

I Implementation and impact of the Directive

1. In addition to transposition measures, could you please indicate additional practical/ deployment measures (e.g. national portals, asset lists etc) that have been taken in your State by the main public sector content holders in your country to facilitate the re-use of PSI?

In the United Kingdom, OPSI has launched a number of initiatives, which are detailed below. Further information on each of the initiatives can be found in the annual United Kingdom Report on the Re-use of Public Sector Information 2008 (published 22 July 2008, Cm 7446, <http://www.opsi.gov.uk/advice/psi-regulations/uk-report-reuse-psi-2008.pdf>). Cross references to the appropriate sections in the Report where the content is provided in more detail have been made in this response. The paragraph numbers given relate to the paragraphs in the Report.

The Click-Use Licence (please refer to paragraphs 5.2 – 5.9): OPSI launched the Click-Use Licence in 2001 ahead of the implementation of the PSI Directive. The Click-Use Licence is an online licence that facilitates re-use of a wide range of public sector information. The main characteristics of the Click-Use Licence are that it:

- is quick, certain and transparent
- provides re-users and content holders with the certainty of knowing what the terms of re-use are
- enables the public sector to monitor who is using PSI
- is enabling, but reinforces that PSI is protected by copyright and so should not be misused
- is worldwide and crosses international boundaries
- has the potential to be used across the entire UK public sector.

The Click-Use Licence was extended to include a wider range of information and material than just core government information, for which it was originally created. The future of the Click-Use Licence includes the possibility of developing a Scottish Parliamentary Click-Use Licence and developing Click-Use web services for the automated issuing of licences.

Information Asset Registers (please refer to paragraphs 7.11 – 7.19): Information Asset Registers (IARs) were first introduced in the UK in 1999. The emphasis of IARs is very much on previously unpublished data assets held by government departments and other public sector bodies. IARs are tools for identifying the information/data held by the public sector. Production of good metadata to describe the assets available for re-use, is therefore a critical factor in this identification process. The UK has undertaken to develop and raise metadata standards to facilitate re-use.

Web Continuity Project (please refer to paragraphs 7.23 7.27): The web is the key platform for government and the wider public sector to make information available for re-use. It is, therefore, critical that there is an infrastructure in place to ensure that the information is available not only today but also for years to come. Research has shown that many of the links used on the web are broken. This arises when new domain names are created and websites are reconfigured. Often this follows public sector bodies changing their names and structures. It is therefore not a UK phenomenon.

The UK is tackling this problem through the Web Continuity project. Through The National Archives the UK is using enhanced web archiving technology and providing software that public sector bodies can use to bind together live websites with a web archive.

Information Fair Trader Scheme (please refer to paragraphs 4.2- 4.9): IFTS is fundamentally an accreditation process for raising standards of information trading across the public sector. It involves monitoring key principles, including openness, fairness and transparency. IFTS, which was initially targeted at major information traders within government, has proved so successful that it was rolled out to the wider public sector and made available as an online process.

Statutory Complaints Process (please refer to paragraphs 3.16 – 3.23): The UK Government considered it imperative that the Regulations on the Re-use of PSI (PSI Regulations) should be underpinned by a statutory complaints process that is administered centrally. This process is managed by OPSI. OPSI's responsibility is underpinned by the review role provided by the Advisory Panel on Public Sector Information.

OPSI's experience is that the complaints process provides a level of reassurance to re-users and is a robust alternative to pursuing complaints through litigation.

OPSI has recently relaunched its mediation service, which complements the formal complaints process.

Re-use Request Channel (please refer to paragraphs 4.29 – 4.36): The 'unlocking service' was launched in July 2008 as a webchannel to gather and assess the demand for re-use. The aim is to provide a mechanism for re-users to raise issues around re-use, to provide assistance in resolving these issues and to assess the types of information and data that are requested. The UK Government is also running the Power of Information competition inviting the public to suggest ideas for new products, which re-use PSI (please refer to paragraph 4.28).

Semantic Web Standards (please refer to paragraphs 4.37 – 4.44): To encourage access to, and re-use of, information it is essential to provide information in accessible forms. With the web as a platform,

semantic technologies can provide the standards and capabilities to create new information structures for facilitating re-use. OPSI is engaging with partners to develop new semantic web standards to ensure PSI is more accessible and re-usable.

OpenSpace (please refer to paragraph 4.45): OPSI has collaborated with Ordnance Survey, the UK's national mapping agency, to build Web applications based on Ordnance Survey mapping data. This enables data mashers to access and use mapping data free of charge for non-commercial purposes.

2. Do you consider that the Directive has had an impact on the information market in your country? If so how?

Some of the key initiatives launched in the United Kingdom pre-dated the Directive. This includes the launch of IARs in 1999, the Click-Use Licence in 2001 and IFTS in 2002. This acknowledges that the UK had identified that re-use was a significant plank of government information policy in meeting the needs of the information industry.

The Directive encapsulated a number of key principles, which the UK was already taking forward, at least at central government level. The UK considers that the Directive has had an impact on the information market in the UK for the following reasons:

- it provides a legal framework across the EU which provides re-users with the certainty of knowing that there are key principles in place regarding re-use
- it has raised the profile of PSI considerably in the UK across the private and public sectors
- it has recognised the impact of the web and new technologies on the information industry. As a result, every citizen is potentially a publisher and data masher and, hence, there is a rapid growth of websites created by citizens rather than conventional publishers. More of the public now want information and data for re-use, and the PSI Regulations ensure that there is open and fair competition. Although much of this is driven by web technology, the UK believes that the Directive has created the climate that contributed to this development (please refer to paragraphs 4.24 – 4.28).

3. Has the implementation of the Directive resulted in a revised charging policy by public sector bodies?

As stated in response to question 2, the UK had a number of initiatives in place to encourage the re-use of PSI, some years before the Directive came into force. For example, approximately 70% of information produced by central government departments could be re-used free of charge under the PSI Click-Use Licence that was launched in 2001. Nevertheless, the Directive has set legal parameters for charging. The provisions on charging contained in the Directive have also informed

recent UK reports including the Office of Fair Trading's Commercial Use of Public Sector Information Report (CUPI) and the Models of Public Sector Information Provision via Trading Funds Report (the Cambridge Report) (please refer to paragraphs 6.4 – 6.9). These reviews have informed future charging options and models including the current work by the UK Government to assess the business models of Government Trading Funds.¹ This work will include an assessment of the current pricing, access and licensing regimes (please refer to paragraphs 6.10 – 6.12).

4. What kind of problems do you believe private companies in your country are encountering when wishing to re-use public sector information?

OPSI has worked hard to ensure that structures are in place to facilitate re-use. However, due to the non-mandatory wording of the Directive and the PSI Regulations, many public sector bodies have effectively opted out. This is particularly the case at local government level. The problems encountered by the private sector could be summarised as follows:

- a lack of awareness amongst public sector bodies regarding their responsibilities
- a lack of engagement in certain parts of the public sector, especially in local government. Some public sector bodies respond to requests by stating that as the PSI Regulations and the Directive are not mandatory, and therefore, opt to not comply
- given that there are more than 100,000 public sector bodies in the UK the level of compliance is variable. Many have IARs and standards licences in place, while others do not refer to public sector information on their websites
- lack of clarity about charging
- as highlighted in the OFT CUPI report problems can arise when public sector bodies operate in both the upstream and downstream markets. This can raise competition issues
- a lack of clarity as to what constitutes a public sector body's public task.

II. Scope of the Directive

5. Would it be appropriate to include cultural establishments, education and research organisations and public sector broadcasters, within the scope of the Directive?

and

¹ Trading Funds are commercial organisations operating within government in very specialised fields and rely on their ability to derive income from their activities in order to cover their costs.

6. 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?

Information held by organisations such as museums, libraries, archives, research bodies, cultural and educational establishments, public sector broadcasters, and scientific organisations is currently exempt under the PSI Regulations. These organisations are excluded as many are holders of third party copyright material and there would be a significant burden on these organisations processing applications to allow re-use of such material. Alternatively, some of these organisations operate in highly commercial environments, such as public sector broadcasters and implementing the PSI Regulations would cut across these activities. This remains the situation in 2008. The UK's position is that any proposal to remove the exclusion would require specific and considered justification and a detailed assessment of the effect that it would have on the organisations concerned. Any assessment would also need to consider the potential administrative burden that would fall on these organisations.

III. Looking Ahead

7. 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)?

The UK has established dispute resolution mechanisms through implementing the PSI Regulations for the reasons explained in question 1. The UK is also engaging with public and private partners to develop new technologies to facilitate re-use.

Certain terms in the Directive have given rise to some doubt as to their legal interpretation. These include: *public task*; *document*; *re-use*; and *reasonable return on investment*. Clarification of these terms, perhaps in the form of official guidance issued by the Commission, would provide a level of certainty. OPSI is willing to work with the Commission and other member states in reviewing these terms.

8. 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?

The UK supports any actions that would maintain the momentum behind PSI. Our view is that any substantive amendment could lead to public sector bodies arguing that there is little point in complying until the revised version of the Directive was in place. Building on, and reinforcing, the

existing Directive to deliver clarity and ensure its wider uptake provide realistic goals for the next stage in its development.

The Directive provides a minimum framework and it is open to member states to go beyond the provisions set out in the Directive. For example, if member states believe that statutory dispute resolution mechanisms are required, national legislation can be amended accordingly without recourse to amending the Directive.

As stated earlier, the non-mandatory wording of the Directive is problematic for take up across the public sector. Through OPSI, the UK Government has introduced a range of tools and awareness activities to remind the public sector of its obligation under the Directive (please see the Timeline, pages 36 – 39 of the Report). The solution to this lies both at national level and with the Commission.

Drawing on the UK's experience of putting the Directive into practice and operating the regime for three years, formal guidance to support the Directive and reinforce its aims would be a valuable practical next step. The UK would see defining certain key terms used in the Directive as the prime focus of any Guidance. Further clarification of third party rights (as an exemption) and the circumstances under which exclusive licences may be granted would also be helpful as there have been areas where the Directive's wording has proved ambiguous.

9. Additional Comments

The UK Report in both the Executive Summary (see pages 9 - 10 of the Report) and in Chapter 8 (please see pages 58 – 61) provides a snapshot of the key issues and challenges from the UK experience of implementation and operation.

Office of Public Sector Information on behalf of the UK Government

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