

European Commission
Directorate-General for Information Society and Media
Unit E-4 Digital Libraries and Public Sector Information
For the attention of Mr. Javier Hernandez-Ros

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Vienna, September 15th 2008

Subject: PUBLIC CONSULTATION - Review of the PSI Directive

Dear Ladies and Gentlemen,

ISPA, the Austrian Association of Internet Service Providers, appreciates the invitation to comment the European Commission draft Review of the PSI Directive. Please find our position below.

i. Implementation and impact of the Directive

Question 1: In your opinion, has the Directive been properly implemented and applied in your country and beyond? If so, please indicate ways in which public sector bodies are contributing to facilitating access and re-use of their information. If not so, please give indications on what kind of problems you are encountering when wishing to reuse public sector information.

The PSI Directive has been properly implemented in Austria in the so called "IWG" (Informationsrechtsweiterverwendungsgesetz – BGBL I Nr 135/2005) on federal basis as well as in nine state laws for the use of state and communal public sector information. Additionally an asset list (Informationsweiterverwendungsregister) has been installed <http://www.help.gv.at/iwr/>.

In practice the application of the IWG is in need of improvement. In Austria no legal obligation for public sector information holders (PSIH) exists to provide access to their information. So hardly any PSIH allows or even facilitates the re-use of his data.

There are only a very few positive examples like the federal Office for Metrology and Surveying, which revised their prize model and the Austrian National Bank, which declared everything on their website free for re-use. On the other side PSIH as the Ministry of Internal Affairs, which is in charge of the register of non-profit organizations or the Ministry of Justice, which handles the Austrian company register still refuse access and the re-use of their data.

The above mentioned asset list contains quite a huge number of entries but among them are in fact only a small number of relevant PSI data, because most of the listed assets are brochures published by ministries.

Question 2: Has the implementation of the Directive resulted in a revised charging policy by public sector bodies? If so, has this had any impact, e.g. on the volume of information downloaded, number of hits, number of re-users registered, etc?

Except the Federal Office for Metrology and Surveying no fundamental changes in the charging policy by public sector bodies could be noticed.

ii. Scope of the Directive

Question 3: In your opinion would it be appropriate to include cultural establishments, education and research organisations and public service broadcasters, within the scope of the Directive?

As a general statement all information predominantly funded by the public should be made available for re-use. Of course some sources are protected by industrial or intellectual property rights, which have to be respected in order to keep the chain of exploitation alive and to guarantee the income of the creative community. But a lot of information gathered by cultural establishments, education and research organisations and public service broadcasters have either never been protected or their protection has already expired. It would be a waste of public funds and an obstacle for the development of the content industry if the gathered information would be kept unused and far away from the interested public.

Question 4: What would be the impact and societal benefits of including these sectors within the scope of the Directive? What are the problems these excluded sectors may encounter should they be included within the scope of the Directive?

The positive effects of including these sectors are the extension of possibilities for the content industry, the opening for usage by the public and for this reason the chance for a new cultural exchange.

Problems could arise if industrial or intellectual property rights are infringed or if some of the mentioned institutions (that are eg just partly public funded) are in competition with a company that wants to use PSI.

iii. Looking ahead

Question 5: What technical, organisational, legal and practical measures could be established by national administrations and/or at European level to optimise the re-use of PSI (e.g. efficient dispute settlement mechanisms)?

In our opinion it is necessary to make clear that the usage of PSI is the norm and a refusal has to be a justified exception. The actual legal situation provides a framework if the PSIH is willing to cooperate but there is no efficient measure to convince the PSIH to open access to PSI.

Question 6: Should legislative amendments be introduced in the Directive to make it more efficient? If so, which ones and why? Would guidelines on proper implementation and application of the Directive be useful?

The Directive contains a couple of terms, which are too unspecific and can be interpreted in several ways. The Austrian implementation of the Directive adopted most of these terms and did not specify them or elaborate on them. The result is legal uncertainty. The introduction of legislative amendments in the Directive would help to achieve legal certainty and reduce the possibility of conflicts between PSIH and members of the content industry. For example, in Austria some of these conflicts led to legal court cases and caused a lot of costs.

To make the Directive more efficient the following points should be realized

- Clarifications that access for individual citizens and commercial re-use have to be seen and treated differently. Already existing access possibilities for individuals should not provide an excuse for blocking commercial re-use.
- It is necessary to make clear that the usage of PSI is the norm and a refusal has to be a justified exception.
- The term "public task" has to be defined explicit and strict. The requirements when a "public task" is fulfilled have to be fixed.
- Charges for collection, production, reproduction and dissemination calculated by PSIHs are often not founded and exaggerated. Especially, if payments at

the time of the entering of the data have already been made, following legal obligations for registering (as in most public registers). In these cases the PSIH should not be allowed to request a further charge, since its costs are already covered.

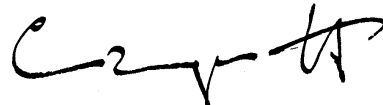
Guidelines on proper implementations and applications would of course support a harmonized usage and would be a valuable source for implementation in national law.

Best regards,

ISPA Internet Service Providers Austria



Roland Türke
President



Dr. Kurt Einzinger
General Secretary

About ISPA: ISPA is the Austrian association of Internet Service Providers, representing approximately 200 ISPs. ISPA is a major voice of the Austrian Internet industry. Our goal is to shape the economic and legal framework supporting an optimal growth of the Internet and Internet services. We regard the use of the Internet as an important cultural skill and acknowledge the resulting socio-political responsibilities.