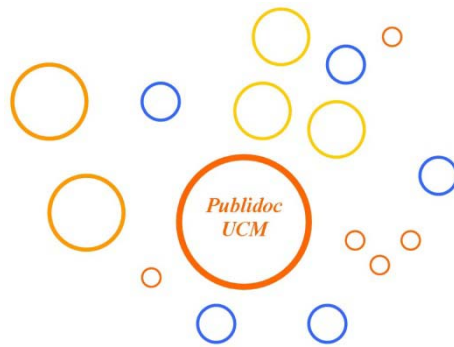


# PSI: Identification of Potential Exclusive Agreements – Spain / Final Report

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\* Luis Fernando Ramos Simón, Rosario Arquero Avilés, Iuliana Botezan, Concepción Mendo Carmona, Jaime Peón Pérez, Rodrigo Sánchez Jiménez, Carlos Tejada Artigas, Félix del Valle Gastaminza, Andrea Sala Jiménez and Silvia Cobo Serrano.  
**Coordinator: Rodrigo Sánchez Jiménez**

<http://multidoc.rediris.es/ppo/>

## *EXECUTIVE SUMMARY*

This report presents the research activities carried out between December, 8th 2009 and March, 30th 2010 within the framework of the assignment of the European Commission in order to identify the potential existence of exclusive agreements related to the re-use of Public Sector Information in Spain.

The object of this study is to identify situations that constitute an exclusive agreement or might potentially be considered as such in the context of the PSI Directive. In order to achieve this, we singled out the main public sector information (PSI) market domains in Spain and identified the most PSI relevant public sector bodies from the State administration as well as from the autonomous regions. Finally, we have also contacted companies involved in the re-use of PSI.

A web survey was launched, addressed to 101 public sector bodies (PSBs) and 205 re-users, which was complemented by follow up telephone calls and personal interviews in order to obtain a reasonable sample.

The analysis of the information gathered from this survey, as well as from previous desk research and other research activities, resulted in **12 potential leads** of EAs that were followed during subsequent weeks. Of these, **6 might require further investigation** through the appropriate authorities and channels. Details on these leads are available in the third section of the report.

Knowledge of the PSI-Directive in Spain is low, as is the awareness of the economic potential of PSI re-use, both in the public and private sectors. In this context, the Ministry of Industry promotes the re-use of PSI in Spain through the “Proyecto Aporta,” an initiative that aims to improve awareness of PSI across the government.

We can highlight that there is no information in the administration on existing agreements (exclusive or not), and in spite of the fact that a considerable amount of PSI is publicly available, pricing policies as well as terms and conditions for re-use are not clear. In most circumstances no office or department in PSBs is specifically in charge of managing PSI re-use, and it was difficult to find a valid "officer" for responding to questionnaires or conducting interviews.

Although no central agency is regulating PSI re-use, and a national policy on PSI re-use does not exist yet, central, regional and local initiatives have arisen in the last few years and even in recent months to “open data” and/or promote PSI re-use.

## *INTRODUCTION*

The object of the study is to collect relevant information from the public and the private sides of the PSI markets (Supply and Demand) on the potential existence of exclusive agreements in Spain, in light of Article 11 of the Directive 2003/98/EC on the re-use of public sector information (the PSI Directive). The Commission launched a study for assessing the existence of possible exclusive agreements between public sector bodies and third parties within certain Member States<sup>1</sup>.

According to the PSI Directive, publicly available information shall be open to all potential actors in the market under the same conditions. This implies that public sector bodies (PSBs) grant exclusive rights on public sector information to third parties.

Exclusive rights could be interpreted as “...any restriction agreed upon, imposed or accepted by the public sector body in a contractual relationship with a market player with respect to the provision of information for the purpose of re-use, which limits its ability to grant re-use rights to the same information within the scope of the directive to other market players.”<sup>2</sup>

According to the PSI directive, “The exclusive arrangements established after the effective date of this directive shall be transparent and made public.”<sup>3</sup> The directive also establishes a date for the termination of exclusive agreements: “Existing exclusive arrangements that do not qualify for the exemption under paragraph 2 shall be terminated at the end of the contract or in any case no later than the 31st of December 2008.”<sup>4</sup>

After December 31, 2008 exclusive agreements are only permitted due to public interest criteria: “...where an exclusive right is necessary for the provision of a service in the public interest, the validity of the reason for granting such an exclusive right shall be subject to regular review, and shall, in any event, be reviewed every three years.”

This final report summarizes research efforts made in order to detect situations that constitute an exclusive agreement or that might potentially be considered as such between Spanish public sector bodies (PSBs) and re-users, in the context of exploitation of public sector information (PSI). It’s produced according to the guidelines stated in the tender documents and in the submitted proposal.

The activities leading up to this report have been carried out in full conformity with the Inception Report. This involves: the identification of the main public sector information market domains, consulting the public sector (both at the central and at the regional levels), consulting the private sector, and a thorough analysis of the leads found during the process. The research team also analyzed other evidence that might lead to situations in which practical restrictions for competition might exist, which were not included in the contract requirements but were added to the tender offer by the contractor.

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<sup>1</sup> [http://ec.europa.eu/information\\_society/policy/psi/facilitating\\_reuse/exclusive\\_agreements/index\\_en.htm](http://ec.europa.eu/information_society/policy/psi/facilitating_reuse/exclusive_agreements/index_en.htm)

<sup>2</sup> [http://ec.europa.eu/information\\_society/policy/psi/docs/pdfs/other\\_activities/luis\\_presentation.pdf](http://ec.europa.eu/information_society/policy/psi/docs/pdfs/other_activities/luis_presentation.pdf)

<sup>3</sup> Article 11/2 of the PSI Directive

<sup>4</sup> Article 11/3 of the PSI Directive

This report is structured in four parts. The first part includes previous analysis regarding the main domains of the Spanish information market, as well as the identification and selection of both PSBs and re-users. The second part relates to the analysis of questionnaires sent, telephone calls made and personal interviews held, in order to obtain information and possible evidence from both the private and public sectors. The third part analyzes the evidence compiled regarding the existence of exclusive agreements and/or restricting practices. The fourth part is the annexes, some of which might not be published, given the private nature of some of the data it includes.

## ***PART 1: PREPARING THE SURVEY***

### **DESCRIPTION OF THE INFORMATION MARKET DOMAIN**

The notion of “the information market domain” was used to abstract great amounts of information, services and activities regarding public sector information according to their thematic similarity. These domains are useful for describing the market in terms of activity, both in the production and dissemination of information assets (public sector side) and in the re-use of it (private sector side).

Prior studies of PSI, as well as consulted experts agree in grouping PSI into six main market domains that attract most of the attention from the private sector.<sup>5</sup> Sub-domains indicate specific market areas, associated with high re-use potential types of PSI, and are also subject to wide agreement. We have added or refined some of them in the Business and Social domains to adapt them to the Spanish case, according to the following table:

<b>Market domain</b>	<b>Market sub-domain</b>
Business / Economic Information	<ul style="list-style-type: none"> <li>· Chamber of Commerce information</li> <li>· Official business registers</li> <li>· Patent and trademark information</li> <li>· Public tender information</li> <li>· Agriculture, livestock and fishing industry</li> <li>· Energy</li> <li>· Telecommunications</li> <li>· Financial Information</li> <li>· Economic / industrial statistics</li> </ul>
Geographic Information	<ul style="list-style-type: none"> <li>· Address information</li> <li>· Aerial photos</li> <li>· Buildings</li> <li>· Cadastral information</li> </ul>

<sup>5</sup> See the MEPSIR study: [http://ec.europa.eu/information\\_society/policy/psi/docs/pdfs/mepsir/final\\_report.pdf](http://ec.europa.eu/information_society/policy/psi/docs/pdfs/mepsir/final_report.pdf)  
 Or the study on exclusive agreements in Belgium:  
[http://ec.europa.eu/information\\_society/policy/psi/facilitating\\_reuse/exclusive\\_agreements/index\\_en.htm](http://ec.europa.eu/information_society/policy/psi/facilitating_reuse/exclusive_agreements/index_en.htm)

	<ul style="list-style-type: none"> <li>· Geodetic networks</li> <li>· Geology</li> <li>· Hydrographical data</li> <li>· Topographic Information</li> </ul>
Legal Information	<ul style="list-style-type: none"> <li>· Decisions of international and foreign courts</li> <li>· Decisions of national and regional courts</li> <li>· National Legislation (Official Gazettes)</li> <li>· Treaties</li> </ul>
Meteorological Information	<ul style="list-style-type: none"> <li>· Climatological data (including models)</li> <li>· Weather forecasts</li> </ul>
Social Data	<ul style="list-style-type: none"> <li>· Employment statistics</li> <li>· Health information and statistics</li> <li>· Population statistics</li> <li>· Public administration statistics</li> <li>· Social statistics</li> <li>· Culture and cultural production statistics</li> <li>· Science and technology statistics</li> <li>· Statistics on consumption</li> <li>· Handicapped and dependent persons</li> <li>· Education statistics</li> </ul>
Transport Information	<ul style="list-style-type: none"> <li>· Vehicle traffic information</li> <li>· Information on roadwork</li> <li>· Public transportation information</li> <li>· Vehicle registration statistics</li> </ul>

**Table 1:** Information market domains and sub-domains

No consensus exists regarding the relative importance of each sector, or its potential, so during the first two weeks of the study information was compiled and analyzed in order to produce a description of the information market that explained the relative importance of each domain in the table above in terms of re-use potential. This overview was intended to guide us in the process of choosing targets for the surveys and interviews in a way that reflected the estimated distribution of the market.

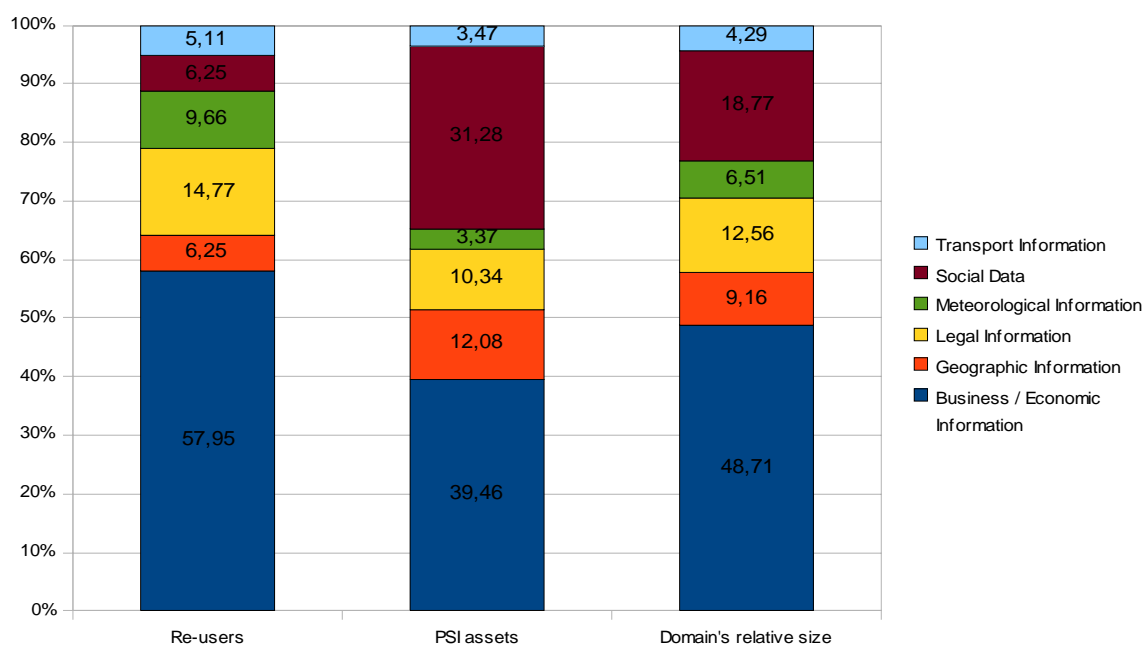
The sub-domains in this table were used as a guide that enabled the classification of PSBs, re-users and information assets in their respective domains of activity, but could not be used directly as categories to classify them because few of the entities would fit into a single sub-domain.

In order to determine the relative importance of each sector, the data regarding the availability of quality public sector information products was analyzed. Databases, datasets and official publications from both the general administration of the state and the autonomous regions were listed, providing the following breakdown.

Information Market Domains	Central Administration	Autonomous Regions
Business / Economic Information	324	228
Geographic Information	78	93
Legal Information	86	81
Meteorological Information	16	37
Social Data	317	181
Transport Information	30	23
	851	643

**Table 2:** Information products (databases, datasets and official publications) found per administration level.

At the same time, a first sample of private sector agents that might be involved in the re-use business was sketched. All data was put together, and resulted in the following distribution, that reflects a 50% / 50% split of data coming from evidence on available potentially reusable information and a prior outline of re-users' demands, based on re-user lists already available.



**Table 3:** Estimated domain's relative size

In accordance with this, a major effort was put into finding and selecting both PSBs and re-users in the business and social information domains, trying to adapt the sizes of the target populations to the estimated relative domain size.

## IDENTIFICATION AND SELECTION OF SURVEY TARGETS IN THE PUBLIC SECTOR

Efforts were undertaken to select the most relevant PSBs, trying to reflect each domain's relative size as well as trying to achieve a balance between the regional and central levels of administration (53 from the central administration and 48 from the regional level).

The general administration of the state and the autonomous regions have different structures, and in accordance with this, different criteria were chosen in order to locate adequate persons to which the survey would be submitted.

### **General Administration of the State**

The general administration of the state (central administration) in Spain is a constantly evolving structure. Its efficiency is highly dependent upon its ability to adapt to the needs of society. In spite of this continuous process of transformation, a basic structure persists that is the result of the adaptation to the information society framework by the public sector bodies.

The promotion of the evolution of the public administration towards efficiency is a European phenomenon that guides the administration through the path of administrative management. This makes evident the need to take into account the importance of information generated by the administration that should benefit both the society as a whole and the administration itself, that is, the importance of information as a patrimonial asset of the administration.

The concept of “Offices of Studies” has extended throughout the whole of Europe, as administrative units inside broader public sector bodies, and is directed by staff specialized in gathering and managing information generated by the public body as a whole. This information is useful to anticipate and plan future scenarios in which specific policies should be developed according to new situations. Thus, a new activity devoted to managing knowledge specific to every field of the administration has been developed.

The Offices of Studies assume the control and coordination of statistical services, archives and libraries; that is, every function that has traditionally been used as a means to provide the administration with information.

These units are known in Spain as “secretarías generales técnicas,” being initial users of information that after a management process is used as feedback for the rest of the directive units of the department as a valuable tool for decision making and strategical planning.

With regards to the re-use of PSI, its important to understand that these units became information policy coordinators for every ministry, through two specific departments: the “administrative information services” (servicios de información administrativa) and the “publishing services” (servicios de publicaciones) that executed the sectorial publishing plans of the general administration of the state.

The diffusion of information generated (or compiled) by the administration is entrusted to the “secretarías generales técnicas”, which implies that the provision of PSI for re-use is also under these units’ responsibility.

This is the reason why the questionnaire was sent to those units (“secretarías generales técnicas”), as well as to the web publishing departments, which are also coordinated by them.

### **Autonomous Regions**

The autonomous regions show a different organization scheme, being at the same time heterogeneous among the specific regional administrations.

At first glance it seems clear that for several autonomous regions, the management of PSI is not centralized. The structure and functions of the different administrative units involved in the management and diffusion of information seems more related to opportunity and/or efficiency criteria than to a centralizing effort. Locating units responsible for the PSI was difficult in these cases, and depends upon the specifications of each region.

In the autonomous regions where a centralized scheme had been adopted regarding information management, it seems that in most cases the responsibility was exerted by presidential departments (“consejerías de presidencia”), to which the questionnaire was submitted. With regards to the rest of the cases, one or several public servants / units are in charge of information in every department, which frequently implied making telephone calls to get to know who was supposed to be able to answer the questionnaire.

## **IDENTIFICATION AND SELECTION OF SURVEY TARGETS IN THE PRIVATE SECTOR**

The methodology used to identify and select survey targets in the private sector has been described with great detail in the Inception Report (see annexes), although we could summarize it as a seeking process that involved business directories, as well as Internet searches and information provided by the PSBs. Re-users that were re-using information whose source was known to be the public sector were prioritized, and among those, special emphasis was put into finding and selecting re-users aware of the problems inherent in the re-use business (many do re-use PSI but without ever having contacted the administration in order to do so).

There is no easy common criteria for deciding which person the questionnaire should be directed to, although it was clear from the beginning that contacting the appropriate employees highly depended upon the size of the company we were contacting. In the end, the whole process needed an “iterative” approach that mixed e-mail and telephone calls, as well as some research (see “increasing the response rates”, below).



## ***PART 2: THE SURVEY***

### **SURVEYING THE PUBLIC SECTOR SIDE (QUESTIONNAIRES AND TELEPHONE CALLS)**

The questionnaire directed to public sector bodies was intended to enable us to get some insight into the conditions in which the public sector was provided to the private sector for its re-use. We obviously put special emphasis on the agreements regulating the process. At the same time it serves as a means of characterizing PSI that might be re-used, the way it was produced, disseminated and commercialized according to Spanish Law 37/2007 on public sector information and Directive 2003/98/CE of the European Parliament and of the Council.

The questionnaire was structured and included 24 questions grouped into four main sections. The first section was about general conditions for PSI re-use in every public body. Questions focused on the features of production, distribution and commercialization of potentially re-usable information. The second section focused on the features of PSI (types and classes, its sources, formats, and elements involved in its generation, as well as application procedures, prices and rates, and targets for that information). The third section dealt with agreements, terms and conditions for PSI re-use, the existence of exclusive agreements and the existence of information regarding those agreements. The fourth section requested data from the contact person in case it was not the same person that had received the questionnaire, or the questionnaire had been forwarded to a third person.

The design process was based on:

- The discussion and analysis by the research group: to identify the questionnaire variables, to choose types of questions, select answer formats, structure the questionnaire, and to adapt everything to what was already known about the targets of the survey.
- The analysis of questionnaires used by previous studies and the adaptation of its contents to the Spanish context.

The questionnaire was submitted to 101 public sector bodies, and was accompanied by a letter of introduction (with an explanation of the questionnaire) by the research group as well as a letter from the European Commission in which the targets of the questionnaire were invited to participate in the study, and institutional support was shown towards the research group.

The questionnaire was submitted via e-mail and was complemented by telephone calls to request further information, to locate the appropriate person when no response was obtained, or to directly interview the staff when necessary for the completion of the questionnaire. The following table shows an outline of the response rates and the number of questionnaires sent per domain.

<b>Information Market Domains</b>	<b>Quest. sent</b>	<b>Responses</b>	<b>Response rate %</b>
Business / Economic Information	38	17	44.74
Geographic Information	7	4	57.14
Legal Information	13	6	46.15
Meteorological Information	3	3	100

Social Data	34	13	38.24
Transport Information	6	4	66.67
	101	47	<b>46.53</b>

**Table 4:** Questionnaires sent per information market domain and response rates.

Most of the institutions that answered the questionnaire (see annexes for a list of PSBs that have participated) claim to be conscious of the existence of a market for the information that they produce, although only roughly half of them (58%) stated that they had established an information dissemination policy. Conversely, almost 90% of the surveyed PSBs included any information regarding the Spanish or European regulations of PSI. As a whole, they estimated that the PSI demand on behalf of the private sector had not increased after those regulations came into effect.

The PSI demands by the private sector were not great in any case, most of them being requests made by other PSBs. This might indicate that the Spanish PSI market is not well developed yet (or that PSI is obtained for free, without an application process by the private sector).

The majority of the PSBs (67.5%) stated that they did not distribute or sell their products for commercial purposes, and more than half of the respondents had not established prices or rates for the information they offered.

With regards to specific questions on exclusive agreements, 92 PSBs stated that they did not hold any such agreements regarding PSI. The rest of the PSBs (9) did not know about the matter, or did not answer that particular question.

Obviously, no PSB could facilitate us with any documents regarding exclusive agreements.

Some generic conclusions might be drawn from the survey:

- It seems that no unified policy exists regarding PSI re-use through the different administration levels (regional/central), and not even between PSBs in the same administration level. It seems that this is not perceived as a need.
- Several institutions are working right now towards the effective implementation of Spanish / European regulations on PSI.
- No PSB admits holding an exclusive agreement, or having heard of one.

## **SURVEYING THE PRIVATE SECTOR SIDE (QUESTIONNAIRES AND TELEPHONE CALLS)**

The questionnaire sent to re-users has served as a means to gather information regarding the perception of the private sector in relation to exclusive agreements, but also regarding other practices that might restrict competition, as well as a general view on the process of acquiring PSI for its re-use.

It was structured in three sections. The first section dealt with PSI needs for re-use, where questions were related to the kind of information that the re-users need and the conditions of access to that information. In the second section questions were directed towards gaining an insight into licenses and agreements for PSI re-use, and to gather information about the arrangements that the private sector is aware of, and that might restrict competition or create situations that disturb the normal running of re-use activities in their particular sector of activity. The third section of the questionnaire was aimed at compiling information on the re-user agents; their size, activity, and other data that helped to characterize them.

The questionnaire's design benefited from previous surveys, such as the ones launched by the Ministry of Industry<sup>6</sup>. Using this as a base, the research group designed a questionnaire that was tested with three re-users to ensure that it was well focused.

The questionnaire was sent via e-mail to 205 re-users, accompanied by a letter of introduction to the group and an explanation of the questionnaire, as well as by a letter from the European Commission giving institutional support to the group and inviting the re-users to participate in the study.

Response rates, as the table below shows, were much lower than for the PSB survey, although most of the companies that had been involved in the various initiatives of the Ministry of Industry<sup>7</sup>, who were especially aware of the problems of the re-use business, did answer the questionnaire.

<b>Information Market Domains</b>	<b>Surveys sent</b>	<b>Responses</b>	<b>Response rate %</b>
Business / Economic Information	106	10	9,43
Geographic Information	17	2	11,76
Legal Information	22	4	18,18
Meteorological Information	16	3	18,75
Social Data	35	3	8,57
Transport Information	9	1	11,11
	205	23	<b>11,22</b>

**Table 5:** Questionnaires sent per information market domain and response rates.

Companies responding the questionnaire classified themselves under various domains of the PSI market, which allowed for the following distribution: business/economic information 64%, legal information 56%, social information 33%, transport information 24%, geographic information 20% and meteorological information 12%.

Products derived from PSI are not free in 64% of the cases, although free products also were produced by 36% of the responding companies, and "access-after-registration" products were produced likewise by 36% of the companies.

In spite of the efforts made by the Spanish administration in recent times (Proyecto Aporta) on PSI re-use, 76% of re-users that answered the survey stated that they had experienced problems when trying to re-use public sector information.

In most of the cases, this is due to problems obtaining and/or downloading information (64.71%), although problems finding such information were also very common (52.94%) as well as access problems (52.94%), and to a minor extent difficulties arose because information was subject to exclusive agreements or other restricting practices. This information is directly related to 41% of re-users that had encountered exclusive agreements and stated so in the corresponding question. Apart from these causes, four re-users brought to our attention the technical problems, two pointed to the insufficient normalization of the information and one alleged that the application process was too slow.

The conditions under which information was available for re-use were perceived as clear only by a 19.5% of the re-users. 33% had even recognized that information was downloaded

<sup>6</sup> Reuniones Empresas Infomediarias: Actas. Madrid: Red.es, 2009

<sup>7</sup> See the Proyecto Aporta's conferences [http://www.aporta.es/web/guest/eventos\\_aporta](http://www.aporta.es/web/guest/eventos_aporta)

without ever contacting the administration or quoting the source. Only 42.6% of re-users answered that they had contacted the administration for these purposes.

Another point of interest for the analysis was to check the extent to which PSBs were taking into account Spanish and European regulations regarding responses to be given to re-users' requests of information. Directive 2003/98/CE establishes that "The time limit for replying to requests for re-use should be reasonable and in line with the equivalent time for requests to access the document under the relevant access regimes." Law 37/2007 on PSI re-use indicates that the time limit for replying on behalf of the PSB should not exceed twenty days: "...the competent body shall make decisions about re-use requests within the maximum time of twenty days from the request being received by the register of the body competent to process it." 43.75% of the companies that responded to the survey stated that the administration did not comply with regulations in this precise aspect, these being response times much longer than they should have been.

When asked about the event of having had a PSI request refused by the administration, 52% of the companies replied affirmatively, although of these, 80% had had the decision explained as having been required by law.

The reasons given to re-users for their application's refusal were in some cases strange, such as "They estimated that a private company making commercial use of the public sector information made no sense." This might be representative of the dissemination of the PSI re-use concept in some (hopefully small) part of the administration.

PSBs do have to inform the company that has had a request refused on the mechanisms of redress in case the company wants to appeal the decision. Replies to a question on these topics indicated that the administration was not facilitating such information (70%).

Standard licenses are not widespread, or so the 79.5% of answers that stated they had not come across such licenses seem to show.

The answers to the question about the awareness of the existence of exclusive agreements, central to our research, mostly indicate an absolute ignorance of the existence of exclusive agreements. 70% of the people who responded to the survey did not hold, had never held, or did not know about any exclusive agreements. Only 20% say they know of a case, and a scarce 10% have or have had an exclusive agreement.

The responses on the knowledge of the existence of any appeal to the courts against an exclusive agreement show a very high level of unawareness of the topic (75%), which matches the low awareness of exclusive agreements as described above.

When questioned about PSBs acting as re-users in the market, companies claimed (in 75% of the cases) that unfair competition issues were present, but specific information provided by those companies was significant only in two cases which referred to the existence of some form of specific unfair competition. One of the claims was about the business information domain, in which data on private companies deposited in the Official Business Register, was being re-used by certain companies, which were paying a price for the information that was too expensive for their competitors. The second case was reported in the field of legal information and specifically affects the Judicial Documentation Centre (CENDOJ). The re-user that provided this information stated that certain companies received higher quality information, that was faster, cheaper, and in a more appropriate format.

The main obstacles identified by respondents for re-using public sector information was the existence of specific agreements for marketing and distribution, as well as the restrictive practices regarding prices. One of the re-users even claimed that PSB staff themselves or their families created companies and used the information to their advantage. A response indicates the existence of agreements with universities as an obstacle to free competition, although no further details were given.

A particular response seems to indicate the existence of discriminatory practices in the application of different rates (or even arbitrary exemptions). One of the respondents stated that dominating legal publishers seemed to have agreed and influenced in determining an expensive fee for legal sentences that restricted competition. In addition, access to specific sub-sets of innovative and relevant material was not available.

Apart from providing some interesting leads to possible exclusive agreements, the survey enabled us to conclude that there seems to be no training or adequate knowledge of the law on PSI re-use which certainly hampers the possibilities of innovation for enterprises.

### **INCREASING THE RESPONSE RATES**

During the first week of February 2010 surveys were sent via e-mail to every PSB or re-user listed in the annexes. The text of the e-mail included a link to an electronic questionnaire, as well as the letter from the EC mentioned above. Surveys were sent again with a reminder two weeks later, in which we communicated to the targets of the survey that a member of the team was going to call them shortly thereafter. However, response rates were very low, so we proceeded to contact them directly through telephone calls.

Telephone calls were made in the weeks that followed, during which targets of the survey were questioned about contact data when no response had arrived, in order to rule out the possibility of having made a mistake while sending the questionnaire, or to locate a more adequate person who was prone to answer the questionnaire so that a completed form might be submitted.

After that process, questionnaires were sent again, which apparently was the cause of the growth in response rates. However, some prominent PSBs and re-users did not respond, so we tried to do the questionnaire by phone, and to keep contacting them until they responded, which was not always the case.

With regards to PSBs, the main problem was to overcome the barrier imposed by personal assistants or administrative secretaries, which filtered e-mails or deflected calls. Having neither any national direct and explicit institutional support did not help.

Regarding re-users, it was very difficult to locate an adequate person to talk with. Most of the e-mails were rejected or ignored, as telephone calls showed after the first stage. Contact by phone was extremely difficult when dealing with big enterprises, whilst smaller ones offered a more direct contact with the person that could respond or might be aware of PSI re-use problems. Most of the responses were obtained this way, and it enabled us to perceive other aspects of the problem. Singularly, we detected an utter unawareness on the problems of PSI re-use in many of the companies, even those that were positively known to be currently re-using PSI. We think this might be related to cases where information was readily available on PSBs' websites and no physical restrictions existed for downloading and re-using information. Another common behavior on behalf of the companies' employees was that of mistrust regarding the intentions of the person that made the call, even though we pointed out that this was for their own benefit.

As a whole, we were able to draw the conclusion that awareness of PSI re-use issues is not yet widespread, and the existence of Spanish or European regulations does not seem to have reached many of the involved agents.

## ***PART 3: ANALYSIS OF COLLECTED INFORMATION***

Two lines of research were considered to identify potential exclusive agreements of PSI re-use:

- Methodology exposed in the Inception Report and (see annexes) in the original proposal for the tender, which we describe in part a.
- Public sector bodies that had been pointed out as possible holders of exclusive agreements in prior studies and that were supplied to us by the European Commission, detailed in part b.

### **a) Identification and Analysis of Potential Exclusive Agreements According to the Original Methodology**

The following approaches were used in order to detect the existence of potential exclusive agreements. Results are summarized below:

#### **1) Analysis of the Responses to the Survey of PSBs.**

In spite of the high response rates obtained, the web survey of PSBs did not provide any information that facilitated the location of potential exclusive agreements. The seven PSBs that had been pointed out in prior studies as possible holders of exclusive agreements were also included and answered the questions in the questionnaire. They all denied the existence of any exclusive agreement between them and any third party. These answers were contrasted with answers provided by re-users, which will be commented on below.

#### **2) Analysis of the Responses to the Survey of Re-users.**

Responses to this survey supplied a number of leads that have been analyzed thoroughly. These leads place special emphasis on legal information, professional publications, public tenders, and marginally on traffic information. Detailed results are shown in the summary sheets at the end of this report. Nevertheless, as detailed in the analysis of answers provided by re-users, a noticeable difficulty exists in accessing some PSIs, even if exclusive agreements are not involved.

Some complaints related to situations that were in compliance with the law, although they showed that obstacles do exist to the re-use of PSI because PSBs do not offer data, or do not facilitate them in an appropriate format. This leads us to think that a proper PSI re-use policy, dealing with prices and conditions but also with formats and technical issues would be very useful.

#### **3) Webpages of Public Sector Bodies.**

Spanish public administration has made a remarkable effort over recent years in order to disseminate PSI through the Internet. In fact, the surveys show that many PSBs do have sizable amounts of information on the Internet, but without paying attention to who could (and under which conditions) re-use that information. Members of the staff in various PSBs used the motto “What’s on the web is on the web” as a sort of reminder of the new age’s boost in transparency, as well as indicating a certain degree of disregard in relation to the actual use that others make of their PSI. No re-use scheme or policy was in place in most of the PSBs except where a strong / historical interest on behalf of the re-users existed, and

economic interests were matched. We show below a brief analysis of the kind of terms and conditions applied to PSI extracted from a sample of 50 of the most prominent PSBs in Spain:

- Reproduction allowed only for private use. The rest of the uses require express authorization or licenses: 21 PSBs

- Reproduction allowed without mentioning the source: 2 PSBs.

- Free reproduction but the source of information must be mentioned: 10 PSBs

- Copyright protected without further explanation: 9 PSBs

- Free use subject to fair use: 5 PSBs

- No legal notice: 2 PSBs

- Specific regulations: 1 PSB

#### **4) Information Available on the Public Contracting Web Platforms (Both Regional and National)**

Neither the analysis of contracting platforms, including the one managed by the Ministry of Economy and the 17 managed by the autonomous regions, nor the “contractor’s profile” section of PSBs’ web platforms have enabled us to identify any exclusive agreement or practice that might be restricting the normal running of markets. Nevertheless, we have noticed the existence of several contracts in which the administration pays for the carrying out of information services, for both supplying, and most interestingly, disseminating information being generated in the public sector bodies, which could have the appearance of a sort of semi-subsidized PSI re-use. These contracts have not been analyzed in detail (it’s not required in the tender documents and might be outside of the focus of this study), although it is interesting to show some examples in order to provide more context for the understanding of the relations between the private and the public sector in the PSI domain:

<b>PSBs</b>	<b>Contract</b>	<b>Amount (€)</b>
Junta de Castilla y León	Contracting of information services to disseminate information from the Culture and Tourism Department	74,160
M. Presidencia	National and international public interest information services	48,321,440
Generalitat de	On-line information services	129,310

Catalunya		
Junta de Castilla y León	Implementation of information services with national agencies	49,000
AEMET	Information dissemination via radio broadcasting	358,000
M. de Justicia	Citizen's information service	2,386,432

**Table 6:** Extract of contracts from official contracting platforms

**5) The Budget (2010)** contains valuable information on figures regarding sales of ministries' departments, autonomous public bodies, state agencies and public enterprises. Data shows a short volume of income from PSI sales, be it for direct use or for re-use, in documents and other products and services. As an example, we include data obtained from the sales of PSI from several of the PSBs that hold information of high re-use potential (income from rates, subsidies or other sources not included):

<b>Amounts budgeted for 2010 (in thousands of euros)</b>		
Source: Presupuestos Generales del Estado 2010		
<b>PSB</b>	<b>Ministry</b>	<b>Sales</b>
Centro Nacional de Información Geográfica	Fomento	1,845.0
Instituto de Turismo de España	Industria, Turismo y Comercio	361.0
AE Meteorología (AEMET)	Medio Ambiente, Rural y Marino	772.6
AE Boletín Oficial del Estado (BOE)	Presidencia	6,639.2
D.G. Catastro	Economía y Hacienda	
Instituto Nacional de Estadística	Economía y Hacienda	204.1
Oficina Española de Patentes y Marcas	Industria, Turismo y Comercio	361.0
Centro de Estudios Políticos y Constitucionales	Presidencia	345.0
Centro de Investigaciones Sociológicas	Presidencia	532.0

**Table 7:** PSI sales



## **6) National Register of Exclusive Agreements**

According to Law 4/2007, of April 3<sup>rd</sup>, on the transparency of the financial relations between public administrations and private companies, exclusive agreements in the scope of the law should be included in a national register that is to be managed by the General State Comptroller (“Intervención General del Estado”). We contacted the General State Comptroller and were told that the information on that register is only accessible to the European Commission “...being the EC its only consignee...” Given the fact that regulations require a high volume of sales in order to file the agreement in that register, and given the fact that the Spanish PSI market does not seem to produce very high volumes of trade, it seems plausible that no exclusive agreement regarding PSI re-use would be present in the register, but the opportunity did not arise for us to confirm this. Nevertheless, that kind of information should be accessible to every citizen with a justified interest, which was not the case.

## **7) Contacts with Ministries’ Staff in Charge of PSI Re-use Promotion in Spain**

During the first days of the study the research group got in touch with the staff in charge of “Proyecto Aporta,” a program that is promoting re-use of PSI in Spain. These government employees made their interest in the study clear, and gave us their views on the problem of exclusive agreements, although they were not aware of any such agreements.

## **8) Interviews with Professional and Business Sector Associations Connected to Public Sector Information**

Members of the group carrying out this study have talked to representatives of both professional and business sector associations in close contact with the sector of PSI re-use. In the opinion of the representatives of the Spanish Archivist Association, awareness of the Law on Public Sector Information (37/2007) was not widespread, and nothing had been done in that respect. With regards to the Multisectorial Information Association (ASEDIE) that compiles the 30 most prominent re-users in Spain, the market is growing, and in order to boost it, information should be given through licenses for free or at marginal costs. They denied the existence of any contractual exclusive agreements, although in some domains information was too expensive for many companies. They explicitly stated that if they were aware of any such agreement they would be highly interested in its termination.

## **b) Analysis from previous studies**

The list of Exclusive Agreements identified in the MEPSIR Study provided by the European Commission, contains a compilation of seven PSBs that had been reported in the past as possible holders of an exclusive agreement. Although most of the PSBs had already been selected for the survey, the remaining ones also received the questionnaire. Apart from this, each of the mentioned PSBs were contacted by telephone in order to obtain an answer to the survey, as well as to request further information about the supposed exclusive agreements. Each of the PSBs that appeared in the list denied holding any exclusive agreement, although one of them (COCICYL) limited itself to stating that according to the law they were not obliged to answer the questionnaire because that particular PSB “was not specifically associated with public sector entities.”

<b>Public Sector Body</b>	<b>Type of PSI</b>	<b>Responded to the Survey</b>
<b>Agencia Estatal Boletín Oficial del Estado (BOE)</b>	National legislation	yes

<b>Centro de Investigaciones Sociológicas (CIS)</b>	Social statistics	yes
<b>Consejo Regional de Cámaras Oficiales de Comercio e Industria de Castilla y León (COCICYL)</b>	Regional chamber of commerce information	yes
<b>Registro Mercantil Central</b>	Official business registers	yes
<b>Consejo Superior de Cámaras de Comercio</b>	Chamber of commerce information	yes
<b>Consorti de l’Autoritat del Transport Metropolità (ATM).</b>	Public transport information	yes
<b>Instituto de Estadística de la Comunidad de Madrid</b>	Population and social data	yes
<b>Propiedad Intelectual del Ministerio de Cultura</b>	Copyright information	yes

**Table 8:** List of PSBs that had been reported as being holders of a possible exclusive agreement in previous studies

After analyzing the available evidence, we could not identify an exclusive agreement between these PSBs and other entities, although degrees of collaboration varied a great deal from case to case. We would like to highlight the degree of collaboration offered by the “Agencia Estatal Boletín del Estado,” which was contacted several times and was classified under the domain where more suspicion arose among PSI re-users. In every case, the agency pointed out the transparency of its activities, the detailed information that it offered on its webpage and the high level of accessibility of information that was produced by that particular PSB.

## SUMMARY SHEETS

### Summary sheet, No. 1

Summary sheet, No. 1	
Case	Agreement declared as non-exclusive about exclusive distribution
Public Sector Organization	Centro de Documentación Judicial (CENDOJ)
Holder	Federación de Gremios de Editores de España (FGEE)
PSI Domain	Legal information
Material	General agreement providing access in the same conditions to judicial decisions to all publishers
Date of approval or beginning	2007/05/24
Date of expiration	2012/05/24
Source	Survey and telephone calls
Exclusive rights / restricting practices	Included in the list because several re-users said this arrangement was exclusive.
Legal analysis	<p>The agreement deals with the following range of issues in the context of re-use:</p> <ul style="list-style-type: none"> <li>• Depersonalization of data</li> <li>• The legal publishers hold the right to access public information and adding value in the form of intellectual creativity as well as to develop editorial products from this information.</li> <li>• It promotes the use of electronic formats, prohibits the granting of exclusive rights and provides for approval of a tariff policy or public fees for the provision of documents and licensing for reuse.</li> </ul> <p>Other aspects:</p> <ul style="list-style-type: none"> <li>- Free assignment of information to agencies and public sector entities for non-commercial activities.</li> <li>- Free access to information in case law on the CGPJ website.</li> <li>- Establishment of systems that prevent massive or illegitimate downloads from the webpage for profit.</li> <li>- Penalties for the re-use of content without a license or for breaching its conditions.</li> </ul> <p>Some complaints of re-users might be justified, especially those relating to the conditions of the agreement that might benefit big companies due</p>

	to the high prices of legal sentences, and volume discounts applied.
Opinion and interpretation	The agreement was provided by the Federación de Gremios de Editores de España (FGEE), we appreciate their cooperation. Re-users complained about pricing conditions that were beneficial to bigger companies, although the agreement is from before the Law 37/2007, and is supported by the international recommendations on transparency.

## Summary sheet, No. 2

Case	Preferential treatment to obtain privileged information
Public Sector Organization	Ministerio de Medio Ambiente y Medio Rural y Marino and others
Holder	Re-user specifically requested anonymity
PSI Domain	Business / Economic Information. Professional / technical publications on agriculture, food, cattle and fishing
Material	Declaration of re-user
Date of approval or beginning	Situation in progress
Date of expiration	-
Source	Survey and telephone calls
Exclusive rights / restricting practices	Some re-users obtain information faster than others, which apparently might have caused reports being published by professional publications even before the PSB did. Poor coordination on behalf of some ministries, as well as poor implementation of information dissemination protocols might be a cause for this.
Legal analysis	It is an issue that directly relates to the right to access public sector information.
Opinion and interpretation	It is based on a relationship of trust with the source of information in the PSB and the journalist who gets the official information before others, thus providing a privileged access to information, in a journalistic sense. It might be an issue regarding competition, and is apparently focused in the agriculture and food sub-domains, and not in other areas of high re-

	use potential such as energy or transportation.
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### Summary sheet, No. 3

Case	Restrictive market practice on vehicle registration. Non declared agreement
Public Sector Organization	Dirección General de Tráfico (DGT)
Holder	Three undisclosed re-users
PSI Domain	Transport information
Material	Declaration of re-user
Date of approval or beginning	During the decade of the 1990s, now inactive
Date of expiration	
Source	Questionnaires and personal interview
Exclusive rights / restricting practices	Restrictive market practice. Commercialization agreements
Legal analysis	Restrictive market practices. Only three companies had access to records.
Opinion and interpretation	An agreement, which in fact, excluded other re-users. The PSB involved did not respond to the survey or provide any further information. Restrictive market practices, discriminatory treatment. These practices have apparently stopped since information has started being published on the Internet.

### Summary sheet, No. 4

Case	Non-declared agreement
Public Sector	Aeropuertos Españoles y Navegación Aérea (AENA)

Organization	
Holder	Agencia Estatal de Meteorología (AEMET)
PSI Domain	Meteorological information
Material	Public tax
Date of approval or beginning	
Date of expiration	
Source	Questionnaire, The Budget (2010), telephone interview and external legal advice.
Exclusive rights / restricting practices	<p>The Agency is financed almost completely by the “Ministerio de Medio Ambiente, Rural y Marino.” Another important source of income is the provision of meteorological services included in the network of aerial navigation aids, through the rate managed by the Public Entity AENA, which reached EUR 13,647,220.</p> <p>Source: Presupuestos generales del Estado. Presupuesto por programas y memoria de objetivos. Gastos. Tomo XIII (Sección 23). p. 722 (726 pdf), vol. L10_E_G13.pdf  <a href="http://www.spgg.pap.meh.es/Presup/PGE2010Ley/MaestroTomos/PGE-ROM/Cuerpo.htm">http://www.spgg.pap.meh.es/Presup/PGE2010Ley/MaestroTomos/PGE-ROM/Cuerpo.htm</a></p>
Legal analysis	The Statute of the Agency should be examined in order to verify that it allows for the consideration of “own resources” which are defined as those entities for which a contracting authority holds a control similar to that which it may have over their own services. It should also be considered whether the sale of AEMET weather forecasts can be made by a partnership agreement or other agreements excluded from public sector contracting regulations.
Opinion and interpretation	<p>Both government agencies have denied holding an exclusive agreement, despite repeated conversations we had with them.</p> <p>This looks like a situation where a possible exclusive arrangement could exist.</p>

## Summary sheet, No. 5

Case	Legal status
Public Sector Organization	Registro Mercantil Central
Holder	Offices of the Business Register
PSI Domain	Official Business Register
Material	Regulations of Official Business Register (Reglamento del Registro Mercantil) RD. 1784/1996, July 19 and RD. 158/08, February 8. Article 12.
Date of approval or beginning	
Date of expiration	
Source	Personal interviews, questionnaires, external legal advice.
Exclusive rights / restricting practices	Seems to be a legal monopoly with a single supplier.
Legal analysis	<p>Regulations of the “Registro Mercantil”, passed by R.D. 1784/1996, July the 19th and R.D. 158/08 from February the 8<sup>th</sup>.</p> <p>Article 12 regarding formal publicity is of particular interest:</p> <ol style="list-style-type: none"> <li>1. The business register is public, and professional treatment of the contents of registry’s records is an attribution of the Trade Registrar, so that direct public access is granted, as well as the impossibility of manipulating or massively downloading those records.</li> <li>2. Records will be made public according to a certification procedure or through informative notes of some or all of the data contained in the corresponding record, in a way to be determined by the Trade Registrar.</li> <li>3. Trade Registrars, under their responsibility, should evaluate conformance to the law of publicity requests “en masse” or those affecting records containing private data.</li> </ol> <p><a href="http://www.boe.es/aeboe/consultas/bases_datos/doc.php?id=BOE-A-1996-17533">http://www.boe.es/aeboe/consultas/bases_datos/doc.php?id=BOE-A-1996-17533</a>)</p>

Opinion and interpretation

Some re-users have implied or stated the view that the registrars have a legal monopoly, without any form of negotiation. They believe that the information they provide is very expensive and subject to rigid management procedures. Public data is managed by registrars who in turn operate as private companies, without competition or tariffs.



## Summary sheet, No. 6

Case	Private Partnership Contracts
Public Sector Organization	Consejo Superior de Cámaras de Comercio/ Consejo Regional de Cámaras Oficiales de Comercio e Industria de Castilla y León (COCICYL)
Holder	Camerdata, S.A.
PSI Domain	Chamber of commerce/business data
Material	Contract
Date of approval or beginning	Situation in progress
Date of expiration	
Source	Questionnaires, several telephone calls, e-mails
Exclusive rights / restricting practices	Private partnership agreements have been signed with shareholders of the Chambers of Commerce. Commercialization agreements. Possible exclusive agreement.
Legal analysis	No copies of contracts were provided by either the PSB or the company, although the situation seems clear. As Camerdata recognizes, “Our mission is to integrate census from every chamber of commerce as a single source of information that grants official and complete coverage for the whole national territory.” Source: <a href="http://www.camerdata.es/php/Home/quienes_somos.php">http://www.camerdata.es/php/Home/quienes_somos.php</a>
Opinion and interpretation	We recommend that the corresponding authority gather more data with respect to the scope of the contracts. Both the PSB and the re-user involved were reluctant to provide further information. This looks like a situation where a possible exclusive arrangement could exist.

## CONCLUSIONS AND RECOMMENDATIONS REGARDING GENERAL ISSUES ON PSI RE-USE

Law 37/2007 on PSI re-use is widely unknown in the public sector, as are its potential benefits. RECOMMENDATION: Define an active dissemination and communication policy of the contents and benefits of the law.

The identification of staff responsible for PSI re-use issues was difficult or impossible in many cases. This is confusing and might hamper PSI re-use. RECOMMENDATION: Responsibilities and functions regarding PSI re-use should be defined, and a single unit or office per PSB should be explicitly designated.

The average profile of re-users in Spain corresponds to an SME (Small and Medium Enterprises) model, with more than five years of activity and a turnover of less than 7 million annually, which operates around the information in areas of law, business, marketing or publishing. It is not a homogeneous group and there is no association of companies. There is no awareness of being part of a specific sector. RECOMMENDATION: Promote sectorial meetings or events to report on public information policies.

The re-users feel that it is very difficult to reuse public sector information. One of the main problems identified affects the usability and interoperability of information related to obtaining, loading and structuring information. RECOMMENDATION: The public administration should improve the interoperability and supply information in reusable formats.

There are significant difficulties in relation to the terms of use of PSI, including the possible existence of competition restricting practices, and in some cases the lack of clear definition of public pricing policies. RECOMMENDATION: Promote the development of clear pricing policies and enforcement of PSI regulations.

Efforts to improve the awareness on and availability of PSI have been made by the public sector, and Proyecto Aporta is still moving towards promoting these aspects. We would like to highlight the publication of an Information Asset Register in Aporta's platform<sup>8</sup>, although much work is still to be done in the field of PSI re-use.

We would like to highlight the best practices regarding PSI re-use found in the Official State Gazette Agency BOE<sup>9</sup>, as well as in the Cadastre<sup>10</sup>, which is the only PSB that included an explicit reference to the Spanish Law on PSI re-use.

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<sup>8</sup> <http://www.aporta.es/web/guest/catalogo-de-informacion-publica>

<sup>9</sup> <http://www.boe.es/>

<sup>10</sup> <http://www.catastro.meh.es/>; [http://www.catastro.meh.es/pdf/Plan\\_estrategico\\_2009.pdf](http://www.catastro.meh.es/pdf/Plan_estrategico_2009.pdf), pág. 8

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# **ANNEXES**