

The Locus Association

Submission to the European Commission on the Re-Use of Public Sector Information Directive

September 2008

Introduction

1. The Locus Association welcomes the opportunity to provide a written submission to the European Commission on the Re-Use of Public Sector Information Directive. If required, Locus would be happy to provide supplementary written or oral evidence at a later date.

About Locus

2. Locus is a trade association of private sector companies who all use Public Sector Information (PSI) and wish to establish a constructive relationship between the public and private sectors and a fair and transparent market place for PSI in a way that will bring hugely innovative benefits to the end consumer.
3. The Locus Association was launched in January 2006 and its President is a former Director General of the Office of Fair Trading (OFT) and Oftel, Sir Bryan Carsberg. The Association exists to raise awareness of, and promote the development of, a healthy and competitive private sector in relation to PSI. Locus acts as a forum for exchange of information, keeps its members up to date with latest policy developments, and provides advice and guidance. Our members recognise the potential of PSI, but also the benefit of uniting to address some of the challenges and pooling resources to meet them. It is worth noting that the particular nature of the PSI market structure, where individual private sector organisations have limited influence, lends itself to the development of a trade body.
4. Locus's members all have a pivotal interest in PSI policy and the actions of PSIHs; some members are primarily involved in the purchase of raw data and value addition, whilst some members also compete directly with PSIHs in the provision of value-added products and services.
5. Locus Members come from a number of different sectors. These sectors include:
 - Mapping Industry
 - Weather Industry
 - Environmental Consulting
 - Legal Information
 - Aerial Imaging Industry

The Locus Association	
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- Utilities
6. The full membership is as follows:
- Multimap
 - Landmark Information Group
 - Intelligent Addressing
 - Weathernews
 - Emapsite.com
 - Flight Images Ltd
 - Geosense Ltd
 - Getmapping Plc
 - GroundSure
 - Harvey Maps Ltd
 - Infoterra
 - Intermap Technologies Ltd
 - Lovell Johns Ltd
 - MacDonald, Dettweiler and Associates (UK) Ltd
 - STL Group
 - Tele Atlas
 - Severn Trent Searches
 - Bluesky International
 - The Information Centre for Health and Social Care

Background to the Locus Submission

7. Locus has consistently supported the Directive as a positive step in the development of a more transparent and harmonised regime for the re-use of public sector information in the European Union. It strongly supports the aspirations underlying the Directive, it is clear that there is more to be done – particularly in the domestic implementation of the Directive however.
8. In the UK, there have been numerous independent reports on the issues surrounding PSI and public policy innovation over the past six years, several commissioned by the Government. None have suggested that maintaining the current status quo is desirable. All have been critical, in some cases highly critical. They include Select Committees (PSI re-licensing terms appear unfair), the Office of Fair Trading (economic detriment of at least £500 million being caused), the Cabinet Office (“The Power of Information” – an important opportunity is being missed) and most recently the Cambridge Study for the Treasury (the existing Trading Fund position is economically inefficient).
9. In the opinion of the Locus Association, the only significant aspect of PSI and public policy innovation which these reports have not studied is the cost to Government itself, in operational and legal terms, of the complex licensing arrangements that the current Trading Fund model necessitates. There is, however, evidence that this complexity has a direct impact upon the speed and scope of transformation and innovation within Government, and may actually be highly detrimental to governmental objectives.

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Consultation Response

10. The Locus response has been divided into the following sections:

- A. Implementation and impact of the Directive
- B. Scope of the Directive
- C. Looking Ahead
- D. Other Comments

11. The Association has responded to each question directly in these sections. If further evidence is required, Locus will be happy to provide it to the Commission.

A. Implementation and Impact of the Directive

QUESTION 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.

12. The UK was one of 8 member states to have implemented the Directive by the 1st July 2005 deadline. The effect of this Directive has been beneficial in a number of ways, and Locus is happy to acknowledge these:

- Given greater prominence to the re-use of PSI on the political agenda
- Helped to fuel debate about proper policy on this area
- Applied a degree of pressure on PSI producers to make information available
- Provided rules which make it easier for potential private sector PSI re-users to apply leverage to PSI producers to allow re-use of their data

13. However, Locus does not believe that the Directive has been properly or fully implemented and applied in the UK. The kinds of problems Locus members are encountering are as follows:

- **Transparency:** the Directive calls for conditions and charges to be published; however, Locus members have experience of pricing and licensing documents being treated as confidential, and re-users not being able to share the details of those agreements with third parties.
- **Pricing:** The Directive says that charges should not exceed the cost of collection, etc. of the data plus a reasonable return. However, in our experience, charging often has no relation to the cost of collecting and processing its data, and there is not enough detail about its accounting made available for external parties to be clear on actual costs. Locus members also experience cross subsidy in the pricing of data bundles this can lead to competitive unfairness for the private sector.
- **Licensing:** Article 8 of the Directive says that licensing terms should not restrict competition. However, Ordnance Survey contracts – for example – prohibit re-users from taking any action that might cause OS harm, which could be interpreted as prohibiting re-users from competing with OS. Further, restrictions on the use of some OS materials have resulted in some players in the market complaining that the development of some markets and use of the data have been limited. The licensing regime should be transparent, simple and concise. There should be no

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'sideletters' and all licence agreements should be open for anyone to see. Any prices from PSIHs for procurements should be public with an audit trail that shows how they were reached, though the preferable solution is for the models to be transparent so that resellers / VARs can calculate the prices.

***QUESTION 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?*

14. Locus believes that the implementation of the Directive has not resulted in a revised charging policy by public sector bodies. Whilst there was one recent notable reduction in charges for data products (Ordnance Survey data), the impetus for this reduction was Locus understands pressure from the private sector (Google) rather than the Directive or any other Government initiative.
15. From Locus' members experience and conversations with others operating in the information sector, the Association does not believe that there has been any substantial or demonstrable increase in the reuse of PSI since the Directive was introduced. However, clearly Public Sector Information Holders, not Locus' are best placed to provide actual statistics regarding number of hits and number of re-users registered.

A. Scope of the Directive

***QUESTION 4:** 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?*

16. The view of the Association is that yes it would be. Individual member companies have provided more details re which organisations they feel it would be appropriate to include in their own responses to the consultation.

***QUESTION 5:** 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?*

17. Greater access to information would in Locus' view certainly provide benefits- individual members have elaborated on the details of this in their own answers. It is of course worth noting that these organisations would of course have to put in place operations to disseminate the information properly, and in compliance with the Directive.

A. Looking Ahead

***QUESTION 6:** 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)?*

18. There are several measures that would work towards strengthening both the implementation and execution of the Directive significantly. Below are some suggestions from the Locus Association:
- **Dispute Resolution:** Strengthened measures to enforce independent dispute settlement would be a very positive step.

The Locus Association	
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- **Channels for redress:** Providing the existing regulator (OPSI in the UK) with more flexible but stronger power and authority, and the ability to fine PSIHs and require them to change when they are found to be in breach of regulations is a key necessity. Additionally, the regulator should be totally independent. HMSO, as part of OPSI, still has overall “ownership” of Crown Copyright and therefore OPSI is not strictly an independent regulator but has a potential conflict of interest
- **Appeals Process:** The appeals process for complaints should be timely and transparent in order to ensure confidence in the process and the bodies involved.
- **Transparency:** All PSIHs should be forced to publish a list of all the relevant data that is available for re-use under the Directive. This would avoid any ambiguity and would increase confidence in both the Directive and the system at large. Additionally, if there are any exceptions (data sets that do not fall under the Directive) then they should also be listed with the reason for their exclusion. Locus also believes that all PSIH pricing and charging should be transparent if there is to be a level playing field in the PSI arena.
- **Public Task Clarification.** Locus would welcome a clarification of the role of Public Sector Information Holders (PSIHs) which it believes can be subject to undesirable conflicts of interest. Some PSIHs have a statutory obligation to collect information as part of their “Public Task” but are also encouraged to innovate and exploit new opportunities to sell data at a retail level, sometimes in competition with their own private sector distributors. PSIH terms for licensing data can cause operational difficulties for the public as well as the private sector and the private sector needs real guidance over what PSIHs Public Task is..

QUESTION 7: 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?

19. Yes.

20. The current Directive is too vague on a number of these points. Dispute resolution should be required, and despite the fact that it will increase costs and overheads, there should be a regulator.

A. Other Comments

21. The Locus Association acknowledges that the Re-Use of Public Sector Information Directive serves a vital purpose and is usefully contributing to the increase in PSI re-use in the UK. However, it is clear that certain aspects of the Directive are in urgent need of strengthening. With the benefit of several years operational experience of the Directive and PSI Regulations the overall view of Locus is that it remains committed to the aims of the Directive. However it does not feel that the UK has yet succeeded in those aims and considers that the Directive needs to be urgently tightened in a number of key areas.

Contact Information

22. Further information about The Locus Association can be found at:
<http://www.locusassociation.co.uk>

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