



Film Heritage in the EU

*REPORT on the Implementation of the
European Parliament and Council
Recommendation on Film Heritage
2012-2013*





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**Implementation of the 2005 European Parliament and Council
Recommendation on Film Heritage**

Progress report 2012-2013

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1. INTRODUCTION

Cinematographic works are an essential component of our cultural heritage and therefore deserve full protection. In addition to their cultural value, cinematographic works are a source of historical information about European society. They are a comprehensive record of the richness of Europe's cultural identities and the diversity of its people. Cinematographic images are a crucial element for learning about the past and for civic reflection upon our civilisation. In order to ensure that the European film heritage is passed down to future generations, it has to be systematically collected, catalogued, preserved and restored. In addition, European film heritage should be made accessible for non-commercial educational, academic, research and cultural purposes.

Encouraging the exploitation of film heritage can contribute to improve the competitiveness of the European film industry. Business activities related to film heritage could increase thanks to a better use of technological developments. The digital revolution offers new exploitation windows for films, and therefore, new business possibilities. Film Heritage Institutions (FHI), as any other digital archive, demand new highly specialised technological services, which is an opportunity for highly qualified job creation.

On 16 November 2005, the European Parliament and Council adopted a **Recommendation on film heritage and the competitiveness of related industrial activities¹ (Film Heritage Recommendation)**. The Recommendation recognised the intrinsic cultural value of and the business opportunities offered by European film heritage. This view was confirmed by the **Council Conclusions on "European film heritage, including the challenges of the digital era", adopted in November 2010²**.

The Recommendation invited Member States to report on the progress of matters relating to the protection of and access to European film heritage every two years³. The Commission committed itself to monitor the progress made by Member States and to consider the need for further action. This monitoring is done through implementation reports.

The first implementation report on film heritage was published in August 2008⁴, the second in July 2010⁵ and the third in December 2012. **This fourth report analyses the answers of the Member States to a Commission questionnaire circulated in September 2013.** Implementation reports are based on Member States' reports and, therefore, they are fully dependent on the quality and quantity of the information provided.

All Member States' reports are available online in English and in their original language⁶. A summary of the situation in each Member State in relation to each subject raised in the questionnaire is available in **Annex I** of this report.

¹ Recommendation of European Parliament and Council Recommendation of 16 November 2005 on film heritage and the competitiveness of related industrial activities, OJ L 323 of 9.12.2005, p.57.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32005H0865:EN:NOT>

² http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/educ/117799.pdf

³ Point 23 recommended to Member States to inform the Commission every two years of action taken in response to the Recommendation.

⁴ SEC(2008)2373, 08.08.2008, http://ec.europa.eu/avpolicy/reg/cinema/report/index_en.htm

⁵ SEC(2010) 853, 02.07.2010, http://ec.europa.eu/avpolicy/docs/reg/cinema/report_2/2010_853.pdf

⁶ <https://ec.europa.eu/digital-agenda/en/news/recommendation-member-states-film-heritage-fourth-implementation-report>

The Commission Services have also published the first progress report⁷ on the Commission **Recommendation on the digitisation and online accessibility of cultural material and digital preservation**⁸, which applies to Europe's cultural memory, regardless of the format in which it is imbedded, including film heritage. This report shows that digitisation of cultural heritage is not a systematic activity in all Member States. The use of structural funds and public-private partnerships for co-funding digitisation is limited. It also highlights the challenges faced by cultural institutions to bring public domain material online. The report also points out to the low percentage of in-copyright and audiovisual materials in digital cultural platforms like Europeana.

The European Commission also adopted the **Communication "Towards an integrated approach to cultural heritage for Europe"**⁹ in July 2014, which includes a reference to film heritage. This document examines the value, including economic and societal potential, of cultural heritage. It invites all stakeholders to look into how public policies at all levels, including the EU, could better deal with cultural heritage. In particular, it seeks to draw out the long term value of Europe's cultural heritage, and to develop a more integrated approach to its preservation and valorisation.

2. ANALYSIS OF THE SITUATION OF FILM HERITAGE IN THE EU

2.1. Film Heritage Institutions

All Member States have designated one or more FHI to ensure that cinematographic works forming part of their audiovisual heritage are systematically collected, catalogued, preserved, restored and made accessible to the public. There are **around 100 national and regional FHI in the EU**. Almost of all them have a working website. Part of the website is often available also in English.

The legal framework within which FHI operate has not changed since the previous report. **Lithuania** adopted a new law in December 2011. This law defines more clearly the competences of FHI. The **Czech Republic** has also introduced an Audiovisual Act in October 2012, which clarifies the conditions for deposit of cinematographic works in the FHI.

There continues to be great variation in funding and human resources devoted to film heritage between Member States. For instance, in France more than 400 people work for FHI, while in countries like Ireland, Slovenia or Greece, the staff is less than 10 people. Budget and human resources allocations have remained stable or reduced during the reference period. Luxembourg is the only Member State that has substantially increased its budget.

In 2010, the Council¹⁰ committed to actively support FHI in all their tasks, in particular in the context of the move to a digital environment¹¹. However, very few Member States have allocated the required resources for digitisation, digital preservation and digital access.

⁷ <https://ec.europa.eu/digital-agenda/news-redirect/18265>

⁸ Commission Recommendation 2011/711/EU, OJ L 283/39 of 29.10.2011

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:283:0039:0045:EN:PDF>

⁹ COM(2014)477 of 22.7.2014

http://ec.europa.eu/culture/library/publications/2014-heritage-communication_en.pdf

¹⁰ 2010 Council Conclusions on film heritage,

¹¹ See "A digital agenda for film archives", March 2012, http://www.ace-film.eu/?page_id=1228

In general, European FHI are directly financed by State resources. Given the present economic situations, some FHI are looking for additional funding through private sponsors, in particular for specific projects.

- State resources devoted to film heritage have generally remained stable or have even been reduced.

- New investment and organizational changes are required in order to fully exploit the opportunities of the digital era for film heritage, as well as to ensure that digital film heritage will be collected and preserved. According to the figures provided, **these new changes are not yet being financed.**

2.2. Collection

2.2.1. *Legal and contractual deposit*

Member States ensure the collection of cinematographic works that are part of their audiovisual heritage through legal or contractual deposits. **Legal deposit** refers to the legal obligation on producers or distributors to submit a copy of cinematographic works to a FHI. **Contractual deposit** takes place when the contract between the national or regional film funding authority and the producer foresees that the later submits a copy of the supported film to a FHI.

- **Legal deposit:** the Czech Republic, Denmark, Finland, France, Hungary, Italy, Luxembourg, Malta, Poland, Slovakia (10 Member States)

- **Contractual deposit of cinematographic works that have received public funding** (so-called **compulsory deposit**): Austria, Bulgaria, French and Flemish speaking Communities of Belgium, Cyprus, Estonia, Germany, Greece, Ireland, Latvia, Lithuania, the Netherlands, Portugal, Romania, Slovenia, Spain, Sweden and the United Kingdom (17 Member States).

Croatia has both a legal deposit of all films intended for public showing and a contractual deposit of financed films. The **Belgium French speaking community** introduced the contractual deposit in 2014.

Greece is in a peculiar situation, since there is no public institution nominated to collect the contractual deposit of films. There is a draft law foreseeing that this would be the Film Archive, but it is not yet adopted.

The **enforcement of the deposit obligation** continues to be a problem for several Member States (Bulgaria, Poland, and Luxembourg). **Lithuania** complains that only a small proportion of national films have been deposited.

Best practices to deal with this problem include:

- For legal deposit: In Finland, non-compliance with the deposit obligation is a punishable act for which a fine can be imposed.

- For contractual deposit of works that have received public funding: Payment of the State aid is conditional to the deposit (Spain, Cyprus, Greece, Italy, the Netherlands, Hungary, Sweden). In Sweden, only producers that have deposited their film are eligible for future funding.

Most Member States report that they perform quality checking of the deposited material. **Finland and the Czech Republic** are currently establishing practices for checking digital material. This good practice should be generalised.

2.2.2. *Voluntary deposit*

Voluntary deposit continues to be extremely important for enriching the FHI's collections with foreign films or film related materials. **It is essential that contracts are signed between the archive and the right holder, clearly defining the rights and obligations of each party.** In this context, the Commission facilitated the signature of a model contract¹² between the Association of European Film Archives and Cinematheques (ACE¹³) and the International Federation of Film Producers Associations (FIAPF). Only a small number of Member States use the contract or the principles contained in it (the Czech Republic, Greece, Lithuania, the Netherlands and Portugal). Some Member States have established their own model contracts, for instance the "Centre National de la Cinématographie" (CNC) in France and the Austrian Filmarchiv.

Austria, Slovakia and Romania report that extensive collections were acquired through voluntary deposit. Austria has an active policy of promoting voluntary deposit.

Denmark, Finland and Sweden report that the digitisation of cinema theatres in 2012 has put an **end to the voluntary deposit of non-European films** distributed in those countries. When distribution was done on the basis of analogue copies, distributors were depositing the used prints. Today, films are distributed as digital files, which are no longer deposited. In addition, the digital files are encrypted DCPs¹⁴. These files cannot be opened by the archives, and therefore they cannot be preserved. Some FHI (Sweden) have even the public mission of collecting those films, as they consider that international films with subtitles in their languages are part of their film heritage. However, they are not able to fulfil this public mission anymore, as non-European films in digital format are no longer deposited.

A possible solution to this situation would be **an agreement between international producers, distributors and film archives associations, with the objective to re-establish the practice of voluntary deposit** that existed in the analogue world.

2.2.3. *Film heritage collection in the digital era*

The role of a film archive is to receive the final products of a film production chain, **whatever their technical format and properties**, and keep them forever¹⁵.

As a consequence of the digital revolution, the **definition of national film heritage** has evolved. In its collection policy, revised in November 2011, the **British Film Institute** defines film as: "**a moving image work crafted to express an idea or tell a story – fictional, factual or artistic – regardless of production process, recording medium or distribution channel.**"

¹² http://ec.europa.eu/avpolicy/docs/reg/cinema/fiapf_ace_fa.pdf

¹³ <http://www.acefilm.de/>

¹⁴ A Digital Cinema Package (DCP) is a collection of digital files used to store and convey Digital cinema (DC) audio, image, and data streams. The term has been defined by the Digital Cinema Initiatives, which is a joint venture of several Hollywood majors <http://www.dcinovies.com/>

¹⁵ See <http://www.ace-film.eu/wp-content/uploads/2012/03/A-Digital-Agenda-for-Film-Archives-2012.pdf>

Some countries (Belgium, the Czech Republic, Estonia, Spain, and the United Kingdom) have **updated the legal instruments establishing the legal or compulsory deposits in order to also cover films produced on digital support**. For others (Austria, Belgium Flemish Community, Croatia, Finland, Denmark, Germany, Greece, Latvia, Lithuania, Luxembourg, the Netherlands, Slovakia, Slovenia, Sweden), the collection of digital material is possible in the framework of existing deposit obligations, so they do not need to update them. Nevertheless, some countries do not yet collect films on digital support (Portugal, Romania) or do not have the facilities to store them (Ireland).

France imposed by law that the legal deposit of digitally-born films has to be done in analogue format since December 2011. **Poland**, on the contrary, underlines that they need to remove the obligation of depositing an analogue copy, as often that copy is no longer produced. In **Sweden**, the contractual deposit of 35mm elements stopped in January 2013.

Some Member States have already **changed their collection practices to adapt them to new channels of distribution**. A good example is **Sweden**. It has reformed its definition of national film heritage to include all films regardless of whether they will be shown in cinemas or not¹⁶. The aim is to take into account new forms of cinema distribution and to cover films that, for instance, will be only released on VoD. **Spain** is preparing a law on the legal deposit of audiovisual material published on the web, without any analogue support. The legal deposit would take place in the National Library.

At present, **procedures for the collection of digital material vary among FHI**. **Sweden** has been applying clear criteria for the collection of digitally distributed films since January 2012¹⁷. They request both the deposit of a digital master and a digital distribution copy. The digital master should be a Digital Cinema Distribution Master (DCDM) according to the Digital Cinema Initiatives (DCI)¹⁸ standard or a similar format. The digital distribution copy should be an unencrypted Digital Cinema Package¹⁹ (DCP), as defined by the DCI standard. The **British Film Institute** requests one uncompressed and unencrypted clone of the DCDM on a portable hard drive and one unencrypted and uncompressed DCP (final version as used for theatrical release). The EYE Film Institute in **the Netherlands** and the National Film Archive in **Poland** have also produced detailed specifications for the submission of digital film productions.

The **International Federation of Film Archives (FIAPF)** established that only a Digital Cinema Distribution Master (DCDM) or an unencrypted Digital Cinema Package (DCP) are acceptable formats for the long-term preservation of cinema works²⁰. However the issue is far from being settled. For instance, a DCDM does not always exist for small productions. **Germany** reports that there is still **uncertainty** among industry and FHI **about the kind of**

¹⁶ Sweden defines national heritage as anything screened in cinemas, or that has received production subsidy from the SFI. Meaning, if a film has received funding support from SFI, they will preserve it whether it has been screened in cinemas or not. If a film has not received subsidy from SFI, they only collect what has been screened in cinemas.

¹⁷ [http://www.sfi.se/Global/Filmarkivet/Policy%20of%20the%20Archival%20Film%20Collections%20of%20the%20Swedish%20Film%20Institute%20\(2011\).pdf](http://www.sfi.se/Global/Filmarkivet/Policy%20of%20the%20Archival%20Film%20Collections%20of%20the%20Swedish%20Film%20Institute%20(2011).pdf)
<http://www.sfi.se/en-GB/Film-Heritage/About-the-archive/Deposit-by-contractual-obligation/>

¹⁸ Digital Cinema Initiative: Body formed by the Hollywood majors to create voluntary specifications for digital cinema, <http://www.dcinovies.com/>

¹⁹ A Digital Cinema Package (DCP) is a collection of digital files used to store and convey digital cinema

²⁰ <http://www.fiafnet.org/commissions/TC%20docs/DCinema%20deposit%20specifications%20v1%200%202010-09-02%20final%201.pdf>

formats that can be deposited. The Federal Archives decide on a case-by-case basis which formats are acceptable and publish the information online²¹. In the **UK**, the list of accepted digital deliverables is regularly updated. Decisions are made on a case-by-case basis and in close cooperation with the cinematographic industry.

Denmark and **the Netherlands** do not pay the last instalment of the state aid for film production until a digital element suitable for long-term preservation is deposited.

The **period for depositing the film** varies enormously, from the moment of completion of the film (**Slovenia**) to 7 years after its release (**Romania**). The DAEFH study²² explains that the rationale beyond a long deadline for deposit was to allow the deposit of the distribution copy and to eliminate the cost of producing a duplicate²³. In the case of digital distribution, the cost of deposit of a digital master is negligible, so this long deadline is not necessary. In addition, the risk that the digital file is damaged or lost increases exponentially with time. Therefore, the DAEFH study recommends shortening the deadline for deposit. Producers and distributors could see this early deposit as a sort of "insurance" for their works. In line with this recommendation, the **Czech Republic** has introduced a 60-day deadline for deposit. The deadline in the **UK** is 3 months. These **short deadlines for deposit are a good practice to extend**.

- The digital era changes the **definition of film heritage**, which is now independent of its recording medium (film, digital file ...) and its distribution channel (theatrical distribution, VoD ...). Member States should revise their definitions of film heritage to adapt it to the digital era, if not yet done.
- All Member States have **legal or contractual deposit** systems for the collection of film heritage, but the **enforcement** of these mechanisms needs to be improved in many cases. In the case of contractual deposit, a good practice to extend is **to reserve the final payment of the aid until the deposit takes place and the FHI certifies that the deposited digital element is suitable for preservation**.
- In case of **voluntary deposit**, the signature of contracts between the film archive and the rights holder, specifying the rights and obligations of each party is a good practice. The ACE/FIAFP framework contract provides a useful model.
- FHI need to **update their collection policy** to deal with digital films. In addition of adapting to the new definition of digital film, they should establish **very short deadlines for deposit** and ensure that **only unencrypted digital files are deposited**.
- FHI should continue their exchange of best practices about the **kind of digital elements that should be accepted for long term preservation** and **strengthen cooperation with the industry**.
- Agreements between international associations of film producers, distributors and FHI would facilitate the **continuation of the deposit of international films in European FHI**.
- Reflection on the **collection of audiovisual material published only on the web**, without physical support, should continue.

²¹ <http://www.bundesarchiv.de/fachinformationen/01053/index.html.de>

²² Study on a Digital Agenda for European Film Heritage. See chapter 3.1.1. https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/final_report_en.pdf

²³ Estimated between EUR 30,000 and 50,000.

2.3. Metadata, film databases, interoperability and web access

Film metadata is the information about cinematographic works (name of director, year of production, etc.) encoded in the databases of FHI. Creation and preservation of metadata in well-maintained databases is of key importance for the preservation of and access to collections. This is particularly relevant for digital works. In a connected society, the interoperability of film databases is a necessary condition for the emergence of joint projects, both national and European. Finally, increased web access to databases allows collections to become visible and searchable for the public.

a) Modernisation of internal film databases and interoperability thanks to European standards

All FHI have created internal databases. An increasing number of FHI have developed (Estonia²⁴, Germany²⁵, Spain, Sweden, UK) or are developing (Austria, France, Luxembourg) comprehensive film databases or modernising the existing ones.

Following a standardisation mandate from the European Commission to the European Committee for Standardization (CEN), CEN produced two European Standards (EN) to facilitate the interoperability of film databases:

- **EN 15744:2009** "Film Identification – Minimum metadata set for cinematographic works";
- **EN 15907:2010** "Film Identification – Enhancing interoperability of metadata – Element sets and structures".

In addition, CEN published the "**Guidelines for implementation of EN 15744 and EN 15907**"²⁶ in February 2012. An online platform designed to support the application of the standards is available on <http://filmstandards.org>. In 2010 and 2011, the Commission also financed 4 workshops **to promote the use of those standards**.

A large number of FHI have implemented or plan to implement the European standards. One of the driving forces behind the success of the standards are the EU-funded projects European Film Gateway (EFG) and European Film Gateway 1914²⁷ (EFG1914). Both use an exchange format based on an early draft of EN 15907. Therefore, many of the 27 FHI contributing to the EFG and EFG 1914 have invested in adopting the European standards. On the one hand, European standards allow the emergence of pan-European projects such as EFG and EFG1914. On the other, European collaboration projects effectively promote the use of European standards.

For the **British Film Institute (BFI)**, the first priority is to ensure **institutional interoperability so that information can be shared with other organisations**, supporting the widest possible access through a network of collections. For that reason, their newly created "Collections Information Database" (CID)²⁸ complies with the European standards.

²⁴ <http://www.efis.ee/en>

²⁵ www.filmportal.de; www.pflichtregistrierung-film.bundesarchiv.de

²⁶ CEN/TS 16371

²⁷ <http://project.efg1914.eu/partners/>

²⁸ <http://collections-search.bfi.org.uk/web>

The CID application is currently being introduced in **Germany** as well (Deutsches Filminstitut, Deutsche Kinemathek).

France is working on the platform CINECULT²⁹, which will give web access to consolidated information on all cinematographic works and related material from all French cinémathèques. The information will be accessible both to professionals and to the public. The database is fully based on the European standard EN 15907:2010.

In the case of **Lithuania**, EU structural funds co-financed the project “**Lithuanian documentaries on Internet**” (e-Cinema) in 2010-2012. The result is the creation of a new database³⁰, publicly accessible on the Internet and fully compliant with the European standards. 1800 films will enter the database before 2018.

Nevertheless, some FHI report that the lack of funding is still an obstacle for the full implementation of these European standards (Belgium).

b) Interoperability with other systems and with Europeana

Some Member States have taken actions to facilitate interoperability of their film databases with Europeana and other web portals:

All **EFG and EFG1914 partners** provide data to Europeana via the **Europeana Data Model**³¹ (EDM).

Latvia's objective is to facilitate internet access to Latvian documentary heritage and link this to APEX³² (the **Archives Portal Europe** network of excellence). APEX is a framework for European archives to collaborate for wider and enhanced accessibility of their content on the web. APEX is funded and supported by the European Commission within the framework of the Information and Technology Policy Support Programme (ICT-PSP), and it runs from March 2012 until February 2015.

Austria supports the development of the **Europeana Data Model** and participates in the **Europeana Linked Open Data**³³ (LOD) pilot. **Hungary** provides its metadata in accordance with the **Data Exchange Agreements**³⁴ (DEA) concluded with Europeana. **Lithuanian** films on <http://www.e-kinas.lt/> are also available in Europeana.

Belgium reports that Europeana metadata sets are not very useful in regard to audiovisual materials.

The **British Film Institute** is working with **EIDR**³⁵ (Entertainment Identifier Registry) to add unique identifiers to audiovisual works in their database in order to facilitate interoperability with other databases.

c) Film databases accessible online for the public

As mentioned above, the French web platform **CINECULT'** will give public access to information about the collections of all French cinémathèques. **Germany** is also working on a

²⁹ <http://www.cnc.fr/web/fr/actualites/-/liste/18/3617773>

³⁰ <http://www.e-kinas.lt/>

³¹ <http://pro.europeana.eu/edm-documentation>

³² <http://www.apex-project.eu/>

³³ <http://pro.europeana.eu/linked-open-data>

³⁴ <http://pro.europeana.eu/data-exchange-agreement>

³⁵ <http://eidr.org/>

pilot project for a web-based stock catalogue of German films³⁶. In both cases, the filmographic databases that support the projects comply with the European standards. Dutch **EYE Film Institute** launched "Collection EYE³⁷" in 2014. This is a new collection, information and registration system. **Slovakia's** film database was made available to the public through the Internet in November 2013³⁸. The external online interface of the **Swedish Film Institute's** database³⁹ contains filmographic information on 72,000 films. Filmarkivet.se⁴⁰ allows to search and stream 1000 films. Some of those will be also made available through Europeana. The **British Film Institute (BFI)** made accessible online their new Collections Information Database (CID) in 2013. It holds over 800,000 film titles. A union catalogue for the English regional archives and the BFI is also available online⁴¹.

- Preservation of **metadata** in well-maintained **databases** is of key importance for the preservation of and access to collections, particularly in a digital environment. Therefore, metadata should be collected, kept in databases and updated.
- The **European standards** on interoperability of film databases published in 2009 and 2010 are largely used in the EU. They have facilitated European projects such as EFG or EFG 1914. Their application should be extended.
- Interoperability with **Europeana** should be sought.
- An increasing number of film databases **are accessible and searchable online**. Some also give the **possibility to stream the works**. This is a good practice to be extended.

2.4. Preservation of analogue and digital films

There is now a clear awareness about the need of long-term digital preservation systems. This is a positive evolution in relation to the previous reporting period. International conferences devoted to this topic, like the one that took place in the **Belgium Cinematek** in November 2013⁴², have contributed to this. Unfortunately, awareness rising among FHI professionals has not always been backed with the necessary financial resources to install long term preservation systems.

a) From awareness...

As stated by ACE: "**If preservation is not performed properly, there will be no heritage to show and give access to**".

The switch to digital cinema means that FHI are evolving towards **hybrid archives taking care of both analogue and digital collections**. Preserving a digital film is completely different from preserving an analogue film: In the analogue world, taking care of the physical carrier equals taking care of the content. Digital archiving is about preserving the content, regardless of the carrier.

³⁶ www.filmportal.de

³⁷ <https://www.eyefilm.nl/en/collection/selection>

³⁸ <http://www.sfd.sfu.sk/index.php?&jazyk=1>

³⁹ <http://www.sfi.se/en-GB/Swedish-film-database/>

⁴⁰ <http://www.filmarkivet.se/sv/English/>

⁴¹ <http://unionsearch.bfi.org.uk>

⁴² <https://ec.europa.eu/digital-agenda/en/news/conference-our-images-our-future-securing-cinemas-past-and-future-digital-era-presentations>

This implies that **depositories ensuring optimum temperature and humidity conditions for physical films need to be maintained and improved**⁴³. Good examples in this area are **Austria** (which opened a new nitrate film depot in 2010), **Finland** (which turned their film archives into cold storage warehouses in 2012), **Spain** (which opened a new centre of Conservation and Restoration in 2012) and the **UK** (BFI opened its Master Film Store in 2012).

Many private analogue laboratories have closed down following the definitive switch of the industry to digital. This raises the question **on how to maintain technology and know-how related to analogue film**. The film heritage of the 20th century, basically produced with photochemical technology, cannot be conserved for the future by using digital media. Digitisation is not a preservation measure, and photochemical originals shall always be preserved. Some countries have dealt with the need of preserving the analogue technology and know-how by setting up their own laboratories. For instance, **Sweden** acquired new equipment to make analogue preservation and screening elements following the bankruptcy of photochemical laboratories in the country. They set up their own laboratory in August 2012.

At the same time, **new long-term preservation systems for digital film have to be put in place**. These new systems require completely different technologies, facilities, technical skills, management and mind-set compared to the preservation of analogue film. According to **Denmark and Poland**, digital films must be collected and preserved in **robust OAIS**⁴⁴ (**Open Archive Information System**) **compliant storage systems**.

b) ...to implementation

Very few Member States have moved to the implementation phase. **UK** has implemented a digital workflow to acquire, document, quality check and preserve cinema works delivered as digital cinema distribution masters. They have defined requirements for a long-term preservation infrastructure to ingest, manage and preserve all types of digital content. **Finland**⁴⁵ has received an additional €1M per year since 2009 for the digital part of the archive. **Romania** has also built new facilities for the preservation of digital material. **Sweden** stores born-digital works in robotised tape libraries, which ensure long-term digital preservation since August 2012.

A good practice to be extended is updating archival policies in order to include digital **preservation**. A good example is the **Swedish archival policy**⁴⁶, established in December 2012. In **Sweden**, films that only exist as DCP or DCDM are preserved as JPEG2000⁴⁷ and wav files and stored on LTO data tapes⁴⁸ in two different tape robots with separate locations. In **the Netherlands**, EYE and Sound and Vision are working on a joint strategy for the

⁴³ See FIAF Technical Commission Preservation Best Practice,

<http://www.fiafnet.org/pdf/uk/Best%20Practice%20FINAL%20EN.pdf>

⁴⁴ ISO 14721:2012

http://www.iso.org/iso/iso_catalogue/catalogue_ics/catalogue_detail_ics.htm?csnumber=57284

⁴⁵ <https://ec.europa.eu/digital-agenda/en/news/conference-our-images-our-future-securing-cinemas-past-and-future-digital-era-presentations>

⁴⁶ [http://www.sfi.se/Global/Filmarkivet/Policy%20of%20the%20Archival%20Film%20Collections%20of%20the%20Swedish%20Film%20Institute%20\(2012\).pdf](http://www.sfi.se/Global/Filmarkivet/Policy%20of%20the%20Archival%20Film%20Collections%20of%20the%20Swedish%20Film%20Institute%20(2012).pdf)

⁴⁷ JPEG 2000 is an image compression standard and coding system. <http://www.jpeg.org/jpeg2000/>

⁴⁸ Linear Tape-Open (or LTO) is a magnetic tape data storage technology originally developed in the late 1990s as an open standards alternative to the proprietary magnetic tape formats that were available at the time. <http://www.lto.org/index.html>

multiple long-term storage of digital films. This is done under the aegis of a "National Coalition for Digital Preservation".

The EU-funded research project "**EDCine**"⁴⁹, which ran from June 2006 to June 2009, proposed a model for the management of digital film archives. The project resulted in software solutions that are now commercially available to archives. They were used in the EFG1914 project.

As already said, **France** is an isolated case in the EU. They consider that the digital preservation of films is not a good solution for the next decade. Therefore, they request the legal deposit of an analogue support, even for films that were produced and distributed digitally.

c) The gap between needs and resources

While all FHI are now aware of the challenges of **digital preservation**, most of them have not received any additional funding to take care of the preservation of digital film. **Belgium** underlines that the funding is insufficient, since the impact of digital in the film sector is completely underestimated. **Portugal** does not have the resources to preserve digital films. **Slovakia** does not yet have the facilities.

For **Poland** and **Portugal**, effectiveness and security of digital preservation can be increased by joining forces with other institutions. It is also necessary to ensure the stable financing of digital archives, which require much more financial resources than traditional analogue archives. The **UK** is considering the possibility of common digital archives within the UK Sound and Vision Group. However, **Sweden** points out that the needs of the FHI are more urgent and on a different scale than in other institutions.

Finally, budgets for **analogue preservation** and restoration are also shrinking (for instance, in the Netherlands and Slovenia), which puts film heritage at risk of disappearing.

- FHI are now aware of the fact that the **preservation of digital film is a new task** for them, requiring additional resources and skills. However, **no additional budget has been given for this task** in most Member States.
- Due to the transformation of the industry from analogue to digital, analogue laboratories have closed down. One way for FHI to cope with this is to set up their own analogue labs in-house, so that they can **maintain the technology and the know-how for analogue preservation**.

2.5. Restoration

According to the DAEFH study, digital restoration is a "mature field", with few specialised software solutions available to correct damage and flaws in image and sound. On the one hand, costs are rapidly decreasing in terms of hardware / software. On the other, overall costs remain high because of the incidence of manpower being used to perform tasks which cannot be automated.

⁴⁹ ftp://ftp.cordis.europa.eu/pub/ist/docs/ka4/au_concertation_1006_edcine_en.pdf
<http://ec.europa.eu/avpolicy/docs/reg/cinema/june09/edcine.pdf>

A good practice to be highlighted is the bi-annual **FIAF film restoration summer school in Bologna**⁵⁰. Participants are trained in the use of the newest digital equipment for the preservation and restoration of film heritage, on digital strategies for access to material and on analogue restoration techniques.

Due to budgetary constraints, FHI have introduced prioritization systems. For instance, in 2011 **Dutch Sound and Vision** launched a restoration project targeted at Oscar nominated films. **Germany** gives priority to material that is in danger of disintegration, as well as to historical children's films.

The **Czech Republic** carries out individual digital restoration projects in cooperation with commercial entities.

2.6. Digitisation of collections

Most European film heritage institutions are in the process of digitising part of their collections with the purpose of providing online access or allowing digital projection. The new **EYE Collection Policy**⁵¹ (2014-2017) states that "digitisation is currently the most important precondition for optimal access to the collections for the general public and professionals".

Germany has recently included the digitisation of film heritage among its film policy priorities. Their Film Subsidy Act (FFG) of 1 January 2014 added the digitisation of film heritage to the list of responsibilities of the Federal Film Board (FFA).

So far, **only two countries, i.e. France and the UK, have far-reaching digitisation projects**, supported by substantial financial resources:

- **France:** The financing mechanism "**Grand Emprunt**" was created by law in May 2012. It has a double objective. First, digitise 2500 films with commercial potential, within 5 years, with a budget of €125 million. Second, digitise 7000 films and 4000 short films with high cultural value, within 6 years, with a budget of €400 million⁵².

- **UK:** €3.8 million per year from 2012 to 2017 are invested in the digitisation of 10,000 titles from the BFI archives under the plan "**Film for Ever**"⁵³.

Other Member States that are also devoting resources to digitisation of film heritage are:

- **Germany:** Specific funds were allocated to digitisation of film heritage in 2012 (€430,000) and in 2013 (€1M). The FFA allocated €1 million to subsidies for digitisation in 2014. Applications may be made by the holder of exploitation rights in Germany and must include a detailed exploitation plan. The resulting digital version should have a resolution of at least 2K.

- **The Netherlands:** The project "Images for the Future"⁵⁴ was launched in 2007. The initial budget was €115 million over 7 years. The objective was to restore, preserve and digitize a total of 91,183 hours of video, 22,086 hours of film, 98,734 hours of audio, and 2.5 million

⁵⁰ <http://www.fiafnet.org/uk/education/Summer%20School%202012/SummerSchoolProject20120208.pdf>

⁵¹ www.eyefilm.nl

⁵² <http://www.cnc.fr/web/fr/aide-selective-a-la-numerisation-des-oeuvres-cinematographiques-du-patrimoine>

⁵³ <http://www.bfi.org.uk/about-bfi/policy-strategy/film-forever>

⁵⁴ <http://beeldenvoordetoekomst.nl/en.html>

photos from Dutch archives. Even if the project was terminated before term, it made a big contribution to the digitisation of heritage: Sound and Vision digitised more than 17,000 hours of films; EYE digitised 20% of its film collection and 27% of the non-film and library collections. Right holders who use material restored/digitised by EYE in commercial exploitation are requested to give a percentage of their net receipts to EYE as a contribution to the restoration and digitisation costs.

- **Latvia:** The State cultural policy guidelines "Made in Latvia" for 2014-2020 contain chapters on archives, digital cultural heritage and films.

- **Lithuania:** The project "Lithuanian documentaries on the Internet"(e-cinema) has digitised 1000 Lithuanian documentaries from 1919 to 1959. They are available online on www.e-kinas.lt. The total cost was €2.7 million and it was co-funded by EU structural funds.

- **Slovakia** expects to receive € 15.4 million for the digitisation of film collections from structural funds.

- **Sweden:** A budget of €4.3 million has been allocated to the Swedish Film Institute to digitise 500 films during 2014-2018. In March 2014, the Swedish Film Institute adopted guidelines on the selection criteria for the digitisation of films⁵⁵.

According to FHI, the **two obstacles** to the digitisation of European film collections continue to be:

- scarce **funding**;

- high cost in money and time for **clearing rights**. Therefore, FHI mainly digitise collections in the public domain or for which the state owns the rights.

Many FHI are making efforts to **attract resources from the private sector**. For instance, the **Polish Audiovisual Institute** has obtained funding from the National Bank of Poland and the Polish Energy Group for digitisation.

One of the main drivers behind the digitisation of collections has been the EU-funded project "**European Film Gateway**"⁵⁶ (EFG) and its follow-up project **EFG1914**⁵⁷. The EFG portal is an "aggregator" for **Europeana**⁵⁸ in the film domain. Europeana is a single access point to millions of books, paintings, films, museum objects and archival records that have been digitised throughout Europe. It is an authoritative source of information coming from European cultural and scientific institutions. EFG ran from September 2008 to August 2011 and involved 22 partners, of which 17⁵⁹ were FHI from 16 European countries. EFG developed an online portal, which provides direct access to about 600,000 digital objects including films, photos, posters, drawings and text documents.

⁵⁵ <http://sfi.se/en-GB/Film-Heritage/About-the-archive/News/Digitization-policies/>

⁵⁶ <http://www.europeanfilmgateway.eu/>, <http://www.efgproject.eu/>

⁵⁷ <http://project.efg1914.eu/>

⁵⁸ www.europeana.eu

⁵⁹ Participating Film Archives: Cinemateca Portuguesa/Museu do Cinema, Cineteca del Comune di Bologna, Deutsches Filminstitut – DIF, Det Danske Filminstitut, FernUniversität Hagen, Filmoteka Narodowa, Filmarchiv Austria, Cinecittà Luce (former Istituto Luce), La Cinémathèque Française, Lichtspiel – Kinemathek Bern, Lithuanian Central State Archive, Magyar Nemzeti Filmarchívum, Národní Filmový Archiv, Nasjonalbiblioteket Norway, National Audiovisual Archive Finland, eye Film Institute Netherlands (former Nederlands Filmmuseum), Tainiothiki tis Ellados

EFG1914⁶⁰ ran from 15 February 2012 to 15 February 2014. It had 31 partners, of which 21 were FHI⁶¹. It focused on films and non-film material from and related to World War I. This project has allowed the digitisation of 740 hours of film and 6,100 film-related documents. Almost 3,000 newsreels, documentary, animation and feature films can be viewed online, providing an extensive overview of the contemporary film production during WW1⁶². The films digitized within the scope of the project are of special importance and value because they constitute a major part of the moving images from the 1910s that have survived in European film archives until today. About 80% of the film production from that time is estimated to be lost because films were either destroyed directly after their exploitation in cinemas ended or, if they were kept, they were destroyed during the Second World War. Digitizing and giving online access to a critical mass of the remaining films from that period in EFG1914 has considerably simplified the locating, viewing and re-use of this material.

The Commission Recommendation on the digitisation and online accessibility of cultural material and digital preservation⁶³ sets an overall target for Europeana of access to 30 million digital items by 2015, including 2 million audiovisual items. In order to reach this target, Member States should include moving images, including film, in their national digitisation strategies. It is to note that some FHI are getting equipped to **make digitisation in-house (Denmark, the Netherlands, Sweden)**, according to their own calendar. In some Member states, **film heritage has been included in national digitisation strategies**, in close cooperation with the national library.

According to the DAEFH study, 1 million hours of films could be digitized in the holdings of all European FHI. In 2012, ACE estimated that only around 1.5% of holdings were digitized.

There is a **lack of precise statistics about the progress of digitisation of film heritage**. The EU financed the study "Enumerate"⁶⁴ to assess the progress of digitisation in heritage institutions. However this study failed to provide significant figures about the film heritage sector. According to the replies to the 2013 questionnaire, most Member states do not have figures about the progress of digitisation of film archives. Some of the few figures provided are:

- The Czech Republic: less than 1%
- Estonia: 20%

⁶⁰ <http://project.efg1914.eu/>

⁶¹ EFG1914 Project partners and associated partners: Arhiva Nationala de Filme, Bucharest | Association des Cinémathèques Européennes, Brussels/Frankfurt | Athena Research and Innovation Center in Information, Communication and Knowledge Technologies, Athens | Bundesarchiv, Berlin | Centre National du Cinéma et de l'Image Animée-Archives françaises du film, Bois d'Arcy | Centro Sperimentale di Cinematografia, Rom | Cinecittà Luce S.p.A, Rome | Cinémathèque royale de Belgique, Brussels | Fondazione Cineteca di Bologna | CNR-ISTI, Pisa | Det Danske Filminstitut, Copenhagen | Deutsche Kinemathek - Museum für Film und Fernsehen, Berlin | Deutsches Filminstitut - DIF, Frankfurt | Estonian Film Archive, Tallinn | EYE Film Institut Netherlands, Amsterdam | Filmarchiv Austria, Vienna | Filmoteca Española, Madrid | Fondazione Cineteca Italiana, Milan | Fraunhofer IIS, Erlangen | Friedrich-Wilhelm-Murnau-Stiftung, Wiesbaden | Imperial War Museums, London | IVAC, Valencia | Jugoslovenska Kinoteka, Belgrade | La Cineteca del Friuli, Gemona | Landesfilmsammlung Baden Württemberg, Stuttgart | Magyar Nemzeti Digitalis Archivum És Filmintezét, Budapest | Museo Nazionale del Cinema, Turin | Národní filmový archiv, Prague | Nasjonalbiblioteket, Oslo | Österreichisches Filmmuseum, Vienna | reelport GmbH, Cologne

⁶² Video shown at the UN commemoration of WW1:

https://www.youtube.com/watch?v=VN57tdO_Ho0&feature=youtu.be

⁶³ OJ L 283, 29.10.2011, p. 39

⁶⁴ <http://www.enumerate.eu/>

- Germany: less than 0.5%
- Latvia: 15%
- Lithuania: 13%
- The Netherlands: 20%
- Poland: 20%
- Slovakia: 1.25%
- UK: 3.8%

The Baltic States and Poland have made use of EU structural funds for digitisation, which explains that they are more advanced than other Member States in digitisation.

However, these figures have to be taken with caution. First, it is not always clear whether they refer exclusively to the digitisation of film material, or if they also include digitisation of non-film material (posters, scripts, books...). The digitisation of the first one is obviously more costly. Second, they do not provide details about the quality of the digitisation. It is cheaper to digitise in a lower resolution for online streaming than to digitise in 2K or 4K quality, in order to produce DCPs that can be projected in cinemas.

In conclusion, **we lack precise statistics about the progress of digitisation of film heritage in the EU**. Nevertheless, **the figures point to a very low level of digitisation, indicating that little progress has been done since 2012**. The only exceptions are the projects funded with EU structural funds, through EFG1914 or through a national policy of digitisation of film heritage, such as the Dutch "Images of the Future" or the British "Film forever".

"Strengthening ICT applications for e-culture" is among the priorities of the **EU structural funds for 2014-2020**⁶⁵. This opens the door to **co-financing of digitisation of film heritage**, provided that it is included among the priorities of each Member State in its "Partnership agreements"⁶⁶. Digitisation of cultural heritage to boost innovation was included in the **Digital Tool Box** published by the European Commission in 2014⁶⁷.

- Despite the **lack of precise statistics** about progress of digitisation of film heritage, data indicates that it is **still very low**.
- **Scarce funding and complexity of clearing copyright and related rights** are obstacles to digitisation.
- Some Member States have successfully used **structural funds** for the digitisation of film heritage. More use of structural funds is to be encouraged.
- British "Film forever" is a very good practice, to be followed by other Member states, in accordance with their available resources.

⁶⁵ See article 5(2)(c) of Regulation 2013/1301/EU

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:347:0289:0302:EN:PDF>

⁶⁶ http://ec.europa.eu/regional_policy/indexes/in_your_country_en.cfm

http://ec.europa.eu/contracts_grants/agreements/index_en.htm

⁶⁷ See chapter 5.8 -

<http://s3platform.jrc.ec.europa.eu/documents/10157/334751/The%20Digital%20Agenda%20Toolbox%20%20final.pdf>

- Member States should include film heritage in their **national digitisation strategies**, with the view to **increasing film content in Europeana**.

2.7. Digital cinema and film heritage

According to Member States' replies, around **17 Member States have equipped** (Austria, Belgium, Denmark, Finland, France, Germany⁶⁸, Greece, Ireland, Luxembourg, Poland, Romania, Slovakia, Slovenia, Spain, Sweden, and UK) **or plan to equip** (Hungary) **their cinematheques with digital projection equipment**. Some of the cinematheques are also considered as "art and essay" cinemas, and therefore can benefit from national or EU funding for digitisation (Hungary, Slovakia). 6 Member States (the Czech Republic, Cyprus, Estonia, Lithuania, Italy, and Portugal) have not digitised the screens of their FHI and have no plans to do so. The situation in the remaining Member States is known. **It seems rather urgent to equip all cinematheques with digital projectors. Structural funds may be used to this end.**

Digital projection also offers the **possibility of projecting heritage films beyond the cinematheques**, provided that catalogue films are digitised. **Sweden** will produce DCPs of classic films, which can then be screened at any external cinema.

At the same time that cinematheques get equipped with digital projectors, it is necessary to **keep alive the technology of analogue projection**. Analogue projection will remain the only possibility for projecting classics that have not been digitised.

- **Cinematheques need to get equipped with digital projectors**, so as to project digitised or born-digital films. **Structural funds** may be used to this end.

- **Analogue projection technology** should also be preserved.

2.8. Access to collections for non-commercial purposes

New technologies create new possibilities to allow access to collections to a wider public. This offers enormous possibilities for education, recreation and cultural uses.

Traditionally, the main role of FHI was preservation. For some years, however, FHI have been increasing their efforts to also facilitate access to their collections. This change is driven both by technological changes and by societal demand. A clear example of this movement is the **BFI Collection Policy** of November 2011⁶⁹. It states that "**preservation and access have equal priority as objectives**".

FHI continue to provide access to film heritage in **traditional ways** (Screening in the cinematheques, rental or sale of DVD of restored or rare films, television broadcasting of classic films, etc.). **Film heritage festivals** (Bologna, Pordenone, Lumière in Lyon⁷⁰, "Toute

⁶⁸ In Hessen, this was co-financed by Structural funds

⁶⁹ <http://www.bfi.org.uk/sites/bfi.org.uk/files/downloads/bfi-collection-policy-2011-11-16.pdf>

⁷⁰ <http://www.festivals-connexion.com/calendrier/fiches.php?idadherents=82>

la memoire du monde" in the Cinémathèque française⁷¹, International Festival of German Film Heritage in Hamburg⁷²) and specific sections in film festivals devoted to film heritage ("Retrospective"⁷³ in Berlinale, Cannes Classiques, Venice Classics) attract an increasing number of participants. In all these cases, **access is provided in agreement with right holders.**

During the reported period, FHI have intensified their efforts to make their collections **available through digital channels:**

- Films or extracts available for streaming on the FHI's website.
- YouTube channels: The BFI YouTube Channel⁷⁴ is very successful, with 31,500 subscribers and 15 million of views since its creation. Other YouTube channels include: Belgium Cinematek⁷⁵, EYE Film Institute, the Deutsches Filminstitut⁷⁶, the Danish Film Institute⁷⁷, Hungarian MaNDA⁷⁸ and Latvia. Most of the films available on those channels are shorts. These institutional channels do not include advertising.
- Many FHI⁷⁹ use **social media** (Facebook, Twitter) to communicate with *cinephiles* and promote their activities. Successful examples are @cinecabologna (7.500 followers), @InstitutLumiere (9.200 followers) and @BFI (264.000 followers).

Examples of **online access** are:

- **Austria:** Newsreels collection from 1918-1919⁸⁰ was made freely available online in 2012.
- **Belgium:** www.laplateforme.be contains several hundreds of recent Belgium documentaries.
- **Denmark:** Filmcentralen⁸¹ is the new film streaming platform from the Danish Film Institute. It currently has two sections. The largest section is Filmcentralen/Education, which is the continuation of Filmstriben/School, and is a subscription (S-VOD) service for schools and educational institutions in Denmark. The other section is Filmcentralen/Alle (For all), which opened in April 2014. This is an open streaming service, where films have been pre-cleared to be freely accessible for all citizens. There are almost 400 titles available for free streaming. The Filmcentralen platform also links to just over 200 titles, which are available on paid streaming platforms. Within 2 months, Filmcentralen had 182,913 users, of which 49,423 were for Filmcentralen/Alle. Users are evenly distributed throughout Denmark. All ages are represented, with most visitors in the group age of 25-45 years (this includes children aged 3-12 years using their parents' PC/tablet). The access was done through: smartphone (9%), tablet (19%) and PC (72 %).

⁷¹ <http://www.cinematheque.fr/fr/dans-salles/hommages-retrospectives/fiche-cycle/toute-memoire-monde-2013,562.html>

⁷² http://www.cinefest.de/e/pro_uebersicht.php

⁷³ http://www.berlinale.de/en/das_festival/festival-sektionen/retrospektive/index.html

⁷⁴ www.youtube.com/bfifilms

⁷⁵ <https://www.youtube.com/user/CINEMATEKfilms>

⁷⁶ <http://www.youtube.com/user/DFIfilms/videos?view=1>

⁷⁷ <http://tmoeller.dk/wordpress/gratis-film-pa-youtube-movies.html>

⁷⁸ <https://www.youtube.com/user/kulturkincks>

⁷⁹ Italy, Germany, France, The Czech Republic, UK, Ireland, Hungary...

⁸⁰ <http://www.filmmuseum.at/jart/prj3/filmmuseum/main.jart?rel=en&content-id=1336731140070&reserve-mode=active>

⁸¹ <http://filmcentralen.dk/alle/om-filmcentralen-1>

- **Estonia:** Newsreels from 1920 to 1998 are freely accessible online by agreement with the Authors' society.

- **Germany:** Plans to open the archive of the German Film and TV Academy in an online archive in 2015. At the moment collections can be viewed in various websites⁸².

- **Latvia:** The internet platform www.balticuniverse.com/en/ provides access to digitised historical films from the Baltic regions. It was co-financed by the EU structural funds.

- **Lithuania:** The project "Lithuanian documentaries" made 1000 Lithuanian available online in www.e-kinas.lt.

- **The Netherlands:** Public can access the collections of **Sound and Vision** through 15 websites and eMobile Apps. The distribution platform Open Beelden⁸³ offers 1600 videos on Wikimedia Commons, which makes it the larger provider of videos in Wikimedia. This has generated 40 million views in 2012. **EYE's** collections are available on several websites⁸⁴. 150 early films in the public domain are offered through Open Beelden⁸⁵ for reuse or remix under Creative Commons.

The VoD platform Ximon.nl⁸⁶ had the objective to provide online access to Dutch film heritage. As the demand generated on the Dutch market was too small, they tried to offer their services to other Member States. It closed down in January 2014, mostly due to the expiry of the public funding and the high transactional costs for clearing rights in several territories.

- **Poland:** NINATEKA.pl is an audiovisual library that includes documentaries, animations, experimental films, theatre and opera recordings, as well as concert recordings. It contains more than 2000 audiovisual files, of which 98% are available free of charge. The remaining 2% of the materials can be accessed after payment. Filmoteka Narodowa offers a presentation on the second life given to silent Polish films at the Google Cultural Institute⁸⁷.

- **Spain** has digitised and made available online⁸⁸ 700 film hours, mainly reelnews from 1943 to 1981 (NO-DO). This has been possible thanks to the cooperation with the public broadcaster RTVE. In the first 8 months, the website has been accessed by more than one million and a half different users. Spain plans to expand the online offer to other films for which the State owns the rights.

- **Sweden:** Low-resolution digitisation for online access has been carried out since 2011. Around 1000 films are freely available for streaming on www.filmarkivet.se from all over the world. The average number of unique visits per day in 2013 was 1,295. The website was visited 472,593 times in total in that year. The films are mainly short non-fiction films (newsreels, amateur films and advertising). In 2013, another digitisation project was launched, aimed at creating digital masters and DCPs from the analogue collections.

⁸² www.filmportal.de; www.europeanfilmgateway.eu; www.lost-films.eu; <http://breloer.deutsche-kinemathek.de/>; <http://www.berlin-ecke-bundesplatz.de/>; <http://www.deutsche-kinemathek.de/de/publikationen/online-publikationen/murnaus-tabuwww.wir-waren-so-frei.de>; <http://www.first-we-take-berlin.de/>

⁸³ openbeelden.nl

⁸⁴ www.filminnederland.nl; www.instantcinema.org; www.scenemachine.nl

⁸⁵ [Eye.openbeelden.nl](http://eye.openbeelden.nl); http://eye.openbeelden.nl/news/690996/EYE_plaatst_meer_dan_150_films_op_Open_Beelden

⁸⁶ <http://ximon.nl/>

⁸⁷ <http://www.google.com/culturalinstitute/exhibit/silent-films-second-life/ARpPjn4s?hl=en-GB&position=0%2C-1>

⁸⁸ www.rtve.es/filmoteca

- **UK:** As part of its five-year plan "Film Forever", the BFI is committed to unlocking film heritage. BFI Player⁸⁹, a video-on-demand platform launched in October 2013, is the core of the digital strategy designed to deliver this vision. Unfortunately, the video playback is geo-locked to the UK.

We **lack comprehensive data about the use that the public makes of film heritage resources online**. We have examples (such as the BFI YouTube Channel, the Dutch Open Beelden or the Spanish NO-DO) proving **that film heritage can generate millions of views if the material is well curated, actively promoted and connected to sites that can attract internet traffic**.

- In the digital era, access is as important as preservation in terms of policy objectives.

- FHI should continue to **expand online access to their collections**. At the same that they expand their online offer, they should **seek to actively attract internet traffic through curation and connection** to highly visited websites.

- FHI should also **collect information about the use** that the public makes of online heritage resources, so they can better target their future efforts.

2.9. Film heritage as a business opportunity

a) New exploitation opportunities for heritage films

New technologies offer the possibility for right holders to explore new windows of exploitation and new possible revenues. To achieve that, there are several conditions: First, the original film material has to be preserved; second, it has to be digitised at an acceptable quality; and finally, it has to be made available, curated and promoted.

According to the DAEFH study⁹⁰, most of the European works that have subsequently returned to TV screens or to DVDs have been kept and restored by European FHI. The fragmented European film industry has not been in a position, or had the capacity, to preserve the films that they have produced. These works could now be exploited digitally and on new platforms, such as VoD. The potential for "long-tail" revenues, (typically revenues for films older than 5 years) **is still largely unexploited**⁹¹.

Commercial VoD services can make their offer broader and more attractive by including heritage films. New technologies allow for the creation of applications for tablets and mobile phones, offering information about films and related activities. Marketing strategies, curation and partnerships with other media are elements ensuring the success of VoD platforms.

A good example of a VoD service is the **BFI player**⁹², launched by the British Film Institute in October 2013. It offers over 1000 videos, both free and paid-for content, across a wide range of genres, both library films and day-and-date films. So far, it is geo-locked to the UK. First figures on its economic performances are expected in October 2014.

⁸⁹ [Player.bfi.org.uk](http://player.bfi.org.uk)

⁹⁰ See point 1.2.2.

⁹¹ Figures from the study "Identification et évaluation des flux économiques et financiers du cinéma en Europe et comparaison avec le modèle américain IMCA for DG EAC, Unité C1, study nr. DG EAC/34/01

⁹² <http://player.bfi.org.uk/>

Istituto Luce Cinecitta⁹³ in **Italy** started a collaboration with Google in 2012, which brought on YouTube 30.000 newsreels from the 20s to the 60s. It has 20,000 subscribers and 6 million views. Luce is claiming **advertising revenues** based on this figure. The same year, it released a free application for tablets and mobile phones, which has been downloaded 50,000 times. It contains 200 titles (newsreels, documentaries and photos). Istituto Luce Cinecitta owns the rights of its collections, which allows them to proceed to digitisation. In September 2013, they started collaborating with Apple to open a thematic channel on Italian cinema on iTunes.

Some countries create incentives and encourage the digitisation and exploitation of film heritage by right holders. The **German Federal Film Board (FFA)** allocated €1 million for subsidies for digitisation in 2014, with a view to having the digitised material exploited in cinemas. Applications may be made by the holder of exploitation rights in Germany and must include a feasible and detailed exploitation plan. **France** also supports the digitisation of works that have commercial potential by right holders in the framework of the "Grand Emprunt"⁹⁴. The subvention could cover up to 90% of the restoration and digitisation costs of the work. Within this framework, in March 2012, Gaumont received €10 million to digitise and exploit commercially 270 heritage films⁹⁵. In **Sweden**, 20% of the funding available for the digitisation of films is reserved to right holders, if they can provide a distribution plan for those films.

b) Film heritage as a source for new creation

Increased cultural availability of heritage films and increased education on European film culture can only result in increased interest and demand for European films, both new and "old". Moreover, film heritage is a source for inspiration and for new creation, both for professional authors and for the general public.

The training **Archidoc**⁹⁶ helps the development of original film projects that use archives and allows their directors to access the international documentary market. It provides training for 10 European filmmakers willing to develop their documentary film project that uses archives.

Mash-up of film heritage can also be at the origin of new business opportunities. In several countries, film heritage material is made available online for mash-up.

c) Positive economic spill-overs of film heritage

Film heritage is also a cultural asset that attracts tourism, and has a positive impact on the international image of various towns and regions. Two good examples are **Il Cinema Ritrovato festival in Bologna** and the **Retrospective at the Berlinale**. The 2014 edition of Il Cinema Ritrovato attracted more than 2,300 participants from 43 countries. The 2013 edition was covered by more than 200 articles in Italian and international press. The total revenues for the town of Bologna generated by participants in the festival are estimated at around €1 million.

⁹³ <http://www.cinecitta.com/>

⁹⁴ <http://www.cnc.fr/web/fr/1334>

<http://www.cnc.fr/web/fr/textes-juridiques/-/editoriaux/1791322;jsessionid=EB6880876E5F67788E3FB71481583837.liferay>

⁹⁵ Defined as films that had a theatrical release before 1 January 2000.

⁹⁶ <http://www.femis.fr/archidoc-presentation-in-english>

- Member States should provide incentives to right holders to digitise and exploit their catalogues online or through digital projection.
- Possibilities for re-use of catalogue sources for new creation should be further explored.

2.10. Education / Film literacy

The reflection that FHI have been doing on "the future of the past", or in other words, on the reasons for investing in the preservation of heritage, have led to an increase of film literacy⁹⁷ activities. Availability of heritage resources is a necessary condition for any film literacy activity. Film literacy results into more understanding from the audience about European cinema, and into demand for a broader film offer.

The European Commission aims to improve the efficiency of European film literacy initiatives through its **Creative Europe Programme**⁹⁸. Among the projects selected in 2014⁹⁹, two involve Film Heritage Institutions: the **British Film Institute** will develop a project on a "European Framework for Film Education". **Cineteca di Bologna** will coordinate the project "ABCinema" which involves 6 partners¹⁰⁰.

The European Commission financed a study on "**Screening Literacy: Film education in Europe**"¹⁰¹, which was published in 2013. The study was led by the British Film Institute. One of the recommendations was for the EU "to sponsor, in tandem with the industry, a European bank of exemplar online resources, for a wide range of audiences and education settings, translated from good practice across the EU".

The European Commission is currently carrying out a study called "**Showing films and other audiovisual content in European Schools – obstacles and best practices**"¹⁰². The study will be published late 2014. It includes an assessment of copyright and other issues that are relevant for the use of current and heritage films in schools.

The French CNC published a report entitled "**For a European film education policy**"¹⁰³ in June 2014. According to this report, the most successful film literacy projects are those that have managed to combine several film literacy activities:

- Screenings during school hours, often in theatres, allowing school students to view classic or contemporary films.
- Practical workshops in which young people produce films, from the initial idea to the final cut.

⁹⁷ Film literacy is defined as "the level of understanding of a film, the ability to be conscious and curious in the choice of films and the competence to critically watch a film and to analyse its content, cinematography and technical aspects."

⁹⁸ http://ec.europa.eu/culture/opportunities/audiovisual-support/audience-dev_en.htm

⁹⁹ https://eacea.ec.europa.eu/sites/eacea-site/files/documents/publication_of_results_audev_2014_en.pdf

¹⁰⁰ Cineteca di Bologna, Deutsches Film Institute, Les enfants de cinema, EUE, Cinémathèque Royale de Belgique and Watershed.

¹⁰¹ <http://www.bfi.org.uk/screening-literacy-film-education-europe>

¹⁰² <http://filmedeurope.wordpress.com/proyecto/>

¹⁰³ http://www.cnc.fr/web/en/publications?p_p_auth=W997hLEB&p_p_id=20&p_p_lifecycle=1&p_p_state=exclusive&p_p_mode=view&p_p_col_id=column-1&p_p_col_count=1&_20_struts_action=%2Fdocument_library%2Fget_file%20folderId=16538&_20_name=DLFE-10811.pdf

- Events specifically targeting youth – festivals, competitions, prizes – which have been successfully developed over the last few years.
- Training courses established for teachers, theatre operators and community workers so that they can communicate film culture to the young.
- Use of new media – dedicated websites, online video platforms, and blogs – which are increasingly favoured channels for film education.
- Twinning between organisations, cities and regions in Europe, an increasingly common practice.

Some of the recommendations proposed by this report are:

- The creation of a video platform making European films available to children and young people.
- The establishment of a library of 20 European films, old and new, to be circulated throughout Europe for educational use both in theatres and at school.
- **To make European funding for distribution and exhibition conditional on activities promoting film education.**

Educational use of film heritage is normally possible only after having obtained the agreement of the right holders. In **Finland**, production companies and the copyright association for audiovisual producers have given permission to schools for using film records for educational purposes since 2006 in exchange of an annual fee. In **the Netherlands**, there are agreements with the right holders' organizations for the use of audiovisual sources in the Dutch Institute for Film Education and the Media Awareness Expertise Centre. The **Lithuanian Film Centre** has concluded agreements with 15 national film producers for the use of their films for education. In **Sweden**, some heritage films are available for DVD-screening or streaming in classrooms thanks to collective licensing agreements.

This situation is different in Austria and Latvia. **The Austrian** Copyright act allows the projection of films for teaching purposes if they are related to the curriculum. Right holders are entitled to claim equitable remuneration through a collective society¹⁰⁴. In **Latvia**, the copyright law¹⁰⁵ allows the use of works in educational institutions without the author's consent and without remuneration for direct teaching purposes.

Almost all European film heritage institutions devote resources to promote education and film literacy in many different ways. **Best practices** to report are:

- **Poland** is very active in the use of new technologies for providing school access to film heritage¹⁰⁶, through its project "School Film Archive". It is planned to sign agreements with rightholders to make available 66 Polish cinematographic works to schools through the Internet. Another project is the "Ninateka Edu" website, launched in December 2011. It makes available, via a closed network, audiovisual resources for teachers and pupils, including audiovisual material, lesson scenarios and exercise books. The aim is to attract the interest of young viewers by giving new contexts to archive content. "Ninateka Edu" is complemented with activities at the Cinematheque.

¹⁰⁴ Article 56c of the Copyright Act (Urheberrechtsgesetz – UrhG)

¹⁰⁵ Article 19(7) of the Latvian Law on copyright

¹⁰⁶ edukacjafilmowa.pl

- **Cyprus** maintains a website with educational films¹⁰⁷.
- **The Czech Republic** has launched the "Open Film Education Programme".
- **Finland** launched a new educational film web portal¹⁰⁸ in November 2013. This portal offers free film excerpts and material for teaching film in schools. Teachers can choose by themselves from which angle to approach the material. "Film path" is based on the National Audiovisual Institute's (former Finnish Film Archive) own film collection and digital material (Suomi-Filmi & Suomen Filmitoimisto). Its main objective is to solve the schools' difficulty to use films for educational purposes legally and without high screening fees. Finland also offers a full length fiction film online for schools. It is free-of-charge, but password protected.
- **Germany**: The federally funded agency "Vision Kino"¹⁰⁹ promotes film literacy jointly with distributors, cinemas, producers and FHI. This includes the annual "School cinema weeks". The aim is to strengthen the cooperation between schools and cinemas by turning the cinema into a classroom. In 2012, 700,000 pupils and teachers participated. The German Cinematheque and DIF also offer "train the teacher" events in this context.
- In 2012, **Ireland** published a research study on "New Directions in Film and Media Literacy"¹¹⁰.
- **Italy: Cineteca di Bologna** offers more than 500 activities for children and young people in the framework of the project "Schermi e Lavagne". These include screenings, workshops and summer camps. The project is supported by the municipality of Bologna and the Europa Cinemas network¹¹¹.
- The **Lithuanian Film Centre** launched an educational project for school teachers in December 2013. It is called "Film Education Resources Database". Its aim is to encourage teachers to watch, analyse and evaluate Lithuanian films together with their students in the classroom. Three film literacy programs targeted to different age groups are available. Each program contains feature films, documentaries, animation and short films, as well as teaching material. The Film Education Resources Database is available only to teachers, who are registered users. Once registered and logged into the database, teachers can download teaching resources and watch the films online in the classroom. 200 teachers signed up in the first 6 months since the launching of the project.
- **Spain** launched a prize on "History of Cinema"¹¹² for school pupils in 2013.
- The **Swedish Film Institute** has produced material for teachers on how to make educational use of the website www.filmarivet.se. This website offers more than 750 short films from its collections, free of charge.
- The **BFI has launched its "5-19 Education scheme" for 2013-2017**¹¹³. Film education is an integral part of the BFI's future strategies. In this context, it has established "Film Nation

¹⁰⁷ <http://paragoges.pi.ac.cy>

¹⁰⁸ <http://elokuvapolku.kavi.fi/>

¹⁰⁹ www.visionkino.de

¹¹⁰ http://www.ifi.ie/wp-content/uploads/IFI_FilmFocus_WV.pdf

¹¹¹ <https://www.europa-cinemas.org/en/>

¹¹² <http://www.mecd.gob.es/cultura-mecd/areas-cultura/cine/premios/otros-premios/premio-historia-de-la-cinematografia/presentacion.html>

¹¹³ <http://www.bfi.org.uk/education-research/5-19-film-education-scheme-2013-2017>

The main elements of the scheme are: a world-class digital platform for young people, teachers, parents and learners, a single integrated film education program including activities and support across the UK which should

UK¹¹⁴", with a budget of £26 million over 4 years, and the BFI National Youth Film Academy.

- "**Le Cinema, 100 ans de jeunesse**" focuses on experimental film. Pupils are asked to reflect and develop material on specific film related issues. It involves FHI (Deutsche Kinemathek, Italian Scuola Nazionale di Cinema, BFI and Cinematheque Victor Hugo) media literacy networks and cinemas. It is coordinated by the Cinémathèque Française. 1000 pupils from 7 countries benefit from this training.

In relation to the availability of free online footage for **mash-up**, the **Netherlands** has three pioneer projects: Open Images¹¹⁵, Scene Machine¹¹⁶ and Celluloid Remix. **Poland** has also organised a remix of archive material competitions, in particular through the "Europeana awareness project"¹¹⁷. The **German Cinematheque** website¹¹⁸ offers several hours of recordings from Berlin available for mash-ups.

- **Film literacy** activities have **increased** during the reporting period. The Commission is promoting them through funding and studies.

- Online footage available for mash-up is still very limited.

- Mechanisms for **facilitating the educational use of films from a right-clearance perspective** need to be further developed in order to boost online material available for film literacy.

2.11. Professional training

Lack of specialised professional training on film heritage has been traditionally a weak area in all Member States. With the arrival of the digital era, **the situation has worsened, as new digital competences have to be developed, while photochemical competences have to be maintained.**

Often, the professional training takes place at the FHI itself, since only some limited European professional training is available. The **bi-annual FIAF Film Restoration summer school in Bologna** is a good practice to be highlighted. The most recent one took place in July 2014¹¹⁹.

In this reporting period, **the cooperation between FHI and Universities has developed.** Some examples are:

- the establishment of a Master's programme on "Film culture: archiving, programming, presentation", thanks to the cooperation between the Goethe University in Frankfurt and the **German Film Institute.**

be available to all 27,600 schools, to cinemas, youth organizations and community groups and The Youth Film Academy Network.

¹¹⁴ <http://www.firstlightonline.co.uk/fundingstream/the-film-nation-uk-outreach-grant-programme>

¹¹⁵ www.openimages.eu

¹¹⁶ www.scenemachine.nl

¹¹⁷ <http://pro.europeana.eu/web/europeana-awareness/home>

¹¹⁸ <http://www.first-we-take-berlin.de>

¹¹⁹ <http://www.immagineritrovata.it/summer-school/>

- Cooperation between the **German Cinematheque** and the University of Applied Sciences in Berlin.
- Cooperation between the **Greek Film Archive** and the University of Athens in organising and teaching a postgraduate course on audiovisual archives.
- **Dutch EYE** cooperates with the University of Amsterdam for the Master's course 'Preservation and Presentation in Film Heritage and Digital Film Culture'.
- **Spanish Cinematheque** reports that there is an increasing number of Spanish universities offering specialised training on film heritage. They ask for cooperation from the Spanish Cinematheque.

In **Sweden**, the last photochemical laboratory ceased its operations in 2011. The Swedish Film Institute acquired part of the equipment and hired some of their technicians. Since June 2012 they are operating their own photochemical duplications and restorations in-house. They have also started to offer internships in their photochemical laboratory, to ensure the permanence of know-how in their institutions.

In the **UK**, Creative Skillset¹²⁰, the sector skills council, has a small amount of funding set aside to support archive skills.

- Professional training on film heritage faces two challenges: **create new digital competences and maintain the analogue competences.**
- Training is mainly done by the FHI itself. The only exception is the FIAF bi-annual Film Restoration summer school in Bologna.
- A **good practice** to be encouraged is the **cooperation between Media studies universities and FHI**, in order to offer trainings related to film heritage.

2.12. State aid to cinema production and film heritage

More than EUR 2 billion was devoted by EU Member States to film funding in 2009. In the same year, 1185 feature films were produced in the EU¹²¹.

As shown in Figure 1, the **state resources devoted to film heritage represent only a small fraction of those invested in supporting film production.**

¹²⁰ <http://creativeskillset.org/>

¹²¹ Source: European Audiovisual Observatory, Yearbook 2011.

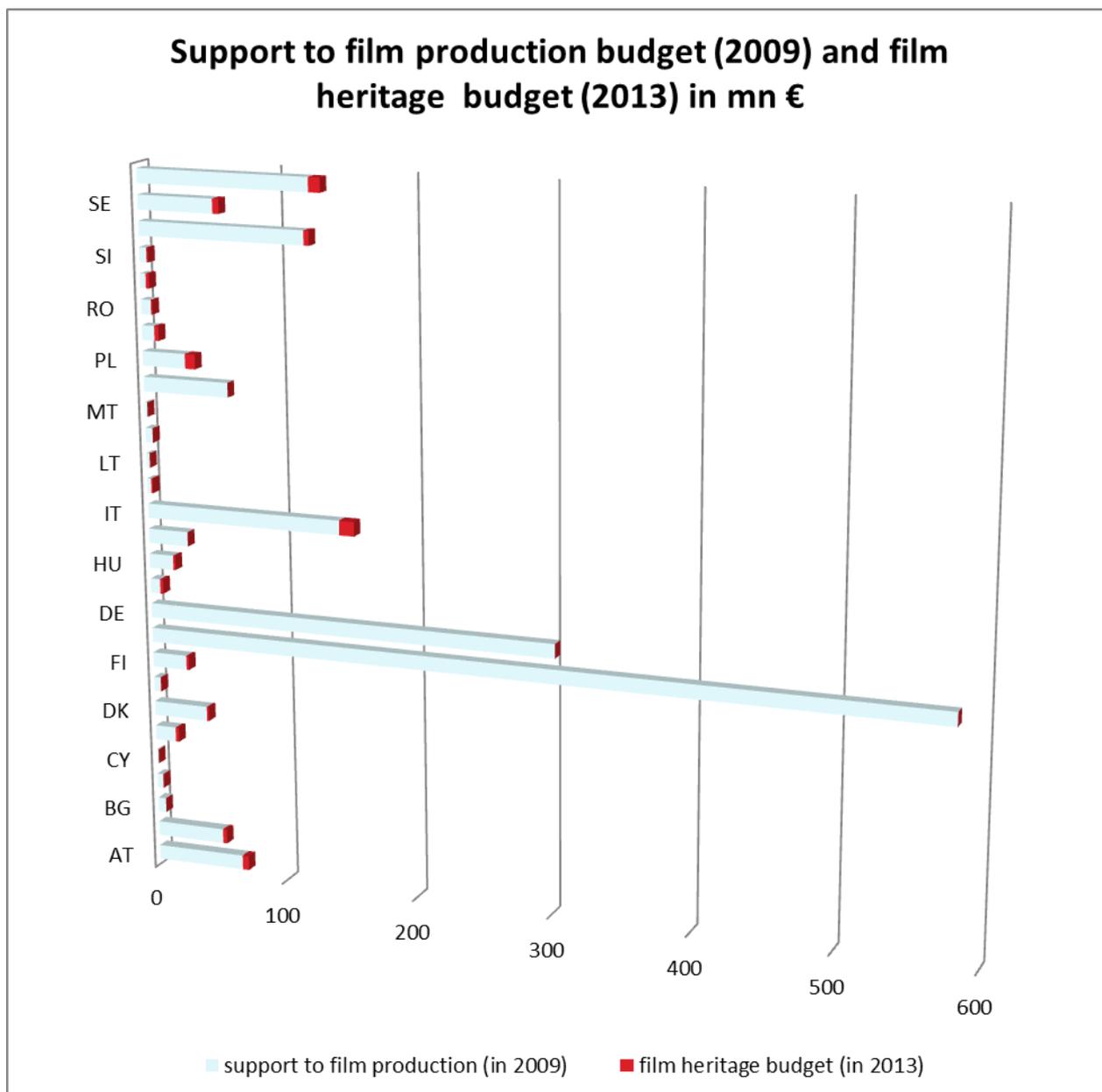


Figure 1

The **Council Conclusions on European film heritage of November 2010** invited Member States to make sure that **film heritage preservation is fully part of national or regional film policy**.

The **Cinema Communication of November 2013**¹²² placed film heritage among the specific **assessment criteria** to be taken into account in the context of the State aid assessment.

According to point 52.6 of the Communication *"Member States should encourage and support producers to deposit a copy of the aided film in the film heritage institution designated by the funding body for preservation, as well as for specified non-commercial use*

¹²² OJ C 332 page 1 of 15.11.2013, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:332:0001:0011:EN:PDF>

agreed with the right holder(s) in compliance with intellectual property rights and without prejudice to fair remuneration for the right holder(s) after an agreed period of time set in the grant agreement and such that this does not interfere with the normal use of the film."

Even if this aspect **is not a compatibility criterion, linking film funding and film heritage is a feature of a well-designed support scheme**. Therefore, **the Commission has been monitoring since November 2013 whether Member states' support schemes take care of film heritage**¹²³.

Public support to film creation can have a positive impact on the collection and access to those films, when they become heritage films, in two ways:

- Enforcing the contractual obligation of deposit, in particular in the digital era where a digital support suitable for long term preservation has to be provided to the FHI.
- Facilitating its use for public interest purposes by film heritage institutions, by including non-commercial uses in grant agreements between funding bodies and film producers.

A **General Block Exemption Regulation**¹²⁴ (GBER) entered into force on 1 July 2014. The effect is that some categories of aid exceeding a certain threshold do not have to be notified to the Commission. These include aid schemes for audiovisual works above EUR 50 million per scheme per year. The compatibility conditions set out in the GBER are based on the Cinema Communication.

As far as **deposit** is concerned and as explained in section 2.2, some Member States (Denmark, Finland, and the Netherlands) have introduced **the practice of paying the last instalment of the subsidy only after the film archive has certified the deposit of the film in a format suitable for long-term preservation**. This has proved to be the best possible instrument to enforce the contractual deposit obligation. In addition to that, **Sweden** also foresees that producers cannot apply for new funding until the deposit takes place. **Estonia** updated its "Guidelines for Granting of Support" in 2014. The Estonian Film Institute will now monitor the deposit of funded films. **German** funding bodies have made an undertaking to tie the granting of funds to the deposit of a technically perfect copy suitable for preservation.

In relation to **cultural and educational uses**, there are already some **good practices** to note in this field:

- **Denmark:** According to the Danish law on legal deposit¹²⁵, deposited films, which have received a public subsidy, can be shown to a paying audience in the context of the Danish Film Institute's cultural activities.

¹²³ To date, the schemes that were assessed under the new rules include: SA.38000, Germany, FilmFinanzierungsFonds – HessenInvestFilm; SA.38449, Germany, Baden-Württemberg film scheme – amendments; SA.38083, Belgium, Filmfonds SA.37869, Belgium, Mediafonds; SA.37722, Finland, Aid scheme to cinema in Finland; SA.38099, Netherlands, Netherlands Film production incentive; SA.38212, Spain, Basque film support scheme – modifications; SA.38306, UK, Modifications to the UK Film Tax Relief. The decisions are available at <http://ec.europa.eu/competition/elojade/isef/index.cfm>. Some of these schemes could now fall under the GBER.

¹²⁴ Commission Regulation (EU) N°651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty; OJ L 187 of 26.06.2014, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.187.01.0001.01.ENG

¹²⁵ <http://www.pligtaflevering.dk/loven/bekendtgørelse.htm>

- **Spain:** The Spanish legislation¹²⁶ requires that beneficiaries of public funding must give a perfect copy of the film subject of the aid to the Spanish Film Archives. The film can be used by the Institute of Cinematography and Audiovisual Arts for foreign promotion and also in the Institute's website for promotion in the form of extracts. In addition, it can also be used for diffusion of the Spanish film heritage by the Spanish Film Archives two years from its premiere. The producers can oppose or condition this right if they reasonably consider that it may damage the commercial exploitation of the film.
- **Sweden:** The Declaration of deposit by contractual obligation¹²⁷, applicable for producers receiving production subsidy from 1 January 2012, foresees that "the Swedish Film Institute has the permission to use all contractually deposit auxiliary material in its daily activities". The contract also foresees the permission to migrate the deposited material onto new formats and carriers, if needed for long-term preservation and access to the film.
- **Estonia:** The 2014 "Guidelines for the granting of support" entitle the Estonian Film Institute "to use films that have obtained funding for the non-commercial promotion of Estonian culture in Estonia and abroad, in agreement with the films' responsible producers and in accordance with the films' distribution plans and global premieres".
- **Latvia:** Financing contracts include a clause which transfers the rights for non-commercial film distribution (non-exclusive license) to the National Film Centre. This is allowed to distribute the film in educational institutions, libraries, festivals, Latvian film promotion events, etc. This practice is based on a mutual agreement between film producers and the National Film Centre.
- **Croatia:** Producers must deliver to the Croatian Audiovisual Centre one copy of the film with subtitles in one foreign language for the purpose of non-commercial showing at the Croatian Culture Days or for promoting Croatian cinematography abroad.

The rationale behind these practices is that public investment in cultural creation should benefit tax-payers as much as possible. Firstly, film funding allows European audiences to enjoy a diversified cultural offer in cinemas and other distribution channels. Once films have reached their return-on-investment, on average after 5 years after release, they usually become commercially unavailable, and therefore, invisible for the European citizen¹²⁸. As explained above, ACE estimates that 85% of European film heritage is out-of-commerce. Therefore, a different way of providing benefit to tax payers can be introduced through the best practices such as those illustrated. In general, these contractual provisions allow cultural and educational use of films after their commercial life. Increased cultural and educational access to film heritage can only result in increased interest and demand of new European productions.

¹²⁶ Article 17 of the Orden CUL/2834/2009.

¹²⁷ http://www.sfi.se/PageFiles/5823/Declaration%20of%20deposit_2012.pdf

¹²⁸ The American Assembly at Columbia University made the following proposal in its contribution to the first public consultation for the review of the Cinema Communication:

In order to modernize how public funding agencies conceive their mission, with an emphasis on much wider and cheaper distribution of EU movies, they proposed:

- Making public funding contingent on creative commons commercial use licensing of the work after an initial period of commercial release (provisionally, five years). The CC license would allow works to circulate at no cost, without requiring permission from the rightsholder.
- Allowing production companies to buy out of this clause if they choose to do so (notably if a film is a hit) by paying back the funding agency."

European FHI and the European Film Agency Directors (EFADs) met in February 2014, on the occasion of the Berlinale, to discuss the common interest of promoting digitisation and access to film heritage, in particular for film literacy purposes.

- In line with the 2010 Council Conclusions on film heritage and with the 2013 Cinema Communication, some Member States have **linked film funding policy and film heritage**, with a double purpose: **to enforce contractual deposit and to facilitate cultural and educational use of funded films, in compliance with intellectual property rights.**
- The **extension of these good practices** would ensure an effective collection of films in formats suitable for long-term preservation and would facilitate the cultural and educational use of films after their commercial life.
- European or bilateral **cooperation between FHI and EFADs** should continue.

2.13. Film heritage and copyright and related rights

2.13.1. Directive 2001/29/EC on copyright in the information society¹²⁹

FHI do not usually own the rights over the material in their possession but possess such works as a function of their role as cultural depositories. In order to perform their public interest missions such as preservation, restoration and the provision of non-commercial cultural and educational access to works in their collections, film heritage institutions need in principle to seek the agreement of the right holders.

Directive 2001/29/EC on copyright in the information society provides for **certain exceptions** to this principle directly linked to the daily work of FHI. Member States are, however, free to implement them or not in their national legislation, which has led to a complex situation in the EU. In 2013, the European Commission published a study¹³⁰ on the application of Directive 2001/29/EC. It assesses the implementation of these exceptions in Member States and whether and how those exceptions would need to be adapted to new developments in the online environment.

- **Article 5(2)(c):** This exception allows Member States to authorise specific acts of **reproduction** made by publicly accessible libraries, educational establishments, museums or archives which are not for direct or indirect economic or commercial advantage. This would include, for instance, the **reproduction of film material in new media in order to ensure its preservation**. According to Member States' reports, all Member States, except **Bulgaria**, have reported that they have implemented or they are in the process of implementing (**Cyprus**) the exception provided by Article 5(2)(c). The **UK** implemented the exception in 2014¹³¹. However, **Lithuania** reports that the reproduction of cinematographic works is not covered in their national law. In **Germany**, FHI are not covered by the exception. **Sweden** is considering an amendment to its law to include FHI. Moreover, transposition is not always

¹²⁹ OJ L 167 of 22.6.2001, p. 10

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0029:EN:HTML>

¹³⁰ http://ec.europa.eu/internal_market/copyright/docs/studies/131216_study_en.pdf

¹³¹ <http://www.legislation.gov.uk/uksi/2014/1372/contents/made>

technology neutral. For instance, some Member States do not explicitly authorise digitisation or format-shifting, which is required for the preservation of digital material.

The above study confirms that the implementation of this exception in Member States has been rather restrictive. For example, some national laws do not allow the making of digital copies (or only allow it under specific conditions), which creates a particular difficulty for film heritage institutions. Certain categories of works are excluded from the scope of national laws. This limitation could hamper the preservation of the European heritage. The study also highlights some uncertainties as to the scope of the exception, in particular in relation to digitisation, format shifting and mass digitisation projects¹³².

The current situation may hamper preservation activities of FHI, particularly in the digital era and could prevent or render very expensive the emergence of pan-European projects and cross border sharing of digital preservation infrastructures. FHI and other institutional users believe that the exception should be rendered mandatory and that it should be clarified that it applies to all methods of preservation, to all types of heritage institutions and to all kinds of works (including film and audiovisual).

- **Article 5(3)(n):** This exception allows Member States to authorise **consultation through dedicated terminals on the premises of cultural institutions mentioned in Article 5(2)c for the purpose of research or private study**. Most Member States mention in their reports that it has been included in their national legislation. **Cyprus, Ireland, Slovakia and Slovenia** note that it is not transposed.

The above study explains that the scope of this exception is defined very precisely by the directive. Therefore, national legislators have generally made a literal transposition thereof. The key question is whether this exception is outdated and should be adapted to broader possibilities of consultation, in line with the common practice of researchers and students (e.g. remote access via secure networks). The study discusses the difficulty to define proper boundaries for a broader exception.

Article 5(3)(a): This exception allows the use of copyrighted material for the sole purpose of **illustration for teaching or scientific research**. Most Member States have transposed it. Nevertheless, the above study underlines the restrictive transposition and diverging conditions of the teaching exception in the laws of Member States and the possible cross-border problems resulting from the lack of harmonisation.

All other uses which are not covered by an exception require prior consent from the right holder. FHI have reported that right clearance is an extremely time consuming and expensive task, that often prevents them from providing access to the collections. This complexity has led the British Imperial War Museum to take an insurance against the infringement of copyright, despite the diligence and resources that they devote to clear copyright.

The current legal framework does not facilitate the emergence of **mass digitisation projects**. The above-mentioned study considers that "the exception for specific acts of reproduction is

¹³² The authors of the study "have developed the opinion that such copying in digital format is in itself not impairing the normal exploitation of the works or the legitimate interests of copyright or related rights owners, so far as the making available is not included in the scope of the exception." – page 402

not capable to address the major challenge of digitisation that digital libraries face¹³³" and that "the exception for on-site consultation" is too narrow¹³⁴.

Transaction costs associated with right clearance (not the remuneration of the author, but all related costs, such as identification, search, bargaining, monitoring and enforcement costs) for single works are very high, in particular for older works. Therefore, FHI have so far **concentrated their digitisation efforts on public domain material (very early cinema) or on works for which the State holds the rights (for instance, newsreels)**. Instruments such as the Orphan Works Directive or the Licences for Europe agreement on the digitisation of films are applied on a "work-by-work" basis. FHI consider that both are useful instruments suited for the digitisation of (groups of) individual works, but not for large scale digitisation projects.

A **public consultation on the review of the EU copyright rules** took place between 5 December 2013 and 5 March 2014¹³⁵. More than 9,500 replies were received. Several FHI contributed to the consultation, in particular in relation to the questions on registration and identifiers, terms of protection, exceptions (preservation, consultation, teaching, research, disabilities) and mass digitisation. Views from audiovisual authors, film producers and distributors and collective management organisations were also collected in this context. All replies are available online, as well as a summary report¹³⁶.

The discussion on the scope of the exceptions was opened by the **2008 Green Paper on "Copyright in the knowledge economy"**¹³⁷. The **2009 Commission Communication on "Copyright in the knowledge economy"**¹³⁸ did not propose any further steps in this respect. In July 2011, the European Commission continued the discussion with the **Green Paper on "the online distribution of audiovisual works in the European Union"**¹³⁹. Chapter 5.1 of the Green Paper is devoted to FHI, under the heading "Special uses and beneficiaries". It is explained that these institutions are concerned that the current EU copyright legal framework does not provide them with sufficient legal certainty to carry out their public missions of preservation and providing non-commercial cultural and educational access.

The Green Paper inquired again if the **exceptions** of Article 5(2)(c) and of Article 5(3)(n) of Directive 2001/29/EC **need to be adapted in order to provide legal security to the daily practice of FHI**. It also asked what other measures could be considered. 225 replies were received to the consultation¹⁴⁰. In its reply, **ACE** and **the Europeana Foundation** already stressed the **need to make the exceptions mandatory for all types of cultural institutions and to adapt them to the digital world**.

¹³³ The exception in Article 5(2)c of Directive 2001/29/EC does not cover projects of mass-scale digitisation as they go beyond the notion of "specific acts of reproduction".

¹³⁴ The exception in Article 5(3)n of Directive 2001/29/EC is limited to consultation carried out on the premises of the institutions and through dedicated terminals.

¹³⁵ http://ec.europa.eu/internal_market/consultations/2013/copyright-rules/index_en.htm

¹³⁶ http://ec.europa.eu/internal_market/consultations/2013/copyright-rules/docs/contributions/consultation-report_en.pdf

¹³⁷ At that time, libraries and film archives expressed that these exceptions should become mandatory and their application harmonised among Member States. They should also be adapted to the digital world

¹³⁹ http://ec.europa.eu/internal_market/consultations/2011/audiovisual_en.htm

¹⁴⁰ Replies available on http://ec.europa.eu/internal_market/consultations/2011/audiovisual/index_en.htm

The DAEFH study explains that an exception was introduced in **Section 108 (h) of US copyright law**¹⁴¹ allowing public non-profit institutions to “reproduce, distribute, display, or perform in facsimile or digital form” a work that is in its last 20 years of any term of copyright and which is not commercially available. The explicit rationale behind this exception was the acknowledgment that: “Creative works inspire new creations, which in turn inspire others, but this “engine of free expression” does not function unless the works so created are made available to the public”.

2.13.2. Orphan works

Orphan works are works that are still protected by copyright but the right holders of which are either unknown or cannot be located to obtain copyright permissions.

According to the results of an ACE survey conducted in 2010, **21% of the films deposited in the ACE members' archives are considered to be orphan works**. The figures are confirmed by the results of the rights clearing process carried out by the EYE Film Institute in the Netherlands in the framework of the Images for the Future Project.

Directive 2012/28/EC of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works¹⁴² (the Orphan Works Directive) was adopted on 4 October 2012. The Directive has to be implemented by Member States by 29 October 2014. It covers, among other works and subject matters, cinematographic works contained in the collection of FHI. Firstly, the Directive contains rules on how to determine the status of orphan works. It provides that the user has to conduct a diligent search to find the holder(s) of copyright and related rights. Secondly, it establishes that if the diligent search does not yield the identity or location of the rights holder(s), the work shall be recognized as an orphan work. This status shall then, by virtue of mutual recognition, be valid across the European Union and the work can be accessed and used in accordance with the Directive in all Member States. Thirdly, the Directive establishes the uses that can be made of the orphan works and the conditions for such uses. This Directive provides FHI with legal coverage to digitise and make available online some of their treasures, for everyone throughout the European Union.

The Directive also provides for the establishment of a single publicly accessible online database for Orphan works. The database is currently being set up and will be managed by the Office for the Harmonization of the Internal Market. Member States shall take the necessary measures to ensure that information about orphan works (such as results of the diligent search, uses by the FHI, contact details of the FHI, changes in relation to the status) is recorded in that database. The publicly accessible database will give guidance to other cultural heritage institutions as to the status of works that they have in their collections, and it will allow potential right holders to claim rights to works that have been identified as orphan. The database will be accessible by the Directive implementation deadline.

Moreover, the European Commission is financing the project "**Framework for an EU-wide Audiovisual Orphan Works Registry**"¹⁴³ (**FORWARD**) within the CIP-ICT PSP

¹⁴¹ <http://www.copyright.gov/title17/92chap1.html#108>

¹⁴² OJ L 299 of 27.10.2012, p.5.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:299:0005:0012:EN:PDF>

¹⁴³ <http://project-forward.eu/>; http://www.ace-film.eu/?page_id=3496

program¹⁴⁴. FORWARD runs between July 2013 and June 2016. The aims of the projects are to create an automated system to assess the rights status of audiovisual works (public domain, protected by copyright, orphan) and to build up a registry of orphan films. The goals of the project are to:

- Simplify the search procedure for FHI by creating an automated system to assess the rights status of films;
- Harmonize rights status definitions across Europe;
- Analyse existing sources providing information about the right holder(s): FHI filmographic databases, producers, CMOs and distributors databases;
- Implement a system to search, harvest and process data;
- Establish a network of National Rights Clearance Centres;
- Ensure interoperability between FORWARD and ARROW¹⁴⁵ (a similar project in the book sector).

It consists of 13 partners¹⁴⁶, of which 11 are FHI.

2.13.3. *Public domain*

The public domain is generally defined as consisting of works that are either ineligible for copyright protection or for which copyrights have expired or have been waived. Copying or using public domain works does not require the prior consent of a right holder.

The DAEFH study compared the situation of rights in the US in relation to the EU. One of the conclusions was that US legislation contains a clear definition of public domain works in the **US: all works published before 1923 are in the public domain**. From the perspective of FHI, a cut-off date would facilitate digitisation and access to older works.

Europeana published a "Public Domain Chapter"¹⁴⁷ in 2010. This document underlines that digitisation of public domain content does not create new rights over it. Works that are in the public domain in analogue form continue to be in the public domain once they have been digitised.

2.13.4. *Contractual and voluntary approaches*

In its reply to the 2011 Green Paper, the **Europeana Foundation** pointed out that **2% of content to which Europeana gives access is audiovisual and audiovisual content ranks highly in users' preferences**. In their view, the reason for the low share of audiovisual content lies in the significant legal barriers that FHI face: clearing rights for making this

¹⁴⁴ http://ec.europa.eu/information_society/activities/ict_psp/index_en.htm

¹⁴⁵ <http://www.arrow-net.eu/>

¹⁴⁶ Cinémathèque Royale de Belgique/Koninklijk Belgisch Filmarchief, Co-ordinator (Brussels), Association of European Film Archives and Cinémathèques (Brussels, Frankfurt), EYE Film Institute Netherlands (Amsterdam), Consorzio Interuniversitario – CINECA, Centre national du cinéma et de l'image animée – AFF (Bois d'Arcy), Det Danske Filminstitut (Copenhagen), Kansallinen audiovisuaalinen instituutti– National Audiovisual Institute (Helsinki), Instituto de la Cinematografía y Artes Audiovisuales – Filmoteca Española (Madrid), Fondazione Cineteca di Bologna (Bologna), Deutsches Filminstitut – DIF (Frankfurt), FOCAL International LTD (Middlesex), Filmoteka Narodowa (Warsaw), Národní filmový archiv (Prague)

¹⁴⁷ http://pro.europeana.eu/c/document_library/get_file?uuid=d542819d-d169-4240-9247-f96749113eaa&groupId=10602

audiovisual content available online in a cross-border way is very difficult in practice because of the high complexity and therefore high cost of right clearance¹⁴⁸ in relation to the budget of these publicly funded cultural institutions. ACE underlined that 85% of Europe's film heritage is estimated to be out-of-commerce, and therefore, invisible for the European citizen.

In an attempt to address this situation with practical industry-led solutions, the European Commission hosted the "**Licences for Europe**" process in 2013. This was a stakeholder dialogue in the area of copyright and digital content. One of the four working groups focussed on audiovisual heritage. This group presented two deliverables at the Final Plenary meeting of 13 November 2013:

- **Statement of Principles and Procedures for facilitating the digitisation of, access to and increased interest of European citizens in European cinematographic heritage works.** It was signed by film heritage institutions, film producers and audiovisual authors¹⁴⁹. This document was signed by the European or International associations representing FHI, authors and producers¹⁵⁰. It contains pre-agreed procedures, which can be used on a voluntary basis to reduce transactional costs associated with right-clearance and facilitate access to heritage audiovisual works. The agreement is based on the principle of sharing the revenues generated by the exploitation of the work between FHI and rightholders. The document has not yet been used for the conclusion of digitisation agreements.

- **Declaration on audiovisual work standard identifiers for new works.** It recommends that all new audiovisual works be systematically registered with an international standard identifier such as ISAN or EIDR to facilitate licensing.

- There is an open discussion on the **extent to which exceptions to copyright and related rights need to be clarified or adjusted to enable FHI to fulfil their public interest mission in the digital environment and to engage in large-scale digitisation projects.**

- Member States' implementation of the **Orphan Works Directive** will facilitate that individual orphan works in FHI are digitised and available for cultural and educational purposes.

3. CONCLUSIONS

Some Member States and the majority of FHI are becoming aware of **the impact of the digital revolution on the film heritage sector**. FHI have to evolve towards hybrid archives, taking care both of analogue film collections and digital or digitised collections. New technologies offer enormous possibilities for cultural, educational and recreational access to film heritage, as well as new business models for commercial exploitation.

Nevertheless, this report shows that **only a minority of Member States are devoting resources to enhance this evolution**. These are mainly countries in the North of Europe

¹⁴⁸ The high cost is due to the complexity of rights situation of audiovisual works and the divergences in copy right legislation among Member States.

¹⁴⁹ <http://ec.europa.eu/licences-for-europe-dialogue/sites/licences-for-europe-dialogue/files/7-AV-heritage-principles.pdf>

¹⁵⁰ ACE, FERA, FIAPF and SAA

(Denmark, Finland, Sweden, Germany, the Netherlands and UK), France and Poland. Most Member States have not provided additional budget for digital tasks. Therefore, European digital film heritage is at risk of being lost, and the opportunities offered by the digital revolution are largely being missed. In some countries, such as Ireland and Greece, it is a fact that current digital cinema is not even being collected.

Despite the lack of precise statistics about the **progress of digitisation of film heritage**, existing data points to a **very low percentage**. Some Member States have successfully used structural funds for the digitisation of film. **More use of structural funds to this end is encouraged.**

Online access to film heritage collections for non-commercial purposes has increased but it is still very small. FHI should seek to expand their online offer, at the same time that they actively attract internet traffic to it through curation and connection to highly visited websites.

Some Member States have created **incentives for digitisation and commercial exploitation of film heritage by right holders**. This is a good practice to be extended. Possibilities of **re-using catalogue sources for new creation** should be further explored.

Film literacy activities, in particular through digital channels, have increased during the reporting period. The Commission is promoting them through funding and studies.

Financial and human resources devoted to film heritage have generally remained at the same level or have been reduced. The economic situation has indeed pushed Member States to change their priorities. However, it is worth noting that while there is already an imbalance between production and distribution & consumption (i.e. between the number of films produced and the number of films that actually reach their target audience), a substantial amount of money continues to be invested in film production. **Resources devoted to film heritage, on the contrary, continue to represent a very small fraction of resources allocated to funding of new film productions** by all Member States.

A step in the right direction was the adoption of the Cinema Communication on State Aid of 15 November 2013. It includes among the "Specific assessment criteria under Article 107(3)(d) TFEU" a point on film heritage. **In practical terms, the Commission is asking Member States to provide information on the deposit of financed films and on mechanisms that facilitate their use for public interest by film heritage institutions every time that a new State aid scheme is notified.**

The complexity and cost of clearing rights continues to be an important obstacle for providing online access to digitised collections, even for education. The "Licences for Europe" Statement of Principle and Procedures is an important step forward. Its application will have to be assessed over time. The Orphan Works Directive, once implemented in Member States legislation, is expected to contribute to the digitisation efforts of FHI and will allow cross-border access to certain works held in their collections. At the same time FHI continue to insist on the need of reviewing the existing exceptions to copyright, in order to allow large-scale digitisation and easier access to collections for cultural and educational purposes.

Preservation of metadata in well-maintained databases is of key importance for the preservation of and access to collections, particularly in a digital environment. Therefore, metadata should be collected, kept in databases, and updated. **An increasing number of film databases are accessible and searchable online.** Some also give the possibility to screen the works. This is a good practice to be extended.

Film heritage can increase the visibility of and awareness to actual political and social issues such as the centenary of the outbreak of the **First World War**. The success of EFG1914, supported by the Commission under the eContentplus programme, proves the importance of a contextualised and thematically focused approach¹⁵¹. **Europeana** allows FHI to create synergies with other cultural heritage sectors: virtual exhibitions that offer films are more attractive to the public. At the same time, Europeana is an entry door that redirects visitors to film heritage resources.

The Commission will continue to monitor the application of the Film Heritage Recommendation. Member States are asked to send their 5th implementation report by November 2015. A questionnaire will be circulated mid-2015 to facilitate the reporting.

The Commission will also continue to promote the exchange of best practices in the framework of an annual meeting of the Cinema Expert Group / Subgroup Film Heritage¹⁵² and to regularly circulate information to its members by e-mail and through the Twitter account @EUfilmheritage.

Cover picture: Cameraman Wolfgang Filzinger, Deutsches Filminstitut / Estate Wolfgang Filzinger.

Picture at the back: Cameraman Wolfgang Filzinger (on the left) shooting on the air field of Pontfaverger, March 1915, Deutsches Filminstitut / Estate Wolfgang Filzinger.

¹⁵¹ http://project.efg1914.eu/wp-content/uploads/2014/05/EFG_1914_PUBLISHABLE_SUMMARY_YEAR2.pdf

¹⁵² http://ec.europa.eu/avpolicy/reg/cinema/experts/index_en.htm

