

## An on-line survey on the PSI Directive

| Meta Informations                                                                                                                                                                                                                                                                                    |                    |
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| Invitation Ref.                                                                                                                                                                                                                                                                                      |                    |
| Status                                                                                                                                                                                                                                                                                               | N                  |
| Preliminary questions                                                                                                                                                                                                                                                                                |                    |
| I reply as /on behalf of a:                                                                                                                                                                                                                                                                          | academic/expert    |
| Please provide your name, and where relevant the name of your organisation                                                                                                                                                                                                                           |                    |
| A FACE ("Association for Fair Copyright in Europe")                                                                                                                                                                                                                                                  |                    |
| Please provide your e-mail address                                                                                                                                                                                                                                                                   |                    |
| <div style="background-color: yellow; height: 15px; width: 100%;"></div>                                                                                                                                                                                                                             |                    |
| Please provide your country of residence / establishment                                                                                                                                                                                                                                             |                    |
| ITALY                                                                                                                                                                                                                                                                                                |                    |
| Context and possible action to consider                                                                                                                                                                                                                                                              |                    |
| Do you think that PSI re-use has reached its full potential in Europe?                                                                                                                                                                                                                               | disagree           |
| Could further action towards opening up public data resources and practical measures facilitating re-use (asset lists of available documents, simplified or no licensing conditions, marginal costs etc.) contribute to unlocking innovation and developing new services, applications and mash-ups? | agree              |
| Community-wide products and services using PSI are not limited to national borders. Do you think that divergent national rules can make it more complicated to grasp economic opportunities and to develop cross-border products and services?                                                       | agree strongly     |

|                                                                                                               |                |
|---------------------------------------------------------------------------------------------------------------|----------------|
| Should further action be taken at Community level to promote cross-border products and services re-using PSI? | agree strongly |
| In your opinion, should the PSI Directive be amended?                                                         | yes            |

### Amendments to the Directive

more substantive amendments to the Directive? yes

and/or technical adjustments to the Directive clarifying some of the provisions? yes

If you think that the PSI Directive should be amended, which issues should in your opinion be addressed? Which provisions should not be amended?

the opening of public information should be compulsory, not left to the good will of each Public Authority - with the notable exception of acts and documents which need to be secret for State or security reasons; the meaning of "document" should be enlarged and widened, so to contain also audio, visual and audio-visual documents, orphan works, all the documents held by PAs -of any kind- above which PAs do not own or do not own any more IP rights. any work created in the exercise of a Public service provision and/or duty should be a "document" as for the PSI directive, notwithstanding the existence of an IP right; public broadcasters and public enterprises should be burdened with the same duty as Public authorities, in the scope of the Directive

Should "soft law" measures be taken possibly in addition to a modification of the Directive, such as Commission guidance or recommendations, regarding the application / interpretation of the PSI Directive? yes

If yes, which "soft law" measures would you favour?

recommendations to P.A. About how to publish the documents they have/own; recommendation to P.A. to facilitate cooperation with private non profit associations available to implement structure to facilitate access to and use of the documents owned by the P.A.; standardisation of the information to be given per each document; creation of an EU database, accessible via web and free - or, at least, a State database per each Member State

### Substance

#### Scope (Article 1)

public service broadcasters? agree

educational and research establishments? agree

cultural establishments? agree

Could you please indicate reasons for or against the inclusion of information held by these establishments? What would be the benefits / difficulties if the scope was extended to cover such information? Are there certain data sets, if not all, held by these establishments that could be valuable for developing new services or applications and that should be made available to re-use?

We think that all the documents created and/or held by public service broadcasters because of their public service mission should not be held as proprietary goods, but opened to public access and consultation, notwithstanding IP rights held by their creators (which may play a role in the determination of the price, if any). Our belief stands upon -financial reasons: what has been paid by citizens with their taxes should be totally accessible to them, at a price tending to zero or containing only storage and conservation costs, for

any purpose; -political reasons: public service broadcasting tends to promote the self-awareness of citizens, culture, independence of thought and critical reasoning; it is implicit in such a definition that the content held by public broadcasters should be opened to re-reading, re-elaboration and critical re-adaptation by citizens. The same reasons justify application of the PSI Directive to educational and research establishments, and to cultural establishments: their purpose is to create and spread culture and information. The difference may be at a financial level: the price should be higher as the one of public service broadcasters, since these establishments are not usually undertakings, but in the limit of their public funding: any information or document which is paid by the State or any public entity (therefore indirectly by the citizens) should be for free, for any use, within the limit of the funding

## Definitions (Article 2)

Do you think that the definitions of the PSI Directive cause problems and should be amended or clarified?

yes

If yes, could you please indicate which definitions / problems, and how they could be clarified / addressed?

the definition of "information" or "document" is too narrow. It should be enlarged and widened to include also audio, visual and audio-visual documents, orphan works, all the documents held by PAs -of any kind- above which PAs do not own or do not own any more IP rights. any work created in the exercise of a Public service provision and/or duty, notwithstanding the existence of an IP right.

## General principle (Article 3)

Do you think that all public sector information which is already publicly accessible should also be re-usable?

agree strongly

In your opinion, what would be the advantages / disadvantages of this?

The advantage of re-use, at any level, is grounded on basic cultural mechanisms. The mere information held by a person, or by a group of individuals, or even by the totality of citizens, does not achieve the purposes of the Directive expressed in the first Recital of the PSI Directive" or create any knowledge. It is the exchange of information and opinions among individuals which achieve such purpose, provided that it takes place on the basis of secure, public and verifiable information. Differentiations from case to case may be done by applying different prices to the different kind of re-uses (e.g.: the price to simply publish onto a blog should be different from the price asked to use an entire database to create a movie), including not applying any price insome instances. In this regard, we, as AFACE, strongly think that no price should be paid for a creative fair re-use of any document and/or work, although protected by copyright, especially if it has been created with public funding.

## Processing of requests (Article 4)

Do you think that the requirements applicable to the processing of re-use requests should be tightened or clarified?

yes

If yes, how should this be done?

## Available formats (Article 5)

In your opinion, should more re-use friendly formats (e.g. machine readable) be promoted?

yes

If yes, could you please specify which formats and how?

## Charging (Article 6)

|                                                                                          |                   |
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| at charges based on full cost recovery, together with a reasonable return on investment? | disagree strongly |
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|-----------------------------------------|-------------------|
| at charges based on full cost recovery? | disagree strongly |
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| at charges based on partial cost recovery? | agree |
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| at marginal costs for reproducing and disseminating the documents? | disagree |
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| at marginal costs as the basic rule with certain limited exceptions? | disagree |
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| for free as regards both commercial and non-commercial re-use? | agree |
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|                                            |       |
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| for free as regards non-commercial re-use? | agree |
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What would be the benefits of charging based on marginal costs? What could be the disadvantages?

As stated above, paying for something which has already been paid - via taxes and public funding - does not make sense, especially if the payer is someone who has a right and a righteous claim to access information and documents. Therefore, a fair charging for re-use (PrRU) should be based upon the marginal cost of producing, storing and disseminating the document, (MC) minus the percentage of public funding for such activity, or in any case in the actual activity of the body holding the document or information (PF), times a multiplier calculated upon the kind of use (e.g. from 0 -private use- to 1 - commercial use; fair commercial uses and political uses should be compared to private use), (KU) So  $PrRU = KU * (MC - PF)$ .

What could be the exceptions to a default rule of marginal costs?

|                                                                                                                                                                                                                     |     |
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| Do you think that the current rules on charging (allowing full cost recovery, together with a reasonable return on investment) should be tightened and/or clarified in respect of how much re-users can be charged? | yes |
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If yes, in what way?

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## Transparency (Article 7)

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| Do you think that the current transparency rules regarding conditions and standard charges for re-use of PSI should be changed / clarified? | yes |
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If yes, could you please indicate how you think this should be done?

- In order to verify that meaningful criteria be applied to pricing policies, each P.A. should be under an obligation to give access to all its accounting information relevant to determine the MC, PF and any other element relevant to determine the PrRU

### Licences (Article 8)

Do current licensing regimes of Member States or of individual public sector bodies still create problems for re-use (e.g. by imposing unfair conditions or by unduly restricting the possibilities for re-use)?

### Practical arrangements (Article 9)

Do you think that more measures should be taken to facilitate the search for documents available for re-use?

yes

If yes, which measures?

Adoption of soft-law measures -but hard law should work better- should be encouraged such as: recommendations to P.A. About how to publish the documents they have/own; standardisation of the information to be given per each document; recommendation to P.A. to facilitate cooperation with private non profit associations available to implement structure to facilitate access to and use of the documents owned by the P.A.; creation of an EU database, accessible via web and free - or, at least, a State database per each Member State.

### Non-discrimination (Article 10)

In your opinion, have the current rules on non-discrimination caused problems in practice and should they be tightened / clarified to foster fair trading conditions?

### Prohibition of exclusive arrangements (Article 11)

Do you think that exclusive arrangements are a problem and that more measures should be taken to address them?

yes

If yes, could you please specify which?

We agree with the existing content of article 11. It should be clarified that exclusive arrangements existing on the date of entry into force of the Directive are to be deemed as have been automatically terminated as of 31 December 2008. The prohibition of exclusive arrangement should be confirmed for the future. Information on the existing agreements which qualified as exceptions under paragraph 2 of article 11 should be disclosed to as to assess whether the exception has been abused or need any adjustment.

### Practical measures

Should the Commission encourage deployment measures at national level such as exchange of good practices, awareness raising and/or practical measures facilitating re-use?

yes

If yes, could you please indicate which deployment measures?

Adoption of soft-law measures -but hard law should work better- should be encouraged such as: recommendations to P.A. About how to publish the documents they have/own; standardisation of the information to be given per each document; recommendation to P.A. to facilitate cooperation with

private non profit associations available to implement structure to facilitate access to and use of the documents owned by the P.A.; creation of an EU database, accessible via web and free - or, at least, a State database per each Member State.

Should the Commission promote practical measures such as national portals (like the [www.data.gov.uk](http://www.data.gov.uk) or the [www.data.gov](http://www.data.gov) in the US) with a strong political drive towards opening up the wealth of public sector data?

## General issues

What changes in policy of Member States and/or public sector bodies regarding re-use of public sector information have you noticed since the adoption of the PSI Directive in 2003?

None. Italy formally adopted the Directive, but so far has made no effort to promote its application.

What have been the positive effects of the PSI Directive and of these changes? Please give also figures on growth in terms of turnover, staff, number of clients, downloads etc., where possible.

None of significance.

What are the remaining barriers to re-use (availability of information, charging, licensing conditions, etc.)?

- mostly, limitations caused by propriety exceptions; slow responses by the PAs; difficulty to know even whether a document exists, and its content.

Would you have any other comments or input that you wish to give regarding the review of the PSI Directive?