

ECP-2007-DILI-517006

EFG – The European Film Gateway

Contracts for EFG's sustainability and use of data

(title changed from
"Statutes and rules of the established entity")

Deliverable number	<i>D 7.2</i>
Dissemination level	<i>Confidential</i>
Delivery date	<i>20 December 2010</i>
Status	<i>Final</i>
Author(s)	<i>Kerstin Herlt (ACE), Georg Eckes (DIF)</i>



eContentplus

This project is funded under the eContentplus programme, a multiannual Community programme to make digital content in Europe more accessible, usable and exploitable

Table of Content

1	INTRODUCTION	4
1.1	EXECUTIVE SUMMARY	4
1.2	PURPOSE OF THE DELIVERABLE	6
2	EFG EXECUTIVE GROUP	9
3	EFG PORTAL	11
3.1	MAIN OBJECTIVES OF THE EFG PORTAL	11
3.2	AGGREGATING FILM RELATED CONTENT FOR EUROPEANA	11
4	GOVERNANCE AND SUSTAINABILITY MODELS FOR EFG PORTAL	13
4.1	“STICHTING” EUROPEANA FOUNDATION	13
4.1.1	<i>Basic Definitions of a Dutch “Stichting”</i>	14
4.1.2	<i>Tasks of the Europeana Foundation:</i>	14
4.1.3	<i>Organisational Structure</i>	15
4.1.4	<i>Financial Structure</i>	15
4.1.5	<i>Is a Foundation or a Non-Profit Organisation a Feasible Model for EFG?</i>	16
4.2	EFG PORTAL RUN BY ACE	17
4.2.1	<i>Organisational Structure</i>	18
4.2.2	<i>Is the CENL/TEL Model Feasible for ACE/EFG?</i>	19
4.3	SUSTAINING THE EFG PORTAL WITHOUT SETTING UP A LEGAL ENTITY	19
4.3.1	<i>Is a Service Level Agreement a Feasible Model for EFG?</i>	20
5	BASIC REQUIREMENTS AND DEFINITIONS FOR EFG GOVERNANCE & SUSTAINABILITY	21
5.1	PURPOSE OF THE EFG ENTITY	21
5.2	MEMBERSHIP REQUIREMENTS	22
5.3	RIGHTS AND DUTIES	23
5.4	MEMBERSHIP FEES	24
5.5	INTELLECTUAL PROPERTY OF THE EFG SYSTEM, USAGE OF DATA AGGREGATED, LIABILITY	24
5.6	ORGANISATIONAL STRUCTURE	25
5.7	ACCOUNTS AND AUDITS	25
5.8	DISSOLUTION	26
6	CONTRACTS FOR EFG: TERMS OF SERVICE AGREEMENT AND DATA PROVIDER AGREEMENT	27
6.1	THE MAIN ELEMENTS OF THE EFG TERMS OF SERVICE AGREEMENT	29
6.2	RISKS AND REWARDS OF A TERMS OF SERVICE AGREEMENT	30
6.3	THE MAIN ELEMENTS OF THE EFG DATA PROVIDER AGREEMENT (DPA)	31
6.4	EFG DPA: REMAINING POINTS OF DISCUSSION	32
7	OUTLOOK	35
	ANNEX I: A COMPARISON OF LEGAL AND FISCAL FRAMEWORKS FOR ASSOCIATIONS AND FOUNDATIONS (“STICHTING”) IN THE NETHERLANDS AND GERMANY	37
	ANNEX II: INCORPORATION OF A FOUNDATION UNDER DUTCH LAW (“STICHTING”) TO MANAGE EFG PORTAL	42

ANNEX III: INCORPORATION OF A GERMAN NON-PROFIT ASSOCIATION – “IDEALVEREIN” FOR EFG	46
ANNEX IV: MANAGING EFG WITHOUT SETTING UP A LEGAL ENTITY	51
ANNEX V: TERMS OF SERVICE AGREEMENT FOR THE EUROPEAN FILM GATEWAY HOSTING & MAINTENANCE & DEVELOPMENT (V5.0, 21.09.2010).....	54
ANNEX VI: EFG CONSORTIUM MEMBERS (ARCHIVES)	61
ANNEX VII: ANNUAL COST PLAN EFG MAINTENANCE (SEPTEMBER 2010)	62
ANNEX VIII: EFG DATA PROVIDER AGREEMENT (V.4.0 21.09.2010)	63
ANNEX IX: EUROPEANA LICENSING FRAMEWORK	71

1 Introduction

This deliverable describes the measures and decisions that were taken by EFG to guarantee the sustainability of the EFG Portal after the end of the project funding in August 2011. The first chapter of this report gives an overall summary of the results of month-long discussions and the decision that was taken. It also lists the basic questions that guided the discussions. In chapter 2 the EFG Executive Group is described, which was established to discuss the sustainability issues more effectively. Chapter 3 takes a step back to name the basic functionalities of EFG Portal and its function as an aggregator for Europeana, while chapter 4 presents the governance & sustainability models which have been discussed in the Executive Group. Chapter 5 resumes the basic requirements for setting up a legal entity to govern EFG and chapter 6 then presents the sustainability model on which the Executive Group has agreed upon: the EFG Terms of Service Agreement (ToSA) and the EFG Data Provider Agreement (DPA). The annexes to this deliverable include the documents which served as the basis for discussion in a number of meetings, telephone conferences or mails. The annex also contains papers that resulted from these discussions.

The title of this deliverable needed to be changed from *“Statutes and rules of the established entity”* to *“Contracts for EFG's sustainability and use of data”* due to decisions taken during the discussion and decision-making process in the framework of WP 7. In a nutshell, the most important decision that led to the title change was that the consortium refrained from establishing a separate EFG entity on its own. The preferred solution was to appoint one of the partners as the hosting institution and establish a set of identical bilateral service agreements between the hosting institution and each individual partner archive. The reasons for this decision are elaborated on in this report.

1.1 Executive Summary

Setting up a sustainable framework for the EFG Portal is the overall task of WP 7 “Legal and organisational governance, sustainability planning”. It is not only the precondition for making strategic and policy decisions for the Portal after the end of the project on 31 August 2011 but it is also necessary for bringing in new partners who need reliable information on the organisational structure and the financial conditions for being a partner in the EFG Consortium. The governance and sustainability framework will replace the Description of Work which currently regulates the relationship between the European Commission, Deutsches Filminstitut – DIF as project coordinator and the EFG Consortium from 1 September 2011 on.

In the context of Task 7.3 “Achieving consensus on and implementing a legal and organisational framework”, the Executive Group (EG)¹ examined the pros and cons of three different models for EFG’s governance and sustainability:

1. Founding of a new legal entity such as a foundation or association for the purpose of managing and developing the EFG Portal
2. Making EFG a service of the Association des Cinémathèques Européennes (ACE) and putting ACE in charge of the management
3. Sustaining the EFG service without a legal entity on the basis of bilateral agreements between each content provider and the hosting institution.

In order to be able to find a suitable solution and to speed up the process of decision making, an Executive Group consisting of 9 EFG partners representative of the whole consortium was established. The work and decisions of this Executive Group, which will be described in more detail in chapter 2 had to be approved by the whole consortium. Agreeing on one model was quite a long process within the EG, and some detours had to be made. At first, the EG tended towards setting up a legal entity in order to sustain the EFG Portal, but after some thorough evaluation decided that for the archives it will be more convenient to go with option 3, to sustain the portal on the basis of bilateral agreements between each content provider and the hosting institution. Reasons for this decision will be described in more detail in the following chapters. The second option of running the portal as a service by ACE – comparable to the The European Library (TEL) which is run and owned by the Conference of National Librarians (CENL) – is currently not feasible because to date still only a minority of ACE members participate in EFG and, on the other hand, several partners of EFG are currently not members of ACE. However, running the portal as a service of ACE remains an option in the long term, given that there are plans for further ACE archives to join the EFG consortium during a possible follow-up project and also due to plans of current EFG consortium members to become ACE members.

Based on the decisions taken by the EG, the need for two kinds of agreements became evident:

- (a) an EFG Terms of Service Agreement (ToSA) and
- (b) an EFG Data Provider Agreement (DPA)

The ToSA describes and defines the service provided by the hosting institution to ensure the operation and maintenance of the EFG system from 1 September 2011 on. It is concluded between DIF as the hosting institution and each content provider. Purpose of the DPA is to

¹ “Administrative Board” according to the DOW. It was re-named in “Executive Group”.

determine the rights and obligations of DIF for using the data delivered by the EFG content providers. It also determines what the Europeana Foundation can do with these data. Details of both agreements are explained in Chapter 6. They were drafted by ACE and DIF and discussed with the EG on various occasions in personal meetings and several series of phone conferences and conversations.

The basis for the EFG DPA is the Europeana DPA. However, some deviations from the original Europeana Data Provider Agreement needed to be made in order to achieve consensus among the EFG Consortium. These deviations mainly concern third party use of data to be granted by DIF or Europeana, and they may affect DIF's ability as an aggregator to sign a Data Aggregator Agreement with the Europeana Foundation. Questions about the re-use of metadata still need to be assessed within the following months. EFG and Europeana will intensify their communication and make best efforts to find an agreeable solution for both parties. For this purpose, members of the Executive Group of EFG will attend a workshop organised by Europeana which specifically addresses the issues of metadata sharing with third parties. In any case, the general ability to use EFG data in Europeana.eu will not be affected.

Both agreements were presented at the EFG Plenary Meeting on 1 October 2010 for preliminary approval. The content providers, who also received the agreements digitally, were asked to send their final remarks on the agreements by 20 October. The ToSA is currently being revised by a German lawyer since German jurisdiction governs the agreements. A final approval of all EFG content providers and a commitment of signature of the ToSA is scheduled for early next year.²

1.2 Purpose of the Deliverable

In contrast to D 7.1 "Preliminary set of rules of procedure" which provided a framework for the cooperation between the EFG partners in order to successfully manage the **project**, the objective of D 7.2 is to provide a framework for sustaining and managing the EFG **Portal**.

Instead of only presenting the results – the EFG Terms of Service Agreement (ToSA) and the EFG Data Provider Agreement (DPA) – D 7.2 reflects and documents the process of consensus-building. Alternative models which govern and sustain comparable portals were researched and their applicability for the EFG Portal discussed.

EFG is one of the first Europeana aggregator projects which will end in 2011. All other aggregator projects which not only collect data from content providers for Europeana but

² Although DIF did not receive feedback from all consortium members by mid- November 2010, there is a tendency that the majority of the members will accept and sign the ToSA.

also build a portal, are expected to end later. Therefore the main references for discussion were the TEL business model, the governance model of the Europeana Foundation, as well as the Service Level Agreement of the MIDAS project, which initiated the filmarchives-online.eu portal.

The discussion about an agreeable model for sustaining and governing EFG portal has been guided by the following questions:

1. Mission

- What is the aim of an EFG entity (mission statement)
- What kind of members do we want?
- How can they be attracted?
- How do we conceive the relationship to Europeana?
- What is EFG's unique feature in contrast to other related portals?

2. Governance

- Which kind of organisational and legal structure do we want for EFG Portal?
- Are governance models for comparable internet services already available?
- If so, can we use them for managing EFG?
- How to organise cooperation and consensus building?
- On which level should the portal be sustained: Do we want to keep the status quo or do we want to develop it further?
- Do we consider only non-commercial, or commercial activities as well?

3. Service Agreements

- Which aspects need to be covered contractually in order to provide legal safeguards to all members in the EFG consortium?
- Which agreement or agreements need to be drawn up to this end?
- What do these agreements need to contain?
- How should the issues identified be regulated in detail and in a way that enables all content providers in the consortium to sign the agreement(s)?

4. Legal aspects

- Which aspects need to be covered to provide legal safeguards to the content providers which deliver data to EFG and Europeana?
- Which provisions need to be made to provide legal safeguards for EFG's hosting institution?

- Which kind of rights for the use of their metadata do the content providers want to transfer to EFG and Europeana?
- How to guarantee a continuous licensing of rights from EFG data provider to EFG aggregator, and from EFG to the Europeana Foundation?

2 EFG Executive Group

WP7 set up a board of members authorised by their institutions to assume responsibility for all policy and strategic decisions taken with respect to EFG's sustainability. Therefore the election of a regular Executive Group (EG) by the EFG content providers – due in September 2010 according to the DOW – was sped up. The members of the EG were appointed at the first WP7 meeting in Bologna in July 2009 and confirmed by the content providers at the EFG Plenary Board in Vilnius in October 2009.

Regarding the composition of the group, the idea was to have those content providers involved that either contribute a lot of content to EFG and/or have a legal department in place as well as expertise in setting up licensing contracts. The group was selected to represent various facets of content providers in the EFG consortium, namely: public vs private institutions, non-profit vs profit-oriented organisations, new vs old member countries. Being the initiator of the project, it was considered important to have a representative of the ACE Executive Committee (EC) involved in the discussions of the EFG Executive Group. Since neither ACE's Secretary General Dan Nissen (DFI) nor other members of the ACE Executive Committee could follow the discussion in the EFG EG regularly, Kerstin Herlt (Head of ACE office) joined the group as rapporteur to ACE. In order to make sure the considerations of the EG are in line with the latest developments in Europeana, Aubéry Escande from Europeana Office was invited to participate in the EG as rapporteur to Europeana. The EFG EG consists of the following institutions and colleagues:

ACE	Dan Nissen (Director DFI); (Kerstin Herlt)
Cinecittà Luce, Rome	Roland Sejko
Cinémathèque Française – CF, Paris	Sophie Cazes
Det Danske Filminstitut – DFI, Copenhagen	Pernille Schütz
Deutsches Filminstitut – DIF, Frankfurt	Georg Eckes
Eye Film Instituut Nederland – EYE, Amsterdam	Ad Pollé
Filmarchiv Austria – FAA, Vienna	Thomas Ballhausen
Národní filmový archiv – NFA, Prague	Tómaš Lachman
Europeana Office, The Hague	Aubéry Escande

Main tasks of the EG are:

- To develop a specific profile for the EFG Portal
- To discuss and recommend to the Plenary agreeable sustainability models for managing EFG portal, based on the suggestions made by ACE and DIF

- To discuss and make recommendations concerning Europeana as well as EFG policies, e. g. The Europeana Licensing Framework, the Public Domain Charter.

All suggestions made by the EG must be approved by the Plenary Board.

Communication and consensus building:

Whenever necessary, real-life meetings were arranged, as they proved to be the most efficient way of communication. ACE and DIF were calling these meetings, preferably in combination with other events that require the presence of the EG members. After a preparatory meeting in Bologna in July 2009, the EG met four times in person so far:

- Vilnius, 7 October 2009
- Berlin, 18 February 2010
- Bologna, 29 June 2010
- Frankfurt, 25 August 2010

Another EG meeting is scheduled for February 2011 in Berlin. The main topic then will be the new draft of the Europeana Data Provider Agreement and its effects on EFG contracts and EFG sustainability.

Memos and discussion papers were prepared by ACE and DIF and circulated prior to the meetings. Comments from the partners were not only gathered in the named meetings, but also in writing and via telephone calls before and after them.

3 EFG Portal

3.1 *Main Objectives of the EFG Portal*

The main goal of the EU-funded Best Practice Network EFG – The European Film Gateway which runs from September 2008 to August 2011, is the conceptualisation and implementation of a web portal providing search functionalities and centralised access to film related material from film archives in Europe, to facilitate co-operation between the partners and to make it easy for the public to access these materials.

The EFG Portal is an Internet site that provides information about the digital objects, derived from metadata as supplied by the individual film archive, along with filmographic information. The digital objects are available on the archives' websites and digital repositories and not physically copied to the central EFG server. Only the metadata are copied to the central EFG server and ingested in the so called EFG database. Among other information, the metadata contains the direct URL to the local file for embedding the image/video on the EFG site through deep linking. So, the main purpose of the EFG portal will be to present the information gathered in the EFG database and present the local files embedded in its user interface. This is especially important to be kept in mind when it comes to the discussion about data licensing described in Chapter 6. By early 2011 a first version of the web portal is expected to be publicly accessible. An internal beta version of the EFG portal is already available and is currently undergoing thorough testing regarding all features and functionalities based on the data collected in the common EFG database. The fully developed EFG portal as it will exist by the end of the EFG project will have to be sustained in financial, technical and organisational terms from 1 September 2011 on.

3.2 *Aggregating Film Related Content for Europeana*

EFG is one of more than 50 projects and institutions that function as an aggregator for Europeana. An aggregator is an organisation that collects and standardises metadata from a group of content providers and makes them available to Europeana. Aggregators have been established as an intermediary between the content providers and Europeana to handle the different types of material and the huge amount of work that the standardisation of metadata requires.³ Aggregators also support the content providers with administration, operations and training as well as with advice concerning data contribution to Europeana.

The role and the activities of EFG as an aggregator are:

- To aggregate metadata from the film archives both for use in the EFG portal and by Europeana
- To facilitate communication with the content providers
- To drive traffic on the content providers site
- To provide context to the material which Europeana can not give
- To provide domain specific expertise and skills to partners and Europeana
- To pass knowledge and services from Europeana back to the content providers
- To disseminate the vision and objectives of Europeana to the EFG network
- To create ad hoc working groups to solve particular issues of relevance to content providers, aggregators and Europeana

Aggregators are represented in the CCPA (= Council of Content Providers and Aggregators) which is part of the Europeana Foundation⁴. The CCPA elects 6 members to the Foundation Board and plays an advisory role on strategy and policy from the content providers' point of view.

DIF, ACE, EYE and other EFG partners are registered in the CCPA and participate in related work groups on legal issues, business development, sustainability and financial issues, technical development and ethical aspects regarding the content linked to on Europeana.⁵

Europeana Data Aggregator Agreement⁶:

EFG is supposed to sign a Data Aggregator Agreement with the Europeana Foundation. This agreement grants Europeana the rights to use the EFG Data in order to produce Europeana Data.⁷ It is based on a clean hands model: Europeana does not sign agreements with individual content providers submitting data via the aggregator. The aggregator is responsible for the rights clearing with the individual content provider. Since Europeana is driving traffic to the aggregator's site, the agreement only covers metadata, not content. It adopts a non-commercial use regime, for Europeana and for third parties.⁸ A licence for third parties is not yet developed, but it shall be similar to a Creative Commons license.

³ Europeana Aggregators Handbook: http://version1.europeana.eu/c/document_library/get_file?uuid=94bcddbfc3625-4e6d-8135-c7375d6bbc62&groupId=10602

⁴ The CCPA has been established in 2009. Main purpose of the CCPA is to provide a key communication channel from Europeana Foundation to its aggregators and content providers.

⁵ These work groups have been set up at the Europeana Pre-conference meeting in The Hague on 13 October.

⁶ The Data Aggregator Agreement is annexed to the Aggregators Handbook: http://version1.europeana.eu/c/document_library/get_file?uuid=94bcddbfc3625-4e6d-8135-c7375d6bbc62&groupId=10602

⁷ For the lifetime of the EFG project, the legal basis for making EFG data available in Europeana is the EFG Description of Work.

⁸ When presenting the Europeana Business Model at the Europeana Open Culture Conference, it was announced that Europeana will introduce commercial use and that both the Europeana Data Provider and the Europeana Data Aggregator Agreement are under revision.

4 Governance and Sustainability Models for EFG Portal

In preparation for the first meeting of WP 7 in Bologna, ACE und DIF presented three alternative models for sustaining the Portal, and the pros and cons were discussed by the members:

1. Setting-up a separate legal entity working on a non-profit basis, e.g. a Dutch “stichting” or a German “Idealverein”
2. EFG Portal becomes a service of ACE
3. EFG Portal will be sustained through service agreements between the hosting institution and the content providers without setting up a separate legal entity.

For each of the possible alternatives, examples of already existing legal entity forms and sustainability models were given:

1. “Stichting” Europeana Foundation (formerly EDL Foundation)
2. The European Library (TEL) as a service run by the Conference of National Librarians (CENL)
3. MIDAS Service Level Agreement to maintain the filmarchives-online.eu portal

The listed options are presented in more detail in the following chapters.

4.1 “Stichting” Europeana Foundation

http://dev.europeana.eu/edlnet/edl_foundation/purpose.php

The Europeana Foundation was set up in 2007 as part of the EDLnet project to develop and govern the European Digital Library. The proposal for a stichting was based on the experience with the organisational model of CENL (Conference of European National Libraries). The European Commission supported the idea of a Foundation because of sustainability, flow of subsidies, branding and promotional opportunities. Legal power and financial accountability lie within the EC of the Europeana Foundation.

4.1.1 Basic Definitions of a Dutch “Stichting”

Organisational Structure⁹

A Dutch stichting is a rather unique legal entity, in that it does not have to have members or shareholders. The articles of association must include provisions regarding the inception of a board of managing directors, which may consist of individuals or legal entities. The creation of further bodies, e.g. a board of supervisory directors, or an advisory committee is possible. However, these additional bodies cannot function as a General Assembly of associations, as this contradicts the legal definition of a foundation.

Purpose

A stichting is created solely for the purpose of achieving certain defined objectives, such as, for instance, to manage educational facilities, to support and fund research programmes, etc..

Capital

A foundation can obtain operating funds through fundraising, subsidies, donations and gifts. There are no legal limits to the amount of the reserve capital nor legal rules for its administration and use, as long as it is not paid out to founders or representatives of the foundation. The structure of the foundation is laid down in its statutes. At the moment of incorporation, the foundation does not have to have capital, but of course working capital is necessary in order to realize its goal. There are no legal limits to the amount of reserve capital and no legal rules for its administration and use.

Liability

In general the members of the board of managing directors of a “stichting” are not personally liable for the consequences of (legal) acts, debts etc. of the foundation. Only if the foundation runs an enterprise and is subject to corporation tax, each of the managing directors may be held personally liable for debts under certain conditions. Each foundation has to be registered within the Dutch Trade Register of Chamber of Commerce.

4.1.2 Tasks of the Europeana Foundation:

- to provide access to Europe's cultural and scientific heritage by way of a cross-domain portal
- to facilitate formal agreement across the domains on how to cooperate in the delivery and sustainability of a joint portal.

⁹ See “Memorandum regarding the incorporation of a foundation in the Netherlands”:
http://www.europeanfilmgateway.eu/members/downloads/Annex1_Info_Dutch_foundation.pdf

- to provide a legal framework for use by the EU for funding purposes and as a springboard for future governance
- to support and facilitate the digitisation of Europe's cultural and scientific heritage.

4.1.3 Organisational Structure

Board of Participants (BoP)

- European associations from the four cultural domains: libraries, museums, archives and audiovisual archives (legal entities)
- International Associations of cultural institutions (legal entities) for the benefit of a European branch (non legal entities) of this association
- Natural persons for the benefit of an association for one of the aforementioned domains, which is not a legal entity
- Existing/Founding members of the Board of Participants and initial hosting institution, the Koninklijke Bibliotheek
- Up to 6 elected representatives of the Council of Content Providers and Aggregators (CCPA).

Executive Committee (EC)

- 5-9 natural persons (currently 8), elected from the Supervisory Board
- The EC holds the financial accountability and legal power
- EC members are individually responsible but representative of their pan European Associations.

Council of Content Providers and Aggregators

- Represents content providers & aggregators in the decision making process of the Europeana Foundation and Europeana.eu
- Provides feedback to its members on the activities of Europeana and the Europeana Foundation
- Influences the increase of content contribution to Europeana at all levels
- Advises the Europeana Foundation on strategy and policy from viewpoints of the content providers and aggregators.

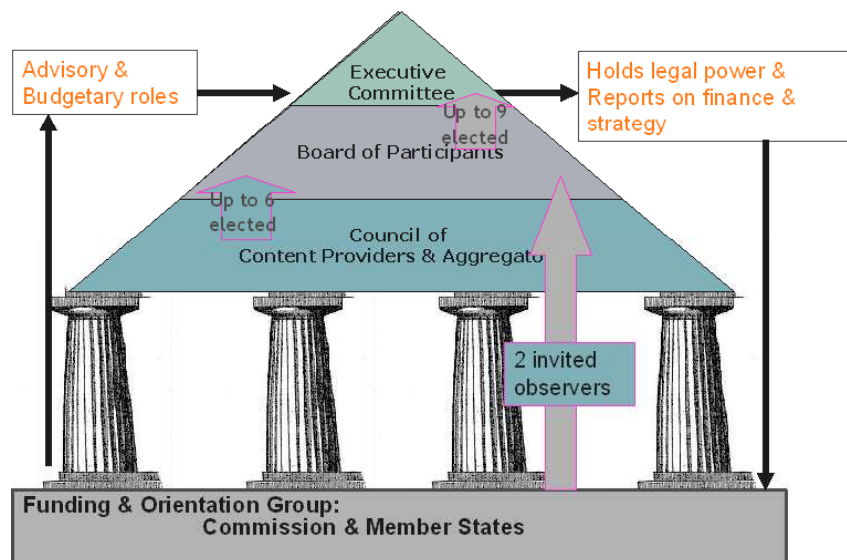
4.1.4 Financial Structure

- Funding by the Europeana Commission is allocated on the basis of projects in which Europeana is partner. It is secured until 2013;

- EDLF currently runs one project – Europeana v 1.0 – and is project partner in 12 Europeana related projects;
- Whether the participating organisations will have to pay a subscription fee is still being discussed. The Foundation has postponed this decision and decided to work out and agree on a final organisational structure in the first place;
- Europeana Foundation receives further funding from Member States to cover the matching funds;
- Europeana Foundation has an agreement with the Koninklijke Bibliotheek (KB) concerning housing. IT and general services for the employees are covered by the KB.

4.1.5 Is a

EDL Foundation Governance



Foundation or a Non-Profit Organisation a Feasible Model for EFG?

Pros:

- Setting up a foundation or association may facilitate the opportunity for follow-up projects and further funding;
- Members of the EC share responsibility in all financial and legal issues;
- Members of the EC are not personally liable;
- An EFG foundation or legal entity could apply for grants to cover its operative costs ¹⁰
- A reliable legal body with precise regulations for membership may facilitate the inclusion of new partners.

¹⁰ See Strand 2 of the CULTURE Programme 2007-2013, "Support for organisations active at European Level" http://eacea.ec.europa.eu/culture/programme/strands2_en.php

Cons:

- Setting up a legal entity is a time consuming procedure: Rules of procedures have to be put in place, articles of the association have to be implemented, the entity has to be registered in one of the partner's countries, meetings have to be scheduled for the Executive Committee and the Board;
- Administrative costs are involved in setting up and running a foundation, and the EFG partners have to pay membership fees not only for maintaining the service, but also for its administration. Unlike Europeana, EFG, as a vertical aggregator, has few chances to get funding from the Members States;
- Higher subscription fee: In case there will be no follow-up project, not only the service has to be sustained, but the administrative structure as well;
- Overlapping of legal frameworks: Most of the partners in EFG are members of ACE.

4.2 EFG Portal Run by ACE

Example: CENL (Conference of European National Librarians) / TEL (The European Library)
<http://www.theeuropeanlibrary.org/>

TEL is the portal and union catalogue of Europe's national libraries. It is owned and run by the CENL. An agreement exists between the individual members of CENL (National Libraries) and the CENL Foundation.

- Since the end of the TEL project in 2003, the portal is maintained under a Service Level Agreement (SLA) between the project partners and the National Library of the Netherlands (KB);
- Funded initially for a period of 3 years, then extended for another 3 years;
- Each National Library participating in TEL pays a subscription fee. Subscription fees vary between the different countries. They are determined through a complex calculation that takes into account regional economic differences, size of the institutions etc. Fees vary between 500€ and 40.000€ for full membership;
- Associate members pay 300 Euros but have restricted access to the service;
- Subscriptions pay for maintaining the operational service and for main staff (project management, marketing, interoperability);
- Additional staff members and further development of TEL are funded by follow-up projects such as TelMeMor, EDLproject, FUMAGABA, TELplus (most projects co-funded by the EU).

4.2.1 Organisational Structure¹¹

Bilateral agreements between CENL and TEL members.

- Each full member has a place in the Management Board which elects the Executive Group;
- The European Library office takes its guidance from the Executive Group (EG);
- Four working groups support the Management Board and the TEL office.

The Management Board:

- consists mostly of CENL members and thus directors or chief executives of National Libraries;
- meets twice a year;
- is responsible for determining the fees and the overall strategy;
- elects the officers for the EG.

The Executive Group:

- consists of six members (chair, vice chair, host director, treasurer and two rotating members);
- meets virtually every six weeks;
- discusses business and gives strategic direction.

Four Working Groups:

- Contacts Working Group: participation in this group is mandatory for each partner library. The participating library's representative is responsible for maintaining relationships with TEL;
- Technical Working Group: splits into smaller groups working on metadata, collection descriptions and service descriptions, validating and proposing new architectural solutions for the service;
- Language Working Group: meets virtually and extends to all CENL members;
- Editorial Working Group: all 48 CENL members are active. They are responsible for the promotion of TEL in their countries and the update of library websites.

Through CENL/TEL the national libraries have created a mechanism to work together to make their digital content easily available.

¹¹ For the TEL business model please go to:
http://version1.europeana.eu/c/document_library/get_file?uuid=f531a14c-7f13-4ac8-ac7c-f64511a651aa&groupId=10602

4.2.2 Is the CENL/TEL Model Feasible for ACE/EFG?

Pros:

- A legal body and an organisational framework are already in place;
- ACE is a strong network of members which is experienced in designing projects, fund raising and collaborative work on projects;
- Well established relationship with the European Commission, ACE is recognized as the representative of European film archives.

Cons:

- A more complete commitment of ACE members in EFG would be desirable before this option could be implemented: Out of 40 ACE members, currently only 12 are partners in EFG;
- ACE will have to take responsibility for the portal although less than 1/3 of its members currently participate in EFG;
- Several content providers participating in EFG are not yet members of ACE, therefore a part of the EFG consortium would still be outside ACE governance;
- The calculation of the subscription fee in TEL is very complex and requires efforts to be maintained and kept up to date. Also, most ACE members have a lower financial capacity than national libraries;
- Low flexibility in attracting new partners: Following the CENL/TEL model, EFG would be restricted to ACE members.

4.3 Sustaining the EFG Portal Without Setting up a Legal Entity

Example: MIDAS Service Level Agreement (SLA)

The MIDAS project initiated www.filmarchives-online.eu, a portal which provides access to catalogue information from the holdings of 18 European film archives. The project was supported by the MEDIA plus programme and ran from January 2006 to January 2009.

- The Portal is hosted by Deutsches Filminstitut – DIF;
- 14 project partners pay an annual fee on the basis of a Service Level Agreement between each partner and the Deutsches Filminstitut – DIF;
- Current SLA ends February 2011;
- Total costs for service maintenance are split equally among all associated partners of the SLA;
- Fee: ca. 700 € per partner per year pays for maintaining the current status of the portal, including software updates and editorial work on the website;
- Extensive further technical development of the web portal is not included.

4.3.1 Is a Service Level Agreement a Feasible Model for EFG?

An agreement between the hosting institution and the EFG consortium members is necessary anyway, independently of whether a legal structure will be set or not to determine the service provided by the host as well as the rights and obligations of both contracting parties. The hosting institution would be in charge of managing the Portal, the integration of new partners, of proposal submission and the liaison with the Commission and Europeana. No official Board would be in place, however the Service Level Agreement (SLA) could state that the hosting institution would need to seek the approval of those who have signed the SLA for certain decisions.

Pros:

- Contribution per member is time limited. Therefore partners retain a certain level of freedom. This also results in a lower entry threshold for future partners;
- Preserves the project while at the same time keeping flexibility;
- Low risk to members, again resulting in a low entry threshold for new partners;
- No labour-intensive and expensive management structure needs to be sustained.

Cons:

- If archives were to pay an annual fee, it can be expected that this fee would only cover the basic maintenance of the portal but not any further technical development of the site. The latter would simply be too expensive in the eyes of the involved archives;
- There is a limit to the amount of money which can be handled without creating a legal entity on its own (otherwise the recognition of the non profit status of the hosting institution would be threatened);
- Liability: The hosting provider has to assume responsibilities which otherwise would be assumed by a legal entity and shared by the members of the board.

5 Basic Requirements and Definitions for EFG Governance & Sustainability

The Executive Group discussed at the meeting in Vilnius in October 2009 the above presented sustainability models. While each model has its assets and drawbacks, the EG was inclined to set up a legal entity for EFG. Following this decision, ACE and DIF explored the legal and fiscal frameworks of different non-profit organisations.¹² This was done for a Dutch Foundation (“Stichting”) and a German non-profit association (“Idealverein”). Main arguments for setting up a legal entity were that the members of the board are not personally liable, and that a separate legal entity would be more flexible in attracting new partners. If the portal is run by ACE, membership would be most likely restricted to ACE archives. However, the possibility to set the EFG operation up with the help of a management board acting on behalf of ACE was also explored upon suggestion of ACE President Claudia Dillmann. This solution would be based on individual agreements between ACE and EFG members instead of forming a separate legal entity.

Tasks based on the decisions made at the EG meeting in Vilnius:

- To compare the legal and fiscal framework of a “stichting under Dutch law and a German “Idealverein (see Annex I “Legal and fiscal frameworks for associations and foundations”);
- To describe the main elements and requirements for setting up a Dutch “stichting” or a German “Idealverein” (Annex II-III);
- To describe the main elements and requirements for managing EFG without setting up a legal entity (Annex IV).

A memo was set up by ACE and DIF describing the requirements and definitions in terms of purpose, membership, representation, rights and obligations and bodies of a possible entity, independent of the actual legal form and place of registry. Hence, these requirements can be realised within the framework of all proposed models. This memo served as a basis for discussion at the EG meeting in Berlin in February 2010.

5.1 Purpose of the EFG Entity

- To sustain, maintain the EFG (European Film Gateway) Internet portal, being a result of the eContentplus Best Practice Network “EFG – The European Film Gateway”

¹² Milestone 7.2 “EFG portal: Suggestions for legal and organisational governance”

- To facilitate access to and dissemination of Europe's film heritage by way of a single domain portal;
- To aggregate film-related digital content for Europeana;
- To support film archives, cinémathèques in Europe on how to cooperate in the delivery of data and the sustainability of a joint film portal;
- To gather and disseminate knowledge about concepts and technology for cataloguing and documentation among European film archives;
- To enrich and further develop the EFG Portal by adding collections which bear witness to film works, their context of production, distribution, exhibition and reception;
- To define a content strategy and a target audience considering the specifics of film heritage content;
- To expand the EFG Consortium and its Portal by integrating new partners, who are able and willing to provide access to information and collections in the scope of EFG;
- To support cooperation with international organisations in the film heritage sector, in particular ACE and FIAF, as well as other institutions and organisations relevant in this field active in Europe;
- To foster cross-sector co-operation between the film heritage sector and libraries, museums and archives in Europe;
- To facilitate communication between the content providers and Europeana;
- To pass knowledge and services from Europeana to content providers;
- To provide a legal framework for the EFG Portal and the EFG Consortium Members contributing content in order to govern (1) relations between the EFG member archives and (2) relations between EFG and third parties;
- To define rights and obligations of institutions contributing to the EFG Portal through the statutes or contractual arrangements.

5.2 Membership Requirements

Only legal entities can become members of EFG, but not natural persons. Members have to be admitted by the EFG Consortium. Participation can take two forms: (1) full membership and (2) associated membership¹³.

Full members can be:

- Members of European associations of film archives and film heritage institutions (ACE and FIAF) and

¹³It was discussed at the EG meeting in Berlin in February 2009 whether EFG membership should be restricted to ACE and FIAF members. It was decided to formulate this as a desire and to include a respective clause in the statutes or the agreement. The EG will have to decide whether it should be a "must be" clause.

- European film archives, cinémathèques (legal entities) and relevant institutions which hold film and film related material and which are not represented by an association/legal entity and
- EFG project partners as defined by the Grant Agreement ECP-2007-DILI-517006 (EFG), whereas participation is limited to those partners defined as “Content providers”.

Associated members can be:

- Any of the above and
- Any other organisation outside ACE or FIAF pursuing the same goals as the EFG entity, as long as a qualified majority of full EFG members agrees to the associated membership of the organisation.

5.3 Rights and Duties

EFG members have both the right and the duty to contribute content to the EFG Portal and have access to their online services and sites facilitated through being represented on the EFG Portal. Rights and duties are regulated in the statutes or – in case no legal entity will be set up – in agreements. Beyond that and in particular,

Rights of members of the EFG entity are:

- The right to vote on issues brought up by the EFG Consortium;
- The right to raise issues of strategic importance to the EFG Portal before the EFG Consortium;
- The right to elect the members of the Executive Group (in case such a body will be set up);
- The right to be elected into the Executive Group (in case such a body will be set up);
- The right to review the annual accounts and activity report;
- To discharge the Executive Group of liability.

Duties of the members of the EFG entity are:

- To sustain the EFG Portal by taking joint financial responsibility in co-operation with the hosting institution through an annual membership fee;
- To provide any means necessary to make digital collections accessible through the EFG Portal and maintain accessibility to their online services;
- To review the annual accounts and activity report;
- To regularly convene in meetings of the EFG Consortium as scheduled by Executive Group (in case such a body will be set up);
- To discharge the Executive Group of liability;

- To promote the EFG Portal to its national network.

Rights of associate members are:

- The right to attend meetings of the EFG Consortium

Duties of associate members are:

- To provide any means necessary to make digital collections accessible through the EFG Portal and maintain accessibility to their online services.

It was discussed at the Berlin meeting whether EFG should also accept associate members. While the majority of the EG agreed on this distinction, the criteria and the added value of full membership needed to be further developed. This depended on the model to be chosen for EFG. If an association or foundation was to be set up, associate members shall have the right to be represented in the EFG Consortium / Board, but cannot be elected in the Executive Group. If ACE would own and run the Portal, full membership would probably be restricted to ACE and FIAF members. One could also consider that only full members can be beneficiaries in follow-up projects.

5.4 Membership Fees

Membership fees will be there for financing the activities of the organisation and to host and maintain the EFG Portal. The costs for maintaining the Portal, especially if it is intended to go beyond a mere technical supervision and maintenance, will be very much dependent on the desired scope of activity. The extent of the activity of the organisation should be discussed within the EG, which should make a suggestion to the EFG Consortium which then finally should decide.

5.5 Intellectual Property of the EFG System, Usage of Data Aggregated, Liability

Regulations concerning the intellectual property of the IT developments made within the EFG project during the duration of the Best Practice Network and IT developments made after the end of the Best Practice Network should be regulated in a separate agreement: The should neither be part of the statutes, nor a Service Level Agreement. The same is valid for regulations concerning the property of the aggregated metadata, liability for data provided and content made accessible via the EFG Portal. Instead, there should be separate written agreement(s) between the project participants.

5.6 Organisational Structure

Board of Members

Every EFG member has a seat in the Board of Members. The Board is charged in particular with appointing the members of the Executive Group. It discusses and decides on all activities regarding the EFG Portal, including the setting up of membership fees. Meetings will be held as often as the Executive Group gathers a meeting, but at least once a year. A member can be represented by another member in the meeting, holding a written proxy to that effect. Each member will have one vote, decisions are made with the majority of votes cast in a meeting of the members present or represented. The statutes or agreement must also contain provisions in case voting results in a tie. The Board of Members appoints and dismisses the Executive Group.

Executive Group (EG)

The Executive Group is a subset of the Board of Members which legally represents EFG. The actual number is to be determined by the Board of Members that appoints the EG. Amongst the members of the EG there should preferably be representatives of the founding members of the EFG project (content providers), one representative from the Executive Committee of ACE, and one representative from the hosting institution. The EG may appoint a chairperson, a secretary general and a treasurer amongst its members. In case the EFG Portal will be sustained on the basis of Service Agreements only, the hosting institution legally represents EFG. Every member has one vote, resolutions will be adopted by the absolute majority of the votes cast in a meeting. Details on voting have to be regulated in the statutes /agreement.

Relations with ACE

If EFG would become a service by ACE, the relations to the Association should be defined. In terms of decision-making, a strong independence of the EFG management board from the ACE Executive Committee or General Assembly would be necessary in order to avoid unnecessary delays. A yearly activity report to the ACE Executive Committee could be envisaged, as well as a mechanism for the ACE Executive Committee to make policy or strategy recommendations to the EFG management board.

Liaison Europeana

The cooperation with Europeana should be part of the statutes or the agreements.

5.7 Accounts and Audits

The Executive Group (or the hosting institution) is required to keep records of all matters which relate to the activities of the entity, to draw up and adopt a budget, a balance-sheet, a statement of the income and expenditure and a report on the entity's activities every year.

5.8 *Dissolution*

The Executive Group is authorised to wind up the organisation. The dissolution shall be reported to the respective Register. After the winding up, the organisation will be liquidated by the members of the Executive Group. After the liquidation, the organisation's books and records will remain in the keeping of the person to be designated by the liquidators for the period prescribed by law.

6 Contracts for EFG: Terms of Service Agreement and Data Provider Agreement

After this more elaborated evaluation of the inclinations of setting up a legal entity, the ongoing discussions brought up more and more concerns about this option. Setting up a legal entity with a properly working Board would mean a lot of work for the involved archives. More importantly, a legal and in a way political entity for EFG consisting of around 15 European archives might be considered a kind of (possibly unnecessary) parallel to ACE, where currently 40 film archives are members. Traditionally, ACE initiates projects that are carried out by European film archives and therefore this does not need to be done by a separate entity. So, after weighing the pros and cons of a legal entity, it was decided that the contra arguments outweigh the pros, leaving the archives in favour of a less time-consuming and bureaucratic variant to sustain the EFG Portal. Therefore, the option to develop bilateral Service Level Agreements came into the focus of discussion in the following meetings. After discussing and defining the basic requirements for such a Service Level Agreement, which eventually was called "Terms of Service Agreement", the Executive Group decided the following at the meeting in Berlin:

1. Deutsches Filminstitut will continue to host EFG Portal after the end of the project;
2. EFG Portal will be sustained along the lines of a Service Agreement (ToSA) between the EFG Consortium Members and Deutsches Filminstitut – DIF e. V. ;
3. A Data Provider Agreement (DPA) determining the rights and obligations of EFG and Europeana when using the metadata (and previews) delivered by EFG content provider is necessary. This DPA, just like the Terms of Service Agreement, needs to be mutually signed by DIF as the legal entity representing EFG and each content provider.

The Terms of Service Agreement and the Data Provider Agreement were exhaustively discussed and refined. The following table shows the different steps that were taken before both agreements could become a final draft, which could be presented to all EFG content providers:

May 2010	1st draft ToSA and DPA – Feedback from CF and EYE
29 June 2010, Bologna	Discussion of the 2nd draft of TosA and 2nd draft of DPA with the Executive Group
25 August 2010, Frankfurt	Discussion of 3rd draft ToSA and 2nd draft DPA within the EG
31 August:	Circulation of 4th ToSA and 3rd DPA drafts for final comments to the EG

25 September	Circulation of 5th draft ToSA and 4th DPA to all EFG content providers
01 October	Discussion in the EFG PBM
20 October	Written feedback from all content providers
15 November	Final approval and commitment to sign the ToSA
By mid December	Review of the TosA Agreement by German Lawyer

Legal review of the final TosA draft is currently underway. Should the result yield changes to the current text, the draft needs to be fed back to the consortium for final approval and subsequent signing. Approved and signed TosA Agreements are expected during the course of the first half of 2011. The ultimate deadline for the signatures is the 31 August 2011, the last day of EFG's lifetime as a Best Practice Network. Until this day, the EFG Grant Agreement governs the relations between the partners. After that, the ToSA shall become effective for this purpose.

In the second half of 2010, it became apparent that the Europeana Foundation seeks to replace the current Europeana Data Provider Agreement with a new DPA. The most important change will be the removal of the restriction to Europeana's and third parties' use of metadata only for non-commercial purposes. Due to this substantial shift, the EFG-internal negotiations of the EFG Data Provider Agreement were put on hold. Due to the fact that the EFG-DPA was derived basically from the the "old" Europeana DPA soon to be replaced, it was considered futile to continue with the discussions on this basis. It needs to be continued after the final draft of Europeana's new DPA is finished.

Consequently, extensive efforts need to be put in the negotiation and consensus-building for a new EFG-DPA in line with the new Europeana DPA in 2011. There is a possible risk that this discussion does not yield satisfactory results by the project's end in August 2011. If it materializes, the consequences may reach as far as certain sets of data not being supplied to or being removed from Europeana, should the respective data provider refuse to agree to the new DPA.

However, this does not necessarily threaten the contribution of data during the lifetime of the EFG project. To date, a DPA does not need to be in place because the EFG Grant Agreement and Description of Work govern the relations between archives, EFG and Europeana. The only exception is the contribution of the Filmoteka Narodowa (Warsaw) which contributes metadata to EFG and Europeana without being a formal member of the EFG project and consequently without being a "beneficiary" in the sense of the EFG Grant Agreement. Consequently, the current EFG-DPA has already been signed between DIF and the Filmoteka in order to guarantee legal safeguard for both sides.

6.1 The main elements of the EFG Terms of Service Agreement

The TosA covers the rights and obligations of DIF and the content providers. The fifth and current draft of the document can be found as *Annex V* to this deliverable. The following list sums up the main points that are covered in the ToSA.

- 1) EFG Mission Statement: describes the main objectives of EFG Portal as well as the commitment for further development;
- 2) Purpose of the Agreement: The ToSA describes and defines the service provided by Deutsches Filminstitut – DIF to ensure the operation and maintenance of the EFG system from 1 September 2011 on;
It defines the costs and the time period for providing the service the contracting partners have agreed upon as well as the rights and responsibilities of DIF and the other members of the EFG Consortium;
- 3) Definitions: describes all relevant terms which are used in the ToSA;
- 4) Responsibilities of DIF : describes the service to be provided by DIF, e. g. continued operation of EFG system, hard & software maintenance, cooperation with IT-service, basic data management and editorial management of EFG homepage, financial statement, annual reporting;
- 5) Budget and Annual Membership Fee: The EFG Consortium Member commits itself to pay an annual fee. The fees will be re-assessed annually. The calculation of costs is annexed to the ToSA;
- 6) Integration of Further Partners: The costs for integrating new partners are not subject of the ToSA. The integration of new partners need to be funded by other sources. EFG Consortium Members can object against the application within a certain timeframe;¹⁴
- 7) Responsibilities of the Content Provider: describes how the metadata and authority files have to be delivered to EFG. Detailed information is provided in the [EFG Data Provider Handbook](#);
- 8) Liability Disclaimer
Metadata: Each member of the EFG Consortium is responsible for its metadata provided to the EFG system. Any third party claims due to copyright violation will be dealt with by the respective member, provided that these third party claims are due to the non-respect by the members of its obligations or its guarantees in the matter of copyright clearance.
Editorial content: DIF is responsible for EFG editorial content published on EFG Portal through the content management system, except for content which is provided in languages other than English.¹⁵

¹⁴ The main criterion for a new partner who would like to join EFG will be whether or not the candidate complies with the EFG Mission Statement. It was also decided that the new member has to fill in an application form describing the collection the new partner wishes to contribute to EFG Portal.

¹⁵ The liability disclaimer is one of the most important paragraphs of the ToSA. Its main purpose is to exclude joint liability as well as liability of DIF as operator of the Portal. It has to be checked whether under German

- 9) Duration of the ToSA: It enters into force on 1 September 2011 and shall remain effective until 31 December 2012. The agreement will be renewed automatically for a period of 1 year starting on 1 January each year unless terminated by one of the parties.
- 10) Termination: In case of termination, DIF will be responsible for removing the data within a certain timeframe.¹⁶ If a member terminates the ToSA and leaves data in the EFG system, DIF will assume responsibility for these data. The EFG consortium will not cover any costs caused by a member's exit.
- 11) Modification of the Agreement: Any amendment of the ToSA needs the consent of 2/3 of the members who then has two months from the date of reception of the notice to accept or reject the new agreement.
- 12) Applicable Law and Settlement of Disputes: German Civil Code "Bürgerliches Gesetzbuch der Bundesrepublik Deutschland". Place of jurisdiction of the courts in Frankfurt am Main, Germany.

6.2 Risks and Rewards of a Terms of Service Agreement

The decision to sustain the EFG Portal by a bilateral ToSA does not only have advantages. As listed under chapter 4.3.1, this model also has a number of drawbacks. An evaluation of the pros and cons listed earlier, was further elaborated in this chapter.

Liability:

The question of liability is crucial. Regulations were fixed in the Terms of Service Agreement, which excludes joint liability and the liability of Deutsches Filminstitut as the operator of the Portal for actions or claims made by third parties due to the non-observance by an individual EFG Consortium Member of its declarations and guarantees given in the agreement. Legal advice is required to check whether the regulations serve this purpose before the agreements will be signed.

Further development:

The ToSA guarantees a basic maintenance of the web portal, but no further development. EFG runs the risk of losing the space the project occupied as an aggregator for film content and to become a "dark aggregator" when the portal is no longer accessible to the public. In order to develop and offer new services for the user and to integrate further partners, EU funded follow-up projects are necessary.

Higher flexibility and lower costs:

Maintaining the service on the basis of agreements without setting up a separate legal entity means less administrative burden and therefore lower costs. Communication between the

¹⁶ law the institution running a portal is responsible for its content, as it is the case in some European countries like France.

host and the individual member is assured due to the fact that each partner has to provide a contact person for EFG. Since the costs for basic maintenance are moderate, it is easier to get the commitment from the actual project partners, and it is also easier to attract new ones.

6.3 The main elements of the EFG Data Provider Agreement (DPA)

Purpose of the DPA is to determine the rights and obligations of DIF for using the data delivered by the EFG content providers. It also determines what the Europeana Foundation can do with these data. Questions of liability and responsibility in case of copyright infringement have to be addressed. The DPA was mainly drafted from the Europeana Data Provider Agreement.

DIF should be authorized by content providers to sign the Europeana Data Provider Agreement with Europeana Foundation. It is understood that DIF cannot confer more rights to Europeana Foundation than those conferred by the content provider to DIF. Since content is not delivered to EFG Portal, the DPA only covers the use of metadata and, to some extent, also previews. *For the fourth draft of the DPA please see Annex VIII.*

- 1) Preamble: describes the purpose of the DPA;
- 2) Definitions: describes all relevant terms which are used in the DPA;
- 3) Licence of rights for metadata from content provider to DIF: defines what DIF is allowed to do with the metadata: The content provider grants DIF a non-exclusive, worldwide, royalty free licence on copyright, related rights and the sui generis database rights for the term of the agreement, whereby DIF shall have the right for non-commercial purposes only to publish, store, distribute and translate the metadata, create adaptations, summaries or extracts thereof for the purpose of displaying these data in the EFG Portal and Europeana.eu¹⁷;
- 4) Licence of rights for previews from content provider to DIF: defines what the DIF can do with previews¹⁸;
- 5) Licence of rights for metadata from content provider to Europeana Foundation: The content provider confers DIF the right to allow Europeana Foundation all kind of uses which are specified in point 3 above, for non-commercial purposes and for displaying them on Europeana.eu only;

¹⁶ Matched and merged cannot be removed in all cases.

¹⁷ § 2: The provider of the original metadata will receive a copy of the translation. The rights to the translated version of the metadata belong to the data Provider who produced the translation.

¹⁸ § 3: If the preview is submitted as URI pointing to an embeddable player or viewer, the embedded player or viewer will be made accessible on EFG Portal and the URI will become part of EFG Data. DIF shall have the non-exclusive right to make available the embedded preview. The preview itself will not be stored and will not become part of EFG Data. If previews submitted as a file it will be resized if necessary and become part of EFG Data. DIF must give proper attribution of data provider submitting the previews.

- 6) Licence of rights for previews: The content provider confers DIF the right to allow Europeana Foundation all kind of uses that are specified in point 4) above, for non commercial purposes and for displaying them on Europeana.eu only;
- 7) Licence of rights for content: No content will delivered to EFG and Europeana. However the copyright status of the content must be indicated;
- 8) No third party use of the content provider's metadata;
- 9) Obligation of the content provider: the content provider warrants that the use of the metadata (and previews) based on content from the provider's website, do not constitute a violation of IPR of third parties, of personality, privacy, publicity or other rights, or an infringement of public order or morality;
- 10) Obligations of the hosting institution: DIF must give proper attribution on EFG Portal of the content provider who submits metadata and/or previews. DIF has to collaborate with the content provider for the correction, update and removal of the data provided. In case the agreement is not it shall be the responsibility of DIF to remove the data from EFG Portal within a limited timeframe. EFG holds the content provider free and harmless of any action, recourse or claims made by any third party due to the non-observance of DIF's obligations under this agreement;
- 11) Liability disclaimer: Each EFG content provider is responsible for its metadata and previews delivered to the EFG Portal. Neither DIF as operator of the Portal nor the content providers collectively will be liable for the accuracy, completeness of the data nor the re-use in obscene material etc. Third party claims due to copyright infringement will be dealt with by the content provider individually;
- 12) Duration of the agreement: 1 September 2011 until 31 December 2012. The agreement will be renewed automatically for a period of 1 year starting on 1 January each year unless terminated by one of the parties;
- 13) Termination: The DPA can be terminated by each party on written notice under the conditions specified in § 14 "Termination";
- 14) Modification: the same conditions apply as specified in point 10) of the ToSA;
- 15) Applicable law, settlement of disputes: see point 12) of the ToSA.

6.4 EFG DPA: Remaining Points of Discussion

While the ToSA is considered almost final, although some adjustments might be necessary after the revision by the German lawyer, there is still a need for discussion concerning third party use of metadata. This is especially true with regard to the expected changes to the Europeana DPA ahead.

In the final version of the Europeana Aggregator Agreement, the Europeana Foundation reserves itself the right to allow third parties a non-exclusive, world wide and royalty free

right for the non-commercial re-use of the metadata.¹⁹ Ideally, this licence of right has to be transferred from the EFG content provider to DIF and from DIF to Europeana Foundation.

For Europeana, the re-use of metadata by third parties is an important means to create value, since the value is not in the single artefact, but in its relationships it has to other artefacts from different cultural domains. This contextualisation can attract also search engines and semantic operators looking for new ways to extract value out of aggregated content, metadata and user profiles.²⁰ Therefore Europeana is looking towards publishing aggregated metadata as linked open data and to make the material available to the user wherever he/she is: on Portals, API's, via partnerships etc. (see *Annex IX Europeana Licensing Framework*)

In principal, although EFG content providers could also profit from enriched metadata to be fed back to their institutions, some partners have reservations about the re-use of EFG Data by unidentified third parties and want to restrict the use of EFG Data to EFG and Europeana. However, for the future collaboration with Europeana, it is important that both documents do not differ in essential points in order for EFG to be able to sign the Europeana Data Aggregator Agreement. Europeana and EFG will intensify their communication to find a solution agreeable for both parties.

One step in this direction is a workshop organised by Europeana in The Hague on 2 December where the risks and rewards of open linked data will be discussed. ACE, DIF, Luce, EYE and CF will participate in this workshop. The results will be fed back to the EFG Consortium and hopefully bring some compromise.

An important line of possible compromise can be seen in the fact that Europeana leaves the decision on which metadata actually to contribute up to the content providers (meaning: "Only contribute data which you actually want to contribute under the new Europeana DPA"). In principle, EFG's architectural setup enables the project to function as a "filter" for those types of metadata that the archives deem fit for being supplied to Europeana also under the circumstances of the new Europeana DPA. At the moment, such a filter is already in place: While EFG gathers extensive data about film works, persons, events and objects and uses a sophisticated data model for storing this information, it currently only supplies data about objects according to the DC-oriented, "flat" Europeana Semantic Elements (ESE) schema. This already constitutes a considerable "dumbing-down" of the complexity of data provided by many archives. The EFG project management currently investigates whether this filter mechanism is deemed sufficient by the archives. Initial feedback by some EFG partners (e.g. EYE Film Institute Nederlands, Danish Film Institute) indicates that even more

¹⁹ § 4 of the Europeana Data Aggregator Agreement, final version 02.04.2010.

²⁰ see Harry Verwayen, Business model innovation in digital libraries: the cultural heritage sector. In: Mel Collier (ed.), Business planning for Digital Libraries. International Approches, Leuven University Press 2010, p. 23-33.

extensive data could be delivered to Europeana also under the new DPA. Feedback from other partners (e.g. Cinémathèque Française, Cinecittà Luce) indicates that sticking to the current ESE mode of data contribution, or even less, may be necessary.

The different positions of archives in the EFG Consortium arises from their different setups (e.g. public vs. private) and different institutional business models in place. While some partners are financed entirely through public funding, several other institutions at least partially rely on revenue from the commercial market. This also means that some partners license metadata to private ventures for commercial purposes to Video on Demand platforms on the internet (e.g. film-related data such as titles, formats, crew & cast, etc.). Putting this data freely on the web, fully retrievable and well-structured according to the Europeana Data Model, is considered a substantial economic risk by these archives once the “non-commercial” clause of the old Europeana DPA is removed.

This mixed situation might even make customized, archive-specific filtering via the EFG-Europeana-interface desirable. This possibility exists in principle. However, it has not been considered yet in the current setup of the project and therefore is not included in its Description of Work. If such a customized data delivery solution is deemed desirable by the consortium, an evaluation of the feasibility and the efforts necessary for technical implementation needs to be initiated.

7 Outlook

Considering the feedback on the ToSA received until now, there is a strong commitment from the Consortium Members to sign the agreement in order to guarantee the maintenance of the EFG Portal. The same is true in principle for the EFG DPA based on the “old” Europeana DPA which defines the conditions for using the member’s data in EFG and Europeana. However, this consensus needs to be negotiated and achieved again with the arrival of the new Europeana DPA. Extensive efforts need to be invested in this task during the remaining months of the project in 2011, and there is a risk of this process not being completed in a proper manner before the end of the project. In any case, both agreements – ToSA and EFG-DPA – are the cornerstones for the operation of the Portal and good cooperation.

A major conclusion for both project management, Europeana and possibly also the Commission’s support programmes may be seen in the necessity of already fixing in advance the metadata license under which data is contributed to Aggregators and Europeana. By doing so, most of the issues in EFG’s WP 7 discussion around the Data Provider Agreements would not need to be addressed at all. The most compelling way to provide for this may even be the stipulation of provisions in the Community’s Digital Library funding programmes, making a certain license for contributed metadata mandatory for the conclusion of a Grant Agreement. By doing so, the Commission’s programmes (or any other Community funding body relevant in the field) would provide for greater reliability and predictability for all parties involved: Content providers, Aggregators, Europeana and last but not least the Commission itself. This could help foster the effectiveness and efficiency of projects launched under these programmes.

However, the agreements should not be considered as final achievements, but as an intermediary step in the development of the Portal and the future collaboration with Europeana. One of the main tasks of ACE and DIF in the next months will be to explore funding possibilities which would allow the EFG Consortium to develop content strategies, to enrich and contextualise the material, in order to make the EFG Portal and Europeana.eu even more attractive for the user and to become a reliable source of knowledge.

At the same time, the acquisition of new partners continues. The more film archives and members of the ACE network will join the the EFG Consortium, the more likely it becomes that EFG could be turned into a service of ACE – just as The European Library (TEL), which is a service of CENL.

Following the intensive exchange of views within the Executive Group, EFG's profile should be sharpened. The EFG Portal is unique in the content it provides and the partners who participate: European Film Archives. Film Archives are entrusted with the world's moving image heritage, and it is worth stressing the uniqueness and specificity of film as an important facet of the authentic memory of the 20th century. The digital environment of the EFG Portal offers a perfect opportunity to show and make these images and sounds available to the user, and the main objective of the EFG Portal should be to serve as a main reference and access point for academics, teachers, professional researchers, the creative industry, cultural heritage institutions and all those who are interested in film and film history.

Annex I: A Comparison of Legal and Fiscal Frameworks for Associations and Foundations (“Stichting”) in the Netherlands and Germany²¹

	Netherlands	Germany
Rights of association guaranteed by law	Yes (Articles 1 and 8 of the Constitution).	Yes (Article 9. (1) of the Constitution). The legal position of the association is governed by Article 21 of the Civil Code (BGB) and by the Law on Associations.
Basic definition	In accordance with Article 2.26 of the BW (Burgerlijk Wetboek – Civil Code) an association is a legal person composed of members and constitutes for a precise purpose other than laid down for cooperatives and societies (types of associations in Dutch law). It is constituted by a multilateral act and cannot share profits among its members.	No legal definition. In legal practice and theory an association is defined as permanent and structured group of persons – natural or legal - who form an entity on a voluntary basis to achieve a common goal object. The communality of the members must be expressed at least by a common denomination and in a body which represents them.
Minimum of founding members	One	Two, at least seven when the statutes are registered.
Types of associations	Associations under private seal, associations by notarized act, stateless associations (international associations not under any specific legal jurisdiction, not provided for in law but recognized by the law).	The Civil Code (BGB) governs Idealvereine (Art. 21) and commercial associations (Art. 22). The latter are of only marginal importance and require authorization by the public authority concerned. The result is that in Germany the concept of associations is more or less restricted to non-profit organisations, irrespective of whether they have legal status.
Membership nationality requirements	No requirements	No requirements

²¹ Cf: Communication from the Commission: Promoting the role of voluntary organisations and foundations in Europe: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:1997:0241:FIN:EN:PDF>; Gemeinnützigkeit in Europa –Niederlande: http://www.cox-steuerberatung.de/pdf/europa_005.pdf ; BMJ Leitfaden zum Vereinsrecht http://www.bmj.bund.de/files/-/3759/Leitfaden_zum_Vereinsrecht_barrierefrei.pdf;

Acquisition of legal personality	By notarized act: Registration in the trade register of chamber of commerce.	By entry in the register of associations in the court local to the head office.
Legal capacity	Full legal capacity	Full legal capacity
Statutes	Yes	Yes, for registered associations (BGB 57 and 58)
Registration requirements	None, except for associations constituted by notarized act. See "acquisition of legal personality".	
Commercial activities	Possible, but the purpose of a foundation cannot be to make profits and to distribute them among the members.	Possible, if they are purely ancillary, do not constitute the main object of the association and play a second role. Ancillary activities other than fund raising are allowed if their purpose is to help in the performance of activities to which tax conditions are attached. The income, profits and assets arising from other activities of an association which is recognized as public utility are liable to ordinary tax.
Disposal of assets on liquidation	According to the procedures laid down in the statutes. If there are no claimants to the remaining assets, they revert to the state which will allocate them in accordance with the object of the legal person as far as possible.	Assets pass to the non profit association named in the statutes. If there are no claimants to the remaining assets, they revert to the state.
Taxation		
Indirect Tax		
	Article 13 of 6 th VAT Directive. All exemptions concerning associations apply.	Article 13 of 6 th VAT Directive. All exemptions concerning associations apply.
Other specific exemptions	There are several exemptions for goods and services supplied by foundations, provided that the exemptions do not produce restrictions on competition and that the organisation does not attempt to distribute profits to	None

	the members.	
Direct Tax		
Income Tax	In general, associations and foundations are subject to common law, no special tax for associations (legal persons). An association may be subject to corporation tax if it is carrying on a business which competes with activities liable to corporation tax, in respect of the profit which it obtains from this activity.	General position: Associations are liable for corporation tax. The tax allowance is 3835€.
Recognition for tax purposes	No exact definition. Article 24. (4) provides for tax exemptions for recognized organisations which exist for the public good. These are completely exempt from corporation tax if the profits in one financial year are less than 6000€ or if the profit for the past four years is less than 29.500€, provided that there is no profit motive or that the profit motives are secondary and the benefits are only used for the public good (Article 5 of the law on corporation tax of 20 August 1971). Examples: Charitable institutions, libraries, retirement funds etc.	Tax concessions are granted to associations whose statutes and effective management are exclusively inspired by altruism and the general good and which are directly engaged in a philanthropic or religious activity (Articles 51 to 68 of the tax code). Tax concessions are not confined to associations, but are granted on the same conditions to any legal persons within the meaning of Article 1 of the law on corporation tax.
Criteria for the recognition	No definition of "public good". According to the law, the public good is the opposite of the good of an individual or restricted group.	The tax law affords such benefits only if the non-profit organisation is an entity within the meaning of the corporation tax law, Körperschaftsteuergesetz . The only entities taxable under the corporation tax law without a minimum capital requirement are incorporated associations,

		eingetragener Verein, e.V. It must be clearly apparent from the statutes and the association's administration that in its actions it is pursuing an objective for the public good. The statutes must state very precisely the object; the way in which the object is attained.
Gifts by individuals	Gifts by individuals to Dutch associations/foundations are tax-deductible at a rate of 1% to 10% of taxable income on sums exceeding 55€ per year and per donor. Gifts made under notarized contracts for at least 5 years are tax-deductible in full in all cases where they are for the benefit of a Dutch association composed of at least 25 members (in which case public good is not a criterion), provided that such gifts are in the form of an annuity, that the association has full legal capacity and that it is not liable for corporation tax.	Gifts made by a natural or legal person liable to tax in Germany to an association recognized by the tax authorities as being of public utility are deductible at a rate of 5% to 10% of the donor's taxable income.
Gifts by companies	Gifts made to associations or foundations registered in the Netherlands which have an academic, religious, charitable cultural object or one for the public good (including political parties) are tax-deductible when exceeding a total of 227€ up to a max. of 6% of taxable income.	Companies may deduct gifts up to 0.2% of the sum of total turnover and salaries and wages paid.
Gifts to non-resident associations/foundations	The same regulations apply to associations registered abroad, specified by the ministry of finance.	Such gifts are not deductible.
Accounts and Audits		
Accounts	In accordance with BW 2 10 (2), the board of managing directors is obliged to keep records of the foundations financial position	Annual profit-and-loss account vis-à-vis members (Art 27. (3) and Article 666, BGB) and the tax authorities (Art. 63 of the Tax

	<p>and of all matters relating to the foundation's activities. Within six months after the end of the financial year, the balance sheet and a profit-and-loss-account have to be drawn up by the board of managing directors.</p>	<p>Code) If the association is engaged in a commercial activity, it is required by commercial law to keep accounting records in the same way as businesses. Two sets of accounts must be presented: one for taxable activities, the other for non-taxable activities.</p>
<p>Auditing /Monitoring</p>	<p>Internal: In accordance with the statutes External: The government authorities may ask the foundation for information. If cooperation is not forthcoming, the President of the Court in charge can order the documents to be shown to the government authorities. At the request of the latter, or any other person concerned, the Court can order the directors to be suspended or dismissed and can appoint successors.</p>	<p>The Administrators are responsible vis-à-vis the General Assembly for keeping proper accounts. The statutes may provide for a supervisory body and its responsibilities. The task of auditing associations has passed to the tax inspectorate, which is regularly recognizing and checking their non-profit-status.</p>
<p>Personal liability</p>	<p>In general, the administrators are not personally liable.</p>	<p>In general, neither members nor board members are liable for liabilities of the incorporated association. This applies for contractual liabilities as well as for those arising from tort (§§ 26(2), 31 Civil Code BGB) providing a corporate veil for those engaged in activities of an incorporated association. If an association acts beyond these limitations for economical activities, personal liability for its members may follow.</p>

Annex II: Incorporation of a Foundation Under Dutch Law (“Stichting”) to Manage EFG Portal

Annex II and III describe the basic requirements in terms of membership, representation, rights & and duties of the consortium, voting, dissolution of a) a Dutch Stichting and b) a German non-profit organisation.

Since Executive Group of EFG decided at their meeting in Vilnius (7 October 2009) to set up a separate legal entity for EFG, the legal and fiscal implications of different non-profit organisations have been explored (M 7.2 EFG portal: Suggestions for legal and organisational governance). Based on the positive experience of CENL (Conference of National Librarians) and the EDL Foundation, setting up a Dutch foundation (“stichting”) was one of the possibilities evaluated.

This paper describes the building blocks which can be used to formulate the statutes of a Dutch stichting. [Articles of Association of the Europeana Foundation](#) ²²were used as reference document.

1. Name, registered seat and office address:

“Stichting” has to be part of the name. The head of the office must be in the Netherlands, while it is not a requirement to have its actual place of business in the Netherlands.

2. Object

The object clause must contain a description of the principal activities: It is not necessary in the Netherlands that a foundation serves a purpose of general interest, but its official goal cannot be to make profits and to distribute them to the members, neither others, the latter with the exception of payments of a charitable, idealistic or social purpose. However, founders or representatives may have a salary paid or reasonable expenses reimbursed by the foundation.

3. EFG’s purpose may be:

- to sustain, maintain and further develop the EFG (European Film Gateway) Internet portal, being a result of the eContentplus Best Practice Network “EFG – The European Film Gateway”

²² The statutes of the Europeana Foundation are under revision, however, the amendments do not affect the main principles and requirements.

- to facilitate access to Europe's film (and audiovisual) heritage by way of a single domain portal;
- to make film heritage (audiovisual) heritage available through Europeana
- to support film archives, cinémathèques and (audio-visual archives) in Europe on how to cooperate in the delivery of content and sustainability of a joint film portal;
- to stimulate and facilitate initiatives aimed at bringing together existing digital cinematographic (audiovisual) content;
- to support and facilitate digitisation and dissemination of Europe's cinematographic and audiovisual heritage.
- to support cooperation with international organisations in the film heritage and audiovisual archive sector, in particular ACE and FIAF, and any other institutions relevant in this field active in Europe
- to provide a legal framework for the EFG portal and the EFG consortium members contributing content in order to govern (1) relations between the EFG member archives and (2) relations between EFG and third parties

4. Participants

EFG Portal will have Participants. Participants have to be admitted by the Executive Committee. Participants can only be:

- members of European associations of film (audiovisual) content holders (ACE, FIAF, restricted to European archives only?)
- European film archives, cinémathèques (legal entities) and relevant institutions which hold film and film related material and which are not represented by an association/legal entity
- the founding members of EFG (EFG project partners, archives only)
- the hosting institution
- (Associate Participants: not conforming to full participant criteria, e.g. representatives of Europeana, sponsoring and funding organisations, commercial partners etc

Participants are obliged to pay the foundation a membership fee and are expected to actively contribute to projects.

Question: Should there be a limit to the number of Participants?

5. Board of Participants = Meeting of Participants

Every participating institution automatically has a seat in the Board of Participants. The Board is charged in particular with appointing the members of the Executive Committee/Executive Group and discusses all matters regarding EFG portal, including the annual budget and annual accounts. Meetings will be held as often as the chairperson of the

Executive Committee convenes a meeting, but at least once a year. A Participant can be represented by another staff member of its institution, holding a written proxy to that effect.

6. Executive Committee / Executive Group

The Statutes must include the manner of appointment and dismissal of its Executive Committee and may also contain provisions regarding the suspension of a member of the EC.

The EC is a subset of the Board of Participants. It has the legal power in the foundation and approves the annual budget and accounts. The actual number (5-9) is to be determined by the Board of Participants that appoints the Executive Committee. The Executive Committee is also entitled to amend the Statutes, which, however requires the approval of the Board of Participants.

Amongst the members of the Executive Committee there should preferably be representatives of the founding members of EFG project (content providers), one representative of the Executive Committee of ACE, and one representative from the hosting institution. The EC may appoint a chairperson, a vice-chairperson, secretary and a treasurer amongst its members.

Personal liability: In general the members of the Executive Committee of a foundation are not personally liable for the consequences of juristic acts, debts, etc. of the foundation. If the foundation is subject to corporate income tax, each of the EC members may be held personally liable.

7. Voting

Each member of the Executive Committee has one vote. Majority requirements / the quorum should be fixed in the statutes.

8. Accounts and Audits

The Executive Committee is required to keep records of the foundation's assets and of all matters which relate to the foundation's activities. The Executive Committee has to keep the relevant files in such a way that reflect the foundation's rights and obligations. they is required to draw up and adopt a budget, a balance-sheet, a statement of the foundation's income and expenditure and a report on the foundation's activities every year, within six months of the end of the financial year.

Within six months of the end of the financial year, the foundation is required to draw up and adopt every year a budget, a balance-sheet, a statement of the foundation's income and expenditure as well as a report on the foundation's activities. Publication of the balance sheet and the statement of income and expenditure is not required by law, unless the

foundation conducts an enterprise with a certain turnover. The appointment of an auditor is not obligatory. The Executive Committee is required to keep all the documents referred to for a period of seven years.

9. Dissolution

The Executive Committee is authorised to wind up the foundation. The dissolution shall be reported to the Trade Register. After the winding up, the foundation will be liquidated by the members of the Executive Committee. After the liquidation, the foundation's books and records will remain in the keeping of the person to be designated by the liquidators for the period prescribed in law.

Annex III: Incorporation of a German Non-Profit Association – “Idealverein” for EFG

Legal framework: Civil Code (Bürgerliches Gesetzbuch – § 21ff BGB)

Fiscal framework: Tax Code (Abgabenordnung §§ 51 – 68 AO)

1. Main characteristics of a non-profit association²³ under German law

- A permanent and structured group of persons – natural or legal – who form an entity on a voluntary basis to achieve a common purpose.
- The association should be organized as a corporation and must have an Executive Committee/Board of Directors.
- The association should exist independently from its changing members.
- Legal capacity is acquired by entry in the register of associations (“Vereinsregister”) at the local court nearby the head office.

2. Requirements for recognition as a tax-privileged body / tax-exempt status

- Tax concessions are only granted to associations whose statutes and effective management pursue a public good and which are directly engaged in charity or religious activities.
- The statutes have to state very precisely the purpose and the way in which the purpose is achieved.
- Commercial activities have to be purely ancillary, since the main purpose of a non-profit association cannot be to make profits and to distribute them to the members. Ancillary activities other than fundraising are allowed only if their aim is to help in the performance of activities to which tax privileges are attached. The income, profits and assets arising from other activities of an association which is recognized as public good are liable to ordinary tax.
- In case of liquidation or loss of the tax-exempt status, the statutes must include the provision that the remaining assets pass to the non-profit association named in the statutes. If there are no claimants to the remaining assets, they revert to the state.
- The management of the association must be in accordance with the statutes.

3. Minimal requirements regarding the statutes of a non-profit association (§ 58 BGB)

The statutes **must** contain the purpose, the name, the seat as well as the declaration that the association will be registered (§ 57 BGB)

The statutes **should** contain provisions

- on the admission and the dismissal of members
- if and to which amount the members have to pay contributions to the association
- on the formation of the executive committee/board of directors
- on the conditions and ways of convening the General Assembly
- how the decisions of the General Assembly will be documented
- to sustain, maintain and further develop the EFG (European Film Gateway) Internet portal, being a result of the eContentplus Best Practice Network “EFG – The European Film Gateway”
- to facilitate access to Europe’s film (and audiovisual) heritage by way of a single domain portal;
- to make film heritage (audiovisual) heritage available through Europeana
- to support film archives, cinémathèques and (audio-visual archives) in Europe on how to cooperate in the delivery of content and sustainability of a joint film portal;
- to stimulate and facilitate initiatives aimed at bringing together existing digital cinematographic (audiovisual) content;
- to support and facilitate digitisation and dissemination of Europe's cinematographic and audiovisual heritage.
- to support cooperation with international organisations in the film heritage and audiovisual archive sector, in particular ACE and FIAF, and any other institutions relevant in this field active in Europe
- to provide a legal framework for the EFG portal and the EFG consortium members contributing content in order to govern (1) relations between the EFG member archives and (2) relations between EFG and third parties

4. Registration procedure

For the entry in the registry of associations a letter of application, the original and copied statutes (to be signed by at least seven members) as well as a copy of the articles of incorporation (“Gründungsprotokoll”) which documents the appointment of the Executive Committee has to be submitted at the local court.

The letter must contain the application for entry in the register of associations, the names, dates of birth and addresses of the members of the Executive Committee as well as certified signatures of the authorized representatives.

With the entry in the register of associations, the “Idealverein” achieves full legal capacity.

²³ Further referred to as „association“

5. Management

5.1 The General Assembly

Organisation and tasks

The General Assembly is entitled to decide:

- on the appointment or election of the members of the Executive Committee
- on the amendment of the statutes
- on the dissolution of the association
- on the amount of the contribution
- on the approval of the actions of the Executive Committee (“Entlastung des Vorstands”)

In general, the General Assembly makes the basic decisions while the Executive Committee manages the association, unless the statutes regulate otherwise.

Convening the General Assembly (GA)

The Executive Committee convenes the GA at least once per year (to be fixed in the statutes). Extraordinary GA's require the consent of one-tenth of the members. The statutes also regulate the modalities of convening the GA (agenda as well as a deadline within which time and place of the meeting has to be indicated to the participants).

Unless the statutes regulate otherwise

- decisions can only be made on topics which are on the agenda
- the Executive Committee chairs the GA (or representatives of the Executive Committee).

Decision making process / voting

Each member has one vote. The GA adopts resolutions with a majority of valid votes cast. If the statutes do not regulate otherwise, abstentions do not count (§ 32 BGB). Resolutions can be adopted without convening a meeting, provided that all members entitled to vote have the opportunity to cast their vote and provided they all declare in writing that they do not object to adopting resolutions in this way. For changing the statutes, a three-fourth of the votes cast in a GA is necessary (§ 41 BGB). Changing the purpose of the association requires the unanimity of the votes cast.

Representation: provisions should be made that a member can be represented by another staff member of its organisation (proxy).

5.2 Executive Committee

Organisation and tasks

An association is administered by an Executive Committee (EC). The minimum and maximum number of members should be fixed in the statutes. Only those powers which are subject to the law, or which are reserved for the General Assembly by the statutes fall outside the responsibility of the EC. The EC represents the association in all legal and non-legal proceedings.

The number of persons necessary to represent the Executive Committee as a whole has to be defined in the statutes. ACE's statutes for example define that the Executive Committee exercises its power collectively. All activities of ACE with the exception of daily operations shall be signed by two members of the Executive Committee, one of whom shall be the President. For daily operations, the signature of a single member of the Executive Committee shall be sufficient.

Tasks of the EC:

- to prepare and convene the General Assembly
- to implement the decisions made by the GA
- to annually draw up an activities report, a budget and a statement of the association's income and expenditure.
- to decide on the affiliation of new members

Decision making-process

Each EC member has one vote. Resolutions are made with the majority of valid votes cast. The statutes should make provisions in case of a tied vote (e. g. in case of a tied vote, the chairperson of the EC will have a casting vote) and the required quorum (= X % of the members of the EC must be present to adopt a resolution).

- Resolutions can be adopted in writing, provided that all members declare that they agree with such a procedure.
- Resolutions of the EC are recorded in writing.

Appointment /Election of the Executive Committee and mandate

The EC is either nominated by the General Assembly ("Bestellungsbeschluss") or elected. Elected is the candidate who has the majority of the valid votes cast (BGB § 32, Art. 1). The statutes should make provisions:

- in case the necessary majority is not achieved in the first round
- about the required quorum (= X % of the members must be present or represented).

- about the mandate, re-election and midterm retirement of EC members

6. Dissolution

The dissolution of an association can only be decided with a three-fourths majority of valid votes cast in a General Assembly especially convened to that effect. Unless the General Assembly does not decide otherwise, the chairperson and the vice-chair have the power of attorney to liquidate the association. The statutes must name the association /institution entitled to receive the remaining assets.

Annex IV: Managing EFG Without Setting up a Legal Entity

Annex IV describes the basic requirements for the management of EFG Portal without setting up a legal entity Annex V: Final Draft of the EFG Terms of Service Agreement

This paper describes the basic structures for governing EFG portal without setting up a legal entity: its purpose, modes of representation, subscription fees etc. This model would apply if

- a) EFG will be a service of ACE
- b) EFG is sustained through service level agreements between the partners and the hosting institution without setting up a separate legal entity.

In both cases, there would be individual bilateral agreements between the archive partners on the one side and the hosting institution on the other.

1. Purpose of EFG

Although not required in legal and fiscal terms, it is recommendable to define a common purpose for EFG portal which should be the basis for cooperation among partners. This :

- to sustain, maintain and further develop the EFG (European Film Gateway) Internet portal, being a result of the eContentplus Best Practice Network “EFG – The European Film Gateway”
- to facilitate access to Europe’s film (and audiovisual) heritage by way of a single domain portal;
- to make film heritage (audiovisual) heritage available through Europeana
- to support film archives, cinémathèques and (audio-visual archives) in Europe on how to cooperate in the delivery of content and sustainability of a joint film portal;
- to stimulate and facilitate initiatives aimed at bringing together existing digital cinematographic (audiovisual) content;
- to support and facilitate digitisation and dissemination of Europe's cinematographic and audiovisual heritage.
- to support cooperation with international organisations in the film heritage (and audiovisual archive sector), in particular ACE and FIAF, and any other institutions relevant in this field active in Europe
- to provide an organisational framework for the EFG portal and the EFG consortium members contributing content in order to govern (1) relations between the EFG member archives and (2) relations between EFG and third parties

2. Organisational structure

(Reference: the CENL/TEL model, see [M 7.2 EFG portal: Suggestions for legal and organisational governance and rules of procedure](#), Chapter 2.2)

Cooperation is regulated through bilateral agreements between ACE and the EFG members.

Each full EFG member will have a seat in the **Management Board (MB)**. The management board elects the **Executive Group (EG)**. In the case of TEL, an office has been set up which implements the decisions of the MB and the EG. It is recommended to build working groups to support the MB and the office. Task of the EG is to discuss business and give strategic direction. Further responsibilities of the Management Board and the EG have to be defined.

3. Membership

In case ACE will run EFG it has to be discussed if other than ACE archives can become partner in EFG. Members can only be legal entities.

A natural person cannot become member of the EFG entity. There are two categories of members: a) full members and b) associate members. The conditions of cooperation have to be determined in an **agreement/contract** between ACE (or DIF) and the EFG partners.

a) Full members have to commit to

- a 3 (?) year-contract
- payment of subscription fees (the basis for calculating the fees has to be determined)
- providing (and updating) content according to EFG standards
- provide a contact person for EFG

Full members have a seat in the Management Board. They can elect the Executive Group and can be elected in the EG. The subscriptions pay for maintaining the service and for main staff.

b) Associate members have

- to pay only a small or no fee
- restricted access to the EFG service, but
- exposure to a wider audience and a platform for collaboration

4. Rights and duties

In contrast to the solutions of a Dutch Stichting or a German Idealverein, the rights and responsibilities including the amount and the way to assess the amount of membership fees are regulated through bilateral agreements between the hosting institution – most probably DIF – and all individual archive partners. However, all bilateral agreements must have the same content: A change in an individual bilateral agreement would only be possible if all others are changed as well, since all partners should have the same rights and duties.

5. Accounts and Audits

The budget is proposed annually by the Executive Group and has to be approved by the Management Board. The hosting institution will manage the accounts and payments within the framework of the approved budget. It is required to annually draw up an activities report.

6. Relations to ACE

As EFG would become a service by ACE, the relations to the Association should be defined. In terms of decision-making, a strong independence of the EFG management board from the ACE Executive Committee or General Assembly would be necessary in order to avoid unnecessary delays. A yearly activity report to the ACE Executive Committee could be envisaged, as well as a mechanism for the ACE Executive Committee to make policy or strategy recommendations to the EFG management board.

7. Intellectual property of the EFG system, usage of data aggregated, liability

As in the other two suggested solutions “Stichting” and “Idealverein”, the regulations concerning the intellectual property of the IT developments made within the EFG project would be dealt with in separate contracts. The same is valid for regulations concerning the usage rights to the aggregated metadata and liability for content made accessible and data provided via the EFG Portal.

8. Termination / Dissolution

A termination of the collaboration would be made by mutual cancellation of the bilateral agreement. Without termination, the agreement would preferably be renewed for another year. The terms and conditions of terminating the agreement would be set up in the agreement itself. They should consist of, among others, deadline for termination, regulations for fees due for the rest of the year, and provisions concerning the data contributed yet (it has to be made sure that data contributed to the system can stay there after an agreement has been terminated).

Annex V: Terms of Service Agreement for the European Film Gateway Hosting & Maintenance & Development (v5.0, 21.09.2010)

between

Deutsches Filminstitut – DIF e.V.
represented by Claudia Dillmann, Director
Schaumainkai 41
60596 Frankfurt
Germany
(hereinafter referred to as DIF)

and

Partner Institution
(hereinafter referred to as XXX)

EFG Mission Statement

The European Film Gateway (EFG) is a collaborative project of film heritage institutions initially funded by the eContent*plus* programme of the European Union. Its main objectives are to enable web-based publication and promotion of digital and digitised collections from film and cinema institutions in Europe, to facilitate co-operation between participating partners and to make it easy for the public to access digital collections of Europe's film heritage.

EFG aims to achieve its main goals by:

- maintaining the EFG Portal as a pan-European, non-profit, free-of-charge access point to the growing digital collections of the continent's film heritage,
- fostering technological developments supporting the availability and interoperability of information about the culture and history of film, in particular with regard to the EFG Portal as the primary product of the EFG Project,
- aggregating data on film-related digital content for Europeana,
- fostering cross-sector co-operation between the film and audiovisual sector and libraries, museums and archives in Europe
- gathering and disseminating knowledge about concepts and technology for cataloguing and documentation among European film archives,
- networking and linking resources and information from film institutions,
- enriching and further developing the EFG Portal by adding collections which bear witness to film works, their context of production, distribution, exhibition and reception,
- expanding the EFG Consortium and its Portal by integrating new partners, who are able and willing to provide access to information and collections in the scope of EFG and who share the objectives of the EFG Mission Statement,

- supporting and engaging with international organisations in the film heritage and audiovisual sector, in particular the Association des Cinémathèques Européennes (ACE) and the Fédération Internationale des Archives du Film (FIAPF), as well any other relevant institutions in Europe.

Purpose of This Document

Purpose of the ToSA is to describe and define the service provided by Deutsches Filminstitut – DIF to ensure the operation and maintenance of the EFG system from September 2011 on. It defines the costs and the time period for providing the service the contracting partners have agreed upon, as well as the rights and responsibilities of DIF and the members of the EFG Consortium (see Annex I “EFG Consortium Members”).

Definitions

1. Content: The digital objects that can be accessed through Metadata. Content is typically held on the Data Providers' sites. Content is typically defined by its individuality and cultural, intellectual or artistic expression. Content has a reference to an individual object of the real world or is born digital. Examples: Photographs, books, letters, films, paintings, television, etc.
2. Data: Catch-all term including Metadata, Thumbnails, Audio and Moving Image Previews.
3. Data Provider: Organisation that submits Data to EFG Portal.
4. Deutsches Filminstitut – DIF e. V.: EFG Consortium Member which hosts and maintains EFG Portal.
5. EFG Common Interoperability Schema: EFG Metadata Schema. Defines all elements and relationships of the EFG Database.
6. EFG Consortium Member: Organisation which submits Data to EFG and which has signed the EFG Terms of Service Agreement.
7. EFG Data: The semantically enriched and merged Data, accessible via EFG Portal, based on Data from Data Providers.
8. EFG Data Provider Handbook: Provides necessary information for institutions on how to provide Data to EFG. It contains technical information for delivering XML exports to the EFG system, guidelines for the enrichment and cleaning of their data locally in order to enhance the quality of the common EFG Database. (*to be delivered*, the necessary information on the EFG Metadata Schema and the Guidelines for EFG Content Providers are currently available on http://www.europeanfilmgateway.eu/members/members-guidelines_and_standards.php)
9. EFG Editorial Content: Text or media published through the EFG Portal other than Data or EFG Data. Typically news items, collection and institution descriptions, thematic features which are integrated in the EFG Portal through the EFG content management system.
10. EFG Terms of Service Agreement (ToSA): The ToSA formally describes the service provided by DIF as well as the costs for and the duration of this service. It also

describes the rights and responsibilities of the service provider and the rights and responsibilities of the EFG Consortium Member.

11. Metadata: Metadata is information about Content, describing its characteristics to aid in its identification, discovery, interpretation and management. Metadata is delivered to EFG and drives the discovery of Content held at the Data Provider's site. Metadata are usually facts or fact like information containing little individual artistic/creative expression. Examples: Bibliographic or filmographic data, temporary and spatial data, etc.
12. Third Party: Any physical or moral person who is not party to this Agreement.

§ 1 Responsibilities of DIF

As of 1 September 2011 the service delivered by DIF includes:

1. Continued operation of the server, hardware maintenance, storage and bandwidth connected with running the service.
2. Covering the operating costs for the management of the domain, data transfer (traffic) and electricity supply.
3. Software maintenance, including controlling and updating of software and the EFG content management system.
4. Cooperation with IT service providers for technical adjustments or troubleshooting where the support of software developers is required. This includes the handling of adjustment projects from defining the services and hiring a service provider until the final payment of the services.
5. Basic data management & basic support for authority file creation and metadata editing: Providing a contact person to all partner archives in particular to ensure the accurate processing of data uploads and the correct presentation of these data via the EFG system.
6. Editorial management of the EFG homepage and content pages, including regular updates of the editorial content (news, newsletter, "video of the day", news postings on social networks). DIF must follow requests from XXX to update or change information about XXX available on the EFG website two weeks after notification and receipt of record to publish.
7. Financial administration of all matters related to the maintenance of EFG (controlling & accounting, financial reporting).
8. Ensuring the availability of a contact person responsible for EFG to address and answer any issues raised by EFG Consortium Members or Third Parties.
9. Preparation of an annual short report on the operation of the portal, including: user statistics, budget spending, description of cooperation with service providers and contracts concluded with service providers, summary of activities performed for

maintaining the soft- and hardware, notification of security infringements (e.g. piracy, attacks), report on interested new partner institutions, report on eventual copyright claims. The report is forwarded electronically to all members of the EFG Consortium. The report is due on 31 January each year.

§ 2

Budget and Membership Fee

1. The XXX commits itself to pay an annual fee for the operation of the EFG system and the EFG portal website.
2. The annual costs for operating EFG and the amount of the annual fee is calculated in Annex II to the ToSA "EFG Annual Costs and Financing".
3. The fee must be transferred to DIF by XXX on 1 March each year. DIF will forward a request for payment to all participating archives.
4. The fee will be reassessed on 31 August each year.

§ 3

Integration of Further Partners

1. The EFG Portal is open to the integration of further archives. Potential contributors are asked to make contact in these matters with DIF. DIF will then inform the EFG Consortium Members accordingly.
2. Members of the EFG Consortium can object to the accession of a new entity within thirty (30) days after notification by DIF. A justified objection needs to be sent to DIF in writing. The requesting entity may enter the EFG Consortium by signing the ToSA if less than one third of all EFG Consortium Members have objected against its accession.
3. New partners can join the EFG Consortium on 1 September each year.
4. Further contributors will also sign the ToSA. Upon entries and departures of one or several partners, the annual fee for all members participating in the ToSA will be adjusted accordingly. The adjustment takes effect on the next due date for the annual fee after the accession of the new partner.
5. The costs occurring due to the integration of a new partner are not subject of the ToSA.

§ 4

Maintaining the Technological Status Quo

The maintenance extends only to the database status reached at the end of the project in August 2011. The extension of the features of EFG Portal are not subject of the ToSA.

Any changes to functional features or the data structure on which the EFG Portal runs that affect data mappings or require any actions of XXX needs to be reported to XXX, and prior authorisation needs to be acquired.

§ 5

Responsibilities of XXX

XXX is obliged to

1. Deliver any Data according to the same data structure that was used for the development of the import filter defined in the latest edition of the EFG Common Interoperability Schema. Any changes by XXX in the structure of an entity, the syntax or semantics of the Metadata must be disclosed to DIF in sufficient time before the next data delivery. If the Metadata are changed in terms of the structure of an entity, syntax or semantics, the XXX has no legal claim to an adjustment of the import filter free of charge. All tasks connected to adjustments of EFG import filters are not subject of the EFG Terms of Service Agreement.
2. Provide a contact person and support DIF in its task to keep any information concerning the XXX that is available via EFG Portal up to date. If relevant information, for instance on the contact person or the institution, should change, the XXX should notify DIF in due time about the respective changes.
3. Accessibility of Content: to the best of the partner's ability, XXX must keep access to the local file were the digital object is stored. If, for any reasons this cannot be guaranteed, DIF has to be notified.
4. XXX is responsible for providing cleaned authority data as defined in the EFG Data Provider Handbook.

All necessary information on how Metadata must be delivered to DIF is regulated in the EFG Data Provider Handbook.

§ 6

Liability Disclaimer

XXX is responsible for its metadata and the editorial content provided to EFG system.

1. Except to the extent required by applicable law, in no event will Deutsches Filminstitut – DIF as service provider nor the EFG Consortium as a whole nor any other EFG Consortium Member be liable on any legal theory for any special, incidental, consequential, punitive or exemplary damages arising out of this Agreement, even if Deutsches Filminstitut – DIF or the EFG Consortium as a whole has been advised of the possibility of such damages.
2. In particular, neither DIF nor the EFG Consortium, nor any other member of the EFG Consortium will be liable for the following:
 - a. Mistakes, omissions, interruptions or suppression of Data representations within EFG Data or the search results on the EFG website;
 - b. Re-use of material by Third Parties in obscene material, hate speech, etc.
3. Neither DIF nor the EFG Consortium as a whole, nor any other member of the EFG Consortium will be liable for the accuracy, completeness, etc. of Data or EFG Data;

4. Any Third Party claims due to copyright violation will be dealt with by XXX individually, provided that these Third Party claims are due to the non-respect by XXX of its obligations or its guarantees in the matter of copyright clearance. XXX is not liable for any claims related to the guarantee mentioned in § 8.5.
5. XXX holds DIF, the EFG Consortium as a whole as well as any other member of the EFG Consortium free and harmless of any action, recourse or claims made by any Third Party due to the non-observance by the Data Provider of its declarations and guarantees written in the above article.
6. DIF is responsible for EFG Editorial Content published on EFG Portal through the content management system, except for EFG Editorial Content as described under 7.
7. XXX is responsible for EFG Editorial Content contributed to the EFG Portal by XXX, given that the EFG Editorial Content contains a language other than English or German.

§ 7

Duration of the ToSA

1. This Agreement enters into force on 1 September 2011 and shall remain effective until 31 December 2012.
2. This Agreement will be renewed automatically for a period of one year starting on 1 January each year unless terminated by one of the parties. Written notification is required at least by three (3) months before the end of the current term.

§ 8

Termination of the ToSA

1. XXX and DIF may terminate this Agreement at any time on the material breach or repeated other breaches by the other of any obligation on its part under this Agreement by serving a written notice on the other identifying the nature of the breach. The termination will become effective thirty (30) days after receipt of the written notice, unless during the relevant period of thirty (30) days the defaulting party remedies the breach.
2. This Agreement may be terminated by both parties, XXX and DIF, on written notice if XXX or DIF becomes insolvent or bankrupt, or if XXX or DIF withdraws or ceases operations. The termination will become effective thirty (30) days after receipt of the written notice.
3. In case of termination, DIF will be responsible for removing the Data from EFG Portal within three (3) months from the date of termination of the Agreement. XXX recognises that matched and merged Data cannot be removed in all cases.
4. If XXX terminates this Agreement and leaves Data in the EFG system, DIF assumes responsibility for these Data. In this event, DIF assumes liability instead of XXX as specified in § 6.
5. If individual provisions of this Agreement are invalid or not realisable or should become invalid or not realisable after the conclusion of the Agreement, the validity of the remaining provisions shall not be affected.

6. Termination of this Agreement does not affect any prior valid Agreement made by DIF on behalf of the EFG Consortium with Third Parties.
7. Termination of this Agreement puts an end to any action, recourse or claim that both parties may have entertained against each other pursuant to this Agreement.
8. Costs caused by the termination of this Agreement have to be covered by the party who terminates the Agreement. Neither the EFG Consortium as a whole nor any other Consortium Member will cover these costs.

§ 9 Modification of the ToSA

This Agreement may be supplemented, amended, or modified only with the consent of two thirds of the EFG Consortium Members. No supplement, amendment, or modification of this agreement shall be binding unless it is in writing and signed by two thirds of the EFG Consortium Members. Any modification proposed by DIF must be notified to XXX who then has two months from the date of reception of the notice to accept or reject the new agreement. If the modifications are not rejected in writing within this period by XXX, the modifications are presumed to be accepted.

§ 10 Miscellaneous

1. Severability

If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

2. Mandatory National Law

Nothing in this Agreement shall be deemed to require XXX to breach any mandatory statutory law under which XXX is operating.

3. Language

This Agreement is drawn up in English, which language shall govern all documents, notices, meetings, arbitral proceedings and processes relative thereto.

4. Applicable Law

This Agreement shall be construed in accordance with and governed by the laws of Germany. Unless otherwise regulated in this Agreement, the regulations of the German Civil Code "Bürgerliches Gesetzbuch der Bundesrepublik Deutschland" (§311 ff.) apply.

5. Settlement of Disputes

All disputes arising out of or in connection with this Agreement, or the breach thereof, shall, in absence of amicable solution by the parties, belong to the exclusive jurisdiction of the courts in Frankfurt am Main, Germany.

Place, Date: _____

Place, Date: _____

Signature: _____

Signature: _____

Annex VI: EFG Consortium Members (Archives)

1. Deutsches Filminstitut - DIF e.V.
Schaumainkai 41
60596 Frankfurt
Germany
www.deutsches-filminstitut.de
2. Cinecittà Luce S.p.A.
Via Tuscolana 1055
00173 Rome
Italy
www.cinecitta.com
3. Cinemateca Portuguesa, Museu do cinema
Rua Barata Salgueiro, 39
1250 Lisbon
Portugal
www.cinemateca.pt
4. Cineteca del Comune di Bologna
Via dell'Industria, 2
40138 Bologna
Italy
www.cinetecadibologna.it
5. Det Danske Filminstitut
Gothersgade 55
1123 Copenhagen K
Denmark
www.dfi.dk
6. eye Film Instituut Nederland
Postbus 74782
1070 BT Amsterdam
The Netherlands
www.eyefilm.nl
7. Filmarchiv Austria
Obere Augartenstraße 1
1020 Vienna
Austria
www.filmarchiv.at
8. Kansallinen Audiovisuaalinen Arkisto
P.O. BOX 16
00501 Helsinki
Finland
www.kava.fi
9. La Cinémathèque Française
51, rue de Bercy
75012 Paris
France
www.cinematheque.fr
10. Lichtspiel - Kinemathek Bern
Bahnstrasse 21
3008 Bern
Switzerland
www.lichtspiel.ch
11. Lietuvos Centrinis Valstybės Archyvas
O Milasiaus g. 19
10102 Vilnius
Lithuania
www.archyvai.lt
12. Magyar Nemzeti Filmarchívum
Budakeszi út 51/e
1021 Budapest
Hungary
www.filmintezet.hu
13. Národní filmový archiv
Malešická 14
13000 Prague 3
Czech Republic
www.nfa.cz
14. Nasjonalbiblioteket
Postboks 2674 Solli
0203 Oslo
Norway
www.nb.no
15. Tainiothiki tis Ellados
48 Iera Odos Str. &
134-136 Megalou Alexandrou Str.
104 35 Athens
Greece
www.tainiothiki.gr

Annex VII: Annual Cost Plan EFG Maintenance (September 2010 estimate)

Technical maintenance	Cost per unit	Type of unit	No. Of units	Annual costs
Rack space	1.200 €	Rackspace rent/year	1	1.200 €
Buying resistance for server	2.500 €	Purchase cost (4 yr. Depreciation period)	0,25	625 €
Internet & traffic	60 €	Est. monthly cost for traffic	12	720 €
Domain	2 €	Monthly rent	12	24 €
IT staff @ DIF	220 €	Daily rate	12	2.640 €
Service IT Subcontractor	900 €	Daily rate	2	1.800 €
Subtotal				7.009 €

Support & editorial staff	Cost per unit	Type of unit	No. Of units	Annual costs
Website editorial staff	160 €	Daily rate	36	5.760 €
Support for partners	200 €	Daily rate	24	4.800 €
Management & Administration	240 €	Daily rate	24	5.760 €
Subtotal				16.320 €

Subtotal Tech. Maintenance & Staff				23.329 €
Overheads (5% of direct costs)				1.166 €
TOTAL				24.495 €

Annex VIII: EFG Data Provider Agreement (v.4.0 21.09.2010)

between

Deutsches Filminstitut – DIF e.V.

represented by Claudia Dillmann, Direktorin
Schaumainkai 41
60596 Frankfurt
Germany
(hereinafter referred to as DIF)

and

Partner Institution

(hereinafter referred to as XXX)

Preamble

EFG Portal is an internet site that provides access to and information about digital objects, derived from Metadata supplied by the archives. Purpose of the EFG Data Provider Agreement (DPA) is to determine the rights and obligations of DIF when using the Data delivered by the Data Providers to EFG. It also determines what Europeana can do with these Data. DIF is authorized on behalf of the Data Providers to sign the Europeana Data Provider Agreement with Europeana Foundation. DIF cannot confer more rights to Europeana Foundation than those conferred by the Data Provider to DIF. Since content is not delivered to EFG Portal, the DPA only covers the use of Metadata.

§ 1

Definitions

1. Audio Preview: Short, lower resolution extract of audio content.
2. Attribution: Keeping attribution information intact is a requirement for EFG, Europeana and all Third Parties. Attribution is considered “proper attribution” when all available Attribution information is kept intact when making available Metadata or Previews. Attribution may include multiple people or organisations, including the Data Provider.
3. Content: The digital objects that can be accessed through Metadata. Content is typically held on the Data Providers’ sites. Content is typically defined by its individuality and cultural, intellectual or artistic expression. Content has a reference to an individual object of the real world or is born digital. Examples: Photographs, books, letters, audiovisual material, paintings, television, etc. Note: In online delivery, Content excludes the peripheral packaging/platform.
4. Context Resources: Catch-all term for resources which help to provide context and enrich EFG Data like linked data, ontologies, vocabularies, thesauri, classifications, taxonomies, etc.

5. Data: Catch-all term including Metadata, Thumbnails, Audio and Moving Image Previews.
6. Data Provider: Organisation that submits Data to EFG Portal.
7. Deutsches Filminstitut – DIF e. V. : EFG Consortium Member and co-ordinator of the EFG Project. DIF hosts and maintains EFG Portal on behalf of the EFG Consortium.
8. EFG Consortium Member: Organisation which submits Data to EFG and which has signed the EFG Data Provider Agreement.
9. EFG Data: The semantically enriched and merged Data, accessible via EFG Portal, based on Data from Data Providers.
10. EFG Portal: The EFG service and its portal website, the infrastructure, functionalities and machine interfaces. Note: The specific URL may change in later iterations of the site.
11. EFG Terms of Use: The conditions, obligations and restrictions upon which legitimate use of EFG Portal is contingent (*to be drafted*).
12. End Users: Members of the public, using EFG Portal covered by the EFG Terms of Use.
13. Europeana.eu: The Europeana website, its Data and machine interfaces.
14. Europeana Foundation: The legal entity in charge of Europeana.eu.
15. Europeana.eu Data: The semantically enriched and merged Data, accessible via Europeana.eu; based on Data from Europeana Data Providers and Aggregators.
16. Metadata: Metadata is information about Content, describing its characteristics to aid in its identification, discovery, interpretation and management. Metadata is delivered to EFG and drives the discovery of Content held at the Data Provider's site. Metadata are usually facts or fact like information containing little individual artistic/creative expression. Examples: Bibliographic or filmographic data, temporary and spatial data, etc.
17. Moving Image Preview: Short, low resolution extracts of moving image content. Can be as short as one frame and functionally equivalent to a Thumbnail.
18. Non-commercial purposes: Any activities which are not primarily intended or directed towards commercial advantage or private monetary gains, including commercial advertising, e.g. Education and Research.
19. Preview: General term including Thumbnail, Audio and Moving Image Preview.
20. Public Domain: Metadata, Content or Previews for which copyright protection has expired or which never was subject to copyright protection because of lack of originality.
21. Third Party: Any physical or moral person who is not party to this Agreement. For the avoidance of doubt: As the Agreement only covers the Data Provider's Metadata and Previews, any Data Provider must adhere to the EFG Terms of Use, just like Third Parties when using EFG Data.

22. Thumbnail: Smaller, low resolution version of still image Content.
23. URI: Uniform Resource Identifier, URLs (Uniform Resource Locators) are URIs.

§2

Licence of Rights for Metadata From Data Provider to DIF

1. Metadata submitted to DIF is used to produce EFG Data, which is accessible on EFG Portal.
2. In order to make this possible, XXX hereby grants DIF a non-exclusive, worldwide, royalty free licence on copyright, related rights and the sui generis database rights for the term of this Agreement, whereby DIF shall have the right for non-commercial purposes only:
 - a. to publish, make available, reproduce, distribute, display, transmit, and store the Metadata exclusively for the purpose of displaying these data in the EFG Portal and Europeana.eu.
 - b. to translate the Metadata (or authorise others to do so) into other languages, create adaptations, summaries or extracts of the Metadata and exercise all of the rights set forth in a. above in such translations, adaptations, summaries, extracts for the purpose of displaying these data in the EFG Portal and Europeana.eu.
3. Rights to the translated version of the Metadata belong to the EFG Consortium Member who produced the translation.
4. DIF shall grant XXX the same rights as specified in subsection 2 above, with respect to any and all translations, adaptations, summaries and extracts that it creates as part of EFG Portal, to re-use in the local environment of XXX. The Provider of the original Metadata will receive a copy of the translation.

§ 3

Licence of Rights for Previews From Data Provider to DIF

1. If the Preview is submitted as URI pointing to an embeddable player or viewer, the embedded player or viewer will be made accessible on EFG Portal and the URI will become part of EFG Data. DIF shall have the non-exclusive right to make available the embedded Preview. The Preview itself will not be stored and will not become part of EFG Data.
2. If the Preview is submitted as a file or as a URI pointing to a file which is correctly sized for a Preview, it will be stored as is by EFG Portal. If the file is not correctly sized, a resized Preview will be created and the original file discarded. The Preview will be accessible on EFG Portal and become part of EFG Data, whereby DIF (on behalf of the EFG Consortium) shall have the right to publish, make available, reproduce, distribute, display, transmit and store the Previews for non-commercial purposes only and for displaying them in EFG Portal and Europeana.eu.
3. DIF must give proper attribution on EFG Portal of XXX submitting the Previews.

§ 4

Licence of Rights for Content from Data Provider to DIF

1. Unless otherwise agreed, XXX does not submit Content to EFG Portal nor does Content become part of EFG Data.
2. XXX should indicate the rights information corresponding to the copyright status of the Content, as specified in the "EFG Data Provider Handbook".

§ 5

Licence of Rights for Metadata from Data Provider to Europeana Foundation

1. With respect to its Metadata, XXX confers DIF the right to allow Europeana Foundation for non-commercial purposes only, and on a non-exclusive, world-wide, royalty-free basis to:
 - a. publish, make available, reproduce, distribute, display, transmit, and store the Metadata exclusively for the purpose of displaying these data in Europeana.eu.
 - b. to translate the Metadata (or authorise others to do so) into other languages, create adaptations, summaries or extracts of the Metadata and exercise all of the rights set forth in a. above in such translations, adaptations, summaries, extracts for the purpose of displaying these data in Europeana.eu.

§ 6

Licence of Rights for Previews from Data Provider to Europeana Foundation

1. With respect to its Previews, XXX grants DIF the right to allow Europeana Foundation for non-commercial purposes only, and on a non-exclusive, world-wide, royalty-free basis the following:
 - a. If the Preview is submitted as URI pointing to an embeddable player or viewer, the embedded player or viewer will be made accessible on Europeana.eu and the URI will become part of Europeana.eu Data. Europeana Foundation shall have the non-exclusive right to make available the embedded Preview. The Preview itself will not be stored and will not become part of Europeana.eu Data.
 - b. If the Preview is submitted as a file or as a URI pointing to a file which is correctly sized for a Preview, it will be stored as it is by Europeana Foundation. If the file is not correctly sized, a resized Preview will be created and the original file discarded. The Preview will be accessible on Europeana.eu and become part of Europeana.eu Data, whereby Europeana Foundation shall have the right to publish, make available, reproduce, and store the Previews for displaying them in Europeana.eu.

§ 7 Other Rights of Data Provider

All other rights of XXX, other than copyright, related rights and sui generis database rights in the Data, shall remain unaffected, such as patent and trademarks rights.

§ 8 Moral Rights

This Data Agreement does not affect any moral rights of XXX or any other party that may persist in or to the Data. More specifically, XXX and the appropriate party assert their right to be identified as the author and to object to derogatory treatment.

§ 9 Obligations of the Data Provider

1. XXX warrants that the use of the metadata as well as the creation and use of Thumbnails and Audio- and Moving Image Previews based on Content from XXX's website, do not constitute:
 - a. A violation of the intellectual property rights of Third Parties;
 - b. An infringement of personality, privacy, publicity or other rights (slandering, private life, etc.);
 - c. Infringement of public order or morality (hate speech, obscenity, etc.).
2. The Data is deemed accepted whenever DIF is of the opinion that the Data meets the specific or usual quality requirements and conditions.
3. XXX is responsible for the correctness of rights information about the Metadata, the Content and the Previews. XXX must make best efforts to identify content which is in the Public Domain.

§ 10 Liability Disclaimer

XXX is responsible for all metadata and content delivered to EFG Portal.

1. Except to the extent required by applicable law, in no event will Deutsches Filminstitut – DIF nor the Data Providers collectively, nor any other Data Provider be liable on any legal theory for any special, incidental, consequential, punitive or exemplary damages arising out of this Agreement, even if Deutsches Filminstitut – DIF or the Data Providers have been advised of the possibility of such damages.
2. In particular, neither DIF nor the Data Providers collectively, nor any other Data Provider will be liable for the following:

- a. Mistakes, omissions, interruptions or suppression of data representations within EFG Data or the search results on the EFG website;
 - b. Re-use of material by Third Parties in obscene material, hate speech, etc.
3. Neither DIF nor the Data Providers collectively, nor any other Data Provider will be liable for the accuracy, completeness, etc. of Data or EFG Data.
 4. Any Third Party claims due to copyright violation will be dealt with by XXX individually, provided that these third party claims are due to the non respect by XXX of its obligations or its guarantees in the matter of copyright clearance.
 5. XXX holds DIF, the Data Providers collectively, and any other Data Provider free and harmless of any action, recourse or claims made by any Third Party due to XXX non-observance of its declarations and guarantees written in the above article.

§ 11 Obligations of DIF

1. DIF must give proper Attribution on EFG Portal of XXX submitting the Metadata and/or the Previews.
2. DIF shall collaborate with XXX, upon the latter's request, for the correction, update and removal of the Data provided by XXX.
4. DIF agrees to collaborate with XXX in taking, upon the latter's request, all reasonable steps and appropriate measures to stop or prevent any infringement by a Third Party of the rights of XXX on the Metadata and Previews.
5. In case the Agreement is not renewed pursuant to § 12 or is terminated pursuant to § 14 below, it shall be the responsibility of DIF to remove the Data from EFG Portal within three (3) months from the date of termination of this Agreement.
6. EFG holds XXX free and harmless of any action, recourse or claims made by any Third Party due to the non-observance of DIF's obligations under this Agreement.
7. DIF reserves the right to remove Data of XXX in case of a claim. In any case XXX will be notified of such a removal.

§ 12 Duration of the Contract

1. The Agreement between XXX and DIF enters into force on 1 September 2011 and shall remain effective until 31 December 2012.

2. This Agreement will be renewed automatically for a period of one (1) year starting on 1 January each year unless terminated by one of the parties. Written notification is required at least three (3) months before the end of the current term .

§ 13

Modification of the Agreement

This Agreement may be supplemented, amended, or modified only with the consent of two thirds of EFG Data Providers. No supplement, amendment, or modification of this agreement shall be binding unless it is in writing and signed by two thirds of the EFG Data Providers. Any modification proposed by DIF must be notified to XXX who then has two months (2) from the date of reception of the notice to accept or reject the new agreement. If the modifications are not rejected in writing within this period by XXX, the modifications are presumed to be accepted.

§ 14

Termination

1. The rights granted by XXX to DIF end when this Agreement is terminated or no longer renewed.
2. Either party may terminate this Agreement at any time on the material breach or repeated other breaches by the other of any obligation on its part under this Agreement by serving a written notice on the other identifying the nature of the breach. The termination will become effective thirty (30) days after receipt of the written notice unless during the relevant period of thirty (30) days the defaulting party remedies the breach.
3. This Agreement may be terminated by either party on written notice if the other party becomes insolvent or bankrupt, or if XXX withdraws or ceases operations. The termination will become effective thirty (30) days after receipt of the written notice.
4. Termination of this Agreement puts an end to any action, recourse or claim that the parties may have entertained against each other pursuant to this Agreement.

§ 15 Miscellaneous

1. Severability

If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

2. Mandatory National Law

Nothing in this Agreement shall be deemed to require XXX to breach any mandatory statutory law under which XXX is operating.

3. Language

This Agreement is drawn up in English, which language shall govern all documents, notices, meetings, arbitral proceedings and processes relative thereto.

4. Applicable Law

This Agreement shall be construed in accordance with and governed by the laws of Germany. Unless otherwise regulated in this Agreement, the regulations of the German civil code "Bürgerliches Gesetzbuch der Bundesrepublik Deutschland" (§311 ff.) apply.

5. Settlement of Disputes

All disputes arising out of or in connection with this Agreement, or the breach thereof, shall, in absence of amicable solution by the parties, belong to the exclusive jurisdiction of the courts in Frankfurt am Main, Germany.

§ 16 Final Clause

This Agreement enters into force as of the date of signature of the parties.

Signed by both parties:

Place, Date: _____

Place, Date: _____

Signature: _____
Claudia Dillmann, Director

Signature: _____
XXX, Director

Annex IX: Europeana Licensing Framework

