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Creative Commons and Public Sector
Information: Flexible tools to support PSI
creators and re-users

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Abstract

Public sector information (PSI) is meant for wide re-use, but this information will only achieve maximum possible impact if users understand how they may use it. Creative Commons tools, which signify availability for re-use to users and require attribution to the releasing authority, are ideal tools for the sharing of public sector information. There is also increasing interest in open licenses and other tools to share publicly funded information, data, and content, including various kinds of cultural resources, educational materials, and research findings; Creative Commons tools are applicable here and recommended for these purposes too.

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1. Executive summary

Public sector information (PSI) is meant for wide re-use, but this information will only achieve maximum possible impact if users understand how they may use it. It is imperative that public sector entities creating and distributing public sector information clarify legal rights to end users, lest the PSI be used less, or not at all.

Directive 2003/98/EC of the European Parliament and of the Council on the re-use of public sector information (Directive) encourages Member states to make use of standard, public licenses to facilitate the dissemination and re-use of PSI.¹ Creative Commons (CC) is a global non-profit organization that develops legal and technical tools to overcome barriers to sharing information. Creative Commons tools, which signify availability for re-use to users and require attribution to the releasing authority, are ideal tools for the sharing of public sector information as envisaged by the PSI Directive.

Governments around the world are to be commended for adopting public licenses and frameworks as a means to share PSI. While an improvement, several of those approaches need to be reformulated and improved to better ensure that PSI reaches its maximum possible impact through discoverability and re-use. There's also increasing interest in open licenses and tools to share publicly funded information, data, and content, including various kinds of cultural resources, educational materials, and research findings. Across these broad categories stakeholders realize that if rights statements are confusing or missing, re-use of information will be sub-optimal. In both cases, implementing CC is the solution.

2. Poor communication of rights for re-use of PSI

Creative Commons is a 501(c)(3) non-profit corporation that develops legal and technical tools used by individuals, cultural, educational, and research institutions, governments, and companies worldwide to overcome legal and technical barriers to sharing and innovation.² CC licenses and public domain tools are easy to understand and use, and incorporate a unique and innovative three-layer design, with a traditional legal tool (Legal Code), a “human readable” deed (Commons Deed), and a “machine readable” format that describes license information in a way search engines and other kinds of technology can understand. This framework helps lower

¹ Available at http://ec.europa.eu/information_society/policy/psi/docs/pdfs/directive/psi_directive_en.pdf

² See <http://creativecommons.org>

the transaction costs normally associated with seeking permission to use creative works by granting some rights in advance, consistent with the rules of copyright. CC tools constitute a globally recognized framework, developed in consultation with legal experts and CC affiliate institutions in over 70 jurisdictions.³

Organizations around the world advocate for increased government transparency and accountability by calling for the posting of information online, including data sets and other resources created by public sector entities. There are various ways that public sector bodies make PSI available for re-use: via online terms of use, by removing copyright and related rights, through government policy and regulation, through the use of custom licenses, via freedom of information laws, informally via norms, through the use of CC licenses and public domain tools, and via other means.

No matter the vehicle through which it is made available, public sector information is meant for wide re-use. But even if public sector bodies agree that PSI should be widely shared, if the resources do not contain explicit descriptions with regard to the rights and permissions granted therein (both for humans and machines), downstream users will be less apt to use the resources and the impact of the materials will be diminished. Mireille Van Eechoud and Brenda Van der Wal, who in 2008 published a seminal report on the use of Creative Commons and Public Sector Information for the Dutch context, wrote, “simply making information available via the Internet does not equal useful access to government information, if the recipient is left in the dark on what use of the information may be made.”⁴

Oftentimes governments do not accurately state the use rights of the public sector information they share on their websites. Many websites of public sector bodies contain conflicting ‘all rights reserved’ statements, or provide no information on copyright policy at all. Others display notices on some parts of websites, but it may not be clear which resources are available for free re-use, and which are restricted, such as materials that contain third party content and which the government body does not necessarily have the right to redistribute. Situations like this leave the end user with the task of ascertaining the legal status of the information published by the public sector, and determining the legitimate uses he or she can make without asking prior permission. The final challenge is the same though—if the public is unaware of how they can use various pieces of public sector information, then that information will be used less or not at all.

³ See <http://creativecommons.org/affiliates>

⁴ Van Eechoud, Mireille M. M. and Van der Wal, Brenda, *Creative Commons Licensing for Public Sector Information - Opportunities and Pitfalls* (January 2008), at 1. Available at SSRN: <http://ssrn.com/abstract=1096564>

3. Creative Commons as the solution to rights communication challenge of PSI re-use

Governments around the world recognize the power of distributed networks to make available public sector information. By making this information widely available, public sector entities promote growth in scientific, educational, and creative content, resulting in healthy, thriving economies.⁵ One way to boost the re-use of public sector information is through adopting policies leveraging tools such as those maintained by Creative Commons. Already, 29 national governments employ CC tools for government data, official reports, multimedia resources, presidential websites, and educational materials.⁶ Creative Commons licenses and public domain tools are key for communicating rights and permissions to end users, and enable the discovery of these public sector resources via search engines. CC tools can offer clarity, and lessen the chilling effects brought about by the lack of information or confusion around copyright use policies for government-created PSI. Public sector bodies can use CC licenses “out of the box,” and do not need to devise or write their own licenses to share PSI.⁷ CC licenses and tools are free to use, applicable worldwide, and supported by a committed international community of legal experts and other stakeholders.

The CC framework ensures broad access and re-use for persons wishing to utilize the PSI while simultaneously ensuring that proper credit and important legal protections are retained by the public sector bodies releasing the information. From the perspective of public sector entities releasing PSI, Creative Commons licenses allow for flexibility in order to reflect the spectrum of government needs. For example, attribution to the licensor is required, and can be tailored to conform to how the public sector bodies releasing the information wishes to be credited. From the

⁵ Prodromos Tsiavos writes, “the social and economic value of such freedoms can be maximized only...[when] all necessary rights or licences have been obtained so that sharing and re-use are actually possible.” *INSPIREd by Openness: The case of the implementation of Directive 2007/2/EC in Greece as a general model for open data regulation within the context of Public Sector Information*. European Public Sector Information Platform Topic Report No. 16, September 2010. Available at http://www.epsiplus.net/topic_reports/topic_report_no_16_inspired_by_openness

⁶ These include Armenia, Australia, Brazil, Bulgaria, Chile, Colombia, Czech Republic, Ecuador, Georgia, Greece, Guatemala, Israel, Italy, South Korea, Macedonia, Mexico, The Netherlands, New Zealand, Poland, Portugal, Russian Federation, Republic of Serbia, Spain, Taiwan, Thailand, Ukraine, United Kingdom, United States, and Venezuela. For a full list of Government adoption of CC tools, see <http://wiki.creativecommons.org/Government>

⁷ Dr. Patrick McAndrew of the Open University said that during the startup phase for The Open University’s Open Learn open educational resources project, the team had originally set aside £100,000 for legal fees to be used in writing a viable license. However, they decided against developing a custom license for the educational materials they were producing because of the ease of adoption of Creative Commons licenses. See <http://creativecommons.org/weblog/entry/23521>

perspective of persons wishing to re-use PSI, Creative Commons licenses promote re-use because content is findable via search engines like Google and the re-use rights are easy to understand.

Attribution

Creative Commons licenses and tools provide a sophisticated, flexible mode of attribution that addresses the needs both of those making the information available (licensors) and those using the information (licensees). The attribution requirement is a feature of all Creative Commons licenses.⁸ This requirement includes an attribution statement, by default recognition of the licensor as the copyright holder of the work, as well as the URL of the original work. The attribution requirement thus serves the dual purpose of ensuring desired credit to the party releasing the PSI, while helping to ensure integrity by requiring that the URL to the original resource is included.

Governments and institutions releasing public sector information may use CC licenses and tools to define their preferences for attribution. For instance, a licensor may request a specific attribution statement, or attribution to particular parties, such as a funder, publisher, or sponsor.⁹ CC tools make attribution flexible and easy for those using public sector information. Attribution stacking problems, where countless numbers of contributor names would need to be included in an attribution statement, will be less likely to arise because attribution will be set to the government or public sector entity releasing the public sector information.

Retain copyright notice and provide licensing information

Re-users of PSI must keep intact any copyright notice attached to the work on all copies. Generally, a copyright notice consists of the copyright symbol (a “c” with a circle around it) the name of the author, and the date of publication. For example, if the work comes with the notice, “© 2011 UK Department of Health, Social Services and Public Safety,” then that information must be retained.

Another static component of the CC framework is the requirement that license information be retained along with the PSI resource. These include the name of the license and the URL of the license, either as text and, where applicable, hyperlinked. For example, “© 2011 UK Department of Health, Social Services and Public Safety. Available under a Creative Commons Attribution 2.0 UK: England & Wales license.”

⁸ However, a licensor may also request not to be attributed at all.

⁹ For example, “*Evaluation of Contagious Disease Vectors*, by Mary Smith. Funded by the UK Department of Health, Social Services and Public Safety. Available under a [Creative Commons Attribution 2.0 UK: England & Wales license](#).”

Do not imply endorsement and identify changes

While many governments and institutions would like to release their PSI in a way that allows others to build upon the information and combine it with other material, some are concerned about the integrity of the information. Public sector bodies may be worried that users will create false impressions of endorsement, or will alter data such that it is less valuable or suggests different conclusions. There are several features of CC licenses that help protect the integrity of public sector information.

The “non-endorsement” clause in all CC licenses prohibits uses that suggest or imply that the licensor of the work—in this case, the public sector entity—in any way sponsors, supports or approves of the uses or adaptations of the work.¹⁰

Certain CC licenses permit making changes to works (those without the No Derivatives condition). In such cases, users must take reasonable steps to clearly label, demarcate or otherwise identify that changes were made to the original work. For example, “This is an audio adaptation of the 2011 Evaluation of Contagious Disease Vectors by UK Department of Health, Social Services and Public Safety, available under a Creative Commons Attribution 2.0 UK: England & Wales license.”

All adaptations and collections of works offered under Creative Commons licenses must also explicitly state that they are not the original. A licensor may also ask that credit be removed from any specific adaptations or collections, while retaining the right of attribution elsewhere. Licensors can also assign different attribution statements to apply for different types of uses: for example, a licensor may require that users who modify the PSI or incorporate it into a collection must give attribution in a different manner than those who simply copy or redistribute it.

No warranties, no DRM

While Creative Commons alerts would-be licensors to make sure that they have all the necessary rights before applying CC licenses to works,¹¹ the licenses do not extend guarantees or warranties to licensees. In this way, public sector institutions releasing PSI do not increase their liability risk by granting re-use rights by using CC tools.

¹⁰ Prodromos Tsiavos notes that the “obligation to keep the information in repositories in a linked-data form, with fixed URIs, could be part of the national implementation of the PSI Directive which could solve many of the provenance issues.” *Cultivating ecologies of PSI regulation in Europe: The role of soft regulation and Creative Commons licenses in the implementation of PSI legislation in the cases of UK and Greece*. European Public Sector Information Platform Topic Report No. 19. December 2010. Available at http://www.epsiplus.net/topic_reports/topic_report_no_19_cultivating_ecologies_of_psi_regulation_in_europe

¹¹ For example, see http://wiki.creativecommons.org/Before_Licensing

In support for downstream re-use of PSI, it is already a feature of all CC licenses that users must not add any technical protection measures (digital rights management or “DRM”) to PSI offered under a CC license that would restrict others from using the work under the terms of the license.¹²

4. CC tools in support of the Directive

Several of the provisions laid out in the Directive on re-use of public sector information call for mechanisms that CC licenses and tools can satisfy in whole or in part. As a baseline, the Directive encourages standardized licensing where licenses are used to disseminate PSI.¹³ It has already been noted that Creative Commons licenses are the global standard for open content licenses, and are used around the world for over 365 million online works. If Member States wish to encourage public sector bodies to use standardized licenses, Creative Commons licenses and tools are a natural fit.

The Directive urges public sector entities to respond quickly to requests for re-use of PSI.¹⁴ Creative Commons licensing automates the approval process for some uses of PSI because it grants in advance permissions to persons to re-use PSI. Adopting CC produces savings in personnel time needed to process requests and decreases turnaround time since the permissions are clearly granted at the time of initial discovery. The use of CC tools can increase efficiency within and between public sector agencies too. Many public sector entities and governmental departments are extremely large and complex, making it difficult to share information between groups. Proactive dissemination of government information and other PSI through the adoption of CC tools could help alleviate some of these challenges.

Another section of the Directive notes that public sector institutions might choose to apply particular restrictions on the re-use of PSI through a license, but any conditions applied should not burden re-use and should not be used to limit

¹² It should be noted that this stipulation does not prevent the licensor from applying DRM at the point of release

¹³ The Directive states, “Member States shall ensure that standard licences for the re-use of public sector documents, [and] shall encourage all public sector bodies to use the standard licences.” Article 8, Section 2. *Directive 2003/98/EC of the European Parliament and of the Council*. Available at http://ec.europa.eu/information_society/policy/psi/docs/pdfs/directive/psi_directive_en.pdf

¹⁴ “Public sector bodies shall...process requests for re-use and shall make the document available for re-use to the applicant or, if a licence is needed, finalise the licence offer to the applicant within a reasonable time...” Article 4, Section 1. *Directive 2003/98/EC of the European Parliament and of the Council*. Available at http://ec.europa.eu/information_society/policy/psi/docs/pdfs/directive/psi_directive_en.pdf

competition.¹⁵ This section is aligned with the flexibility of the CC license suite, and incorporates the possibility of making available PSI for re-use via the CC0 public domain dedication. Public sector entities might be granted the latitude to apply restrictions on the re-use of PSI through license conditions. At the same time, Van Eechoud and Van der Wal argue that the use of license conditions beyond simple attribution to the public sector body are not appropriate for PSI. Their analysis of CC-specific license conditions will be explored more in the next section.

The Directive addresses the need for technological and other means so PSI resources can be easily found and used.¹⁶ CC tools assist users in search and discovery of PSI materials—content that is marked with CC license metadata is searchable across major search engines such as Google. This feature is unique to CC’s licenses and other legal tools—no other public licensing solution offers this benefit. Thus, adopting CC tools can increase the possibility of PSI re-use.

5. Options for CC licensing conditions in PSI

It is assumed that public sector entities want to maximize the impact of the PSI they release. Increasing re-use of PSI can be accomplished by adopting CC tools. But, which license conditions maximize re-use? And, which CC license is appropriate for public sector information? Van Eechoud and Van der Wal explain that any condition beyond attribution within the CC licensing framework restricts essential freedoms that should be present within PSI. They recommend the Creative Commons Attribution license (CC BY) or public domain dedication (now represented by the CC0 dedication) as most compatible with the principles of re-use of PSI, because these mechanisms “[allow] unlimited freedom, and communicates the message clearly, rather than leaving it up to the citizen to ascertain what he or she can or cannot do with government information.”¹⁷

Van Eechoud and Van der Wal have examined why additional CC license conditions

¹⁵ “Public sector bodies may allow for re-use of documents without conditions or may impose conditions, where appropriate through a licence, dealing with relevant issues. These conditions shall not unnecessarily restrict possibilities for re-use and shall not be used to restrict competition.” Article 8, Section 1. *Directive 2003/98/EC of the European Parliament and of the Council*. Available at http://ec.europa.eu/information_society/policy/psi/docs/pdfs/directive/psi_directive_en.pdf

¹⁶ Member States should “ensure that practical arrangements are in place that facilitate the search for documents available for re-use...” Article 9. *Directive 2003/98/EC of the European Parliament and of the Council*. Available at http://ec.europa.eu/information_society/policy/psi/docs/pdfs/directive/psi_directive_en.pdf

¹⁷ Van Eechoud, Mireille M. M. and Van der Wal, Brenda, *Creative Commons Licensing for Public Sector Information - Opportunities and Pitfalls* (January 2008), at 54. Available at SSRN: <http://ssrn.com/abstract=1096564>

(NonCommercial, Share-Alike, NoDerivatives) are incompatible with the principle of PSI re-use.¹⁸ They find that the NonCommercial clause is unsuitable for PSI applications because it “restricts use of the work to certain groups, namely private persons and non-profit organisations,” pre-emptively discouraging innovative re-use by corporations, start-up businesses, and creative entrepreneurs.¹⁹ And, since one of the goals of re-use of PSI is economic activity and innovation, the NC clause seems to undermine these goals. The ShareAlike condition oversteps the bounds of the goal of PSI re-use, as a public sector body should not compel citizens to share with others.²⁰ Finally, the NoDerivatives condition is incompatible with the goals of the PSI directive because it prohibits the creation and distribution of derivative works, one of the main points of releasing public sector information in the first place. The adoption of such a clause would prohibit the translation of PSI into other languages or other activities that would normally be encouraged by public sector bodies looking to maximize the impact of their work.

6. Public sector data and CC tools

The collection, creation and publishing of data have been increasingly central to government transparency and interaction with the public. Governments release datasets on census information, weather and geospatial data, food safety and product recall information, and data on foreign commerce and economic aid. Governments around the world are releasing public sector data using Creative Commons tools in order to maximize the re-use of data in interesting and useful ways.

CC licenses

Since the inception of Creative Commons, people have published data and databases under CC licenses. Recently, countries such as Australia²¹ and New Zealand²² provide pragmatic examples of utilizing CC licensing for the release of public sector data, and demonstrate the benefits of adopting a standardized, default licensing

¹⁸ For a description of Creative Commons licenses, see <http://creativecommons.org/licenses/>

¹⁹ Van Eechoud, and Van der Wal, at summary III.

²⁰ Van Eechoud and Van der Wal, at 56.

²¹ See *State of Play: PSI Re-use in Australia* by Anne M Fitzgerald. European Public Sector Information Topic Report No. 13, July 2009. Available at http://www.epsiplus.net/topic_reports/topic_report_13_state_of_play_psi_re_use_in_australia

²² See *New Zealand moves to embrace PSI Re-use and Open data* by Keitha Booth. European Public Sector Information Topic Report No. 15, August 2010. Available at http://www.epsiplus.net/topic_reports/topic_report_15_new_zealand_moves_to_embrace_psi_re_use_and_open_data

framework for government-created PSI. In fact, the Victorian Government has become the first government to commit to using Creative Commons as the default licensing system for its public sector information.²³ Three of the largest sources of Australian government data sets—the Australian Bureau of Statistics, Geoscience Australia and data.australia.gov.au—are all licensed under CC BY.²⁴ Together these sites provide free access to all of Australia’s census data, official geoscientific information and knowledge, and other public sector data. The Australian government asserts Crown Copyright over the works it creates, and makes informational works, research reports and databases, cultural materials, and other PSI available via the CC license.

CC0

One reason for the variability of how public sector institutions make public sector data available is the diversity of the legal status of information across jurisdictions. For instance, while facts are not covered by copyright, the extent to which databases (compilations of other content which may or may not be restricted by copyright) are covered by copyright or other restrictions on extraction and reuse of their contents varies.²⁵

CC0 (read “CC Zero”) has gained wide use for releasing data and information into the public domain, not only in science but also for bibliographic, social media, and public sector data.²⁶ CC0 is a universal dedication that may be used by anyone wishing to permanently surrender the copyright and database rights they may have in a work, thereby placing it as nearly as possible into the worldwide public domain. CC0 is a legally robust instrument intended for use with any kind of work restricted by copyright or *sui generis* database rights.²⁷ Like the licenses, CC0 has the benefit of being expressed in three ways—legal code, a human readable deed, and machine-readable code that allow works distributed under CC0 to be easily found.

²³ See <http://creativecommons.org/weblog/entry/20619>

²⁴ See <http://wiki.creativecommons.org/Government#Australia>

²⁵ For more information about the scope of database rights see Van Eechoud, Mireille M. M. and Van der Wal, Brenda, *Creative Commons Licensing for Public Sector Information - Opportunities and Pitfalls* (January 2008), at 15. Available at SSRN: <http://ssrn.com/abstract=1096564>

²⁶ See http://wiki.creativecommons.org/CC0_use_for_data

²⁷ *Sui generis* database rights are described in *Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases*: “Member States shall provide for a right for the maker of a database which shows that there has been qualitatively and/or quantitatively a substantial investment in either the obtaining, verification or presentation of the contents to prevent extraction and/or re-utilization of the whole or of a substantial part, evaluated qualitatively and/or quantitatively, of the contents of that database.” Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996L0009:EN:HTML>

Laws around the world differ in terms of how works can be made freely and completely available without restriction prior to the natural expiration of copyright or *sui generis* database restrictions.²⁸ CC0 accounts for those differences by providing three different mechanisms that accomplish the same result. When the dedication function doesn't work for any reason, CC0 acts as an unconditional, irrevocable, nonexclusive royalty-free license to use the work for any purpose.²⁹ This fall back public license is similar to the Creative Commons Attribution license but with the attribution requirement waived. So, where application of CC0 as a dedication or waiver is not feasible, re-use of public sector data is still available via this alternate route. Where the fall back public license does not work for any reason, the person using CC0 undertakes not to interfere with use of the work contrary to the intention of CC0's statement of purpose.³⁰

CC0 is particularly relevant to data, and explicitly designed with data[bases] in mind. An opinion piece in *Nature* explicitly recommends open sharing and the use of CC0 to put data in the public domain.³¹ Database design, structure, and contents are covered by copyright to varying degrees in different jurisdictions, and some jurisdictions (primarily in the EU) additionally provide database rights. CC0 covers all copyright and related rights, as well as database rights, so that all such restrictions that may apply to a database are eliminated effectively placing the database and its contents in the public domain.³² While CC licenses have mechanisms for minimizing problems such as attribution stacking (see above), use of CC0 eliminates such potential friction by replacing a legal attribution requirement with normative citation practices that are understood and practiced in many disciplines. CC0 is already in use by entities to release public sector data, including the government of the Netherlands,³³ The British Library,³⁴ GlaxoSmithKline,³⁵ and many others.

²⁸ See <http://creativecommons.org/about/cc0>

²⁹ See http://wiki.creativecommons.org/CC0_FAQ

³⁰ The full legal code for CC0 is available at <http://creativecommons.org/publicdomain/zero/1.0/legalcode>

³¹ "Although it is usual practice for major public databases to make data freely available to access and use, any restrictions on use should be strongly resisted and we endorse explicit encouragement of open sharing, for example under the newly available CC0 public domain waiver of Creative Commons." Schofield, Paul, et al. *Post-publication sharing of data and tools*. *Nature* 461, 171-173 (10 September 2009). Available at <http://www.nature.com/nature/journal/v461/n7261/full/461171a.html>

³² Notwithstanding, CC0 does not affect patent or trademark rights, nor does CC0 waive any third party rights that may exist in the work (such as publicity or privacy rights). See http://wiki.creativecommons.org/CC0_FAQ

³³ See http://wiki.creativecommons.org/Case_Studies/Netherlands_Government

7. Government Licensing Frameworks and the Open Government License – a Sub-Optimal Precedent

Government licensing frameworks are becoming an increasingly popular means by which governments describe their objectives and identify the public licenses under which they will be releasing public sector information. Frameworks are distinct from licenses in one crucial respect – as the name suggests, they serve as frameworks or roadmaps for releasing PSI rather than the licenses themselves under which the PSI is to be released. For example, the New Zealand Government Open Access and Licensing (NZGOAL) framework³⁶ provides guidance for agencies to follow when releasing information intended for re-use, including a set of open principles. NZGOAL recommends application of CC licenses; it does not serve as (or suggest creation of a unique license to serve as) an intermediary license to be applied at the point of publication of PSI, a distinction that has important downstream implications for re-usability of PSI, as described below.

At least one government has elected to create a custom license under which PSI is released at the point of publication in lieu of applying standard public licenses directly to the information. The Open Government License (OGL)³⁷ was created for the United Kingdom Government Licensing Framework.^{38 39 40} The OGL will be

³⁴ See http://wiki.creativecommons.org/Case_Studies/British_Library

³⁵ See http://wiki.creativecommons.org/Case_Studies/GlaxoSmithKline

³⁶ See <http://www.e.govt.nz/policy/nzgoal>

³⁷ See <http://www.nationalarchives.gov.uk/doc/open-government-licence>

³⁸ See <http://www.nationalarchives.gov.uk/information-management/uk-gov-licensing-framework.htm>

³⁹ Nokes and Paterson describe the challenges in developing the OGL and affirm that it meets all the requirements for enabling PSI re-use, at least from the UK perspective. For example, the authors note that a license should “be interoperable with other internationally recognized standard attribution licence models such as Creative Commons and Open Data Commons; cover copyright and database rights; be more enabling by avoiding the need for re-users to register and apply for a licence; be machine readable; be simple and legally robust; [and] be sufficiently flexible so it could be adopted across the public sector.” They claim that the OGL meets these requirements because it “takes the form of a simple, but legally robust, set of terms and conditions; explains in clear terms, how people can use and re-use government and public sector information; [is] interoperable with any Creative Commons Attribution 3.0 Licence and the Open Data Commons Attribution Licence for database rights; removes the need for users to register for a licence making it non-transactional; [and] is machine readable drawing on Creative Commons vocabularies which means that the licence is presented and coded in such a way that applications and programs can access and understand the terms and conditions too.” Nokes, Judy and Graeme Paterson. *Simplifying PSI re-use in the United Kingdom: the UK Government Licensing Framework and the Open Government License*. European Public Sector Information Platform, No. 22. January 2011, at 8. Available at http://www.epsplus.net/topic_reports/topic_report_no_22_simplifying_psi_re_use_in_the_united_kin_gdom_the_uk_government_licensing_framework_and_the_open_government_licence

⁴⁰ Creative Commons and its UK affiliate provided input to the National Archives during their development of the OGL.

used when UK government information is released to the public, and contains specific terms and conditions on how PSI may be used, some of which are not found in Creative Commons licenses. For example, OGL conditions re-use on not “misleading” others or “misrepresenting” the information or its source. While these restrictions at first seem commendable and attractive to many, these standards are subjective and undefined. 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, even by well-intentioned users.⁴¹ This is just one consequence of introducing a non-standard, custom license that has the potential for undermining a stated goal of the EU Directive, however well intended.

Commendably, the OGL expressly states that it is interoperable with any Creative Commons Attribution license. Unfortunately, this interoperability statement does not fill the gap that exists between a custom license like the OGL and CC licenses. Introducing a custom license as an intermediate license, however temporary in duration before a CC license is applied, is sub-optimal, not a best practice, and should be avoided at all costs by others however appealing it may seem. First, the transition from the custom license to Creative Commons is not automatic; it depends entirely on the third parties republishing the information under Creative Commons. This reliance on downstream users carries several risks and constitutes a missed opportunity for the releasing body on many levels. Given the potentially large quantity of information to be released, there is no guarantee that all the information will migrate to a Creative Commons license and receive the benefits that accompany use of those licenses, as described in Section 3 above. Nor is there any guarantee that those applying a CC license will properly mark and tag the information with the appropriate license, attribution information, preferred source information (URL) and other important metadata. Also, the original information will be harder to locate and re-use in the first place, because it is not itself licensed under a CC license and thus does not contain the corresponding machine-readable metadata that makes it easier to find via search engines.

Frameworks such as those used by Australia⁴² and New Zealand⁴³ have advantages over custom government licenses even when those custom solutions in turn permit relicensing of PSI under public licenses. Adding another license layer leads to higher transaction costs in the sharing and re-use of PSI, contrary to the desired objectives as stated in the EU Directive, and should not become a practice duplicated by other governments. At a bare minimum, where custom

⁴¹ It is worth noting that public licenses do not obviate the need to comply with other laws. Laws everywhere protect against fraud, misrepresentation, and similar abuses to some extent or another. Additionally, existing public licenses like CC address these concerns. To the extent governments and others releasing public sector information are concerned about reputation and being association with any misuse or representation, CC licenses protect against that. See Section 3 of this report.

⁴² See <http://www.gilf.gov.au>

⁴³ See <http://www.e.govt.nz/policy/nzgoal>

licenses are seen as unavoidable for any reason—branding, political sensitivities, or other—dual licensing should be used (i.e., apply both the custom license and the Creative Commons license at the point of publication) so that downstream users may reap the benefits of the Creative Commons license from the start. Marking the work as CC-licensed at the initial departure point is key.

8. Moving beyond traditional PSI: Scope and the role of Creative Commons

Creative Commons licenses and public domain tools are being used to boost re-use of traditional public sector information. The Directive on re-use of public sector information explicitly limits the scope of PSI, exempting broadcasting, education, and cultural information and resources.⁴⁴ However, PSI has been characterized far more broadly,^{45 46 47} and there may be generic benefits in positioning cultural and

⁴⁴ The Directive excludes “documents held by public service broadcasters and their subsidiaries...documents held by educational and research establishments, such as schools, universities, archives, libraries and research facilities...[and] documents held by cultural establishments, such as museums, libraries, archives, orchestras, operas, ballets and theatres.” Chapter 1, Article 1, Subject Matter and Scope. *Directive 2003/98/EC of the European Parliament and of the Council*. Available at http://ec.europa.eu/information_society/policy/psi/docs/pdfs/directive/psi_directive_en.pdf

⁴⁵ For example, Anne Fitzgerald describes PSI as including “information and data produced by the public sector as well as materials that result from publicly-funded cultural, educational and scientific activities. It can include policy documents and reports of government departments, public registers, legislation and regulations, meteorological information, scientific research databases, statistical compilations and datasets, maps and geospatial information and numerous other data and information products produced by government for public purposes.” Fitzgerald, Anne M. *Open access and public sector information: policy developments in Australia and key jurisdictions*. Access to Public Sector Information: Law, Technology & Policy. Sydney University Press, 2010, at 2. Available at <http://eprints.qut.edu.au/31024/>

⁴⁶ OECD describes PSI as “information, including information products and services, generated, created, collected, processed, preserved, maintained, disseminated, or funded by or for the Government or public institution.” *OECD Recommendation of the Council for Enhanced Access and more Effective Reuse of Public Sector Information*, OECD Ministerial Meeting of the Future of the Internet Economy, June 2008, at 4. Available at <http://www.oecd.org/dataoecd/0/27/40826024.pdf>

⁴⁷ UNESCO describes PSI as “any information that is produced by a public sector entity...Governmental public domain information is part of a broader category of ‘public sector information’. Public authorities at the intergovernmental, national, provincial and local government levels produce vast amounts of information. For example, there are policy documents written by government departments, national archives and records, national registers (e.g. electoral roles, land transfer records, housing and land valuations, automobile registrations and business registrations). There are the minutes and records of meetings, ordinances and laws, judicial decisions, myriad scientific databases, statistical compilations, cultural surveys, results of many kinds of research projects, official reports, and innumerable other data and information products produced by government entities for public purposes.” Uhler, Paul. *Policy Guidelines for the Development and Promotion of Governmental Public Domain Information*, UNESCO, 2004, at 3. Available at <http://unesdoc.unesco.org/images/0013/001373/137363eo.pdf>

other information within the scope of the Directive.⁴⁸ Many cultural institutions are worried they will not have the financial and administrative resources to meet the mandate of making their information and materials available to the public if they are included under the umbrella of the EU Directive on re-use of PSI.⁴⁹ However, just as CC tools can be used to decrease barriers to re-use for the information now included in the Directive, these same licenses and legal tools can be used as an efficient mechanism to communicate use rights to those who wish to re-use cultural and educational content currently excluded from coverage under the EU Directive. For example, governments and other public sector institutions invest millions of dollars in scientific research and the creation of educational resources. They collect and preserve media via national libraries and archives, and support public broadcasting via public funding. Much of the cultural, educational, and research resources funded by government bodies is meant to be widely shared with the public that funds its creation. The Creative Commons infrastructure is well suited to aid in this dissemination and increase public re-use of publicly funded materials.

Creative Commons tools are already used in the dissemination and re-use of PSI for content areas outside of those laid out in the Directive. For example, CC is used for some educational content created by the United Nations,⁵⁰ is required for educational materials created with federal grant funds under a new project set up by the U.S. Department of Labor,⁵¹ and for several projects in the GLAM (Galleries, Libraries, Archives, Museums) sector.⁵² Some of the most interesting and immediately usable and consumable public sector media resides within these categories.

⁴⁸ These benefits include, “potential for increasing the economic and market value and visibility of cultural institutions; greater awareness of opportunities; potential to participate in funded cross-sectoral projects and initiatives; incentive to digitise their collections in order to meet the needs of re-users; the opportunity to begin to charge re-users in order to provide an income for the institution to cover the costs of digitisation, legal work etc.; greater harmonisation of prices and more awareness-raising on free or low cost pricing of information generated with public money; creation of innovative co-operation models between the public and private sector; [and] enhanced opportunities for cross domain research and education at all levels (schools, universities) and for all interested in European cultural heritage.” Davies, Rob. *PSI in the Cultural Sector*. European Public Sector Information Platform Topic Report No. 4, 2009, at 4. Available at http://www.epsiplus.net/topic_reports/topic_report_no_4_psi_in_the_cultural_sector

⁴⁹ Davies notes, “Respondents’ main concerns about potential cost barriers associated with coming under the scope of the Directive related to a mixture of processing and supply costs, support costs, legal (rights-related) costs and their consequent adverse effects on the sustainability of digitisation programmes and the provision of public-facing offerings.” *PSI in the Cultural Sector*, at 4.

⁵⁰ See http://wiki.creativecommons.org/Government#United_Nations

⁵¹ See <http://creativecommons.org/weblog/entry/26100>

⁵² See <http://wiki.creativecommons.org/GLAM>

9. Conclusion

Governments and public sector bodies have been diligently working to increase the amount and quality of information they make available to the public, as a means to supporting transparency, public participation, and economic activity. Public sector information is meant for wide re-use by citizens, non-profits, businesses, and government entities.

The use of Creative Commons licenses and public domain tools are ideal for the sharing of PSI because CC tools communicate and clarify information use rights and permissions in advance. The conditions afforded by CC licenses grant broad access and re-use for persons wishing to utilize PSI while ensuring that proper credit is given to the public sector institutions providing the original information. As we have seen, the CC framework satisfies several of the requirements of the Directive in whole or in part, and promotes interoperability and maximum re-use where some custom licenses may fall short.

More broadly, there is great interest in open licensing for publicly funded information, including various kinds of cultural, educational, and research data. Adopting CC can be a solution for these adjacent sectors, and CC tools are already in use within these arenas, promoting access to and re-use of a wide variety of public information, data and media .