

Paris, the 15th of September 2008

## **PUBLIC CONSULTATION Review of the PSI Directive**

### **Contribution of the French inter-association working group on PSI**

This document presents the contribution of the French inter-association working group to the review of the PSI directive.

The working group is composed of the following associations:

- GFII means "Groupement Français de l'Industrie de l'Information". The association gathers public and private actors, in the professional information field.
- GESTE gathers the main French content publishers on Internet (press, radio, TV, music...),
- FIGEC means "Fédération de l'Information d'Entreprises et de la Gestion de Créance". This is a French Association which represents the main private professional players specialised in company information or debt collection (credit bureau /debt collectors /debt buyers and sellers...).

## **1. Implementation and impact of the directive**

### **The implementation**

The directive was implemented into French law by texts very similar to the Directive: ordinance June 6<sup>th</sup> 2005 and decree December 30<sup>th</sup> 2005 which modify the law of July 17<sup>th</sup> 1978 concerning the improvement of the relationship between administration and citizens. The May 29<sup>th</sup> 2006 Prime Minister's circular specified the obligations of this new law whose aim is economic development: the nomination of public representatives responsible for the re-use of public information, the setting up of repositories ensuring the availability of the main public sector information, the definition of standard licences, the analysis of licences with exclusive rights.

### **The French organizations in charge of PSI**

#### **The CADA**

The missions of the Access Commission to Administrative Documents (CADA in French) were redefined by the new laws. This commission makes a recommendation when there is a conflict between a private company and a public information producer or gives advice when a public producer who receives a re-use demand asks for help.

In its annual report 2007, published in June 2008, CADA gave detail on re-use:

1. Communicability and possible dissemination of the information with the application of various statutes.
2. The agreement of the administration is not necessary for re-use unless there is a licence
3. Personal data should be respected according to the French law of January 6<sup>th</sup> 1978

#### 4. No exclusive right when there is commercial re-use.

Since January 1<sup>st</sup> 2006, a great number of recommendations and advice from CADA [2] has stated the obligation for public information producers to give or sell their data for re-use, respecting the personal data and industrial or commercial secret. Nevertheless, some recommendations made by the CADA show the limits of its competence: the CADA only intervenes on the legacy of access, dissemination and re-use.

The re-use of public information represents a small part of CADA's work, as in 2007, on 5015 questions, only 53 concerned this re-use (26 were asked by the same company). "Re-use, though it is in the continuity of access, has a special and autonomous status". [3]

Given the small number of practical cases on re-use, it is very difficult for the CADA to determine this status more clearly.

#### The Immaterial Property State Agency

Another organization has been active in the PSI field since 2008: the "Agence du patrimoine immatériel de l'Etat"(APIE) After the issue of a report on the "intangible economy", the Government set up this new agency on the 23rd of April, 2007 with a view

1. to optimizing the State intangible assets,
2. to coordinating work among ministries in this respect,
3. to supporting the administrative services in order to manage their intangible assets (identification, protection and development of the value of the assets).

Regarding the re-use of public data , the APIE is working on three pilot projects and a standard license project.

#### French situation

The legal context is quite satisfactory, but the practical implementation of the law is too slow: There is no repository ensuring the availability of the main public sector information.

This drawback is highly damaging to the development of the information market, and the inter-association group led by the GFII, is working on it in order to clarify the available content and re-use conditions.

- There are not enough licenses adapted to the new law.

Most of central and local administrations do not propose a re-use licence. When these licences are proposed, some of the conditions do not respect the national implementation of the Directive. (cf. list of licenses at the end of this document).

- The answer from administrations to a demand for re-use is slow

There is no case of a specific obstruction to a re-use demand, but often there is no answer, or a transfer to another service, or even contradictory answers from two different departments.

- No implementation by some semi public organisms

Some semi public organisms, as the "Registries of the Courts of Commerce" (*Greffes des Tribunaux de Commerce*) which sell public information on companies for re-use, do not propose any standard licence or publicly available fees. The contracts and the fees are defined for each re-user.

- No public producer commitment regarding the quality of data

The data quality and the responsibility of the producer are not mentioned in the re-use licence;

- Fees

Some licence fees have decreased after the implementation of the Directive. In some cases, the proportionality between fees and turnover of the company has disappeared. In most cases, calculation of the costs, on which the fees are established, is not made, or is not publicly available.

In order to contribute to a better implementation of the re-use law, GFII has organised information and training meetings:

- Information for public information producers who are members of GFII : published licences with fees, appointment of public representatives, responsible for the re-use of public information, etc;
- Information on information professionals through an article published in a professional press article [4]
- Organisation of three training sessions “management and re-use of public information”, 10/24/2007, 02/07 and 03/13/2008. More than 80 managers of public information for central and local administration, and public organisations attended these meetings [5].
- Organisation of meetings on information sectors with discussions between public information producers and private companies re-using this information:
  - o Patent information, November 21<sup>st</sup> 2007
  - o Law information, June 27<sup>th</sup> 2008

## 2. Scope of the Directive

No comment

## 3. Optimise the re-use of PSI

**In France, we would like to have a unique inter ministry entity in charge of public information re-use so that it could inform the relevant administrations and coordinate the actions of all responsible structures, thereby avoiding overlaps and delays.**

**The economic development of the information market should be its major aim.**

### **Public information must be more visible**

- Repositories of main public information must be rapidly available with precise information on information content and re-use conditions. These first models should be complemented later on, but this work should be implemented as soon as possible
- Dissemination of new licences and adaptation of existing licences with no exclusive rights and calculated fees related to the costs.
- Appointments of public representatives responsible for the re-use of public information should be made rapidly from now on

To obtain these results quickly, GFII is working with APIE on licences, public information directories and calculation of fees.

During a meeting at the Conseil d'Etat, for “CADA” 30<sup>th</sup> anniversary, GFII highlighted that the principal aim of the Directive is economic development. A French market survey, requested by GFII, shows that the French market issuing from public information is about €700 m today [5].

Similarly according to the evaluation of the Office of Fair Trading, the difficulty in getting access to public information, or the too high fees, represents a lack in the economic activity which is deemed at €600 m. This means that the potential French market issuing from public information totals about 1,3 billion euros.

### **Most efficient re-use demand**

The companies having difficulty in obtaining public information should refer to the qualified courts (CADA, APIE, CNIL, DGCCRF).

An association of private companies should be created for more efficient lobbying on national and European administrative organisms.

### **Notes**

[1] Commission d'accès aux documents administratifs, Rapport d'activités 2007 (juin 2008), 87p.

[2] Selections of recommendations and advice from CADA

#### *Recommendations:*

Date: 10/25/2007, N° 20074046. Department of Justice, Re-use of the activity reports of the commission for the evaluation of publications for children and young people.

Date: 03/16/2006, N° 20060771. Regional Environment Direction of Pays de la Loire. Re-use of geographic databases.

Date : 06/29/2006 N° 20062243. Martinique Academy. Rectorate. Re-use of scholar examination results as the same time they are published.

From the publication of this advice, public information was given for re-use.

#### *Advice:*

Date: 04/17/2008 N° 20081565. Oise Regional Park. Re-use of studies of the Regional Park for internet site of an association.

Date: 04/17/2008 N° 20081564 Le Havre Harbour. Re-use of the proceedings of the administration council of the Harbour with respect to industrial secret.

Date: 10/25/2007 N° 20074115. Béziers Town Hall. Re-use of electoral lists of the town.

Date: 09/13/2007 N° 20073182 Pontivy Town Hall. Re-use by a company of the construction agreements of the town.

Date: 06/07/2007 N° 200721096 Tours University Hospital. Re-use by syndicate organisations of the personal files of the hospital agents.

Date: 04/19/2007 N° 20071573 Calais Town Hall. Re-use of photos annexed to a construction agreement.

Date: 02/22/2007 N° 20070769 Nages-et-Solorgues Town Hall. Re-use in an associative publication of administrative account data.

- [3] Documents administratifs, Droit d'accès et réutilisation, Paris, La Documentation Française, juin 2008, 209p.
- [4] « La longue marche de l'information publique », R. Martinez et B. Marx (GFII), Documentaliste-Sciences de l'information 2007, vol.44, n° 3, p.218-227.
- [5] GFII, Formation « Gestion et diffusion des informations publiques » : identification des données publiques, accès et diffusion, droit de réutilisation des tiers, procédures et formalités, contraintes juridiques.
- [6] Serda-Archimag, L'information électronique professionnelle en France : le marché en 2006 et es tendances, IDP, 2007, 165p.
- [7] Office of Fair Trading, The commercial use of public information, (CUPI), OFT861, December 2006, 183p. + annexes.

## *ANNEXE : exemples de licences types disponibles*

### Exemples of available licences

#### Direction de Journaux Officiels

- Bulletin officiel des annonces civiles et commerciales
- Bulletin officiel des annonces des Marchés Publics
- Fichier des associations et associations syndicales de propriétaires et fondations

#### Légifrance

- Codes, lois et règlement (LEGI)
- Lois et décrets (JORI)
- Résumés et liens (LEX)
- Conventions collectives nationales étendues (KALI)
- Décisions du Conseil constitutionnel (CONSTIT)
- Arrêts de la Cour de Cassation (CASS et INCA)
- Décisions du Conseil d'Etat et du tribunal des conflits (JADE)
- Arrêts des cours judiciaires d'appel (JURIDICE)
- Délibérations de la CNIL (CNIL)

#### Institut National de la Propriété Industrielle

- Brevets français
- Marques françaises
- Dessins et modèles français
- Jurisprudence de propriété industrielle
- Registre National du Commerce et des Sociétés
  - Fiches d'identité des entreprises
  - Comptes annuels des entreprises

#### Institut Géographique National

- Licences d'utilisation
  - Licence standard
  - Licence enseignement
  - Licence recherche
  - Licence étendue
  - Licence d'évaluation et de test
  - Licence de démonstration

#### Licences d'exploitation

- Licence d'exploitation "grande diffusion payante"
- Licence d'exploitation "services en ligne"
- Licence d'exploitation "administration électronique"
- Licence d'exploitation "grande diffusion gratuite hors ligne"
- Licence d'exploitation professionnelle
- Licence de prestations
- Licence de développement

Ministère de l'écologie et du développement durable  
Fiches juridiques « diffusion des données », Groupe de travail « Administrateurs de données des Directions Régionales de l'Environnement »

Institut National de la Recherche Agronomique  
Charte de la propriété intellectuelle de l'INRA

Guide de l'Équipement

Guide de la Justice

Météo France  
Licence d'utilisation

Institut National des Statistiques et des Etudes Economiques  
Rediffusion des produits tarifés, sur support électronique avec licence et redevance