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D5.2. Licensing Guidelines



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1. Introduction

1.1 Objective

The objective of this document is to provide a clear set of guidelines (henceforth Guidelines) to Public Sector Bodies (PSBs) regarding the release of their Public Sector Information (PSI) for re-use in accordance to Directive 2013/37/EU, as amending Directive 2003/98/EC (henceforth PSI2013 Directive). The Guidelines focus on the question of the optimal licensing approach based on the best practices of various Member States and the results of previous work conducted by the Legal Aspects of Public Sector Information (LAPSI I and II) projects.

1.2 Scope

As mentioned above, these Guidelines focus on the licensing of PSI. Nevertheless, this document also covers essential steps from the entirety of the life-cycle of PSI, from the moment it is obtained or created by the PSB to the moment it is made available for re-use through a variety of means.

Licence: is any document with legal validity that grants its recipient with a permission to perform acts that would otherwise violate a law or the licensor's rights. Terms and Conditions or other forms of authorization may be deemed as equivalent of or as containing a licence.

In addition, the Guidelines cover not just licensing but also other forms of releasing PSI, e.g. releasing content without conditions, through disclaimers or smart notices. In such case, i.e. where no copyright or other types of rights restrict the access to the PSI, no licensing is required. Any reference to the ways in which such rights-free material is to be used will be making direct reference to the relevant law provisions and, hence, constitute a notice rather than a licence.

Notice: is a document that does not grant rights or permissions, but rather makes reference to applicable rules, without affecting the legal status of the persons it is addressed to. In that sense, it performs a signposting rather than a regulatory function.

1.3 Context

More specifically, and following the Description of Work, this report on Licensing Guidelines (D5.2) builds upon the report on good practices on interoperability (D5.1) and includes the following elements:

- Identification of essential elements for licensing policies: based on the good practices, and the debate in the other work packages, the essential building blocks for any licensing policy will be identified. The underlying reasons for which particular licensing conditions are included by public bodies will be examined, and whether and how these reasons should be addressed in any licensing policy will also be assessed.
- Development of licensing guidelines: a set of guidelines will be developed and directed towards public bodies, with advice on how they should build or adapt their data policy and on the possible ways to implement this policy in such

a manner that open data is optimally stimulated, while at the same time the concerns of public bodies can be appeased. The licensing guidelines will be presented at the second conference and finalized on the basis of the feedback received all along the project.

1.4 Methodological Approach

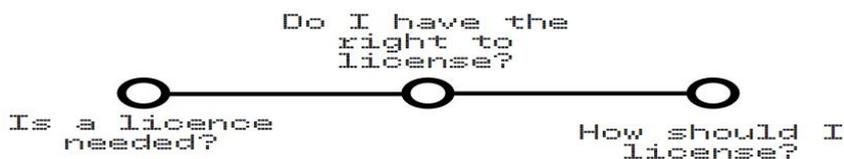
While the question of **how to license PSI** is frequently the first to be asked, it is only the last in a series of actions that ensure that **PSI may be properly released**. The PSB has to ensure that two conditions are met before it licenses any PSI it lawfully holds, i.e.:

- (a) that a **licence is**, indeed, **needed** and, if this condition is met,
- (b) that **the PSB has the right to release the PSI**.

Each one of these two conditions requires further elaboration, which will be done in the following sections.

Once (a) and (b) are examined, a PSB may proceed to the third stage, which is

- (c) **to adopt an optimal licensing strategy**, i.e.:
 - to examine whether there are any limitations as to the kind of licence the PSB may use and, thus, make any subsequent choices within the scope of permitted licences, and
 - to choose the licence(s) with the least possible frictions for the potential re-user.



Schema I: Licensing Decisions

The three stages identified above follow the natural flow of rights in any PSI release scenario: First, identifying that permission is needed, as it could be that the PSI is in the Public Domain (PD) and, hence, the flow of content is unhindered. Second, identifying that there are no statutory restrictions regarding the release of the PSI or third party rights that stop the PSB from making the PSI available. And third, that the PSB chooses the range of licences most appropriately aligned with the objectives of the PSI2013 Directive.

1.5 Licence Classification

Before proceeding with the exploration of each of the above stages in the flow of PSI, it is necessary to explain some of the key concepts regarding the licensing types used in these Guidelines.

Non-transactional Licences are the licences that take effect through the actual use of the licensed material, without the need for any additional transactions.

Re-use Licences are the licences that allow the re-user to use the PSI in a fashion other than the one originally intended by the PSB, but are not necessarily non-transactional, neither open or standardized.

Re-usable Licences are standard licences that are publicly available and may be re-used by any licensor without any modifications. A highly re-usable licence is normally stored at permanent URI and has a community supporting its updating.

Standard Licences are licences that are addressed to a non-specified range of recipients and are not the result of individual negotiations between the licensor and the licensee.

Open Access (OA) is online access to peer-reviewed scholarly research. OA has two degrees: (a) gratis OA, which is online access to scholarly resources for free, and (b) libre OA, which is online access to scholarly resources for free, with some additional freedoms for the end/ re-user, which are normally granted through Creative Commons or other Open Licences. These are described, in this Guidelines, as **Open Access Licences**.

Open Licences are all standard, non-transactional licences that, to some extent, allow the end user to engage in the 4Rs, i.e. Reuse, Revise, Remix and Redistribute. Licences that allow the all 4Rs under the sole condition of attribution or share-alike, comply with the Open Knowledge Definition and constitute Open Knowledge Definition (OKD) Conformant Licences. From the Creative Commons Licences, only Creative Commons Attribution and Creative Commons Share-Alike are Open Knowledge Definition Conformant Licences. From the Open Knowledge Foundation, the Open Data Commons Open Database License (ODbL) and the Open Data Commons Attribution (ODC-BY) licences are ODF conformant. According to the OKF, UK's OGL 2.0 is characterized as a conformant but "non-reusable" licence", in the sense that it cannot be re-used by any PSB in and EU Member State. However, it needs to be stressed out that the OGL was drafted to be used by any UK public sector body (PSB), not just the UK government departments and agencies, and covers all PSI, including but not limited to Crown Copyright. The PSI released under the UK OGL 2.0 may be licensed under CC-BY or ODC-BY.

Copyleft Licences are all licences containing terms that allow modifications to the licensed work on the condition that the work is further disseminated under the same terms and conditions. In the Creative Commons set of licences, all Share-Alike licences are copyleft licences.

Input Licences: are all licences acquired by a PSB in order to be able to release PSI.

Output Licences: are all licences under which PSB makes content available to re-users.

Tip: All open licences are re-use licences, but not all re-use licences are open licences.

2. Releasing PSI without a licence: When a licence for the release of PSI is inapplicable

While the discussion regarding disclosure and making available of PSI is dominated by the question of PSI licensing, which is covered in section 4, it is also likely that no licence is either necessary or possible to be used. This section covers three main cases:

- (a) PSI exempted from copyright protection
- (b) PSI on Public Domain works (copyright has expired)
- (c) Works used by PSBs without obtaining permission from the lawful right holders as a result of limitations - exceptions to copyright protection

The first two categories render any licensing out unnecessary, whereas the third involves licensing in. However, even in the third category, it influences the way in which the PSI is to be released for re-use by a PSB.

2.1 Works not granted copyright or exempted from copyright and similar rights protection

A licence will not be necessary in the absence of copyright or similar rights (including neighboring rights, the sui generis protection of databases or other similar rights) for that specific subject matter.

There are two main cases of PSI as copyright exempted subject matter:

2.1.1 PSI as exempted subject matter *per se*

Some jurisdictions do not assert copyright in PSI, so no license would be needed. The clarity of the regime varies in different jurisdictions: In some cases, this is clearly stated in the law, in some others this is information that could be provided by the National Copyright or Intellectual Property Office and in some others it is less than clear what the PSI status is and it has to be established on a case-by-case basis.

In such cases, the relevant national copyright law will make explicit reference to the types of works and uses of such works that are non-copyrightable subject matter. These will in most jurisdictions be text used to exercise the administrative powers or to offer public service. There are explicit references to judicial, legal

and administrative texts, but the limits of the exemptions are to be defined on a national jurisdiction basis.

2.1.2 Non-copyrightable subject matter released as PSI

The second case is different from the first case, as it is the nature of the PSI material rather than its use as PSI that renders it non-copyrightable.

These are mostly cases where the subject matter does not fulfill the requirements of originality and form to attract copyright protection or specific types of information, such as factual information, raw data or traditional knowledge. Such types of content constitute non-protectable subject matter and hence do not require any type of licensing, irrespectively of whether they are PSI or not.

However, it needs to be highlighted that once arranged in a systematic or methodical way, the resulting set of information may be protected under copyright (if the arrangement passes the criterion of originality) or the *sui generis* database right (if the constitute non-original compilations).

Tip: Not all PSI is copyrightable.

Before you release PSI, establish:

- if the whole or specific types of PSI are not copyrighted subject matter in a specific jurisdiction;
- if the PSI is material that does not meet the necessary conditions to be granted copyright or similar rights protection, particularly criteria of originality or form;
- if the PSI is a specific type of content that is by law exempted from copyright protection, particularly raw facts and data.

2.2 Expiration of the Copyright Term (Public Domain Works)

A licence will also not be necessary when the copyright or similar rights term has expired. Works no longer protected by copyright because of the expiration of the economic rights term should be treated as public domain works and therefore should be freely reused. The economic rights granted under the copyright regime typically expire 70 years after the death of the last co-author or 70 years after the publishing or recording, but rules may vary and years may be added in special cases. Public Domain calculators are being developed to help assessing whether a work will be in the Public Domain in a particular jurisdiction.

Tips:

- Check if the PSI comprises of material for which copyright or similar rights have expired and has, thus, become Public Domain Material
- Do not use licences for Public Domain material
- Mark the PD material with some form of Notice

2.3 Limitations and Exceptions

A different, but related case, is when the PSB needs to use copyright material to perform its public task or where a court requires to have access to copyrighted subject matter in order to issue a decision. These are cases, where no permission or input licence is required for the PSB or court of justice to perform its mission

or task, as it will normally fall under the limitations and exceptions, fair dealing or fair use rule and could hence be used without any additional permission.

However, when such a material is to be disclosed or made available for reuse this could not be done if it contains third party copyrighted material. While the exception will cover the use of the PSI, it will not necessarily cover its re-use. This is the reason why it is strongly suggested that PSBs mark PSI containing third party material with some sort of meta-data or notice regarding the third party material.

Tip: PSI could contain third party copyrighted material and still be eligible for use by the PSB as part of its public mission or task. When, however, such material is to be released for re-use, then special care has to be taken so that:

- (a) that the copyright exception does NOT cover the re-use of third party material
- (b) the third party material is clearly marked, and if possible, removed from the PSI released for re-use

2.4 Use of Marks and Notices

It is highly recommended that when PSI material is not covered by copyright or other similar rights (as in the case of material discussed in sections 2.1 to 2.3) or when it contains third party copyrighted material (as in the case of section 2.3) the relevant marking is in place. This will increase legal certainty and allow the lowering of transaction costs.

This can be achieved in a standardized fashion by using the Creative Commons Public Domain Mark or by drafting an *ad hoc* notice.

Example of an *ad hoc* Public Domain for PSI:

All content provided on this site is in the Public Domain and free to be used and reused in any manner without any restrictions.

Using a standardized tool such as the Public Domain Mark developed by Creative Commons provides the text in a language that is accompanied by metadata, valid across jurisdictions and translated in many languages. According to Creative Commons, the Public Domain Mark “is intended for use with old works that are free of copyright restrictions around the world, or works that have been affirmatively placed in the worldwide public domain prior to the expiration of copyright by the rights’ holder.” The Public Domain Mark tool provides the ability to generate HTML code to inform the public (and search engines) of the public domain status of the work. The Public Domain Mark enables a person who wishes to mark the work as being in the public domain to include optional useful information, such as:

- Name of the work, e.g. title of the dataset;
- Name and URL of the author, e.g. the division or department releasing the PSI and the source page;
- Identifying individual or organization, in case this information differs of the above, e.g. a higher level of the PSB which should be contacted for further information.

2.5 Ensure that no licences are used when Public Domain material is released as PSI

PSBs should refrain from using licences for PSI, which is in the Public Domain. Such licences would create restrictions upon the use of works that are no longer protected by copyright or similar rights and can be freely used without any conditions.

Furthermore, since no copyright exists in a Public Domain work, there is no legal basis to license it. The PSI2013 Directive explicitly makes reference to the possibility of releasing material without any conditions, and the case of Public Domain material clearly falls under such case.

In addition, it is not recommended to add a licence (and therefore restrictions where none should apply) to the digitized reproductions of analogue non-copyrightable data or Public Domain works. The mere act of digitization is not a source of new rights and keeping digitized versions in the Public Domain will guarantee they remain free to use as the original work. Digital reproductions of works which are in the Public Domain must also belong to the Public Domain. Use of Public Domain works must not be limited by the addition of unnecessary licensing requirements. In some countries, the threshold for originality is low, and digitization might open a claim to copyright, but it is not recommended to enforce that right.

3. Does the PSB have the right to license the PSI?

The objective of this section is to highlight all the conditions that need to be met for PSBs to be able to lawfully license the PSI they hold. Following the heuristic of flows of content and rights, we need to ensure that a PSB holds all rights necessary for the release of the content, i.e. PSI, it holds.

Tip: The flows of rights and content have to be *isometric*, i.e. the PSB may only release the content it holds to the extent it has the rights and competency to do so.

In order to ensure the PSB holds the rights necessary for releasing the PSI it holds, it needs to go through the following steps:

- (a) Identify the types of rights subsisting on the PSI or related regulations and the relevant rights-holders or competent regulatory bodies;
- (b) Identify the types of disclosure and release restrictions on the PSI by virtue of law;
- (c) Trace and document the ways in which the PSI has been obtained by the PSB and the subsequent in-flows of permissions and rights.

Tip (Understanding the Type of PSI disclosure Prohibition): Overall, the issue of restrictions in the release of PSI is one of either *absolute* or *relative* prohibitions of disclosing PSI. The *absolute prohibitions* cannot be cured and these are described under section 2. The *relative prohibitions* are ones which may be lifted once permission from the competent body or consent by the information provider is obtained.

An understanding of these three stages requires additional elaboration. More specifically:

Different types of rights may subsist over material regarded as PSI or the content may be subjected to different types of regulations. We have seen some of these rights and related regulations in section 2.

The most important classes of rights and related regulations, which are developed below, are the following:

- Cultural heritage rights (section 3.1.),
- Rules on privacy, personal data protection and data protection acts (section 3.2),
- Existence of confidentiality and/or non-disclosure agreements (section 3.3),
- Third-party trademarks, patents, or trade secrets (section 3.4)
- Limitations deriving from rules on access, such as freedom of information acts or provisions on national security, confidentiality in legal procedures, material relevant to law enforcement/legal proceeding (section 3.5).

If there are disclosure limitations due to third party rights or regulations which are external to copyright law, it could be impossible to distribute and license the content.

Before giving up altogether on the distribution of the PSI, PSBs should check whether the obstacle can be overcome by removing a specific problematic element from the dataset (e.g. by means of anonymization in case the dataset also contains personal data). In other cases there may not be a good solution for resolving the problem, as is the case when there is a national security concern.

It is, however, important to highlight the cases in which there is a solution to the problem of limitations in PSI disclosure or release. Such is the case particularly when the limitations to release the PSI may be lifted after a legal basis is found (e.g. in the case of Personal Data Protection) or a licence is granted by the competent body (e.g. in the case of cultural heritage rights). While this section does not aim at providing a comprehensive solution to the problem of lifting relevant PSI release restrictions, it contains some good practices as to how the problem could be addressed.

Overall, the problem of not being able to release PSI is quite frequently a systemic and strategic rather than tactical problem. That means that PSBs and the administration as a whole may have the opportunity to resolve the problem by acting proactively and strategically rather than re-actively and tactically. In this spirit, the entirety of the suggestions presented in the following section aim at addressing the problem horizontally rather than on an *ad hoc* basis.

3.1 Cultural heritage rights

In the case of cultural heritage rights, if a PSB wishes to release datasets or content as PSI, it should not provide specific licences per cultural artifact but

rather seek to group the relevant PSI and provide group or blanket licences. This does not mean that it should relinquish all its rights in the cultural PSI but rather provide a simple rule accompanied with a simple set of exceptions in case some content is to be provided under a more restrictive licence.

Tip: Devise horizontal policies for Cultural Heritage Rights, by classifying different types of Cultural PSI. For instance, there could be policies for cultural meta-data and the rest of the cultural PSI may be classified in terms of the importance, cultural and economic, of the relevant cultural artefacts.

3.2 Personal Data

Accordingly, in cases of PSI the administration wishes to release, which, however, contain personal data (e.g. MPs salaries, vehicle information, registries' information), the administration should devise simple rules for the resolution of conflict between PSI and Personal Data Protection rules or to ensure it obtains consent where necessary.

Tip: Resolve the problem of the conflict between PSI and Personal Data Protection by acting proactively:

- Ensure that the data subject of PSI that is likely to be re-used is in advance informed about this possibility in a clear fashion and is able to make an free and informed choice.
- Work on building a legal basis for the re-use of PSI containing personal data
- If a strategy of opening PSI data is not possible, explore the possibility of allowing re-use through a controlled environment (e.g. requiring authentication and tracing the re-use of the PSI)

3.3. Confidential Information

In the case of confidential information, it is important to have a mechanism for obtaining consent from the information provider on the occasion the information is to be re-used. It is highly unlikely that confidential information may be released as open content/ data, however, it could be released for re-use under certain circumstances (e.g. when provided to trusted third parties, the original information provider is informed and consents to the reuse of the data and the confidentiality clauses are repeated during the release of the information).

Tip: PSI that contains confidential information is not necessarily impossible to be disclosed. It may be disclosed under well controlled conditions including:

- informing the original information provider and obtaining her consent
- providing the information under a re-use rather than an open licence
- controlling access to the PSI containing confidential information and authenticating the re-user before and during the time of re-use
- passing confidentiality obligations down to the re-users and possibly increasing the confidentiality requirements

3.4 Trademarks

Trademarks constitute a not so frequently observed problem, since the nature of the PSI release does not, as a rule, affect the rights of the trademark rights holder. All that is important to be attentive of when releasing PSI containing third party trademarks is not to imply that there is any licensing of the related artwork, or that the trademark is related to the PSB releasing the PSI or that there is any trademark licensing in any possible fashion.

Tip: When the PSI contains trademarks, ensure that in the Terms and Conditions, notices or licences accompanying the PSI, there is explicit disclaimer regarding the non-coverage of the trademark by the terms of the licence.

3.5 Third Party Copyright and Similar Rights

The rest of the prohibitions related to PSI, relative or absolute, are related to the existence of third party copyright, related rights or sui generis rights over the PSI that either totally prohibits or restricts its release for re-use.

While the acquisition of rights or permissions regarding PSI is outside the scope of the PSI Directive, it is crucial to cover this aspect of the PSI life-cycle in these Guidelines. Actually, the absence of specific rules in the Directive makes it necessary to devise soft norms and best practices as to how the influx of copyright and similar rights to the PSBs may be secured.

Having covered the cases where PSI may be reused as a result of it being in the Public Domain, exempted from Copyright or within specific limitations and exceptions, we now focus on the ways in which a PSB could release PSI under some form of ownership transfer or output licensing.

Tip: In all cases the PSB has to ensure that the flows of rights and PSI remain isometric and that a positive rights balance is maintained, i.e. that the PSB licenses out equal or less rights than the ones it has or has licensed in.

As mentioned above, when discussing other third party rights, the PSBs are always prompted to act proactively and strategically rather than reactively and tactically. In the case of Copyright, neighboring or related and sui generis rights, this means that each administration should devise rights acquisition guidelines and policies or, if such guidelines and policies do not exist, the PSBs themselves are responsible for creating one. These guidelines and policies should include mostly rules regarding how future rights input is to be treated. However, they should also contain guidelines regarding the treatment of legacy material, particularly one that keeps being procured through long term contracts.

Definitions:

- We refer to "rights input", as the range of rights or permissions a PSB acquires in order to be able to use -and potentially re-use- PSI.
- We refer to "legacy material", as the material that a PSB has acquired over a range of years and for which it does not necessarily have a consistent rights acquisition policy or records regarding the rights it has acquired.

In case PSI constitutes copyrighted work, in terms of rights input, we may identify the following cases:

- (a) the PSB creates the PSI internally
- (b) the PSI is created by a contractor
- (c) the PSI is created as part of a Public Private Partnership
- (d) there are pre-existing agreements

Each one of them requires a different treatment and additional elaboration:

3.5.1 The PSB creates the PSI internally

This is the case in which the PSI is created by the PSB in the course of its regular public service provision. In this first group of rights acquisition, we will accept that the PSI is created by public servants or state employees. In such case, the rights are transferred to the PSB in two ways:

- either there is a special provision in Copyright law that automatically transfers the rights from the employee to the PSB; or
- the transfer is effected through the contractual relationship between the employee and the PSB.

Tip: Pointers for a PSB acquiring PSI through an employment relationship:

- examine whether there is a general copyright transfer rule for PSBs in your jurisdiction
- examine whether the rule is one of automatic transfer of copyright or a rebuttable presumption of ownership
- examine whether the rule covers both *stricto sensu* and broader Public Sector Bodies (e.g. publicly owned private companies)
- have a specific copyright assignment or transfer clause in the employment contracts
- ensure that the PSI has been created in the course of employment

The situation become more complicated in cases where “new PSI” is involved, namely content from Museums, Libraries and Archives:

- In the case of Museums, it could be that the work is produced by independent curators. In that case, we need to go back to the employment contract (if such exists) or follow the guidelines regarding external contractors and content procurement.
- in the case of grey literature that is contained in Academic Libraries’ Repositories, if it has been produced by members of the staff (academics or researchers), the PSB needs to check whether:
 - Academics and Researchers fall within the generic rules of PSBs transfer of ownership rules or are exempted from these rules,
 - there are specific rules/ laws regarding the obligation to publish under an Open Access licence in institutional or library repositories,
 - there is a contract between the academic/ researcher and the University as well as how and whether it transfers ownership,
 - there is a grant or other funding agreement that defines the rules under which the material should be made available,
 - there is a national, institutional or repository policy regarding the release of the content contained in the repository.

3.5.2 the PSI is created by external contractors (or) as the result of a public procurement process

This is the case when the PSB obtains the content that will become PSI from a third party outside the public sector. In this process, it is necessary that the PSB secures the maximum amount of rights, so that it is subsequently capable of releasing the PSI under the licence of its choice.

Obtaining the necessary assignments and input licences is to be implemented through a series of steps:

- there has to be a relevant reference in the relevant tendering or public procurement documentation
- there needs to be a special section in the contract between the third party (contractor) and the PSB, where assignment, transfer or licensing of the maximum possible rights is instructed.

It is important to note that full assignment of rights is not always possible for practical or economic reasons and in some cases it is not desirable either. The latter is the case when the rights over the content are not licensed or assigned to the PSB, but rather directly licensed under an open licence. Were it otherwise, all open content providers would be excluded from procuring information to the PSBs. At the same time, PSBs have to be careful when procuring content and data in order to obtain the full range of rights necessary for them to perform their public mission. Thus, a copyleft licence may not be suitable for a PSB that needs to offer data-sets with no restriction for the re-user, e.g. traffic data-sets which need to be licensed under CC Zero in order to reduce transaction costs.

Tip: Shopping list for content/ data public procurement:

- identify the widest possible range of rights you want to acquire and draft both the tendering call and the contract in accordance to your objectives and budgetary constraints
- make sure that your tendering procedure and contract does not exclude any content/ data licensed under open licences
- make sure that when allowing open content/ data, it is licensed under an open licence providing the PSB with the rights necessary for it to perform its public task and re-use strategy.

3.5.3 PSI created as part of a Public Private Partnership (PPP)

PPPs are increasingly becoming a major part of the way in which public service is offered, especially in areas of activity where an abundance of content is produced (for instance in the case of public transport, road construction or health services where a great amount of PSI is produced). A PPP in the broader sense is a government service, which is funded and operated through a partnership of government and one or more private sector companies. A PPP involves a contract between a public sector authority and a private party, in which the private party provides a public service or project and assumes substantial financial, technical and operational risk in the project.

PPPs are of particular interest in the context of PSI since a number of public services that produce significant PSI, such as traffic and geo-data, are provided or are likely to be provided through PPPs. In such cases, the release of the data is not regulated by PSI rules, as they are not actually released by a PSB. For this reason, it is necessary that the PPP agreement contains specific provisions that contractually oblige the private entity to release the data under an open or re-use licence. In order for the PSB to be able to draft such an agreement, there needs to

be a clear business case for the private entity regarding the release as PSI of data produced during the provision of the service and for the duration of the PPP.

Tip: When drafting a PPP agreement ensure that:

- both the PSB and the private entity have a clear idea regarding the treatment of data produced as a result of the operation of the partnership
- there are clear rules regarding the ownership and licensing of the data
- either the PSB holds ownership of the data or the private entity is obliged to release them as PSI, i.e. under the PSI Directive 2013 licensing and charging rules

3.5.4 Managing legacy content and licences

It is more frequent that PSBs have to clear and release existing content rather than establishing processes and ensuring they will obtain all rights necessary for the release of newly created PSI. For this reason, PSBs need to establish rules regarding management of existing agreements and potential strategies to reduce risks from the release of such material.

The most important good practice in this content is to document all input licences or contracts under which content that could be released as PSI is collected. Provided that such contracts or licences are documented, the next step is to decide under which terms the PSI can be released. The simplest rule is to release content only under terms and conditions compliant with the input licence. It is also important to explore the degree to which sublicensing or relicensing is allowed.

Tip: A To Do list regarding legacy content:

- record the legal status of the content
- assess the IPR violation risks of the material
- seek to obtain permissions if possible, after assessing the clearance costs
- clarify whether sub-licensing and re-licensing is allowed under the input licences
- explore the possibility of re-use under copyright limitations and exceptions
- license out only less or equal to your licensed in material

3.6 Competency issues

Independent from any IPR issues is the question of the competency of a PSB to release PSI for re-use. This is sometimes related to the question of PSI ownership and some other times it is an entirely different case.

In the former case, a PSB may hold PSI that does not belong to it, but has been obtained e.g. by another PSB. This is the situation when a PSB has obtained PSI in order to perform its public task, but this is not necessarily related to the release of the information to the public. For instance, a local authority may obtain data from the Cadaster, but does not have the right to release them for re-use unless explicitly stipulated in the agreement with the Cadastre or forming part of a special legislative regime. When such permission does not exist but the PSB from

which the data has been obtained is known, new permission should be sought or the relevant licences should be obtained from the relevant PSB.

There are also cases, in which the PSB has the ownership or necessary licences but is not competent to release such data for re-use, e.g. because this needs to be done by a specific PSB or requires additional permissions from another PSB (e.g. an oversight authority). In such cases, the problem could be overcome with the obtaining of the necessary permissions.

Tip: In case a PSB holds material and all IPR permissions and licences have been obtained:

- verify that this is the competent body for releasing PSI for re-use
- if additional permissions are required, obtain them from the other PSBs

4. How to License

The objective of this section is to propose good PSI licensing practices.

At this stage the PSB has selected the material (PSI) that wishes to release and has checked:

- (a) that it does not fall within the categories of material that cannot be released/disclosed (see section 3), and
- (b) that it is not material for which no licences are required (see section 2), e.g. because it is in the Public Domain or is exempted from Copyright law.

The following steps constitute best practices as to how a PSB should make the best licensing choice, covering a range of issues, from generic licensing characteristics to specific licence features. The suggestions made aim at allowing the release of PSI with the least possible legal frictions for the re-user including maximizing interoperability and decreasing barriers to re-use.

4.1 Use standard and re-usable licences

If licensing is to be used, then the first suggestion is to use licences that are both standard and re-usable, i.e. that contain terms that remain fixed both for the licensor and the licensee, that a formal and open upgrade process is followed, that there is a community working on their upgrade and that there are global in scope.

The most common such licences are the Creative Commons and the Open Knowledge Foundation licences.

The Creative Commons licenses are a set of standard and re-usable public copyright licenses which have been tested in several courts and can be considered as legally valid and robust agreements. They come with a set of machine-readable metadata in open formats which make it easier to mark PSI with the license and additional information, such as Attribution, and to discover PSI with search engines like Google. The Open Knowledge Foundation has developed similar licenses for databases.

Some national governments and public sector bodies (including Galleries, Libraries, Archives and Museums, as well as other public interest institutions) may still prefer to develop and use their own Open Government Licences (OGL). The main reason for such a choice is that they feel that this gives them more control over the wording of the licence and the licence update process. However, this poses increasing challenges as it requires a dedicated team of experts for the creation and maintenance of the licence as well as continuous monitoring of updates of other standard public licences and extra care in the wording so that interoperability between different licences of the same type is achieved. While this is possible, it is extremely difficult to achieve for all six types of Creative Commons licences.

4.2 Dedicate the work to the Public Domain

For PSI not already exempt from copyright protection due to the reasons explained in section 3, it is best practice to be released into the public domain, either by exempting them from copyright and database rights (if your national copyright law allows for it), or by waiving your copyright and related rights by dedicating the PSI to the public domain. For that purpose, you can use the CC0 (read “CC Zero”) Public Domain Dedication. The Open Data Commons Public Domain Dedication and Licence (PDDL) is an equivalent tool for dedicating works to the public domain.

4.3 Use an Open Knowledge Definition Licence

If you cannot dedicate the PSI to the public domain using a public domain waiver such as CC0 or PDDL, you should use a licence that is compliant with the Open Definition. Such licences include the Creative Commons Attribution licence and the United Kingdom Open Government Licence. Do not use a No-Derivatives licence as it will prevent many usages of your PSI which are allowed by the European Directive. Some Re-use Licences try to forbid improper or misleading uses of data by forbidding the creation of derivative works or by prohibiting any use which “misrepresents” the data. Many non-alteration requirements come into play through national legislation. But according to the Communia Association, “[these clauses] have the potential to make large scale and/or automated re-use of licensed data from multiple jurisdictions more difficult by requiring careful examination of such non-standard clauses by humans. As a consequence, uncertainty is introduced for those wishing to re-use the information, and that uncertainty in turn can lead to reduced instances of re-use due to fear of conflicting with the provision. Promoting the adoption of similar yet slightly askew open government licences has the potential for undermining the stated goal of cross- border information sharing. This problem is further complicated by the fact that such open government licences are not available in all official languages of the EU.”

4.4 Use Attribution only Open Government Licences

It is advisable, that if governments or public sector bodies insist in making their own licence, to only create an Attribution (by this we mean “Attribution-only”) licence.

It is strongly advised that even when governments choose to produce their own version of an Attribution (or other open) licence, they should always try to apply it in the following fashion:

- Retain a clear versioning/date scheme, i.e. each licence should have a specific version and a date of that version. When changes are made, these should be made public and the version number should change.
- Store the licences at a permanent location and link the licensed material with the URI of the licence.
- Ensure it is Open Knowledge Definition compliant.

4.5 Refrain from using NonCommercialLicences

PSBs should, where possible, refrain from licensing PSI under licences that reserve commercial rights. Licences that contain a NonCommercial clause will forbid a large number of uses that should be available to users, (not to mention the risk inherent in conflicting interpretations in the NonCommercial term itself). Be mindful that even if the PSI Directive allows you to charge for some costs in some situations, it will require a dedicated staff member to manage the authorization requests and the licensing for commercial use, which royalties may be inferior to the salary of this person.

In the case a PSB insists in using NonCommerciallicences, these should necessarily be accompanied by licences allowing commercial re-use. Ideally, these should be standard and provide a simple, automated and electronic way of paying.

4.6 Refrain from using Licences prohibiting the creation of derivative works

It is highly advised that the PSB does not use any standard licences that do not allow the creation of derivative works. The use of licences not allowing derivative works severely limits the re-use possibilities and does not contribute to the materialization of the objectives of the PSI 2013 Directive.

4.7 Be careful with the use of CopyleftLicences

Finally, PSBs should avoid using licences containing a copyleft/ShareAlike clause, which requires users to release any derivative works under the same licence. These licences raise interoperability issues and are difficult to enforce if the re-user wants to aggregate or mine a large amount of other datasets submitted under different licences.

4.8 Add metadata and documentation

It is useful to provide short information notices to accompany the PSI. You can draft a sentence to help the re-user mention the source of the PSI. Try to include information on attribution, provenance or indication of the source in the credits section of your website and also within the dataset. A condition of all standard open licences is that the licensee must keep a link to the URI of the licence, and be sure to mention how to cite the licence to help the re-user comply with

licensing requirements. Try to not set unreasonable requirements on attribution and integrity beyond source linking.

An Attribution Example:

This dataset has been released and last updated by the department of statistics of the City of Lötzt on the 15th January 2014 under a CC0 1.0 Public Domain Dedication available at <https://creativecommons.org/publicdomain/zero/1.0/>. Rightsholder can be contacted at the region of Tyrol Bureau for Copyright at open@yourpsi.org and data producer at statistics@lotz.at. If possible, please maintain a link to the source when reusing our dataset: <http://statistics.lotz.at/dataset15012014> and explain how you differentiate the original we provide from the derivative you created.

Best practices for attribution are available at:

http://wiki.creativecommons.org/Best_practices_for_attribution

Marking a work with a CC licence is explained here:

http://wiki.creativecommons.org/Marking_your_work_with_a_CC_license

5. Useful resources with commentary

This section presents a number of resources on PSI- and open data- licensing that may be useful for PSBs wishing to view how they could compile their own PSI policies, or administrations interested in devising a national PSI policy.

The following types of documents may be found:

- (a) Guidelines/ Handbooks for open data release in general (technical, legal and organizational)
- (b) Guidelines/ Handbooks regarding open data licensing
- (c) Guidelines/ Handbooks regarding PSI and open data licensing, including model licence clauses and charging instructions
- (d) Model PSI/ Open data policies
- (e) PSI/ Open Data tools and web-sites

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Title	Organisation	URL	Description - Comments
The Guidelines on Open Government Data for Citizen Engagement	UN	http://workspace.unpan.org/sites/Internet/Documents/Guidelines%20on%20OGDCE%20May17%202013.pdf	These are guidelines mostly relevant for the implementation of Open Government and Open Data Action Plans. In the section related to Open Data, there is extensive referencing to the Open Licensing and Open Data Licensing Sections of the Open Knowledge Foundation.
Guideto Open Licensing	Open KnowledgeFoundation (OKF)	http://opendefinition.org/guide/	A very concise guide on Open Licences in general with a focus on content.
Guide to Open Data Licensing	Open KnowledgeFoundation (OKF)	http://opendefinition.org/guide/data/	A concise guide on Open Data Licensing with emphasis on the types of IPR subsisting in various data-sets in accordance to different legal systems. An overview of the UK, US, Australian and Canadian legal systems are provided.
Provisional Open Data Handbook	New York State Open Data Initiative	http://nys-its.github.io/open-data-handbook/	A handbook that covers a number of aspects of open data publication, including legal aspects of open data release. The three stages of the Open Data Guidance, i.e. Identification, Assessment and Prioritization, and pre-publication and disclosure are also used in the LAPSI PSI licensing Guidelines.
Quick Guide for Users (NZGOAL) Quick Guide for Agencies	New ZealandGovernment	http://ict.govt.nz/guidance-and-resources/information-and-data/nzgoal/quick-guide-users/ http://ict.govt.nz/guidance-and-	This is a concise guide both for organizations releasing open data and (re)users of such data. It focuses explicitly on issues of licensing rather than generic open Data issue (e.g. Technical or

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		resources/information-and-data/nzgoal/quick-guide-agencies/	<p>organizational). The guide addressed to PSBs covers issues of subject matter, public domain, copyrighted works, licensing choices and competency issues. The guide addressed to end-users is more focused on the application of the licences, generic copyright concepts and personal data issues. It also contains the New Zealand Open Data Policy.</p>
French Government PSI Handbook	<p>The French Government</p>	http://www.modernisation.gouv.fr/sites/default/files/fichiers-attaches/vademecum-ouverture.pdf	<p>It is a quick guide on open data release focusing particularly on the French data.gov web site and providing the legal and policy background regarding the opening of data.</p>
The Norwegian Open Data Handbook	<p>The Norwegian Government</p>	http://data.norge.no/sites/data/files/Veileder-til-gjengjoring-av-offentlige-data-V2.pdf	<p>It is a handbook regarding the opening of data focused both on the legal and technical aspects of opening data sets. It follows the data life-cycle as well, from collection and digitization to mapping, disclosure and release. It focuses particularly on the Norwegian Open Data Licence.</p>
How do I Implement AusGOAL? Guidelines	<p>The Australian Government</p>	http://ands.org.au/guides/ausgoal-awareness.pdf http://www.ausgoal.gov.au/how-do-i-implement-ausgoal	<p>This is a comprehensive set of guidelines, policies, tools and services covering the entirety of the life-cycle of PSI and providing PSBs (or information providers) with instructions, guidelines and hints as to how to release their PSI.</p>
Open Government	<p>The US Government</p>	http://goals.performance.gov/open	<p>This is a site collecting and presenting the key US</p>

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<p>Data as a Cross-agency priority goal</p>		<p>data</p>	<p>open data policies and strategic objectives along with the main technical tools for releasing such data.</p>
<p>Nasa open gov. plan</p>	<p>NASA</p>	<p>http://open.nasa.gov/plan/framework/</p>	<p>This is mostly a plan covering NASA's key OpenGov activities implementing the Open Government Directive</p>
<p>UK Gov. Licensing framework</p>	<p>The National Archives/ UK</p>	<p>http://www.nationalarchives.gov.uk/documents/information-management/uk-government-licensing-framework.pdf</p>	<p>This is a very comprehensive licensing guide for all types of content and data. It covers all types of government agencies and bodies at all levels and the whole range of UK gov.licences. It also provides guidelines as to how licences are to be chosen and re-use licences to be drafted, including for-a-fee licences.</p>