses on out-of-copyright material and orphan works. However, financial benefits are important due to the lowering of digitisation costs and free distribution of content. This is achieved through pooling of existing resources and competencies, particularly with respect to technology innovation. Funding has been provided by charitable foundations and through research grants, by organisations such as the Alfred P. Sloan Foundation, the Mellon Foundation and the State of California. Digitisation costs have been brought down to US\$0.10 per page as a result of the co-operative efforts of Internet Archive and its partners. Libraries and search engines bear the reduced digitisation costs between them. The access and search infrastructure is provided at no extra cost for libraries by the open digital repositories network using their existing large-scale infrastructure and open source software. Open source development is used for search, browsing and transfer technologies, and new services like print-on-demand and scan-on-demand are being developed.

## 8. INTELLECTUAL PROPERTY RIGHTS

Copyright law seeks to strike a balance between rewarding the creators of intellectual property for their creations, and facilitating public access to these works for the public good. During the duration of copyright, free access is limited to “exceptions” that are designed not to impinge upon the primary economic interest of the rights holder. After the period of copyright is ended then the work enters the public domain<sup>7</sup>.

Within Europe another layer of intellectual property rights have been created with the introduction of a *sui generis* right on “databases”. A database is a collection of independent works, data or other materials which are arranged in a systematic or methodical way and are individually accessible by electronic or other means. A database may be, for instance, a computerised catalogue, a CD-ROM, a card index or a filing system. The *sui generis* right protects the structure of the database and not the underlying content.

National jurisdictions treat copyright differently and the link to creativity depends on the development of copyright law in any particular member state. In common law jurisdictions, the

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<sup>7</sup> However this is becoming less clear cut than it was, as commercial companies are registering trademarks/ wordmarks relating to famous people and characters e.g. Frederick Warne has registered Peter Rabbit as a trademark.

level of creativity is extremely low and is measured by skill, labour and judgement rather than creativity per se. For this reason many cultural institutions in common law countries assert copyright in photographic images of their collections through the operation of their picture libraries. In addition to copyright, new intellectual property may be created through the creation of a database.

The extension of copyright and database rights to digitisation means that whether new intellectual property is created in a digital image, in a database or in the metadata created is a complex area of law which may differ between jurisdictions. New intellectual property may also be created through the addition of editorial content and in the design of that content. It is recommended that partners clearly state who owns any rights created through digitisation and how these rights will be exploited.

For example, the Canada project will provide free access to public domain and public sector content, and a growing body of rights-cleared in-copyright content. Although details of the intellectual property issues have not yet been worked out, it is a principle of the project that there will be no transfer of content ownership or copyright between any of the partners. It is expected that digitised versions of out-of-copyright material will remain in the public domain.

Similarly the partnership established between the BnF and French publishers will also combine public domain and in-copyright content. The publishers will retain control of the use of content whose IP rights they have acquired from authors. The explicit agreement of the rights holders will be required to retrieve their content via the portal.

In the Google-University of Michigan partnership both public domain and in-copyright material will be scanned but the way the books are made available to users will differ depending on their copyright status. If a University of Michigan library book is out of copyright, then it will be available to users in its entirety through Google Book Search. If it is in copyright then users will receive basic background information on the book, two or three excerpts where the words searched appear and information on where to find it in a library, or where it can be purchased. Google states in Annex 2.4 that it “makes use of intellectual property that is fully consistent with fair use and the principles underlying both local and international copyright law”. However, publishers and Google disagree on the legality of both the digitisation itself and subsequent online access to excerpts of in-copyright books. This is the subject of pending litigation in the US and France.

The sub-group recommends that the guiding principle is that partnership should be established within the framework of applicable copyright law.

[The final report will include a note on fair use (in the US) and fair dealing (in the UK) and exceptions in continental Europe].

## **9. PROTECTION OF THE PUBLIC DOMAIN**

Public domain information refers to out-of-copyright works. It is essential that public domain information digitised in the context of PPPs remains accessible for all<sup>8</sup>.

As for in-copyright material, the simple making of a digital copy of a work in the public domain, does not change its public domain status, both in the analogue and in the digital environment.

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<sup>8</sup> Viviane Reding, minutes of the 3<sup>rd</sup> plenary session of the HLEG on digital libraries, 18<sup>th</sup> April 2007

While public-private partnerships can be enormously successful and may offer major benefits to partners and citizens, they are not right for every cultural institution. Some public sector institutions see it as their mission to protect state ownership of the cultural assets of the nation and do not allow them to be exploited for commercial gain. They may view partnerships with the private sector, particularly if paid-for access is involved and re-use rights are granted on an exclusive basis, as enabling the privatisation of public knowledge.

Other cultural institutions view digitisation projects as providing an additional service, which would not have been available to users without private-sector funding. They may believe a fee to help cover the costs of digitisation is both justified and necessary. They point out that the underlying content remains in the public domain.

An example of this is the British Library-Cengage Gale partnership, through which Cengage Gale has a licence to commercialise out-of-copyright digitised content to certain market sectors, for a limited period. Following this period the licence expires and the rights to exploit the digital content revert to the British Library. Access to the digitised 19-century newspaper content would not have been possible without the investment and access platform provided by Cengage Gale as British Library funds for digitisation are limited by the available government funding.

There is a great deal of sensitivity regarding commercialisation of public domain content through digitisation, and widely opposing views. The law in some Member States may not allow commercialisation of public sector assets. Some governments may offer significant investment for digitisation projects, so there may be no need for commercial business models to fund the project. It is for cultural institutions to decide their own opinions on this point and act accordingly, while respecting a number of basic principles outlined in this report.

The sub-group recommends that public domain content in the analogue world should remain in the public domain in the digital environment. If restrictions to user's access and use are necessary in order to make the digital content available at all, these restrictions should only apply for a time-limited period.

## **10. EXCLUSIVITY**

The sub-group has identified three levels of exclusivity in PPPs: exclusivity of partners, content and search/ access.

The sub-group agrees that exclusive arrangements for digitising and distributing the digital assets of cultural institutions are to be avoided<sup>9</sup>.

### **10.1. EXCLUSIVITY OF PARTNERS**

All the partnerships considered through the case studies in this report are non-exclusive in that partnering with one organisation does not preclude the parties partnering with another.

For example, the British Library-Cengage Gale partnership is non-exclusive in that the British Library can establish partnerships with other players to digitise newspaper content. The partnership was established through an open tender process according to EU procurement rules.

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<sup>9</sup> Viviane Reding, minutes of the 3<sup>rd</sup> plenary session of the HLEG on digital libraries, 18<sup>th</sup> April 2007

Other case studies involve collaborative arrangements with a broad range of different public and private sector players. For example, the Canada project was established with three founding partners as stated in section 3, but further discussions are being held with other corporate organisations, research libraries and archives, governmental organisations, publishers, authors groups and heritage organisations. Similarly the Cervantes Virtual Library was set up with a small number of founding partners but has grown to include contributions from nine public sector and eight private sector organisations. New organisations may join the project with the agreement of the Board.

However, the BnF-French publishers' partnership does involve a level of exclusivity as publishers are supposed to choose only one aggregator to work with, for practical reasons. This relates to in-copyright material.

## **10.2. EXCLUSIVITY OF CONTENT**

Some PPPs may involve a level of exclusivity regarding the content that is being digitised – that the partnership prevents the public-sector institution digitising its copies of the content with another private-sector provider. Timing is important and exclusivity may be necessary for a limited period of time, notably when otherwise the content would not be available to the public. This exclusivity provides a commercial advantage to private-sector players, as there would be a disincentive to private partners to invest when they have limited prospects of realising a commercial return. Cultural institutions need to bear in mind that private sector organisations generally have to demonstrate the added-value of new services for users and the subsequent creation of value for shareholders through a cash-flow stream.

An example of this is the British Library-Cengage Gale partnership through which Cengage Gale has an exclusive licence to use the digitised newspaper content via its platform for a limited period of time, and therefore create a commercial opportunity (subject to restrictions based on the digitisation agreements with other stakeholders).

Cultural institutions can consider the use of a creative commons licence if they wish to allow digitised content to be available for re-use.

## **10.3. EXCLUSIVITY OF SEARCH/ ACCESS**

The third level of exclusivity which may be established through partnerships is that of search/ access. Major search engines financing digitisation of content may limit search on the resulting digitised copies to their own sites. They may also ask the public sector partner to prevent the content from being indexable by other search engines. Certain search engines generate profit from search advertising (providing qualified leads) as opposed to generating revenues through paid-for access to the content itself. Making digitised copies of content searchable through a search portal increases the added value of the service for users, thereby creating a competitive advantage for the search engine (note that access to the content itself depends on its copyright status).

An example of exclusivity of search/ access is given by the Google-Michigan partnership. The co-operative agreement between the parties states that the University of Michigan agrees to restrict automated access to the digital copies created, and to prevent third parties from downloading the digital copies for commercial purposes, or redistributing them. This would not prevent competitor search engines from making their own digital copy of the content to make it

searchable through their own platform, but would prevent them from crawling and indexing the digitised copies made in the context of the Google-Michigan partnership.

The stance taken by the Open Content Alliance is to establish non-exclusivity of search and access. Search engines participating in the project must be willing to provide open search of the digitised content. Development of new search tools and indexing techniques can happen therefore independently of partner search engines.

The European Digital Library has stated as an objective that it will make content searchable through any search engine so as not to distort or limit access. Again it is for cultural institutions to decide which approach is the best one for them to take.

## 11. RE-USE OF DIGITAL COPIES

Directive 2003/98/EC<sup>10</sup> sets out specific rules for the re-use of public sector information<sup>11</sup> which applies to digitised content, and came into force on 1<sup>st</sup> July 2005. Re-use is defined in the Directive as “the use by persons or legal entities of documents held by public sector bodies, for commercial or non-commercial purposes other than the initial purpose within the public task for which the documents were produced”. The Directive notes that “public sector information is an important primary material for digital content products and services”. Re-use therefore includes the use of public domain digitised content in products and services such as search, research tools, incorporation into third party products and services, and so on.

The Directive states that:

- Member States shall ensure that public sector documents shall be re-usable for commercial or non-commercial purposes (subject to copyright of third parties and data protection laws)
- Where charges are made for re-use, the total income from supplying and allowing re-use shall not exceed the cost, together with a reasonable return on investment
- That if a licence is required for re-use of the document, the licence shall be open and transparent
- The re-use of documents shall be open to all potential players in the market; contracts between the public sector body holding the documents and third parties shall not grant generally exclusive rights.
- However, where an exclusive right is necessary for the provision of a service in the public interest, the validity of the reason for granting this right shall be subject to regular review, at a minimum of every three years. Moreover, the agreement should be transparent and made public.

At the time of writing, the Directive specifically excluded documents held by educational and research establishments, and documents held by cultural institutions, such as libraries, museums and archives. However, the sub-group recommends that cultural institutions should aim to abide by the Directive.

## 12. LONG-TERM SUSTAINABILITY & TIMEFRAMES

In order for digitisation projects to provide ongoing benefits for all the parties involved, the sub-group agrees that they should be sustainable in the long-term. In all of the case studies we

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<sup>10</sup> See [http://ec.europa.eu/information\\_society/policy/psi/docs/pdfs/directive/psi\\_directive\\_en.pdf](http://ec.europa.eu/information_society/policy/psi/docs/pdfs/directive/psi_directive_en.pdf)

<sup>11</sup> Public Sector Information (PSI) is defined as documents, databases and other information (meteorological information, digital maps, traffic data, etc.) produced, collected, stored, etc. by public sector bodies [http://ec.europa.eu/information\\_society/policy/psi/what\\_is\\_psi/index\\_en.htm](http://ec.europa.eu/information_society/policy/psi/what_is_psi/index_en.htm)

considered, the parties considered sustainability to be either an explicit or implicit objective; and the partnerships were envisaged for the long-term.

For example, the British Library has achieved sustainability of its newspaper digitisation project by allowing its partner Cengage-Gale to charge a pay-per-use or subscription fee to certain markets, with a royalty payment back to the British Library. Any income to the British Library will be ploughed back into further newspaper digitisation, ensuring that product can be expanded and developed over time. The partnership is renewable after a certain period of time.

In addition, sustainability generally also applies to the need to preserve digital material for the long-term, and to support long-term access. The sub-group recommends that partners should consider the full lifecycle costs of digital content when establishing digitisation partnerships. Costs may arise through collection, description, production and dissemination, as well as long-term storage and preservation.

As another example, The Canada Project intends to digitise all of Canada's extensive published and scientific heritage, with a guiding principle that content should be created and maintained "according to standards that support preservation and very long-term access"<sup>12</sup>. The case study notes that in terms of the length of the anticipated partnership, "five years may not suffice".

With the Cervantes Virtual Library, partnership agreements are generally signed for a period of 4 years, but the life of the project is seen as being much longer.

### **13. GOVERNANCE**

[This section will include descriptions of formal and informal arrangements through case studies, to be incorporated following submission of the interim report to the HLEG.]

### **14. LANGUAGE AND MARKET SIZE ISSUES**

All of the PPPs researched through case studies deal with major global languages: English, French and Spanish. At present, the sub-group has been unable to find examples of successful PPPs for digitisation in member states with languages spoken by a much smaller number of people. There are a number of potential reasons for the lack of PPPs in these countries:

- In order to recoup a satisfactory return on investment, private sector firms need to be able to reach a minimum number of users, which limits commercial business models to large geographic areas or languages spoken by large volumes of people
- Public sector organisations tend to be less encumbered by regulations preventing private investment in countries which have embraced de-regulated markets and open competition
- Cultural institutions tend to attract government funding for digitisation in smaller countries with lower volumes of legacy content to be digitised, such as the new EU member states in Central and Eastern Europe.
- Moreover, in the new EU member states, the generally smaller size of private firms compared to those in established member states may mean that private firms have reduced access to capital.

There are certain to be exceptions to these generalisations, and the sub-group welcomes case studies outside these major language groups for inclusion in this report.

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<sup>12</sup> Annex 2.6 - The Canada Project: Library and Archives Canada

## 15. CONCLUSIONS

Although the research into case studies by the sub-group has not been exhaustive, it is clear that PPPs are not widespread within the cultural sector. Certain cultural institutions are sensitive to a risk of privatisation of public domain material. Moreover, there are several barriers to establishing PPPs, despite the potential benefits; some of these, such as the need for private sector partners to ensure a commercial return on investment, language and market size issues have been explained above. Public and private partners often have competing and contradictory demands on their activities which must be balanced to create a successful partnership. Because PPPs are not widespread, public sector institutions may not have the negotiation skills required to deliver the best outcomes. This is changing as public sector institutions recognise that they need to recruit a mix of public- and private- sector expertise to take these partnerships forward.

Most of the partnerships we have investigated are still in their preliminary stages of development, and therefore it is too early to make general conclusions as to the key elements of success. However, in conclusion the sub-group makes a number of recommendations as to critical success factors, as follows:

- Partners clearly state their strategic objectives and the benefits for the citizen to be achieved through the project
- The partnership fully utilises the experience and expertise of the partners, and brings complementary contributions
- The partnership maximises public access and takes into account long-term preservation and sustainability issues
- The partnership operates within the framework of applicable copyright and intellectual property law
- The partnership does not establish exclusive agreements. Where exclusive agreements are necessary to provide a service in the public interest, that such exclusive arrangements are time-limited, regularly reviewed and transparent.
- The partnership is transparent, accountable, and managed through a formal governance structure
- The partnership is formally established through a memorandum of understanding or contract.
- Public domain content in the analogue world should remain in the public domain in the digital environment. If restrictions to user's access and use are necessary in order to make the content available at all, these restrictions should only apply for a time-limited period.

The sub-group recognises that PPPs can deliver major benefits for the partners, citizens and rights holders. The sub-group recommends that public institutions actively engage with private institutions as an option to achieve mass digitisation projects; however partners must fully consider their own unique objectives and circumstances before doing so. A full check list of the potential issues to consider is included at Annex 3; this draws on the case studies and the experience of the sub-group members.

The sub-group would like to thank all the organisations who submitted case studies, the stakeholders consulted, and the European Commission for their help in the preparation of this report.

## **16. FURTHER WORK**

Please note that this report represents an interim draft of the sub-group's findings and further discussions are required to finalise the report. Further amendments will be made to this draft report following the HLEG plenary session on 27<sup>th</sup> November 2007.

**ANNEX 1 – MEMBERS OF THE SUB-GROUP ON PUBLIC PRIVATE PARTNERSHIPS**

**Lynne Brindley**, Chief Executive, British Library (Chair)

**Anne Bergman-Tahon**, Director, Federation of European Publishers

**Lucie Burgess**, Head of Strategy and Planning, British Library

**Stephen Bury**, Head of European and American Collections, British Library

**Julien Masanès**, Director, European Archive

**Patricia Moll**, European Policy Manager, Google

**Daria Nałęcz**, Prof. of History, Polish Academy of Sciences & Pultusk Academy of Humanities

**Elisabeth Niggemann**, Director General, Deutsche Nationalbibliothek

**Luis Rodríguez**, Institutional Relations Director, Fundación Biblioteca Virtual Miguel de Cervantes

**Lucien Scotti**, Director for European and International Affairs, Bibliothèque nationale de France

**Daniel Teruggi**, Head of Research, Institut National de l'Audiovisuel

**Stéphanie Van Duin**, Director of Business Development, Hachette Livre

**Luca Martinelli**, Principal Administrator and Policy Officer, European Commission

## **ANNEX 2 – CASE STUDIES**

**ANNEX 2.1 Biblioteca Virtual Miguel de Cervantes (Cervantes Virtual Library)**

**ANNEX 2.2 Bibliothèque nationale de France and Syndicat National de l'Édition, France (BnF and French Publishers)**

**ANNEX 2.3 British Library and Thomson Gale (British Library and Gale)**

**ANNEX 2.4 Google and the University of Michigan (Google – Michigan project)**

**ANNEX 2.5 Institut National de l'Audiovisuel, France (INA)**

**ANNEX 2.6 Library & Archives Canada, Open Text Corporation and the University of Waterloo (The Canada Project)**

**ANNEX 2.7 The Open Content Alliance**

### **ANNEX 3 – CHECK LIST FOR CULTURAL INSTITUTIONS CONTEMPLATING PUBLIC-PRIVATE PARTNERSHIPS**

- Are the objectives, goals and outcomes of the project clearly stated?
- Are the strategic objectives of the partners aligned? If there is conflict, how will this be resolved?
- How will the partnership help the public sector institution achieve its public service mission?
- How will the partnership help the private sector partner achieve its goal to create shareholder value?
- Does the partnership have important benefits for the citizen? How does the product or service created through the partnership add value for the user?
- Does the partnership utilise the experience and contributions of all the partners? Have the contributions of the parties been clearly stated and agreed (including the amount and balance of funding, technical input, know-how, resources etc)?
- Does the partnership maximise public access? If access is restricted to certain audiences, is this appropriate?
- Does the partnership operate within the framework of applicable intellectual property and copyright law?
- Are the owners of any intellectual property rights following digitisation clearly stated?
- Will it be possible for the digitised content created to be re-used by other public-sector and private-sector players? Are any licensing arrangements necessary?
- Does the partnership create and maintain content according to defined standards and allow for long-term preservation?
- Does the partnership establish any exclusive contractual arrangements, and if so, are these exclusive arrangements necessary for the provision of a service in the public interest? Are they transparent?
- Is the business model sustainable for the long-term, allowing further funding of the project? Will it be business-to-business or business-to-consumer?
- Will access to the digital content be free to the user or priced, and are there any conflicts with local laws or other issues in charging for access?
- How will the digital content and resulting service be packaged and marketed?
- How will the partnership be managed and resourced on a day-to-day basis?
- Will the high-level governance of the project be formal or informal? Will it be transparent, open and accountable?
- Is there a clear mechanism for dispute resolution, in the event of disagreements between the partners?
- Does a time limit need to be placed on the partnership, and if so, what is appropriate?
- How will the parties exit the relationship if they decide this is in their interests?
- Will the partnership be formally established through a memorandum of understanding or contract? If so, have the key contractual provisions (including the issues above) been stated?

## **ANNEX 4 – CONSULTATION WITH KEY STAKEHOLDERS**

**The Conference of European National Librarians (CENL)** - Lucie Burgess presented the work of the sub-group to CENL's annual meeting on 28<sup>th</sup> September 2007. CENL members were supportive of the project and made three key comments:

- That PPPs tend to work only for major language groups and markets due to the need for private partners to work in a large enough market for a commercial proposition to be viable
- That there is a tension between the commercialisation of content and the need to ensure that public domain content remains in the public domain and that cultural institutions retain ownership of the cultural assets of their nation
- That many cultural institutions do not need to seek partnership funding because digitisation projects are funded by their national governments.

**The Federation of European Publishers (FEP)** – Anne Bergman-Tahon presented the sub-group's work to the FEP Executive Committee on 21<sup>st</sup> September 2007.

Members of the FEP Executive Committee, which includes publishers and their representatives, were supportive of the project. They made the following comments:

- the need to develop a trust-based relationship which includes rights holders
- depending on the linguistic area and/or national policy, different types of PPP will be developed, and this has to be recognised in the work of the subgroup.

**The International Federation of Television Archives (IFTA/ FIAT)** – Daniel Teruggi presented the sub-group's work to the IFTA/FIAT annual conference on the 15<sup>th</sup> October. A session was dedicated to partnerships between archives and commercial players.

- The key problem for television and sound archives is digitising their contents and making them accessible externally for professionals and sometimes for the public. Preservation issues are paramount because in order to ensure long-term access, content must be migrated to new media approximately every five years.
- Private sector companies are actively approaching archives to propose integrated services dealing with digitisation, content management and access; however long-term preservation in general has been excluded. It is considered the content owner's responsibility to ensure preservation; private companies do not consider this to be within their remit.
- Private sector companies tend to present migration as the only solution for long-term storage. If archives could work together with commercial players to reduce the rate of migration, say from five to seven years, this would create significant cost savings.
- Few private sector players have the experience of dealing with the scale issues which archives must deal with; for example, 100,000 hours of high-resolution images can be equivalent to 18 petabytes of information.
- The consistency and persistence of the underlying content (questions such as "is the content still there? Has it suffered any changes through time?") are essential for a library or archive, but a solution has not yet been added to the service portfolio of most commercial players.

**Archives community** – Daria Nałęcz consulted the archives community via an informal e-mail questionnaire. Informal contributions were received from the national archives of France, Latvia, the Slovak Republic, Norway, Slovenia, Estonia and Poland. The key perspectives from the archives community are as follows:

- Although PPPs are generally allowed by law, they are not practiced widely. Many archives have used private companies to achieve digitisation on a commercial, arm's-length basis as

opposed to a partnership. There was one exception to this general rule, whereby one national archive was using a PPP to digitise sound and film.

- Although private companies have been used to digitise archive collections, the general view is that it is more economic and effective for archives to invest in the technology and staff resource required than invest resources in partnerships.
- Generally PPPs are viewed positively, and archives believe that they can deliver financial, technical, resource and other benefits such as access to marketing and product development expertise. Genealogy projects are seen as being particularly well-suited to PPPs. However the experience of using them is very limited in practice.
- Digitisation is seen as being one of the core competencies of modern archives and most archives said that they would not give their digitisation activities up even if they also employed PPPs to achieve large-scale digitisation projects.
- The mission of the archive to ensure a good public service is seen as important, although increasingly this has to be balanced with cost-effectiveness.
- Archives are firmly of the view that exclusive agreements are not appropriate unless they have been established for a time-limited period through an open tender process.
- Paid-for business models are unusual and archives see protecting public domain content as critical to their mission.