



The impact and success of legislation on the re-use of public
sector information

*(Directive 2003/98/EC of the European Parliament and Council of 17
November 2003 and the UK Regulations)*

The views of the UK Advisory Panel on Public Sector Information

31 July 2008

Glossary

AEI	Directive 2003/4/EC of the European Parliament and Council of 28 January 2003 on public access to environmental information, implemented in the UK as the Environmental Information Regulations 2005'
APPSI	Advisory Panel on Public Sector Information
BMWA	Bundesministerium für Wirtschaft und Arbeit (German Federal Ministry for Economics and Labour)
CUPI	The OFT's 2006 study on 'The Commercial Use of Public Information'
Defra	Department for Food, Environment and Rural Affairs
Directive	Directive 2003/98/EC of the European Parliament and Council of 17 November 2003 on the re-use of public sector information
EU	European Union
HMSO	Her Majesty's Stationery Office
IFTS	The Information Fair Trader Scheme
OFT	Office of Fair Trading
OPSI	The Office of Public Sector Information
PSB	public sector body
PSI	public sector information
PSIH	public sector information holder
Regulations	The Re-Use of Public Sector Information Regulations 2005

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Foreword

Information collected in the course of government business can be re-used for many purposes. The wealth of such public sector information (PSI) informs and guides citizens and helps to keep them safe. It also fuels business and supports innovation. So its availability for re-use is of vital importance to citizens in the UK and across the rest of Europe.

Background

The legal encouragement for such re-use arises mainly from Directive 2003/98/EC of the European Parliament and Council of 17 November 2003 and from the subsequent UK Regulations implementing the Directive in British law. Under Article 13 of the Directive, the Commission is due to review the application of the Directive before 1 July 2008. Member States have been invited to send their comments to the Commission by 15 September 2008.

The EC review is fortuitously coinciding with much re-thinking in the UK – within government and without – of why and how PSI should be made available to commerce and the public at large.

APPSI is almost unique in Europe in being an independent body set up by government to advise Ministers and the UK Office of Public Sector Information (OPSI) on re-use of PSI (see Chapter 1). Its members are drawn from the public and private sectors and from information traders, information collectors, academics and others. They are appointed either as experts or as representatives of particular sectors.

APPSI has taken the opportunity of the Commission's review of the Directive to look at its application in the United Kingdom, consider whether the original aims of the Directive have been fulfilled, and to comment on what might still need to be done to achieve those aims - whether through amendment to the Directive, the provision of guidance at EU level, or the evolution of policy and regulation within the UK itself. Though it is mostly focused on the UK situation, we have taken advantage of the wide knowledge of various APPSI members on policies and activities in other European Union Member States and elsewhere in the world.

Status of this document

This document is being sent to Ministers and the Director of OPSI as part of our remit to provide advice. Subsequently, the document will form the basis of APPSI's formal response to the EC's public consultation and is used to answer the questions issued by the EC to inform its review of the Directive. The document is also made generally available as part of our commitment to operating transparently.

The re-use of PSI is influenced by decisions taken in many places in government, some independently of each other. The historical legacy of past decisions also influences the current situation. Because the context is complex, we have sought to produce a free-standing report which provides enough background to the current situation for our proposals to be understood.

It will be no surprise that unanimity on all points was not possible: the tensions inherent in the interactions of different sectors, each with objectives which themselves differ, renders this almost inevitable. We have chosen not to neuter this document by pretending such unanimity exists. Rather we see it as important to identify where common ground exists and where it does not – and to highlight the different policy actions which might be appropriate.

Acknowledgements

I am grateful to all the APPSI members for engaging honestly (and with good humour) in the debates and drafting; our Vice-Chairman, Peter Wienand, has borne much of the brunt of producing this statement of views but many others have contributed. I am grateful also to the Director of OPSI, her staff and the Secretary to APPSI for their unstinting support. And, finally, I record that those APPSI colleagues employed by government are manifestly unable to express views on current UK government policy but thank them for their advice and views on economic and operational matters germane to our common aim: the maximisation of the beneficial use of PSI.

David Rhind

Chairman of the UK Advisory Panel on Public Sector Information (APPSI)

Executive Summary

APPSI thoroughly approves of the aims of the re-use Directive, as set out in the Recitals to the Directive. However, it believes there is still much to be done to achieve and indeed further those aims.

There is a divergence of views within APPSI as to what needs to be done. On the one hand, the Trading Fund representative considers that the Directive as a whole needs only marginal clarifications (see Chapter 7). The other Panel members however consider that, ideally, the Directive needs to be tightened in a number of key areas if its original aims are to be achieved in a truly harmonised fashion. Alternatively, if the Directive is not to be amended, then clear and powerful guidance should be issued. Indeed the Panel believes that much of what is desirable could be achieved most speedily by UK government action and commends this course of action. The majority view within APPSI is that:

- with certain explicit exceptions, Public Sector Bodies (PSBs) should be required to make PSI available for re-use;
- PSI originally created as part of the public task of a PSB or integral to the discharge of a public function should be within the scope of the Directive;
- high level EC policy guidance should be provided on interpretation of the concept of ‘public task’ and the UK government should create and operate a public process for its definition and periodic review; the process should include provision for public consultation and challenge;
- the scope of the exclusion of documents in which third parties own intellectual property rights should be clarified, so as to bring within the scope of the Directive documents (i.) where the third party is another EU public sector body; (ii) documents containing re-usable content that is not protected by the third party rights; and (iii) documents where the third party has licensed the document for re-use;
- EC guidance be provided to give much greater encouragement in the Directive for adoption of a marginal cost regime (for most documents), and clarification provided as to whether, and the extent to which, the costs that can be re-charged to re-users should relate to the documents in question or to documents in general; and also that guidance be provided on the principles that should apply to the calculation of costs, following best practice in Member States. The bulk of the APPSI members urge the UK government to move to a marginal cost pricing model for PSI;
- wherever exclusive arrangements remain, a justification should be published, and that all information about exclusive arrangements should appear in one place;
- the UK government should launch an awareness-raising campaign on the merits of PSI re-use.

SECTION A THE CURRENT SITUATION

1. Introduction

- 1.1. Originally established by the Cabinet Office in 2003, shortly before adoption of the Directive, APPSI¹ is a Non-Departmental Public Body of the Ministry of Justice. APPSI members² are drawn from a wide variety of backgrounds including information providers, re-users and consumers of public-sector information, experts from academia and industry, representatives of producer and consumer groups, and representatives of the devolved administrations. APPSI's terms of reference are as follows:
- To advise Ministers on how to encourage and create opportunities in the information industry for greater re-use of public sector information;
 - To advise the Director of the Office of Public Sector Information and Controller of Her Majesty's Stationery Office about changes and opportunities in the information industry, so that the licensing of Crown copyright and public sector information is aligned with current and emerging developments;
 - To review and consider complaints under the Re-use of Public Sector Information Regulations 2005 and advise on the impact of the complaints procedures under those regulations.
- 1.2. APPSI's focus is the re-use of PSI and, specifically, encouraging greater use of PSI. In the UK, it is OPSI³ that has responsibility for policy and regulation of the re-use of PSI. Much of OPSI's and APPSI's work in this context is governed by 'The Re-Use of Public Sector Information Regulations 2005'⁴ (the Regulations) introduced by the UK government to implement the Directive. A detailed account of the impact of the Regulations and of progress that has been made in the UK since they came into force has been published by OPSI.⁵
- 1.3. The re-use of PSI should be distinguished from, but needs to be co-ordinated with, related challenges:
- 1.3.1. that of securing and preserving PSI where the related policy and practice is largely the responsibility of The National Archives;
 - 1.3.2. that of providing ready access to PSI under the freedom of information regime, policy responsibility for which belongs to the Ministry of Justice, while practice is regulated by the Information Commissioner;

¹ Advisory Panel on Public Sector Information; <http://www.appsi.gov.uk/>.

² The list of members is annexed to this submission.

³ Office of Public Sector Information (OPSI); <http://www.opsi.gov.uk/>.

⁴ Statutory Instrument 2005 No. 1515, laid before Parliament 10th June 2005 and enacted 1st July 2005.

⁵ The United Kingdom Implementation of the European Directive on the Re-use of Public Sector Information - the first two years, July 2007; <http://www.opsi.gov.uk/advice/psi-regulations/uk-implementation-first-years.pdf>; and The United Kingdom Report on the Re-Use of Public Sector Information 2008, <http://www.opsi.gov.uk/advice/psi-regulations/uk-report-reuse-psi-2008.pdf>.

- 1.3.3. providing access to Environmental Information, the responsibility for which (including the implementation in the UK of the Access to Environmental Information (AEI) Directive belongs primarily to Defra.
- 1.4. Most strands of public information policy and management principles (except for Environmental Information) are therefore now gathered under the broad umbrella of the Ministry of Justice.⁶
- 1.5. OPSI's and APPSI's very existence is evidence of the importance with which the UK government views PSI as a resource, and of the recognition that there are various perspectives that need to be taken into account in balancing the governmental, administrative, social and economic value of PSI.
- 1.6. APPSI has consistently supported the intent and implementation of the Directive. It also strongly supported the PSI Regulations introduced by the UK government to support the implementation of the Directive. For example, in its Response to the Regulatory Impact Assessments published by HMSO⁷ and The Department of Trade and Industry as part of the process of consultation on the best method to implement the Directive in the UK⁸, APPSI said:
- “The Panel sees the Directive as a wholly positive step in the development of a more transparent and harmonised regime for the re-use of public sector information in the EU. It strongly supports the aspirations underlying the Directive, and which are set out in the Recitals to the Directive. It also believes that the Directive provides a basis for developing more ambitious ways of exploiting the intellectual capital that resides in the public sector.”
- 1.7. This report provides the view of the members of APPSI on application of the Directive, with particular reference to the UK.⁹ It considers the practical (and in some cases innovative) steps taken by OPSI to ensure that this important piece of legislation is recognised, understood and put into practice.
- 1.8. OPSI has done much since implementation of the Directive; indeed, some activity had already begun in anticipation of implementation. It has been active in raising the profile of the re-use agenda, ensuring that it is central to emerging information policy development. In particular, OPSI has:
- published a range of guidance material which sets out step-by-step what public sector organisations need to do to meet their responsibilities;
 - contacted over 400 public sector organisations to spread awareness and raise standards;

⁶ This is itself consistent with APPSI's own recommendations, made on various occasions, for greater co-ordination of information management policy in government.

⁷ On its creation OPSI incorporated HMSO. HMSO continues to operate as an entity within OPSI; <http://www.opsi.gov.uk/about/hmso.htm/>.

⁸ *Response to the Partial Regulatory Impact Assessment on the EU Directive on the re-use of Public Sector Information* (<http://www.appsi.gov.uk/reports/ria-response.pdf>) and *Response to the Proposal for Regulations implementing the EU Directive on the re-use of public sector information* of 18 March 2005 (<http://www.appsi.gov.uk/reports/regulations-response.pdf>).

⁹ As indicated in the Foreword and Executive Summary, the views of the Trading Fund representative and of Trading Funds diverges in a number of respects. Both sets of views – where they differ – are set out in Section B.

- enhanced the Information Fair Trader Scheme (IFTS)¹⁰ and introduced IFTS Online, AKTive PSI and Click-Use Licensing, which set standards and make it easier to re-use public sector information (though APPSI notes that a consolidation of the IFTS and the regime created by the Regulations would be desirable); and
- investigated a number of complaints against public sector information holders, leading to licensing improvements.

1.9. In addition, OPSI has played a vital role in contributing to two key documents produced since implementation of the Directive in the UK:

- the Office of Fair Trading (“OFT”) study into the Commercial Use of Public Information (“the CUPI Study”- see Box 1),¹¹ which investigated whether the market for the supply of public sector information worked efficiently for the benefit of consumers; and
- The Power of Information Review (see Box 2).¹²

1.10. Nevertheless, despite these significant and sometimes insufficiently recognised efforts, it is APPSI’s view that the UK’s PSI assets remain substantially under-utilised. This submission reviews the extent to which the underlying policy objectives of the Directive have been fulfilled within the UK and the impact of the policy and action taken by the UK government. Our objective is to identify generic improvements where possible so as to enhance the exploitation of PSI.

1.11. With the benefit of over two years operational experience of the Directive and PSI Regulations, the overall view of APPSI is that it:

- remains committed to and thoroughly approves of the aims of the Directive, as set out in the Recitals to the Directive;
- believes however that there is still as much to be done in the UK (at least) to achieve those aims;
- considers that the Directive needs to be tightened in a number of key areas if those aims are to be achieved fully. This can either be done by changes to the Directive itself or by provision of clear guidance. Actions by the UK government could ameliorate those issues which are specific to the working of the UK.

The last two points are addressed directly in Section B of this paper.

¹⁰ See: <http://www.opsi.gov.uk/ifts/index.htm>.

¹¹ Office of Fair Trading study on 'The Commercial Use of Public Information' (CUPI); http://www.oft.gov.uk/advice_and_resources/resource_base/market-studies/public-information.

¹² An independent study on the 'Power of Information' (June 2007) by Ed Mayo and Tom Steinberg, published by the Cabinet Office.; http://www.cabinetoffice.gov.uk/newsroom/news_releases/2007/070607_power.aspx.

2. Public Sector Information

- 2.1. Public sector bodies are among the largest collectors and depositories of information in the UK. It is estimated that up to 25% of all information originates from PSI.¹³ PSI is all-pervasive and essential but not always recognised as either. It covers public law, statistics, geography, consultation and policy documents, meteorology, hydrography, environmental issues, education, health service information, corporate and financial data, electoral data, data about governance and the economy and so forth. Whilst this list is already long and steadily growing, certain data is excluded, for example, data which is considered as sensitive or confidential and covered by privacy laws and data protection conventions. These PSI exclusions are generally subject to review to maintain legitimate protected status, while retaining public trust and confidence.
- 2.2. PSI is used directly or indirectly by every citizen daily. Governments and Nation States cannot function without it. Commercial organisations rely upon it. It is pivotal to the development of the knowledge economy and the competitive position of the UK and the EU in the modern world. In 2000, PIRA estimated the average value of PSI, including the cultural content, for EU countries at approximately 1% of GDP.¹⁴
- 2.3. However its true economic value is likely to be far greater than this. The OECD¹⁵ explained it thus:
- “The re-use of this data by the private sector has real benefits. First of all, PSI is:
- directly commercially exploitable as “raw material” for value-added products and services; and secondly,
 - it has an element of “indirect economic potential” as inputs into economic activities to improve efficient decision-taking and production.”
- 2.4. Beyond its economic value, PSI has other virtues. Government statistics for example are used in setting targets and help citizens to assess the performance of the government of the day. Such information underpins education and fosters evidence-based understanding of major public issues. As such, PSI fosters an informed and fair democracy.
- 2.5. The private sector has a vital role to play in this process. It can bring imagination and innovation to the dissemination of PSI in order to maximise its economic and other benefits. It can be a creator of wealth and jobs and a generator of tax revenues. It can offer choice and, by its activity, stimulate economically efficient production. It frequently understands the needs of new customers better than the originator of the PSI itself.

¹³ “Between 15% and 25% of commercial information products and services are based on information held by the public sector.” (Lord Falconer, former Secretary of State for Constitutional Affairs and Lord Chancellor); see:- <http://nds.coi.gov.uk/environment/fullDetail.asp?ReleaseID=238406&NewsAreaID=2&NavigatedFromDepartment=True>.

¹⁴ See http://ec.europa.eu/information_society/policy/psi/docs/pdfs/pira_study/commercial_final_report.pdf.

¹⁵ Digital Broadband Content: Public Sector Information and Content 30th March 2006.

- 2.6. The converse is also true. Where PSI is either unavailable or not easily accessible, then vital information - produced by the State and generally funded at least in part by the taxpayer - is under-utilised; thus resources and opportunities are wasted.
- 2.7. The relationship between public and private sector bodies then is at the heart of successful re-use of PSI. This will become ever more important: for example, success of some of the EU's more ambitious projects, such as INSPIRE¹⁶ - which seeks to provide a common infrastructure for spatial (including geographic, environmental and other) information across the EU - is certain to need close co-operation between the public and private sectors. A relatively flexible framework for joint working is likely to be necessary if they are to be delivered rapidly, efficiently and at reasonable cost to the taxpayer.
- 2.8. The ideal is obvious: to maximise the beneficial use of PSI created mainly by large public investments. But it would be naive not to recognise the constraints that exist to meeting this ideal. For instance, we note that public sector bodies operate in certain respects under different principles to private sector bodies – demonstrable equity of treatment of all parties is often mandated on government bodies whilst private sector bodies typically need to operate on shorter time scales than is normal in the public sector. By understanding the drivers and the constraints – and seeking to minimise the latter – we can enhance the chances of meeting our common goal.

¹⁶ Infrastructure for Spatial Information in Europe. See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:108:0001:0014:EN:PDF> and also http://inspire.jrc.it/reports/transposition/INSPIRE_IR_WP2007_2009_en.pdf for more details of future planned activities.

3. The Intended Impact of the PSI Re-use Directive

3.1. The evolution towards an information and knowledge society influences the life of every citizen in the Community by enabling them to gain new ways of accessing and acquiring knowledge.

3.2. The EC Treaty provides for the establishment of an internal market and of a system ensuring that competition in the internal market is not distorted. Harmonisation of the rules and practices in the Member States relating to the re-use of public sector information contributes to the achievement of these objectives.

3.3. The Directive identified several key benefits of a harmonised regime:

3.3.1. greater access to knowledge for citizens. Recital (2) stated:

The evolution towards an information and knowledge society influences the life of every citizen in the Community, *inter alia*, by enabling them to gain new ways of accessing and acquiring knowledge.

3.3.2. an environment in which Community-wide services can develop. Recital (5) of the Directive stated:

One of the principal aims of the establishment of an internal market is the creation of conditions conducive to the development of Community-wide services. Public sector information is an important primary material for digital content products and services and will become an even more important content resource with the development of wireless content services. Broad cross-border geographical coverage will also be essential in this context. Wider possibilities of re-using public sector information should *inter alia* allow European companies to exploit its potential and contribute to economic growth and job creation.

3.4. The EU PSI Re-use Directive can be seen as linked to two European policy initiatives:

- i2010 - A European Information Society for growth and employment; and
- the Lisbon Strategy for growth and jobs.

3.5. The Council of Ministers recognised both that PSI providers are generally natural monopoly suppliers and the potential economic value from making PSI more widely available by encouraging private sector involvement. The Council specifically wanted to help stimulate the development of innovative new information products and services across Europe, so boosting the EU's information industry.

3.6. The Re-use Directive was approved by the Council of Ministers and passed by the European Parliament on 17th November 2003, with its implementation being required by 1st July 2005. The aim of the Directive was to encourage the re-use of public sector information by removing obstacles that stand in the way of re-use. Its main themes are improving transparency, fairness and consistency and trying to ensure a level competitive playing-field.

4. Achievements to date from implementing the Directive in the UK

4.1. The UK was one of eight Member States to have implemented the Directive by the 1st July 2005 deadline. The effect of the Directive in the UK has been beneficial in a number of ways. It has:

- given greater prominence to the re-use of PSI on the political agenda;
- helped to fuel debate about proper policy in this area;
- applied a degree of pressure on PSI producers to make information available (though not in all cases);
- provided ground-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.

4.2. The transposition of the Directive in the UK is strengthened and enlarged by the role of OPSI. In the UK, OPSI has a broad (if not sole) responsibility for information policy. As far as we understand, this concentration of responsibility is unique in Europe and many people have commented favourably on the existence of OPSI and its activities. Importantly, OPSI continues to encourage and develop best practice amongst PSI holders and acts as the first point of reference in the complaints process introduced under the Directive, even if OPSI's capacity to achieve these objectives remains resource-constrained. It also continues to operate, in parallel to the regime created by the Regulations, the Information Fair Trader Scheme (IFTS).¹⁷ This scheme contains requirements similar to those of the Directive. In particular members of IFTS must:

- make a commitment to five information fair trader principles of Openness, Transparency, Fairness, Compliance and Challenge;
- have the commitment independently verified, usually by OPSI; and
- investigate any complaints that the commitment has not been met.

4.3. In the UK, much if not most available PSI can be licensed on simple licensing terms, either free or at the marginal cost of distribution. OPSI has successfully introduced a model "click-use" licence and over 15,000 such licences have now been taken up. There is therefore no doubt that considerable re-use of certain types of PSI is taking place at all levels.

4.4. The Directive has encouraged a wide range of UK public bodies to make more information available. This is based on work done by OPSI to try to ensure that the public sector is aware of the Directive's requirements and implements them. The progress on legislative and publicity issues is shown in the scorecard produced by ePSIplus.¹⁸ Examples of changed practice as a result of the Directive include:

4.4.1. improved awareness of legislative requirements and availability of information for re-use, resulting from OPSI's IFTS. A study by the UK's Office of Fair Trading (OFT)

¹⁷ The principles of the full IFTS are at: <http://www.opsi.gov.uk/ifts/full-ifts.htm> and in the booklet can be found at: <http://www.opsi.gov.uk/ifts/ifts-booklet.pdf>.

recommended that use of IFTS should be extended across the Public Sector and the government is encouraging public sector information holders to adopt the IFTS measures;

- 4.4.2. promotion, where not already available, of Information Asset lists;
 - 4.4.3. OPSI's development and implementation of a Click-Use licence for some types of information produced by central government bodies, and by Parliament;
 - 4.4.4. the increased emphasis in the UK on the disputes resolution procedure operated by OPSI which includes the right of appeal to APPSI; also provision of a mediation service.
- 4.5. It should however be noted that not all improvements have arisen as a consequence of the EU Directive. For example, the UK government's Cross-cutting Review of the Knowledge Economy (2000) made many positive changes, including the introduction of marginal cost pricing for raw data (with the exception of trading funds), the establishment of the Office of Public Sector Information (OPSI) as a regulator, and the introduction of Information Asset Registers.

¹⁸ ePSIplus scorecard; <http://www.epsiplus.net/scorecard3>.

SECTION B AREAS FOR IMPROVEMENT IN THE DIRECTIVE AND UK REGULATIONS

5 Concerns expressed about the current situation

5.1 Notwithstanding the achievements cited in Chapter 4 of this document, various concerns have been expressed about the effectiveness of the re-use regime as it has operated in the UK. The bulk of APPSI members believe that there has not been a step change in the re-use of PSI in the UK as a result of implementation of the Directive. Ten years ago the barriers to re-use of PSI were mainly the cost and complexity of digitising public records, the limitations of bandwidth and distribution channels and the level of technical skill of the potential user-base. Even in 2003, these constraints were still significant. Since then, the explosion of Internet capability and usage has reduced these constraints hugely. Now, even though much PSI can technically be made easily available, other constraints have become the main 'road blocks' to its exploitation and the growth of new enterprises, products and services through innovation. The UK government has made it clear that such innovation is central to future UK success.¹⁹

5.2 The majority of APPSI members²⁰ believe that the most important constraints to innovation through PSI exploitation are now:

- inefficient interaction between government and markets, itself attributable to a number of causes;
- current UK government policy on charging: by requiring certain PSBs to recharge users the costs of producing some of its most valuable PSI, such as geospatial or geographical data (an area identified as having great opportunity for employment and growth),²¹ the re-use of PSI is impeded;
- the lack of any *obligation* in the Directive or UK Regulations on PSBs to make PSI available for re-use;
- difficulties of enforcement;
- problems arising from ambiguities of definition in the Directive and UK Regulations – in particular for 'Public Task', 'Re-use' (and confusion with 'Access') and 'Documents'. Though apparently arcane, these terms determine what should be made available and how and at what cost it is made available;
- complications arising from multiple ownership of the IPR associated with a document. This can impede re-use e.g. where some owners are organisations that are not PSBs or are based outside the EU, and hence are not subject to the Directive. Meteorological information is a particular example of this, e.g. weather forecasts use data from a wide range of sources which include almost all countries in the world and international bodies. The originators allow their data to be used freely for safety etc reasons but not for other purposes;

¹⁹ See for instance 'The Race to the Top: a review of Government's Science and Innovation Policies' by Lord Sainsbury of Turville, October 2007 for HM Treasury see http://www.hm-treasury.gov.uk/media/5/E/sainsbury_review051007.pdf

²⁰ See Chapter 7 for the views of Trading Funds and the Trading Fund representative on APPSI

²¹ BMWA 2003.

- the lack of awareness of the benefits of making PSI available or the resources which are potentially available for exploitation;
- the potential for overlaps and confusion between the terms of the re-use Directive and the INSPIRE Directive. Both directives have requirements on access to information, but the scope and definitions may very well be different;
- the resources allocated to the regulatory and policy-making sections of government, notably OPSI, which are modest relative to the amount of PSI generated, the need for co-ordination across all areas of the public sector, and the existing (and above all potential) size of the market for re-use.

5.3 These concerns are not simply those of APPSI members alone. In response to complaints, proposals and government recognition of opportunities arising from the burgeoning technology, three major reports have been produced by or for government since December 2006 review aspects of PSI re-use in the UK. These are: The Commercial Use of Public Information (CUPI) study (Box 1); The Power of Information Report (POIR) (Box 2); and the Models of Public Sector Information provision via Trading Funds (the 'Cambridge Study') (Box 3). Each box describes the origins, focus and key findings of the relevant report.

Box 1 The Commercial Use of Public Information (CUPI)²²

The Office of Fair Trading (OFT)'s market study on The Commercial Use of Public Information (CUPI) was launched on 28 July 2005 and published in December 2006 under the OFT's function contained in section 5 of the Enterprise Act 2002. Its aim was to examine whether the way in which Public Sector Information Holders (PSIHs) supply information works well for businesses, to the best advantage for consumers.

Public sector information holders (PSIHs) are usually the only source for much of this raw data and, although some make this available to businesses for free, others charge. A number of PSIHs also compete with businesses in turning the raw information into value-added products and services. This means PSIHs may have reason to restrict access to information provided solely by themselves.

The study found that raw information is not as easily available as it should be, some licensing arrangements are restrictive, prices are not always linked to costs and PSIHs may be charging higher prices to competing businesses and giving them less attractive terms than their own value-added operations.

The report has also found that much of the legislation and guidance - which aims to ensure access to information is provided on an equal basis - lacks clarity and is inadequately monitored. As a result, the full benefits of public sector information are not being realised.

The OFT concluded that PSIHs should:

- make as much public sector information available as possible for commercial use/re-use
- ensure that businesses have access to public sector information at the earliest point that it is useful to them
- provide access to information where the PSIH is the only supplier on an equal basis to all businesses and the PSIH itself
- use proportionate cost-related pricing and to account separately for their monopoly activities and their value-added activities so that PSIH's can demonstrate that they are providing and pricing information fairly and in a non-discriminatory manner, and
- enable the regulator (Office of Public Sector Information) to monitor PSIHs better, with improved enforcement and complaints procedures.

According to OFT, implementing these recommendations could double the value of public sector information to the UK economy to £1 billion a year, and benefit consumers by providing a wider range of competitively priced goods and services.

The OFT highlighted the dichotomy of government approaches to PSI: "on the one hand, the Re-use of Public Sector Information Regulations 2005, the Freedom of Information Act 2000, the Environmental Information Regulations 2004 and the Transformational Government initiative aim to make as much PSI available as widely and cheaply as possible. On the other hand, the Trading Funds' requirement to fulfil income-generating targets and the Wider Markets Initiative (WMI) encourage PSIHs to earn an income from selling or licensing PSI."

Finally, OFT recognised that PSIHs are often the only source of the information they hold, largely because of high fixed collection costs, government funding for collection and privileged access, perhaps through statutory collection powers. They described this basic information, which cannot be substituted directly from other sources, as *unrefined information*. Once a PSIH does something with the unrefined information, it becomes in the OFT terms *refined information*.

²² See http://www.oft.gov.uk/shared_oft/reports/consumer_protection/oft861.pdf and the government's response at <http://www.berr.gov.uk/files/file39966.pdf>.

Box 2 The Power of Information Report (POIR)²³

This was an external review by Tom Steinberg, Director of mySociety, and Ed Mayo, Chief Executive of the National Consumer Council, produced with support from the Prime Minister's Strategy Unit. It was commissioned in February 2007 and reported four months later. Its terms of reference were:

“To explore new way developments in the use of citizen- and state – generated information in the UK, and to present an analysis and recommendations to the Cabinet Office Minister as part of the Policy Review.

Sub Questions to be addressed were:

- What is already going on? How significant is it?
- How can government catalyse more beneficial creation and sharing of information, and mutual support, between citizens?
- What can be done to improve the way government and its agencies publish and share the data they already have?
- Are there any notably information opportunities or shortfalls in sectors outside government that those sectors could work to rectify?”

The report's 15 conclusions included:

- To encourage innovation in the re-use of information by non-commercial users, UK trading funds should, in consultation with OPSI, examine the introduction of non-commercial re-use licences, along the lines of those pioneered by the BBC's Backstage project and Google Maps.
- By Budget 2008, government should commission and publish an independent review of the costs and benefits of the current trading fund charging model for the re-use of public sector information, including the role of the five largest trading funds, the balance of direct versus downstream economic revenue, and the impact on the quality of public sector information.
- To ensure the most appropriate supply of information for re-use, government should consistently apply its policy of marginal cost pricing for 'raw' information to all public bodies, including trading funds, except where the published economic analysis shows this does not serve the interest of UK citizens.
- To improve the supply of government information for re-use, the Better Regulation Executive should promote publication of regulatory information, and should work with OPSI to encourage publication in open formats and under licences permitting re-use.

Government's response was to accept the first, second and fourth of these recommendations, pointing out that the third would depend on the outcome from the study proposed in the second.

²³ See http://www.cabinetoffice.gov.uk/upload/assets/www.cabinetoffice.gov.uk/strategy/power_information.pdf and government response at <http://www.official-documents.gov.uk/document/cm71/7157/7157.pdf> and progress report at http://www.cabinetoffice.gov.uk/reports/power_of_information/interim_progress_report_html.aspx.

Box 3 Models of Public Sector Information provision via Trading Funds (the ‘Cambridge Study’) ²⁴

This study arose as a response to the government’s acceptance of the POIR study’s recommendations (see Box 2). Carried out by distinguished economists and lawyers from Cambridge University, this study analysed the impact of adopting different models for the provision of public sector information by trading funds. Its basic task was to examine the cost and benefits for society, and the effects on government revenue, of four different charging policies: profit-maximisation, average cost (cost-recovery), marginal cost and zero cost; both on their own and when interacted with various data distinctions such as raw versus value-added, and unrefined versus refined. The study focused on the six largest trading funds by data provision.

The authors found that, for many products, limitations of data and/or ambiguities about the nature of the good itself (particularly the data/service divide) would have made the analysis so speculative as to be of little value. Based however on an analysis of the data made available to them and a series of assumptions – which they judged to be conservative – the authors generally confined their analyses to comparing the existing average cost (cost-recovery) regime with marginal cost. On this basis, they concluded that:

- In most cases, a marginal cost regime would be welfare improving (that is, the benefits to society of moving to a marginal cost regime outweighed the costs).
- A change in charging regime should not have a detrimental impact on the performance of trading funds in terms of efficiency or data quality, providing a suitable governance and regulatory regime is put in place.

The government’s response was (i) to promise to look closely at the public sector information held by trading funds to distinguish more clearly what is required by Government for public tasks, ensuring this information is made available as widely as possible for use in actual and potential downstream markets and (ii) in the lead up to the next Spending Review, to ensure that it is priced appropriately. The underlying principle government set out is that information collected for public purposes will be made available at a price that balances the need for access while ensuring customers pay a fair contribution to the cost of collecting this information in the long-term. Shortly afterwards the Shareholder Executive was commissioned to carry out such a study with Terms of Reference defined at <http://www.shareholderexecutive.gov.uk/publications/pdf/tradingfunds250608terms.pdf>

²⁴ See <http://www.berr.gov.uk/bbf/competition/market-studies/public-information/page39978.html> and Budget statement at http://www.hm-treasury.gov.uk/budget/budget_08/report/bud_bud08_repindex.cfm.

6 APPSI members' major concerns

Here we elaborate on the brief summary of key issues set out above, beginning with a high level discussion and ending with a set of recommendations.

6.1 *Interaction between government and markets in the UK*

6.1.1 Given the existence of growing and potentially much larger markets for PSI, a key issue is the interaction between government and markets. Specifically, the issue is the impact the public sector can have on the way markets work. This was the context of the CUPi Study (Box 1).

6.1.2 In its response to the CUPi Study,²⁵ APPSI broadly agreed with the OFT's conclusions. But it questioned whether the 'bottom-up' approach adopted by the OFT in valuing PSI made sense, pointing out that it was likely to seriously underestimate, and indeed mask, the value of the PSI market for those products and services where PSI is absolutely necessary. The result is, APPSI believes, a serious underestimate of the true value of PSI to the economy. APPSI cited OXERA's 1999 study²⁶ which estimated that in 1996:

- Ordnance Survey (OS)²⁷ products and services contributed to activities which together produced 12-20% of gross value added (GVA). This amounted to £79–£136 billion worth of gross value added (GVA);
- this economic contribution of OS comes, in the main, through the use of OS products and services as a primary input into production by several key sectors in the economy (e.g. utilities, local government and transport). A similar study in 2001 for the British Geological Survey by Roger Tyms & Partners put the contribution of BGS in 2001 between £34bn and £61bn.

OXERA noted that there were qualitative benefits as well as quantitative ones from provision of OS data. They also noted that substitution was likely if OS data did not exist.

6.1.3 The great bulk of APPSI members completely accept the OFT conclusions that raw information is not as easily available as it should be, some licensing arrangements are restrictive, prices are not always linked to costs and PSBs may be charging higher prices to competing businesses and giving them less attractive terms than their own value-added operations. They also accept the conclusion that much of the legislation and guidance, which aims to ensure access to information is provided on an equal basis, lacks clarity and is inadequately monitored. APPSI recognises that government has

²⁵ See: <http://www.appsi.gov.uk/reports/cupi-response.pdf>.

²⁶ OXERA Consulting Limited: Report to Ordnance Survey – The Economic Contribution of Ordnance Survey GB, September 24th 1999. See <http://www.ordnancesurvey.co.uk/oswebsite/aboutus/reports/oxera/oxera.pdf> The crucial paragraph reads: 'We estimate that OS itself, together with its suppliers and distributors, plus those parts of the economy which make significant use of OS products, contribute 12–20% of GVA. It is the outputs from the other parts of the economy which play the largest role in this total. Indeed, up to 80% of this total (depending on the assumptions about 'dependency') is made up from the output of three sectors: the utilities, local government, and transport.'

²⁷ Ordnance Survey is a UK Trading Fund.

taken some steps towards improving matters but considers there is still much improvement to be made.

6.2 Charging policy in the UK

- 6.2.1 A second key issue for the UK, as for any Member State, is how far the collection, production and dissemination of PSI should be financed by the taxpayer and how far, if at all, it should be financed by the user. This is not just a matter of finance policy, but of economic efficiency and social utility. If the primary objective is to maximise revenue generation from re-use charges (and thereby reduce the burden on taxation), this may well reduce the extent to which PSI is re-used through pricing levels which make it outside the reach of some user groups – not all of which have equal purchasing power (c.f. utility companies and NGOs). There is common experience and agreement that provision of PSI at marginal or zero cost increases the number of users. Examples from as far apart as Australia and Austria support this view.²⁸ There has also been some debate in the UK of whether the ‘user pays’ or the ‘free provision of data collected at taxpayer expense’ model provides the greatest overall benefit to society.
- 6.2.2 In the UK this dilemma is exemplified by the Trading Funds (see Box 4 in Chapter 7)²⁹ which are required to offset some or all of their costs from commercial income. These are producers and suppliers of some of the most important categories of PSI in the UK. There are also, however, significant producers of PSI that are not Trading Funds.³⁰ The budgets that many of these Trading Funds have for information production are very large. In some cases these far exceed the costs recovered through charges to users.
- 6.2.3 The impact of charging policy on PSI re-use has been much debated and, in relation to Trading Funds has been the subject of a recent study, published jointly by the Department for Business, Enterprise and Regulatory Reform (BERR) and HM Treasury in March 2008 (“the Cambridge Study”: see Box 3).³¹ So far as we are aware, this is the most expert economic analysis of the various charging models that has been carried out world-wide though Trading Funds have expressed reservations on the quality of some of its evidence base (see Chapter 7).
- 6.2.4 Whilst taking note of certain significant limitations in the data available and the authors’ need to make important assumptions,³² APPSI sees the following conclusions of the Cambridge Study as highly significant:

“in most cases [of those studied – emphasis added] , a marginal cost regime would be welfare improving (that is, the benefits to society of moving to a marginal cost regime outweighed the costs)”;

²⁸ See: http://ec.europa.eu/information_society/policy/psi/comm_info/index_en.htm

²⁹ Trading funds were introduced by the UK government under the Trading Funds Act 1973 as a ‘means of financing trading operations of a government department’.

³⁰ Such as the Environment Agency and the National Health Service.

³¹ *Models of Public Sector Information Provision via Trading Funds* (26 February 2008) by Professors David Newbery and Lionel Bently and Rufus Pollock.

³² It would appear that the Trading Funds may have taken issue with some of these assumptions.

and

“having an adequate governance/regulatory regime in place is absolutely central to realizing the potential benefits from change (and also for delivering value for money even under the present charging arrangements).”

- 6.2.5 One objection often raised to a marginal cost regime is that this would reduce the incentive on PSBs to maintain high data quality. There is no doubt that the quality of data produced by certain PSBs in the UK, including the Trading Funds, is of a high level and APPSI members would not wish this to be reduced (as has happened in some other parts of the world). The Cambridge Study however argued that there was no inherent connection between data quality and charging models, and that if data quality was of prime importance, then this was a matter of public policy, regulation and continuity of state funding, and should not be left to the market.
- 6.2.6 APPSI has welcomed the Cambridge Study, while acknowledging that much more detailed work needs to be done in this area, not only in the UK but elsewhere; it therefore also welcomes the Shareholder Executive’s review of Trading Funds now underway. Such work should set the agenda for reviewing the UK policy frameworks in which issues of charging for PSI, and governance and regulation, are to be considered; it may well have relevance elsewhere outside the UK. However, until these policy frameworks are reviewed, the uncertainty created in key areas such as charging, and the risk (as a result of commercial exploitation of PSI by PSBs) of ‘public task’ boundaries becoming more elastic than is appropriate, create a disincentive to private sector investment in certain important areas of PSI which the Directive and Regulations, as they stand, can do little to counter-balance.

6.3 Enforceability

- 6.3.1 When it considered the implementation of the Directive in UK law, APPSI was originally concerned to create a relatively ‘light touch’ process for handling complaints against PSBs that were alleged to be in breach of the obligations created under the Directive. This question is handled further in section 6.9.
- 6.3.2 Under the Regulations, part of APPSI's role is to review and consider complaints that have already been considered by OPSI, and to advise on the impact of the complaints procedures under those regulations. APPSI has had to consider one case where both bodies appealed to APPSI.³³ This highlighted a number of difficulties. One of the salient ones was the absence of real sanctions that could be applied in cases where PSBs are non-compliant.
- 6.3.3 In the UK, this absence is filled, potentially at least, by the existence of a parallel system of regulation, the IFTS. For some PSBs (particularly in central government), the information that they produce is protected by Crown copyright. These PSBs are licensed (under a ‘delegation of authority’) by the Controller of HMSO, which operates from within OPSI. This is true of some Trading Funds, e.g. such as Ordnance Survey, the Meteorological Office, the UK Hydrographic Office and the Land Registry. IFTS was introduced in 2002, initially for Trading Funds and HMSO.

³³ See above, and: <http://www.appsi.gov.uk/review-board/review-SO-42-8-4.pdf>.

Full IFTS accreditation, including OPSI actively verifying compliance to the scheme, is mandatory for such bodies. Several other public bodies which manage their own copyright, e.g. the Environment Agency and some Local Authorities, have also achieved Full IFTS Accreditation.³⁴ Some public bodies have chosen to have IFTS Online Assessment,³⁵ a reduced version of the full IFTS without verification, to demonstrate that they meet the legal requirements of the Directive.

- 6.3.4 There are views amongst APPSI members that IFTS in practice has been ineffective and provides inappropriate respectability. As mentioned above (section 1.8), IFTS has recently been tightened, enabling a delegation of authority to be terminated in the event of non compliance. This is potentially a very powerful tool of enforcement. However, there are difficulties in practice in using it. Terminating a delegation would have catastrophic consequences for the operations of certain PSBs, and thus it requires the agreement of the Minister responsible for that PSB. Further, IFTS does not apply to large swathes of the public sector, notably local authorities. In short, the sanctions are in practice too draconian to be used for one group of PSBs and missing completely for the other. Finally, APPSI would prefer to see a single, coherent code of regulation applicable to all PSBs, implying a consolidation of the regime created by the Directive, and IFTS.

The following sections set out APPSI's view on particular aspects of the Directive, the regulations implementing it and certain other aspects of the UK approach to PSI re-use, together with recommendations for the way forward. The order in which they are dealt with should not necessarily be taken as implying an order of importance.

6.4 Supply of PSI non-mandatory

- 6.4.1 The Directive does not contain an obligation to allow re-use of documents (Recital 9). The Directive currently states that:

Public sector bodies should be encouraged to make available for re-use any documents held by them.
Public sector bodies should promote and encourage re-use of documents.

- 6.4.2 It is difficult to see how the full benefit of PSI re-use as a basis for economic growth and social utility can be enjoyed unless the re-use of PSI is proactively facilitated by PSBs. However, evidence obtained from local authorities (governments) in the UK suggests an alarming lack of awareness and engagement with the issues, or interest in promoting the re-use of PSI held by them.³⁶ The most recent survey by PSI Research show that, of the 75% of all local authorities in England and Wales responding to the survey, 8 out of 10 admit they have not produced an Information Asset Register and a number have made it clear that they do not intend to comply with the Regulations since these are not mandatory. APPSI draws the conclusion that, in the absence of an obligation to permit re-use, there is little or no incentive for PSBs to make PSI available for re-use, especially those with limited resources and other priorities.

³⁴ A complete list of central government bodies that have achieved IFTS Accreditation can be found at <http://www.opsi.gov.uk/ifts/ifts-members.htm>.

³⁵ IFTS Online Assessment at <http://www.opsi.gov.uk/ifts/assessment/index.htm>.

³⁶ See the research conducted by PSI Consulting which can be found at: http://www.epsiplus.net/news/426_psih_s_surveyed_re_psi_directive.

- 6.4.3 It might be objected that an obligation to make PSI available for re-use would burden PSBs with additional cost. However, APPSI does not consider this to be an insuperable problem. PSBs should not be required to do any more than make the documents available (i.e. they would not be required to re-format them or even digitise them). If the charging basis permitted recovery of marginal costs – as we support – then the costs of making documents available would be recoverable.
- 6.4.4 APPSI accepts that not all PSI should be made available for re-use. This principle is already reflected in the Directive in Article 1(2)(c). This might need to be re-visited if PSI re-use were mandatory. It would, however, certainly be preferable if a degree of consistency could be applied to the various access regimes, perhaps using the Access to Environmental Information Directive and Regulations (AEI) as the model.

APPSI recommends that, with certain explicit exceptions, PSBs should be *required* to make PSI available for re-use. At the very least, guidance should be issued creating a presumption that PSI should be available unless the specified exceptions apply. We recommend that UK action is taken to ensure that all PSBs should at least have to meet the requirements of IFTS, revised if necessary to include the Regulations.

6.5 What is a document?

6.5.1 A document is defined by Article 2 of the Directive as:

- a) any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audio-visual recording);
- b) any part of such content.

6.5.2 Documents whose supply is outside the public task of the PSB are excluded from the scope of the Directive i.e. there is no encouragement to make the information available for re-use. Typically these include documents that are produced and charged for exclusively on a commercial basis, sometimes in competition with others in the market. The Directive's definition of 'document' is not intended to cover computer programmes.

6.5.3 The definition used in the Directive is very wide and is capable of applying to any type of information, from individual bytes to digital datasets, where a potential dataset may comprise Megabytes, Gigabytes or even Petabytes. The breadth of the definition is not in itself a problem: indeed, the definition needs to be wide and flexible. Difficulties can, however, arise in the context of charging (see section 6.10 below) because the very flexibility of the definition can facilitate manipulation. For example, tensions can arise where a re-user requires an extract from a dataset, but the public sector body's need to recover the costs of producing the larger dataset leads it to levy a charge based on the entirety of those costs, rather than the fraction attributable to the extract. Examples have occurred of a lack of transparency of costs and the calculation of charges. These

have, in some cases, made it very difficult to develop any reasonable dialogue between producers and re-users of data based on a common understanding of a ‘cost per document’.

APPSI sees no overwhelming need to revise the definition of ‘document’. Rather it recommends the introduction of guidance on appropriate approaches to charging for documents (see below).

6.6 Definition of ‘public sector body’

6.6.1 APPSI notes that there is a category of information, originally produced to discharge a public function, which retains the character of PSI, but which falls outside the scope of the Directive because it is held by bodies that are not PSBs. These are often bodies that were PSBs but have since been given another status. In the UK an example is the Royal Mail. In some Member States (but not all) this type of PSI remains in the public sector, which creates anomalies of treatment across the EU, impeding harmonisation.

6.6.2 The PSI in question is sometimes of essential public importance (such as postcode files), and its exclusion from the Directive can have serious effects in retarding the development of innovative products and services, as well as impeding the efficiency of public administration. In APPSI’s view, some at least of this information should fall within the scope of the Directive. This would prevent avoidance of the Directive by transferring essential PSI to bodies that fall outside the technical definition of a PSB.

APPSI recommends that the Directive be amended to ensure that PSI originally created as part of the public task of a PSB or integral to the discharge of a public function should be within the scope of the Directive.

6.7 Definition of Public Task?

6.7.1 The term ‘public task’ plays a crucial role in the Directive since documents whose supply falls outside a PSB’s public task are excluded from its application. In its role of complaints review, the Review Board of APPSI has already had first hand experience in the lack of clarity as to what is covered by ‘public task’ and has highlighted the need for clearer definitions of the term.³⁷ In considering the question the Review Board was faced with a tension. On the one hand, Recital 9 of the Directive states that:

Activities falling outside the public task will typically include supply of documents that are provided or charged for exclusively on a commercial basis and in competition with others in the market.

³⁷ See the recommendations of the Review Board in review of the complaints by Intelligent Addressing and Ordnance Survey (2007): (<http://www.appsi.gov.uk/review-board/review-SO-42-8-4.pdf>).

6.7.2 On the other hand, in that decision, the public sector body (the Ordnance Survey) sought to insist that the commercialisation of the information held by OS was ‘a core part of its public task’. This is of course a reflection of the special status of UK trading funds, itself a reflection of a wider policy that requires cost recoupment via commercial activity. However, it may be that this issue has resonance elsewhere in the EU.

6.7.3 Faced with this tension, the Review Board of APPSI commented that:

While the Board accepts that the concept of the public task is necessary in any analysis of the activities and functions of public sector bodies, it has found that existing definitions of ‘public task’ are highly problematic and insufficiently precise. The Board certainly does not take the view that any supply of products by a public sector body on a commercial basis must necessarily fall outside that body’s public task, but the boundary between what is within the public task and what lies outside it is difficult to discern, especially in the case of trading funds. It is not clear whether the question is to be determined primarily by reference to (i) the public (including social or economic) need for the information; or to (ii) the duties of the public sector body as set by local law and practice. The Directive itself is not clear even though it suggests the latter. *This would, however, militate against the harmonising intent of the Directive.* [emphasis supplied]

6.7.4 There are various benefits in clarification of this issue:

- (a) it would reinforce the message that if PSBs re-use information they should be subject to the same terms and conditions as any private sector re-user, maintaining the principle of fairness and non-discrimination (principles already enshrined for some in the IFTS and competition law);
- (b) it would provide greater certainty to OPSI and APPSI as to whether specific complaints fall within the scope of the complaints process under the PSI Regulations;
- (c) if the Directive were suitably amended, this would support the key objective of harmonisation.³⁸

6.7.5 In the Review Board’s decision (see above) it recommended that the best practice in the UK should be reviewed and amended to clarify the concept of ‘public task’, following appropriate consultation with relevant government departments, and each trading fund should then produce and publish a statement of scope of its public task consistent with an amended guide to best practice. OPSI has already indicated that it will produce a clearer interpretation of what is meant by the term public task, to be included in its Guide to the Regulations and Best Practice, which will reinforce the existing practical guidance to public sector organisations to help them define their public task.

6.7.6 However, APPSI believes that an adjustment to the legislation, or at least guidance on the principles, would be very helpful here. This would assist in promoting a harmonised approach, which at present

³⁸ The Panel recognises that there may need to be limits on the extent to which the EU legislation should dictate to Member States what is or is not within the public task. However, the concept of ‘public task’ is central to the Directive, which is a harmonising measure or it is nothing. It is the tension created here that the Panel believes needs resolution.

is impossible if the critical concept of ‘public task’ is simply left to be interpreted in accordance with local law, binding rules, ‘common administrative practice’ (accepting that there should be some scope for variation between Member States on what is defined as ‘public task’) or even departmental preference. APPSI suggests that this concept would best be elucidated by reference to a set of common, EU-wide, principles, focusing on the discharge of a public need. Any such elucidation should take account of the plethora of terms used in this area, notably the various binary oppositions (such as ‘raw’ / ‘value-added’, ‘refined’ / ‘unrefined’, ‘competed’ / ‘non-competed’, ‘upstream’ / ‘downstream’, whose use adds confusion rather than clarity. Within these high level principles the UK (and other nation states) would then define a process for defining public task. To encourage public trust in the process, APPSI believes there should be an element of consultation and possible public challenge in the definition process. It is also clear to APPSI that the public task for any particular body should be reviewed periodically as the needs of users and the boundaries between the state and the private sector evolve.

APPSI recommends that high-level policy guidance be provided by the Commission on interpretation of the concept of ‘public task’ and that the UK government put in place a process for its definition and periodic review. This process should involve public consultation and the process should not be solely the preserve of the individual PSB.

6.8 Third party IPR input?

- 6.8.1 Strictly construed, the PSI Directive does not apply where a third party holds relevant IPR in the material. This wide-ranging exclusion, which lacks specificity, catches PSI where only a small element of a third party IPR has been included. This can have unintended consequences. Public Sector IPR in the public task should not be a limitation.
- 6.8.2 APPSI considers that the phrase “for which third parties hold intellectual property rights” is unclear. If the intent is to cover documents in which third parties own IPRs, then this needs to be clarified. This may simply be a matter of language.
- 6.8.3 OPSI has already agreed to clarify the UK approach on third party copyright material in the Guide to the Regulations and Best Practice.
- 6.8.4 In the meantime it would be extremely helpful for clarification to be provided by the Commission, perhaps in some guidance, notably on whether the exclusion:
- covers (or should cover) documents in which a third party owns intellectual property rights, where the third party is another PSB. Notwithstanding the ownership of intellectual property rights by a third party PSB, the relevant documents would be governed by the rules in the Directive if supplied directly by that PSB. It is difficult to see why these rules should be excluded where the documents are held by another PSB. Indeed, such an exclusion acts as an incentive to formulate avoidance strategies based on transfers of PSI between PSBs;
 - applies where the material protected by third party intellectual property rights is immaterial (for example because it is not the part of the document whose re-use is requested); and

- covers documents in which a third party owns intellectual property rights, provided that the third party has licensed the re-use of its intellectual property for the purposes in question.³⁹

6.8.5 It should also be noted that there is an anti-avoidance benefit to a clearer position here, as it is otherwise relatively easy for a PSB to place a document beyond the reach of the Directive by combining it with material protected by third party IPRs.

APPSI recommends that the Directive be amended to clarify the scope of the exclusion of documents in which third parties own intellectual property rights, so as to bring within the scope of the Directive documents where the third party is another EU public sector body; documents containing re-usable content that is not protected by the third party rights; and documents where the third party has licensed the document for re-use.

6.9 Lack of penalties?

6.9.1 Article 12 of the Directive requires that:

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 July 2005. They shall forthwith inform the Commission thereof.

6.9.2 This leaves the precise mechanics of enforcement to each Member State. OPSI and APPSI have given considerable thought to the most proportionate method of enforcement, weighing up the cost of compliance, the cost of establishing a new dedicated regulator, the disincentive created by sole reliance on court proceedings (among other factors). The balance of views among APPSI members when considering this issue in 2004 in the context of how the Directive should be implemented in UK law favoured the establishment of a dedicated independent regulator, to ensure compliance.

6.9.3 However, the solution eventually recommended by APPSI, and adopted in the Regulations, was a complaints procedure designed to be quicker and cheaper than conventional litigation in the courts. This has subsequently been criticised because of the limited sanctions or penalties that OPSI or APPSI can apply in the event of non-compliance. OPSI has recently amended its procedures to make more explicit that it can terminate a licence to use Crown copyright material in the event of a finding of non-compliance, thus aligning its approach to enforcement of the Regulations with its approach to enforcement of the IFTS. However, this only applies to ‘Crown Bodies’ and not to many PSBs such as local authorities (which are not Crown Bodies).

6.9.4 The discussion may not be of relevance to all other Member States because of different laws and types of PSB. APPSI acknowledges that there is a balance to be struck, and that more powerful sanctions can have several consequences, one of which might be a more defensive and cautious attitude on the part of PSBs, which could result in additional costs and a reduction in the range of

³⁹ The proviso is important here, as it avoids compulsory licensing of private sector third party data.

data made available. APPSI also recognizes that competition law provides redress in some cases. However, APPSI considers, in light of experience in the UK, that while the PSI Directive and Regulations provide a framework that can aid compliance, they need to be robustly applied and perhaps strengthened.

6.9.5 APPSI considers that Article 12 is sufficient as it stands: it is for Member States to consider what remedies are needed to ensure compliance. In the UK, a problem is that a breach of the Regulations does not give rise to an obvious cause of action enforceable through the courts. Breach of statutory duty and judicial review are not straightforward. However, the UK government is at risk of private law actions if it fails to provide adequate remedies. APPSI will therefore propose to OPSI that this aspect of the Regulations should be reviewed, and particular consideration given to the establishment of a private law cause of action, enforceable through the courts, available in cases of non-compliance.

6.10 Accounting and Charging

6.10.1 The Principles Governing Charging as defined in Article 6 (and explained in Recital 14) of the Directive, state that:

Where charges are made, the total income from supplying and allowing re-use of documents shall not exceed the cost of collection, production, reproduction and dissemination, together with a reasonable return on investment. Charges should be cost-oriented over the appropriate accounting period and calculated in line with the accounting principles applicable to the public sector bodies involved.

6.10.2 These charging principles are reinforced in Regulation 15, which states that:

- (1) A public sector body may charge for allowing re-use.
- (2) The total income from any charge shall not exceed the sum of:
 - (a) the cost of collection, production, reproduction and dissemination of documents; and
 - (b) a reasonable return on investment.
- (3) Any charges for re-use shall, so far as is reasonably practicable, be calculated
 - (a) in accordance with the accounting principles applicable to the public sector body from time to time; and
 - (b) on the basis of a reasonable estimate of the demand for documents over the appropriate accounting period.
- (4) A public sector body shall not charge an applicant for costs incurred in respect of activities mentioned under paragraph (2)(a) in respect of a request for re-use, if the same applicant had been charged in respect of those same activities by that public sector body for access to the same document under information access legislation.
- (5) Where a public sector body charges for re-use, so far as is reasonably practicable, it shall establish standard charges.
- (6) A public sector body shall specify in writing the basis on which a standard charge has been calculated if requested to do so by an applicant.

(7) Where a standard charge for re-use has not been established, the public sector body shall specify in writing the factors that will be taken into account in calculating the charge if requested to do so by an applicant.

6.10.3 The Directive provides that the total income from any charge should not exceed the cost of collection, production, reproduction and dissemination of documents, together with a reasonable return on investment. This is highly problematic. It is unclear whether the costs of collection, production, reproduction and dissemination of documents that are recoverable via charges are:

- (i) those costs relating to the specific document(s) in question (i.e. actually the subject of the re-use request); or
- (ii) the costs of all documents produced as part of a Public Sector Body's (PSB's) public task (i.e. potentially the subject of a re-use request).

6.10.4 It will be noted that this issue is closely related to the question of how 'documents' are to be defined (see section 6.5.3 above).

6.10.5 There are disadvantages in interpreting Article 6 of the Directive in either way. If (i) is correct, then this could burden PSBs with the task of developing pricing policies for each potentially re-usable item of data, and this could generate further costs that might be passed to the re-user, although this may be challengeable under Article 6. On the other hand, if (ii) is correct this allows the PSB to:

- include in the charges it levies for any dataset its costs relating to all other datasets;
- cross-subsidise and indeed recover historic costs relating to other documents.

6.10.6 The effect of (ii), if correct, would be to allow any public sector body to treat its entire budget for the collection, production and dissemination of documents as the effective ceiling on charges. This may seem hypothetical, but it is a factor in giving the public sector body the benefit of considerable flexibility in setting charges, and indeed would leave, as the only constraint on charges, the unfair/excessive pricing 'ceiling' imposed by competition law on entities in a dominant position. However, this seems to fly in the face of the underlying policy objective of the Directive, which is reflected in Recital 14:

[...] Recovery of costs, together with a reasonable return on investment, consistent with applicable accounting principles and the relevant cost calculation method of the public sector body concerned, constitutes an upper limit to the charges, as any excessive prices should be precluded. The upper limit for charges set in this Directive is without prejudice to the right of Member States or public sector bodies to apply lower charges or no charges at all, and Member States should encourage public sector bodies to make documents available at charges that do not exceed the marginal costs for reproducing and disseminating the documents.

- 6.10.7 It is unclear from the Regulations or the Directive whether costs that have already been met by the public purse should remain recoverable via re-use charges. This would amount to double recovery, and is surely against the spirit of the Directive, but it is not explicitly ruled out.
- 6.10.8 If the current provisions on which costs may be recovered through re-use charges are to be retained, then some guidance on the accounting principles to be adopted in relation to the costs of data gathering and generation might be helpful. APPSI acknowledges that the finance policy aspects are ultimately a matter for Member States, although the Directive could (perhaps in Article 7) require PSBs to provide an identification and explanation of these costs (and not just the calculation basis).
- 6.10.9 However, APPSI notes that different Member States may have widely differing policies, which would militate against the principle of a level playing field and harmonisation. At the same time, APPSI's experience of the position in the UK is that PSBs are often not in a position to account for the costs of collection and production of documents in such a way as to create a transparent basis of calculation of re-use charges. This may be unsurprising, as HM Treasury accounting principles have not historically required rigorous cost-based accounting, specifically in relation to information production and collection costs.
- 6.10.10 These difficulties would be eliminated if a marginal cost basis was adopted for calculating re-use charges. As noted above, APPSI sees increasing acceptance of a marginal (or even zero) cost basis for calculating re-use charges. In view of these arguments, APPSI has therefore moved to a position where the substantial majority of its members supports the adoption of a marginal cost regime, as advocated in the Cambridge Study.

APPSI recommends that guidance be provided to give much greater force to the encouragement in the Directive for adoption of a marginal cost regime (for most documents), and to clarify whether, and the extent to which, the costs that can be re-charged to re-users should relate to the documents in question or to documents in general; and also that guidance be provided on principles that should apply to the calculation of costs, following best practice in Member States. The bulk of the APPSI members urge the UK government to move to a marginal cost pricing model for PSI.

6.11 *Exclusive Arrangements*

- 6.11.1 APPSI is not aware that there has been a notable reduction in the number of exclusive arrangements in the UK since implementation of the Directive, although there is evidence that some PSBs converted some arrangements into non-exclusive licences in anticipation of the Regulations coming into force. It is hard to identify exclusive licences, where they do exist, and to quantify the problem. It is also hard to know how far, in the absence of the Directive, the number of exclusive arrangements would have increased.

- 6.11.2 The lack of a transparent means of analysing this issue leads APPSI to suggest that, wherever exclusive arrangements remain, not only should their existence be published, but a justification should be published, and that all such information about exclusive arrangements should appear in one place (in the UK, it is suggested that OPSI should be responsible for this).

APPSI recommends that wherever exclusive arrangements remain, a justification should be published, and that all such information about exclusive arrangements should appear in one place for each Member State.

6.12 Enhancing awareness of the Directive, the regulations and the benefits of PSI re-use

- 6.12.1 Notwithstanding of the efforts of OPSI, APPSI and other parties, we have seen many examples – in the UK and elsewhere – of a complete lack of familiarity with the merits of PSI re-use and of the Directive and national regulations. Whole areas of the public sector in the UK outside central government seem to fall into this category. We have long called for a greater awareness-raising activity by government, perhaps using role model examples of where this has been a success.
- 6.12.2 Even however where the potential benefits to the public and commerce are clear, many organisations believe this is not a priority and is a drain on scarce resources. We are driven to the conclusion that it may be necessary for HM Treasury to provide modest funding for enabling PSI re-use. We have argued elsewhere that this need not be expensive if material is supplied in whatever form it is held by the PSB. We regard this as a better solution than allowing every PSB to set up its own charging regime and accountancy apparatus.

APPSI recommends that the UK government launches an awareness-raising campaign for the merits of PSI re-use and that consideration is given to provision of modest funding if necessary to oil the process. APPSI stands ready to help OPSI and Ministers define an appropriate communications strategy and support for the campaign.

6.13 Other aspects

- 6.13.1 APPSI considers that many important provisions of the Directive remain clear and are not in need of alteration. For example, Articles 8 (Licences) and 10 (Non-discrimination) are satisfactory and not in need of clarification or adjustment.
- 6.13.2 So far as the exceptions contained in Article 1 (c), (d), (e) and (f) are concerned, APPSI has seen no evidence that would suggest that these need to be amended or adjusted, from a UK perspective.

7 The views of the Trading Funds on APPSI proposals⁴⁰

7.1 Trading Funds are government bodies which differ somewhat from other departments (Box 4). They have been at the centre of some of the discussions on PSI re-use and some of them have been the subject of the reports described in Boxes 1, 2 and 3.

Box 4 The UK government Trading Funds

There are over 20 UK Trading Funds and these operate under statute pursuant to the Government Trading Fund Acts 1973 and delegated legislation and are required to operate within a framework that includes supplementing, or fully funding, their operations from receipts of goods and services including licensing of data under delegated Crown copyright. Some of these Trading Funds also levy statutory charges.

Trading Funds are defined more by their differences in their business models and environments within which they operate, than their similarities. A continuum exists from those where data charges levied are a very small percentage of their recognised income to those that fully subsist from licensing their data.

General statement

7.2 The Trading Funds as represented at APPSI do not concur with the majority position on many issues reflected in this report and are pleased that the inclusive nature of APPSI allows some of their concerns to be acknowledged and explained. This section focuses on the key issues, although that should not be taken as an indication that Trading Funds accept the majority position on all other points. Additionally it should also be stated that the Trading Funds are operating within current government policy and recognise their responsibilities in meeting their obligations within this authority.

7.3 The Trading Funds are committed to meeting their PSIH responsibilities and are fully open to reviewing mechanisms to achieve better access and availability of data. They consider evolution to the Trading Fund Model is a more proportionate and pragmatic approach than recommending a move to a marginal cost licensing model operating within a re-defined mandatory PSI framework. The Trading Funds are fully supportive of the IFTS model as operated by OPSI and consider this an innovative and critical initiative to help ensure improvements are made in data access.

The evidence base

7.4 Many references are made to the OFT CUPI report and the Models of Information, Cambridge Report, in these debates and the Trading Funds are concerned about the interpretations being drawn to date from these resources. Whilst these documents have added to the debate there are still issues outstanding as to whether these benefits have been fully quantified. Trading Funds are fully in support of additional work to help further enhance the evidence base.

⁴⁰ This section has been compiled by Neil Ackroyd, the Trading Fund representative on APPSI, after consultation with those Trading Funds which have information supply as a significant part of their activities.

- 7.5 In many commentaries and references in this report, there is a common view held to the value potential in geographic information. For example in the OFT CUIP report, it can be calculated that geographic information contributes approximately 35% of the value of public information.⁴¹ But it is also represented in Annexe G that the three PSIH's, within the geographic information sector (geog), only account for a comparatively small annual total detriment (4%) in unlocked PSIH potential.⁴² These tables offer only sector figures for Geographic Information, rather than individual PSIH's, but it still identifies the quantum of detriment is very small compared to the broad failure to exploit PSI from PSB's in general.
- 7.6 The Trading Funds propose this lack of significant detriment is a result of the Trading Fund model and that as these organisations focus on supplying data to meet users' needs, this creates a fundamental relationship between making data available and the PSIH's funding and on-going sustainability. Essentially creating a beneficial customer and supplier relationship. The Trading Funds consider that enhancements to the existing models are of course desirable to redress any residual detriment and that for example modifications and simplifications to licensing terms would give the increased flexibility that could be a further enabler to increased access. The Trading Funds do recognise as well the majority position that new and innovative uses of data within the web 2.0 environment will demand greater innovation in supply and distribution models.
- 7.7 The Trading Funds that operate with registration activities are also sensitive to concerns that there can be no cross-subsidisation between registration activities and data supply activities. Clear case law indicates that this is not legally permissible.
- 7.8 Trading Funds are concerned that full life cycle costs of maintaining data and one-off infrastructure costs in changing to a revised model have not been considered in analysis to date. Examples given in current reports of organisations moving to marginal cost or free supply models are not comparable in most cases to data offerings operated within the Trading Funds.
- 7.9 For example references to Australian case studies only relate to Commonwealth government data sets which only provide a small part of Australia's data assets.⁴³ A significant number of these data sets were compiled through one-off programmes and are not maintained. State and Territory Governments, which provide the bulk of Australia's environmental and spatial data generally, operate in cost recovery or in a profit maximisation model. These data sets are much closer in equivalence to data supplied through the Trading Funds. Australian Commonwealth and State and Territory Governments are also shareholders in a public company PSMA Australia Limited which provides national digital data sets assembled from state and commonwealth datasets to meet market need.

IPR and shared ownership of it

⁴¹ Commercial Use of Public Sector Information CUIP report Note 3.2 and Table 3.1.

⁴² Calculated through aggregating relevant amounts in table 4.1 and 4.3 and comparing with table 1.1 of total economic detriment and mid range price elasticity - CUIP Report - Annex G.

⁴³ <http://www.abs.gov.au/Ausstats/abs@.nsf/Latestproducts/8501.0Main%20Features2Apr%202008?opendocument&tabname=Summary&prodno=8501.0&issue=Apr%202008&num=&view>.

- 7.10 The APPSI majority has made a recommendation that exclusion of documents including third party intellectual property rights from the operation of the Directive should be qualified in three instances. Trading Funds would have no objection to clarification that the exclusion does not extend to the second instance – re-useable content not protected by third party rights – provided that the content that is protected by third party rights is easily extracted.
- 7.11 Trading Funds do, however, have quite serious concerns about the other two items. In respect of the first item – where the third party is another EU PSB – Trading Funds who need to operate in accordance with their respective delegations of authority and financial and other regulatory requirements could not countenance that another PSB (even in the UK, let alone the EU) could make decisions to allow the re-use of its information. Also, Trading Funds could not make available information the IPR of which is held by another PSB as it would have no automatic authority to do so.
- 7.12 In relation to the third item – where the third party IPR is inextricably merged with the PSB’s IPR such that it cannot easily be separated – then this recommendation would have the effect of compulsory licensing of private sector data which the Directive cannot have intended. Also, it is difficult to take any of the recommendations in isolation. For example, if this aspect of this recommendation is read with the recommendation for marginal cost pricing, then this recommendation clearly cannot be supported, especially if private sector or non-national PSB data is involved.

The international dimension

- 7.13 A number of Trading Funds operate under international obligations, such as the Met Office and the Hydrographic Office; many also include data with third party embedded IPR. These are created with suitably agreed licensing agreements. In the majority of cases it would not be practical or economic to back data out of these data sets, nor could the aggregated data be provided at marginal cost or in frameworks not supporting effective licensing and royalty return payments.

Public Task

- 7.14 Trading Funds recognise concerns in setting a clearer definition and guidelines to the development of Public Task definitions. They are committed to support this activity but believe this is best addressed within the authority of each national government optimised to each country’s unique and varying needs.

The need for investment

- 7.15 Trading Funds fully understand their obligations to support innovation and believe that the model they operate within supports the allocation of the levels of investment required to bring innovative new data offerings into circulation. It is very early days in realising the full value of many PSB data sets and it is the experience of the Trading Funds that significant investment is necessary to provide data of the necessary quality and completeness to meet the new demands. This also includes substantial new investment required in back-office and enterprise wide IT systems to support maintenance and supply of these data sets. Trading Funds are concerned that standard government funding models may be considered less compatible to the levels of investment required in the new knowledge economy.

Box 5 Ordnance Survey of Great Britain – A Trading Fund Licensing Example

Ordnance Survey operates a market-based licensing model (Ramsey Pricing) which it argues allows the widest access to data based on a market defined, user pays model.

For example, one implementation of this licensing model allows for a fully maintained national road network data set, fully attributed and updated every six weeks, to be supplied to all organisations operating in the personal navigation device market-place on the same terms. Over 3 million satellite-navigation and personal navigation device users are using this data, licensed to VAR's (Value Added Resellers) at a fraction of the unit price of a satellite navigation device. The same data set is also supplied, through partners, continuously accessed by users of Google Earth and Microsoft Virtual Earth, free-at-the point of use.

7.16 The Trading Funds consider what is set out in Box 5 is a tangible example of the unique nature of the Trading Fund model and their ability to work with the commercial partner community in meeting the demands of the new knowledge economy.

Conclusions

7.17 Trading Funds are pleased that the Government has commissioned the Trading Funds Review as detailed in this document. Trading Funds are also in full agreement with the APPSI majority view that more detailed analysis is required before any changes are made to current policy and look forward to supporting this work.

8 Conclusions

- 8.1 APPSI has no doubt of the importance of PSI to the private sector and citizen or that it remains under-utilised. Nor does APPSI have any doubts about the economic value of PSI or that this is, in the words of the Power of Information report, a “story of opportunities”.
- 8.2 Realistically, there is no quick-fix which will ensure that access for re-use, and therefore PSI value, will be maximised. Private sector companies still encounter barriers to PSI re-use, especially where some PSI producers are seeking to commercially exploit the PSI themselves.⁴⁴ The removal of only some of the barriers will still not maximise re-use. All the barriers must be removed for re-use to be maximised and this will inevitably take time and determined action.
- 8.3 However APPSI's over-arching conclusion is that the Directive serves a vital purpose and is usefully contributing to the increase in PSI re-use. But the majority of the APPSI members believe nonetheless that certain aspects are in urgent need of strengthening. With the benefit of over two years operational experience of the Directive and PSI Regulations, APPSI remains committed to the aims of the Directive. However it considers the Directive needs to be tightened in a number of key areas, not least to ensure effective harmonisation and it does not feel that the UK has yet succeeded in those aims: for the latter reason, it urges the UK government to adopt our recommendations.
- 8.4 In line with the European Commission's review of the implementation of the Directive, OPSI already plans to revisit the scope of the PSI Regulations, updating UK guidance as necessary. The action plan already adopted by OPSI, if rigorously implemented, will address some of the problems areas identified by APPSI. However, OPSI and indeed all those involved in the application of the letter and the principles of the Directive will be handicapped unless the key issues identified in this submission are addressed by the EU and by the UK government.

⁴⁴ Although the Panel also recognises that it would be wrong to over-generalise, and some Trading Funds have been instrumental in ensuring the use of PSI even if tensions may also inevitably arise between private and public sector operators where PSBs can, and indeed must, charge for re-use.

Annex: List of APPSI members

- Neil Ackroyd**, Executive Director at Ordnance Survey representing the interests of Government Trading Funds;
- Michael Allen**, Head of Knowledge Management at the Driver and Vehicle Operator Group at the Department of Transport;
- Michael Batty**, Professor of Spatial Analysis and Planning and Director for Advanced Spatial Analysis (CASA) at University College, London;
- Stefan Carlyle**, Head of Scientific and Technical Information Services at The Environment Agency, representing non-crown Government bodies;
- Christopher Corbin**, Analyst with the European Commission ePSPplus Thematic Network;
- J Eric Davies**, Consulting Senior Research Fellow in the Department of Information Science at Loughborough University, representing the Library and Information community;
- Keith Dugmore**, Director of Demographic Decisions, founded the Demographics User Group;
- Trevor Fenwick (to 30 April 2008)**, Managing Director of Euromonitor, a business information publisher specialising in the provision of international statistical data;
- John Gray**, holds executive and non executive Board appointments with businesses and trade associations;
- Christine Gifford**, founding Director of both Public Partners and Gifford Owen;
- Hector MacQueen**, Professor of Private Law and Director of the AHRC Research Centre for Studies in Intellectual Property and Technology Law at Edinburgh University, who will represent Scotland and Scottish interests;
- Hilary Newiss**, lawyer in the fields of Intellectual Property, health, science and technology;
- Michael Nicholson**, Managing Director of Intelligent Addressing Ltd and Chair of Locus;
- Shane O'Neill**, founder of a leading Public Sector Information strategic consultancy business (Shane O'Neill Associates);
- Avinash D. Persaud**, Chairman of two investment boutiques: Intelligence Capital Limited and Elara Capital Limited;
- John Ponting**, former Head of Legal and Procurement at The Met Office;
- David Rhind (Chair from 1 May 2008)** is a Non-Executive Director of the Bank of England and of the UK Statistical Authority. He was formerly Vice-Chancellor of The City University, London;
- Christopher Roper**, Director of Landmark Information Group, a provider of geographic information services;
- Richard Susskind (Chair April 2003 - 30 April 2008)** specialises in the use of IT by lawyers and other professionals and in the impact of technology on government;
- John Thornton**, Director of e-ssential Resources Limited and an independent adviser on e-government, innovation and business transformation;
- Phillip Webb**, former Chief Executive of the Police Information Technology Organisation;
- Peter Wienand (Deputy Chair)**, Head of Intellectual Property at Farrer & Co LLP and former Chair of the Museums Copyright Group;
- David Worlock (to 30 April 2008)**, Chairman of Electronic Publishing Services and Chair of the Digital Content Forum, who will represent online publishers.