

An on-line survey on the PSI Directive

Meta Informations	
Creation date	
30-11-2010	
Last update date	
User name	
null	
Case Number	
971048508442033410	
Invitation Ref.	
Status	
N	
Preliminary questions	
I reply as /on behalf of a:	other
Please provide your name, and where relevant the name of your organisation	
COMMUNIA, The European Thematic Network on the Digital Public Domain (www.communia-project.eu)	
Please provide your e-mail address	
coordinator@communia-project.eu	
Please provide your country of residence / establishment	
International (project); Italy (coordinator)	
Context and possible action to consider	
Do you think that PSI re-use has reached its full potential in Europe?	disagree strongly
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 strongly
Community-wide products and services using PSI are	agree strongly

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?	
---	--

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 following issues should be addressed: - more binding obligations for public sector bodies to make their information available allowing for re-use [the current soft approach (e.g. making available where possible and appropriate etc.) voids many of the provisions of the Directive of any binding nature]; -- this would also favour harmonisation across countries; - stronger obligations regarding redress mechanisms and transparency; - the default rules should be broad access at no more than the marginal cost of dissemination: with reference to Art. 6 (Principles governing charges), at minimum the list of eligible costs should be reformed, with the elimination of the costs of “collection” and “production”; - there should be no discrimination between commercial and non-commercial users; - inclusion of “cultural PSI”, i.e. the inclusion of cultural and research/education establishments (see below the discussion about the optimal scope of Art. 1) - there are mixed feelings about this point, but possibly some clearer rules about the interaction with data protection/privacy law should be provided: maybe, part of the issue should be addressed in the review of the Data Protection Directive, instead than within the review of the PSI Directive; - some additional mechanisms should be put in place in order to prevent de facto private sector monopolies over the exploitation of PSI (i.e. not only prohibiting exclusive licensing): fair, reasonable, non-discriminatory and transparent licensing and pricing rules are part of these mechanisms.

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?

It should be considered that soft law measures are just complementary to new binding provisions. Soft law alone cannot be sufficient (actually, a significant part of the PSI Directive is currently perceived as having the effect of a soft law!). That said, the following soft law measures could have a significant positive impact on access and re-use: - guidance on the interpretation of the Directive, including explicit statements of favor toward some solutions, which are allowed (but not mandated) in the Directive, e.g. zero (or marginal cost) pricing, the use of public domain dedications and very permissive open licenses, etc.; - issuing guidelines, including open data manuals; - the collection of best practices and examples.

Substance

Scope (Article 1)

public service broadcasters?	agree strongly
------------------------------	----------------

educational and research establishments?	agree strongly
--	----------------

cultural establishments?	agree strongly
--------------------------	----------------

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?

The aims of the Directive, as described in its recitals are fully applicable to the information held by these public establishments. Moreover, cultural establishments may have a privileged or monopolistic access to some cultural/artistic/sport/entertainment information: this implies that the re-use of their information may represent the only opportunity to access to the raw data necessary for the development of several cultural products. Some critical points, which can make the inclusion of these establishments in the PSI Directive difficult, are instead related to the chronic lack of public funds of several cultural institutions. This may create a tendency toward “monetizing” as much as possible the re-use of the information and content hold by these organizations.

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 following points of the definition may be improved: - the inclusion of the wording ‘initial purpose’ in Art. 2, No 4 of the definition is confusing; - the concept of “public task” should be defined in a clearer way; - there concept of “reasonable return on investment” (Art. 6) is problematic and should be substituted with something more consistent with recital 14 (that encourages “charges that do not exceed the marginal costs for reproducing and disseminating the documents”).

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 advantages would include a significant reduction of transaction costs, in particular if the re-use is possible under standard open licenses and for free. In turn, this would lead to the full exploitation of the economic benefits of PSI re-use.

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?

Art. 4 is probably not one of the most problematic of the Directive, however this provision can be made more binding, offering Member States less discretion on how and when to make available information re-usable. For instance, para. 1 of art. 4 provides that public sector bodies shall, through electronic means where possible and appropriate, process requests for re-use, etc. Instead, when a public sector body has the information in electronic format and the user needs it in such format, the public sector body should be obliged to provide it in such format and not have the option to decide whether that is appropriate or not.

Available formats (Article 5)

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

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

The use of open and machine readable formats should be promoted, since automatic access is a pre-requisite of extracting more value from PSI. However, at this moment, better machine readable formats (such as RDF or other semantic Web standards) should just be encouraged and not imposed, because this would require too much effort and investments from public bodies. The first goal of public bodies should be to publish and make freely re-usable "raw data now" and not to improve the formats under which these data are available. That said, the intentional "obfuscation" of available data through non-machine-readable formats (e.g. transforming XLS files into PDF files) should be forbidden.

Charging (Article 6)

at charges based on full cost recovery, together with a reasonable return on investment?

at charges based on full cost recovery?

at charges based on partial cost recovery?

at marginal costs for reproducing and disseminating the documents?

at marginal costs as the basic rule with certain limited exceptions?

for free as regards both commercial and non-commercial re-use?

for free as regards non-commercial re-use?

What would be the benefits of charging based on marginal costs? What could be the disadvantages?

[Notice that we COMMUNIA Network is in favour of free re-use, but against distinguishing between commercial and non-commercial re-use and this is why we did not comment the last option above.] In general terms, a charging regime based on marginal costs is socially efficient, since it implies that the optimal quantity and variety of the good (here: the information) is produced and distributed. A PSI holder considering its fixed costs (e.g. collection, production) when defining its pricing principles adopts an inappropriate strategy - both from an economic and social perspective - since the public holder incurs in those costs irrespective to the eventual future reuse of the information. In other words, it is socially and economically strongly inefficient that a PSI holder considers the costs related to its primary activity (which comprises - but is not limited to - collection and management of information). Only the secondary purpose (dissemination for reuse) has therefore to be taken into account when defining charges, thus adopting a marginal costs principle. Moreover, a charging model based on marginal costs allows to reach the highest volume of

dissemination, therefore maximizing the impact of the positive externalities related to access and reuse of PSI, such as new business opportunities, improved downstream competition and lower charges for end users.

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

The exceptions to a default rule of marginal costs should be narrowed to very specific situations not subject to interpretation. A possible line of reasoning may associate charging regimes other from the “marginal costs rule” to the following situation: a piece of information is not already accessible in digital format and its public holder has relevant budget constraints that could hinder the possibility to make this information available with a constant flow also in the future. However, this line of reasoning may create opportunistic behaviours leading to an increase of the number of cases in which charging is a “necessary condition” for gathering and making available PSI in the future. Hence, exceptions to a default rule of marginal cost should be avoided or subject to constant and careful scrutiny.

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

If yes, in what way?

A full cost recovery regime is inefficient and should not be allowed, since it implies that also costs which are related to the primary activity (public task) of a PSI holder could be recovered through PSI dissemination. Not only this approach doesn't have any well grounded economic rationale, but, even more important, one should keep in mind that public tasks are already funded by taxation. Therefore, it should be made clear which costs can be recovered through charging, only maintaining the ones related to PSI dissemination, avoiding to mention any “reasonable return on investment” (by the way, the term “reasonable” is strongly subjective if not further specified from an economic point of view). Also note that in some cases the information collection costs for PSI holders can be negative (this happens when, for instance, information has to be provided to public holders in a mandatory way and by paying a fee). In those cases, collection costs are recovered by definition. Besides, note that, in light of those remarks, a “full cost recovery” regime already implies a return (since the costs related to PSI dissemination are surely lower than the “full costs” of the whole activity).

Transparency (Article 7)

Do you think that the current transparency rules regarding conditions and standard charges for re-use of PSI should be changed / clarified?

yes

If yes, could you please indicate how you think this should be done?

We suggest a clarification according to which: Applicable conditions and standard charges for the re-use of documents held by public sector bodies shall ALWAYS be published through electronic means (and not only “where possible and appropriate”). Moreover, public sector body shall ALWAYS indicate the calculation basis for the published charge (and not only “on request”), if this charge is greater than zero.

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)?

yes

If yes, what can be done to address these issues?

Currently, licensing conditions for some types of public sector data are still restrictive and are not allowing the re-user to do with the data what he wants, in practice making it difficult or impossible to follow his business model. In summary, standard, non-exclusivity licensing is required: more attention should be given to standard licenses and clear conditions, and an easy and quick way for the re-user to complain if he feels the conditions are unfairly restricting his possibilities to 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?

Most public authorities still have much work to do in order to exactly map all the data they own or control. The creation of asset lists/portals/registries should be facilitated. In creating these registries, meta-data should be made freely available ("freely" both in technical and legal sense), possibly using open standards respecting the principles of the semantic Web, as described by the W3C consortium.

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?	yes
---	-----

If yes, could you please specify how you think this should be done?

- The concept of 'comparable' categories of re-use is problematic: it would be preferable to just say that there can be no discrimination in any case (in particular, there should be no discrimination between commercial and non-commercial uses, also because the definition of "commercial uses" is extremely difficult). - The notion of "public task" is also not well defined and it may generate problems.

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?

Exclusive agreements may be a problem, but currently they are not the priority: this issue probably does not need a significant modification of the current text of the Directive. The problems should be addressed mainly through a careful enforcement of the existing rules.

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?

Despite the significant awareness work already performed by the ePSIplus project and other other European projects, awareness raising initiatives are still needed (at EU, national and sub-national level).

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

If yes, could you please specify which measures?

One-stop-shop portals, provided by relevant national or regional authorities should be promoted. These portals should also facilitate the adoption of common technical and legal (e.g. licensing) standards.

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?

Some Member States adopted significant measures and did relevant steps forward: the clearest example is probably represented by the UK. In general, there is a huge variance between the progresses made in different Member States and/or in different regions of the same Member State. This seems to confirm that the current text of the PSI Directive does not guarantee uniformity, since it is not sufficiently binding: progresses can be made, but they are largely left to the good will of each public sector body.

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.

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

There are barriers of various kind: legal, economic, technical, institutional. In particular: - there is still insufficient awareness of the benefits of PSI re-use: much work is needed in order to prevent unnecessary fears and uncertainty; - there is not yet consensus about licensing tools (the adoption of Creative Commons - in particular CC0 - or other standard open licenses to most PSI should be promoted); in particular, there is a lack of interoperability between different licenses; - lack of uniformity in the treatment of the same kind of PSI at various levels (national and/or local); - lack of transparency in licensing and pricing choices and too much room for refusals and/or imposing unfair conditions.

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

Public Sector Information (PSI) will only achieve maximum possible impact if users understand how they may use the content. Just as governments across the world continue to open up information/data/content in ways designed to be more technically useful and accessible via open formats and technologies, it is central that governments clarify legal rights to end users, lest the information/data/content be used less, or not at all. Simply posting information/data/content on the Internet is not sufficient because users do not know whether or how the PSI can be used/remixed. The management of copyrights and other intellectual property with regard to PSI should be considered from the outset when making this sort of information available to the public. Some appropriate tools to make explicit the freedoms that users can enjoy are offered by Creative Commons and Open Data Commons. In particular, COMMUNIA recommends taking into account the following standard legal tools: - CC0 (<http://creativecommons.org/publicdomain/zero/1.0/>) is a public domain waiver that allows rights holders to place a work as nearly as possible into the public domain, worldwide, prior to the expiration of copyright. - The Public Domain Dedication and License (<http://www.opendatacommons.org/licenses/pddl/>) is a similar alternative public domain waiver developed by Open Data Commons that places the data(base) in the public domain (waiving all rights). - The Public Domain Mark (<http://creativecommons.org/publicdomain/mark/1.0/>) is a tool offered by Creative Commons

that makes it easy for people to tag and find content already in the public domain. The public sector can increase the reach and impact of PSI re-use by strongly encouraging or requiring the use of such tools.