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Submission of the European Newspaper Publishers' Association –ENPA

Public Consultation on the Review of the Directive 2003/98/EC on the re-use of public sector information

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ENPA POSITION

REVIEW OF THE PUBLIC SECTOR INFORMATION DIRECTIVE

Overview

ENPA – the European Newspaper Publishers Association – has closely followed the discussions at EU level on the preparation and drafting of the Directive 2003/98/EC of the EP and the Council on the reuse of public sector information.

Public sector information (PSI) concerns a broad range of information whether legal, economical, judicial, political, financial, etc. This type of information needs to be widely disseminated to the public at large as citizens have the right to be informed in order to participate to the democratic debate.

The range of public sector information of interest to the press is wide and varied. It could cover for instance Court proceedings, weather forecasts, educational, cultural, agricultural, scientific, statistical data, and even includes publicly owned images of national heritage, official buildings and spaces etc.

Newspapers play a key-role in bringing such information to the public. To achieve this objective, publishers and journalists need to have an easy access to PSI which should also be easy to reuse. Good conditions for accessing and reusing PSI are contributing to the preservation of freedom of the press and to the right of the public to be informed.

ENPA position on the Directive on the re-use of public sector information could be summarized as follows:

- The press should benefit from optimal conditions for access and re-use of public sector information in the widest sense. Such conditions are indispensable for the protection of press freedom, for the good exercise of journalism but also for an appropriate level of information to the public.
- The scope of the Directive should be as wide as possible as regards the public entities and the type of documents and information that are covered. ENPA would therefore be in favour of the inclusion of cultural establishments, education and research organisations and public service broadcasters within the scope of the Directive as it will improve the free flow of information and a wider access and re-use of information and documents of these public bodies.
- Regarding the conditions for re-use, ENPA requests that the format, the timing of delivery and the pricing of the information should be determined in a way which enables the work of journalists and which is not an obstacle to publishing this information in the newspapers. If public sector information is made inaccessible or too difficult to obtain, this would have a detrimental effect on press freedom, access to information and on the right of the public to be informed.

- ENPA argues for more transparency in the conditions for access, pricing and re-use of public sector information. ENPA also welcomes the prohibition of exclusive arrangements between public bodies and certain companies as it could have a negative impact on the free flow of information.
- ENPA also raises the question of the ownership of rights on works produced in the course of employment relationship which also affects the public sector. This could restrict access and the re-use of PSI when public sector employers are not the owner of the work produced by their own employees.
- ENPA finally underlines that the Directive should contain an explicit reference to press freedom and Article 10 of the European Convention of Human rights.

ENPA Responses 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.

In general, ENPA can affirm that the Directive has not created particular difficulties at national level.

More specific concerns on certain aspects of the Directive are explained in further details in our responses to the questions below.

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?

The charging policy by public sector bodies has a direct impact on the possibility for the press to access and reuse the information. When the original Directive was discussed, ENPA stressed that ideally, public sector information should be accessible and reusable for free. Citizens should have the right to be informed without any obstacle such as tariffs and prices.

As newspapers contribute to the democratic debate, public sector bodies should not be allowed to fix pricing conditions which could prevent publishers and journalists from publishing this information. A prohibitory pricing policy could affect the level of information of the public and the freedom of the press. ENPA also indicated that the pricing/charging policy of public sector bodies should be objective, non-discriminatory and transparent.

Considering that the press plays an essential role in informing the public, newspaper publishers and journalists are entitled to receive this information and reuse it in a way that enables them to exercise their mission.

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?

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?

As it is in the interest of the public to be informed without any restriction, it is therefore important for the press to be able to reuse without restriction information from cultural establishments, education and research organisations and public service broadcasters. However, this should only concern non-copyrighted (public domain) works.

Furthermore, a particular topic which was discussed in certain countries was the question of the availability of TV listings of the public broadcasting organisations for publication in the daily newspapers. In this area, newspaper publishers and the public broadcasters had to sign an agreement where publishers have to pay for publishing such information in their newspapers.

In these circumstances, ENPA believes that public service broadcasters should be included in the scope of the Directive so that TV listings could easily be accessible and reusable without any particular restrictions, including pricing.

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)?

During the consultation process before the adoption of the Directive, ENPA raised concerns on the issue of public documents for which third parties hold IP rights. These documents are excluded from the scope of the initiative.

In some Member States, employers have to acquire the rights to the works produced by their employees. As for the newspaper publishers' concerned, this problem also affects the public sector. In consequence, the use of public sector information is more difficult in these countries than in others, where the copyright is owned by the public employer. A transfer of rights to the employer would facilitate the access to information, its use and the exercise of journalism.

Another aspect is the timing of delivery of the information by public bodies: Newspaper publishers have to comply with tight publication deadlines and need to report promptly in the digital and paper versions of the newspapers on issues of concerns for the citizen (e.g. traffic, weather forecasts, etc). They therefore need to have rapid and easy access to public sector information.

However, the Directive indicates that the timing for public bodies to reply to some requests for re-use should be reasonable. ENPA questions the wording "reasonable" as it could be interpreted in many different ways. Such a broad interpretation could therefore delay the publication of the information in the press.

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?

ENPA is of the view that the introduction of legislative amendments in the Directive or guidelines on proper implementation is only conceivable if the overall purpose is to improve the access and reuse of PSI.

Our responses to the previous questions indicate certain specific issues which could be a basis for discussions:

- The scope and in particular the possibility to include public service broadcasters.
- The pricing policy, in particular the need to promote the idea that PSI should be accessible for free.
- The timing for the response by the public sector bodies to a request for re-using certain information.
- The issue of copyright and employment, in particular the need to change the national legislation in certain EU countries in order to give to the employer the possibility to exploit the economic rights on the work produced by their employees.

7. Other comments

ENPA has no additional comments.

ENPA is a non-profit organisation of 5200 titles from 27 European countries, representing the interests of newspaper publishers to the European institutions. More than 140 million copies of newspapers are sold each day and read by over 280 million people in Europe. Newspapers online have a significant number of unique visits on their sites on daily basis.

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