



EPC | European Publishers Council

**Response from the European Publishers Council to the
Commission Public Consultation on
"Public Sector Information -
PSI Raw Material for New Information Services and Products"
September 2008**

The European Publishers Council (EPC) is a high level group of Chairmen and Chief Executives of leading European media corporations whose interests span newspapers, magazines, books, journals, online database and internet publishing as well as in many cases private television and radio. A full list of the EPC's members is attached.

Part 1 - Summary

The European Publishers Council welcomes the Commission's initiative to review this important Directive. From the outset the European Publishers Council has always supported legislation to open up the market for Public Sector Information and believes the widest possible scope is beneficial to all stakeholders concerned so long as when dealing with cultural and educational institutions, copyright is fully respected. Clearly this is an important factor to take into account as objects and content held by these bodies are mostly created by third parties. Therefore it must be explicit that such works fall outside the scope of re-use and remain subject to the exclusive rights and licensing agreements with the rightsholders.

If the scope is extended, new products from the PSI elements will be developed by publishers, expanding the general repertoire of online content services to the benefit of European citizens who as tax payers fund production of PSI in the first place and should normally benefit more directly through easily accessible products from Europe's publishers who specialise in this field.

Given the international nature of the market for PSI we also support the work of the OECD in this field¹ and where possible would like to see consistency in scope and application of the EU Directive with such international initiatives.

Except in clearly defined and legitimate circumstances such as where confidential data on individuals and data which are subject to State secrecy laws are concerned,

¹ <http://www.oecd.org/dataoecd/0/27/40826024.pdf>

EPC

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the European Publishers Council believes that there should be a positive legal obligation on public bodies not only to license PSI but to make freely available clear and comprehensive information and contact details about what is available for re-use, under what licence conditions, from where and at what price.

In line with internal market principles, and the promotion of cross border access to content online, a **European PSI Portal** could usefully be developed along the lines of The European Digital Library² to make sure that provision of information about the availability and conditions of re-use of PSI is available throughout the European Union.

This is a summary of the EPC recommendations for improvement of the draft directive:

- The scope of the directive should be as wide as possible subject to clear rules about ownership of copyright works held in public institutions;
- PSI accessibility and licensing should be mandatory across the EU according to comprehensive and easily available information about PSI properties and terms and conditions
- Charges should be reasonable, transparent and non-discriminatory and ideally not exceed marginal cost recovery
- PSI itself should be excluded from copyright and database rights.
- A European PSI Portal should be established to promote cross border re-use of PSI

Part 2 - Answers to the Questionnaire

i. Implementation and impact of the Directive

1. *In your opinion, has the Directive been properly implemented and applied in your country and beyond? If so, please indicate ways in which public sector bodies are contributing to facilitating access and re-use of their information. If not so, please give indications on what kind of problems you are encountering when wishing to reuse public sector information.*

The problems reported by our members fall into the following categories:

- The Directive has not met the expectations of many
- Member States have been slow to implement and too vague in their interpretation
- Deliberate obfuscation about availability and terms, including pricing
- Burden on identifying PSI and negotiating access falls unduly on the re-user with no clear time limits, and no systems of redress
- Access on fair and reasonable terms is often not a reality in practice

²

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/1255&format=HTML&aged=0&language=EN&guiLanguage=de>



- Some public bodies assert copyright in their PSI
- Others evade compliance by claiming that requested material falls outside the Directive's definitions
- Cross border access to PSI is problematic

2. *Has the implementation of the Directive resulted in a revised charging policy by public sector bodies? If so, has this had any impact, e.g. on the volume of information downloaded, number of hits, number of re-users registered, etc?*

We have no examples of improvements in this area and must assume therefore that the Directive has not been successful. We recommend that the Commission investigates the potential from the introduction of transparent pricing (and licence terms) and greater take up by re-users.

ii. Scope of the Directive

3. *In your opinion would it be appropriate to include cultural establishments, education and research organisations and public service broadcasters, within the scope of the Directive?*

Subject to clear guidelines about respecting the copyright of those whose objects and content are held in these institutions, yes we fully support extension which we believe to be in the public interest.

4. *What would be the impact and societal benefits of including these sectors within the scope of the Directive? What are the problems these excluded sectors may encounter should they be included within the scope of the Directive?*

Extending the scope will expand the market to the benefit of publishers and consumers alike. There is a vast array of highly desirable public domain materials held by these bodies can be re-used to create greater access to Europe's cultural heritage. In addition, publishers could develop products which link to collections, offering virtual galleries, showrooms etc.

In this context it would be important to emphasise that the intellectual property rights of those whose works are held by these institutions is safeguarded. Furthermore, the EPC supports the recommendation of the High Level Expert Group on Digital Libraries that "exclusive arrangements for digitising and distributing the digital assets of cultural institutions are to be avoided".

iii. Looking ahead

5. *What technical, organisational, legal and practical measures could be established by national administrations and/or at European level to optimise the re-use of PSI (e.g. efficient dispute settlement mechanisms)?*

A concerted effort is needed to improve the function of the Directive at a practical level in the Member States at two levels. Firstly clearer obligations must be elaborated through the Directive to ensure that public bodies not only



license PSI but in the first place make freely available clear and comprehensive information and contact details about what is available for re-use, under what licence conditions, from where and at what price. Secondly, programmes to raise awareness of the potential for PSI re-use, perhaps in conjunction with publication of points of contact, could improve the functioning of the Directive's objectives.

The EPC would support the establishment of a PSI Portal at the European level in line with internal market principles, and the promotion of cross border access to content online. As with The European Digital Library³ such a Portal could ensure access to information about the availability and conditions of re-use of PSI throughout the European Union.

6. Should legislative amendments be introduced in the Directive to make it more efficient? If so, which ones and why? Would guidelines on proper implementation and application of the Directive be useful?

Yes, legislative measures are needed to ensure that the guidance to Member States in the current Directive is transformed into clear legal obligations. Otherwise Member States and public authorities will continue to be lax in the way in which they interpret the Directive as it seems clear that in many instances they do not deem re-use of PSI to be in their own interests. In some countries PSI bodies compete head to head with the commercial sector which is contrary to the objectives of the Directive.

A revision should reverse the burden from the re-user to the provider to comply with mandatory terms and conditions including:

- standardised licensing terms
- transparent pricing schedules
- publication of available PSI properties

Finally Member States should establish independent regulation of PSI activities together with mechanisms for dispute resolution and oversight of anti-competitive activities.

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Annex 1 - List of EPC Members

³

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/1255&format=HTML&aged=0&language=EN&guiLanguage=de>

MEMBERS OF THE EUROPEAN PUBLISHERS COUNCIL

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