



European Public Sector Information Platform

Topic Report No. 2015 / 06

Openness/Open Access for Public
Sector information and works — the
Creative Commons licensing model

Authors: Dr. Marinos Papadopoulos; Dr. Charalampos Bratsas

Published: June 2015

Table of Contents

Keywords	3
Abstract/ Executive Summary.....	3
1 Openness/Open Access	4
2 Directive 2003/98/EC as amended by Directive 2013/37/EU & the Creative Commons licensing model (Copyleft licensing).....	14
3 Conclusions.....	29
References	31
About the Authors	35
Copyright information.....	37

Keywords

Copyright, Copyleft, Creative Commons, Open Knowledge Foundation, Public Sector organizations, PSI Directive, Directive 2003/98/EC, Directive 2013/37/EU, Greek Law 3448/2006, Greek Law 4305/2014, Presidential Decree 28/2015, Open access and reuse of documents, data and public sector information, Openness, Open Access

Abstract/ Executive Summary

This paper focuses on the issue of Openness/Open Access implemented through Copyleft licensing such as the Creative Commons licensing model for information, data, and works produced by Public Sector organizations. The analysis provided herewith describes the CC licensing option seen under the prism of Directive 2003/98/EC as amended by Directive 2013/37/EU implemented in Greece through Laws 3448/2006, 4305/2014, and Presidential Decree 28/2015. The authors conclude that CC licensing fits in the provisions of the legal framework that transposes into national law the provisions of Directives 2003/98/EC and 2013/37/EU.

1 Openness/Open Access

Openness has been high in the agenda of Copyright reform during the last years. Copyright applies to all literary, artistic and scientific works including, of course, the works produced in Public Sector organization; thus, there is Copyright in all kind of copyrightable works either they are produced in the Public or in the Private sectors and either they are produced by individuals or group of natural or legal persons, such as newspapers, reports, books, blogs and content produced online, music, dance, paintings, sculptures, movies, scientific articles and computer software. Copyright restricts the ability of third parties to use copyrighted works without securing permission from the copyright holder. Copyright does not provide any ownership over facts, ideas and news, although a unique expression of such material would enjoy protection from copying of its unique expressive elements. Because a copyright may be bought and sold, the copyright holder may be a party other than the original author, such as a publisher. Copyright protection is thus fundamental to the system of licensing and payment for access to creative works that drive various cultural industries.

Openness implemented through the Creative Commons licensing model makes it suitable especially for the public sector information; both the Creative Commons licensing model and the public sector information meet the following access characteristics (Eechoud, van M., and Wal, van der B., 2008):¹

1. **Public access is the chief principle** because the public sector information is subject to specific regulation, and
2. **Access is not granted under cost recovery model**, i.e. going beyond charges for the cost of dissemination.

Both prerequisites are characteristics of the Creative Commons model which is based on non-discriminatory access and does not allow royalties to be charged for the dissemination of licensed works.

Openness is about the right and the ability to modify, repackage, and add value to a resource (Organisation for Economic Cooperation & Development, (2007), *ibid*, pp.32-36; Rens, A. J.,

¹ Eechoud, van M., and Wal, van der B., (2008), *Creative commons licensing for public sector information—Opportunities and pitfalls*, IVir, p.3, available at http://learn.creativecommons.org/wp-content/uploads/2008/03/cc_publicsectorinformation_report_v3.pdf, p.III [last check, April 5, 2015].

and Kahn, R., 2009; Rens, A. J., and Kahn, R., (2009).² This kind of openness blurs the traditional distinction between the consumer and the producer of resources. The term “*user-producer*” is sometimes used to highlight this blurring of roles (Rossini, C.A.A., 2010).³ In that sense, *Openness* leveraging upon open data or open access licensed works produced by legal entities or natural persons operating or working in the Public Sector should make possible the following three freedoms (Centivany, A., and Glushko, B., 2010):⁴

1. The freedom **to study a work** and apply knowledge offered from it.
2. The freedom **to redistribute copies**, in whole or in part, of a work.
3. The freedom **to make improvements or other changes**, i.e. to make adaptations, to the content of a work, and to release modified copies of it.

These freedoms are based on principles and definitions on the substance of open source, open knowledge (Rufus, P., and Jo, W., 2008)⁵ and open source/free software (The *Debian Free Software Guidelines*)⁶ as they have been shaped by *Openness* movements. The term *Openness* was coined to typify the open access to information or material resources needed for projects; openness to contributions from a diverse range of users, producers, contributors, flat hierarchies, and a fluid organisational structure. In the context of the *Budapest Open Access Initiative*, (Chan, L., et al 2002)⁷ *Openness* in the sense of *Open Access* means the free availability of literature and works of authorship, audiovisual works etc. on the public Internet, permitting any users to read, download, copy, distribute, print, search, or link to the full texts

² Organisation for Economic Cooperation & Development, (2007), *Giving Knowledge for Free: The Emergence of Open Educational Resources*, available at <http://www.oecd.org/edu/ceeri/givingknowledgeforfreetheemergenceofopeneducationalresources.htm>, pp.32-36; Rens, A. J., and Kahn, R., (2009), *Access to Knowledge in South Africa: Country Study Version 2.0*, available at <http://ssrn.com/abstract=1455623> [last check, April 5, 2015].

³ Rossini, C.A.A., (2010), *Green-Paper: The State and Challenges of OER in Brazil: From Readers to Writers?*, Berkman Center Research Publication No.2010-01, available at <http://ssrn.com/abstract=1549922> [last check, April 5, 2015].

⁴ Centivany, A., and Glushko, B., (2010), *Open Educational Resources and the University: Law, Technology, and Magical Thinking*, available at <http://ssrn.com/abstract=1680562> [last check, April 5, 2015].

⁵ Rufus, P., and Jo, W., (2008), *Open Knowledge: Promises and Challenges*, Communia Workshop 2008, available at http://www.communia-project.eu/communiafiles/ws01p_Open%20Knowledge%20Promises%20and%20Challenges.pdf [last check, April 5, 2015].

⁶ The *Debian Free Software Guidelines*, http://www.debian.org/social_contract#guidelines [last check, April 5, 2015], part of the *Debian Social Contract* available at http://www.debian.org/social_contract [last check, April 5, 2015] provided for the *Open Source Definition* and the criteria that a software license must fulfil in order to be considered as free: it must allow free redistribution and modification, ensure availability of source code, not discriminate against persons, groups or fields of endeavour (e.g. it must not prohibit use of the software for genetic research), it must not place restrictions on other software that is distributed along with the licensed software, and it must present technological neutrality as well as independence from a specific product.

⁷ Chan, L., Cuplinskas, D., Eisen, M., Friend, F., Genova, Y., Guedon, J-C., Hagemann, M., Harnad, S., Johnson, R., Kupryte, R., Manna, M., Rev, I., Segbert, M., Souza, S., Suber, P., Velterop, J., (2002), *The Budapest Open Access Initiative*, available at <http://www.soros.org/openaccess/read.shtml> [last check, April 5, 2015].

of these articles, crawl them for indexing, pass them as data to software, or use them for any other lawful purpose, without financial (Suber, P., 2012),⁸ legal (Suber, P., 2012),¹⁰ ¹¹ or technical barriers (Suber, P., 2012)¹² other than those inseparable from gaining access to the Internet itself (Suber, P., 2012).¹³ The only constraint on reproduction and distribution, and the only role for Copyright in this domain, is claimed to be to give authors control over the integrity of their work and the right to be properly acknowledged and cited. The *Budapest Open Access Initiative* (Chan, L., et al 2002)¹⁴ set *Open Access* to peer-reviewed journal literature as its goal; it was mainly focused on scientific literature and the public good that it may crop up as a consequence of ***Open Access and Openness in scientific literature*** (Suber, P., 2012).¹⁵ In the context of said initiative, *self-archiving*¹⁶ and a new generation of *open-access*

⁸ Suber, P., (2012), *Open Access*, MIT Press, available at http://mitpress.mit.edu/sites/default/files/titles/content/9780262517638_Open_Access_PDF_Version.pdf, p.4, regarding financial restraints, namely price tags for literature accessible online. *A price tag is a significant access barrier. Most works with price tags are individually affordable. But when a scholar needs to read or consult hundreds of works for one research project, or when a library must provide access for thousands of faculty and students working on tens of thousands of topics, and when the volume of new work grows explosively every year, price barriers become insurmountable. The resulting access gaps harm authors by limiting their audience and impact, harm readers by limiting what they can retrieve and read, and thereby harm research from both directions. OA removes price barriers.*

⁹ Open Access publishing that removes only financial barriers is called ‘*Gratis Open Access*’. *Gratis Open Access* removes price barriers but not permission—legal—barriers. ‘*Libre Open Access*’ is the most liberal version of Open Access which removes almost all barriers for re-use of works, thus allows re-use in ways over and above simply reading the work; while ‘*Gratis Open Access*’ allows only free reading but does not permit further types of re-use.

¹⁰ Suber, P., (2012), *ibid*, p.5 regarding legal barriers, namely Copyright; *Copyright can also be a significant access barrier. If you have access to a work for reading but want to translate it into another language, distribute copies to colleagues, copy the text for mining with sophisticated software, or reformat it for reading with new technology, then you generally need the permission of the copyright holder. That makes sense when the author wants to sell the work and when the use you have in mind could undermine sales. But for research articles we’re generally talking about authors from the special tribe who want to share their work as widely as possible. Even these authors, however, tend to transfer their copyrights to intermediaries—publishers—who want to sell their work. As a result, users may be hampered in their research by barriers erected to serve intermediaries rather than authors. In addition, replacing user freedom with permission-seeking harms research authors by limiting the usefulness of their work, harms research readers by limiting the uses they may make of works even when they have access, and thereby harms research from both directions. OA removes these permission barriers.*

¹¹ Open Access publishing that removes financial as well as some permission—legal—barriers is called ‘*Libre Open Access*’.

¹² For Suber, Open Access is about bringing access to everyone with an internet connection who wants access, regardless of their professions or purposes. There’s no doubt that Open Access isn’t universal access. Even when we succeed at removing price and permission barriers, four other kinds of access barrier might remain in place: 1) *Filtering and censorship* barriers: Many schools, employers, ISPs, and governments want to limit what users can see. 2) *Language* barriers: Most online literature is in English, or another single language, and machine translation is still very weak. 3) *Handicap access* barriers: Most websites are not yet as accessible to handicapped users as they should be. 4) *Connectivity* barriers: The digital divide keeps billions of people offline, including millions of scholars, and impedes millions of others with slow, flaky, or low-bandwidth internet connections. See, Suber, P., (2012), *ibid*, pp.26-27.

¹³ Suber refers to Open Access literature as ‘*barrier-free*’ access; however he acknowledges that said reference risks being conceived as an emphasis to the negative rather than positive aspects of Open Access. See, Suber, P., (2012), *ibid*, p.5 et seq.

¹⁴ Chan, L., et al (2002), *ibid*.

¹⁵ For the Budapest Open Access Initiative “*An old tradition and a new technology have converged to make possible an unprecedented public good. The old tradition is the willingness of scientists and scholars to publish the fruits of their research in scholarly journals without payment. . . . The new technology is the internet.*” See Suber, P., (2012), *ibid*, p.19.

*journals*¹⁷ are the ways to attain the goal of peer-reviewed journal literature and *Openness* through it. For the Budapest Open Access Initiative *self-archiving* and *open-access journals* are not only direct and effective means to this end, they are within the reach of scholars themselves, immediately, and need not wait on changes brought about by markets or legislation.

The *Bethesda Statement on Open Access* (Brown, P., et al 2003)¹⁸ and the *Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities* (Gruss, P., 2003)¹⁹ seem to agree that for a work to be considered for *Open Access*, the Copyright holder must consent in advance to let users copy, use, distribute, transmit and display the work publicly and to make and distribute derivative works, in any digital medium for any responsible purpose, subject to proper attribution of authorship. With *Open Access* individuals can take projects in their own direction without necessarily hindering the progress of others. The Bethesda Statement reinforces the emphasis on barrier-free dissemination of scientific works and expressly details the types of re-use that *Open Access* permits, including the making of derivative works, and the rights/licensing conditions that apply. The Bethesda Statement specifies what an *Open Access publication* is and which rights the owners or creators of the work grant to users through the attachment of particular licences. For the *Bethesda Statement on Open Access* an open access publication is one that meets the following two requirements:

First, **the author(s) and copyright holder(s) grant(s) to all users a free, irrevocable, worldwide, perpetual right of access** to, and a license to copy, use, distribute, transmit and display the work publicly and to make and distribute derivative works, in any digital medium for any

¹⁶ For the Budapest Open Access Initiative *Self-Archiving* is a means for scholars to deposit their refereed journal articles in open electronic archives. When self-archiving archives conform to standards created by the Open Archives Initiative, then search engines and other tools can treat the separate archives as one. Users then need not know which archives exist or where they are located in order to find and make use of their contents.

¹⁷ For the Budapest Open Access Initiative *Open-Access Journals* is a means for scholars to launch a new generation of journals committed to open access, and to help existing journals that elect to make the transition to open access. Because journal articles should be disseminated as widely as possible, these new journals will no longer invoke copyright to restrict access to and use of the material they publish. Instead they will use copyright and other tools to ensure permanent open access to all the articles they publish. Because price is a barrier to access, these new journals will not charge subscription or access fees, and will turn to other methods for covering their expenses. There are many alternative sources of funds for this purpose, including the foundations and governments that fund research, the universities and laboratories that employ researchers, endowments set up by discipline or institution, friends of the cause of open access, profits from the sale of add-ons to the basic texts, funds freed up by the demise or cancellation of journals charging traditional subscription or access fees, or even contributions from the researchers themselves. There is no need to favor one of these solutions over the others for all disciplines or nations, and no need to stop looking for other, creative alternatives.

¹⁸ Brown, P., Cabell, D., Chakravarti, A., Cohen, B., Delamoth, T., Eisen, M., Grivell, L., Guedon, J-C., Hawley, S., Johnson, R., Kirschner, M., Lipman, D., Lutzker, A., Marincola, E., Roberts, R., Rubin, G., Schloegl, R., Siegel, V., So, A., Suber, P., Varmus, H., Velterop, J., Walport, M., Watson, L., (2003), *The Bethesda Statement on Open Access*, available at <http://www.earlham.edu/~peters/fos/bethesda.htm> [last check, April 5, 2015].

¹⁹ Gruss, P., (2003), *The Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities*, The Max Planck Society, available at <http://oa.mpg.de/berlin-prozess/berliner-erklarung/> [last check, April 5, 2015].

responsible purpose, subject to proper attribution of authorship, as well as the right to make small numbers of printed copies for their personal use.

And second, a complete version of the work and all supplemental materials, including a copy of the permission as stated above, in a suitable standard electronic format is deposited immediately upon initial **publication in at least one online repository** that is supported by an academic institution, scholarly society, government agency, or other well-established organization that seeks to enable open access, unrestricted distribution, interoperability, and long-term archiving.

The *Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities* is essentially the same as the *Bethesda Statement on Open Access* but it includes an additional recommendation for research institutions: it requires for researchers to deposit a copy of all their published articles in an *Open Access* repository and it encourages researchers to publish their research articles in open access journals where a suitable journal exists (and provides the support to enable that to happen).²⁰

All three definitions of *Open Access* given by the Budapest, the Bethesda, and the Berlin statements—also known as the BBB definition on *Open Access*—upon it allow at least one limit on user freedom: an **obligation to attribute the work to the author**. The purpose of *Open Access* is to remove barriers to all legitimate scholarly uses for scholarly literature, but there's no legitimate scholarly purpose in suppressing attribution to the texts subject to *Open Access* publication and use (Suber, P., 2012).²¹

The *Bethesda Statement on Open Access*²² and the *Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities*²³ seem to agree that for a work to be considered for *Open Access*, the copyright holder must consent in advance to let users copy, use, distribute, transmit and display the work publicly and to make and distribute derivative works, in any digital medium for any responsible purpose, subject to proper attribution of authorship. With *Open Access* individuals can take projects in their own direction without necessarily hindering the progress of others. *Openness* is being put forward to facilitate the growth of the open

²⁰ Although there have been attempts to define Open Access after the Budapest, Bethesda, and Berlin declaration about it, these three (Budapest, Bethesda and Berlin declarations), usually used together and referred to as the **BBB definition of Open Access**, have become established as the working definition for Open Access.

²¹ See Suber, P., (2012), *ibid*, p.8.

²² See the *Bethesda Statement on Open Access* at <http://legacy.earlham.edu/~peters/fos/bethesda.htm> [last check, April 5, 2015].

²³ See the *Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities* at <http://openaccess.mpg.de/> [last check, April 5, 2015].

source and free software programming communities, and may involve the consumption and production of free content.²⁴ The appeal of *Openness* has become so great that it is sometimes difficult to recognize that limits on *Openness* are not only necessary but desirable. The virtues of an open environment are undeniable; what is more difficult is negotiating the proper levels of *Openness* for a given realm of online life (Bollier, 2008).²⁵

The sense for movement of *Openness* was first understood according to Professor Yochai Benkler, at a conference at Yale University that Professor James Boyle (Boyle, J., 1997)²⁶ organized in April 1999, which was already planned as a movement-building event. That conference, “*Private Censorship/Perfect Choice*” (Yale Bulletin & Calendar, 1999)²⁷ looked at the threats to free speech on the Web and how the public might resist. It took inspiration from John Perry Barlow’s 1996 manifesto “*A Declaration of the Independence of Cyberspace*” (Barlow, J. P.).²⁸ The stirrings of a movement were evident in May 2000, when Yochai Benkler convened a small conference of influential intellectual property scholars at New York University Law School on “*A Free Information Ecology in the Digital Environment*”. This was followed in November 2001 by a large gathering at Duke Law School, the “*Conference on the Public Domain*,” the first major conference ever held on the public domain (Duke Law School, 2001).²⁹ It attracted several hundred people and permanently rescued the public domain from the netherworld of “*non-property*.” People from diverse corners of legal scholarship, activism, journalism, and philanthropy found each other and began to re-envision their work in a larger, shared framework (Bollier, 2008).³⁰

The *Openness/Open Access* movement cropped up as a reaction of academia in the increasingly rising pricing of scientific publications and subscriptions controlled by publishers and distributors that intervene in the process of scientific knowledge dissemination and stifle

²⁴ See Wikipedia, *Openness*, available at <http://en.wikipedia.org/wiki/Openness> [last check, April 5, 2015].

²⁵ Bollier, D., (2008), *Viral Spiral: How the Commoners Built a Digital Republic of their Own*, The New York Press, p.40, available at URL: <http://www.viralspiral.cc/download-book> [last check, April 5, 2015].

²⁶ See Boyle, J., (1997), *A Politics of Intellectual Property: Environmentalism For the Net?* available at <http://law.duke.edu/boylesite/intprop.htm> [last check, April 5, 2015], was an influential piece that James Boyle wrote in 1997, calling for the equivalent of an environmental movement to protect the openness and freedom of the Internet.

²⁷ See Yale Bulletin & Calendar, *Private Censorship and Perfect Choice* Conference to explore Speech and Regulation on the Net, April 5-12, 1999 Volume 27, Number 27 available at <http://www.yale.edu/opa/arc-ycb/v27.n27/story3.html> [last check, April 5, 2015].

²⁸ Barlow, J. P., *A Declaration of the Independence of Cyberspace*, available at <https://homes.eff.org/~barlow/Declaration-Final.html> [last check, April 5, 2015].

²⁹ See Duke Law School supported by the Center for the Public Domain, *Conference on the Public Domain*, November 9—11, 2001, available at <http://law.duke.edu/pd/> [last check, April 5, 2015].

³⁰ Bollier, D., (2008), *ibid*, p.67.

competition in scientific publishing and distribution (Lessig, L., 2012).³¹ By the time (Suber, 2009)³² *Open Access* started to be a central point of discussion in the agenda of academic institutions, prices had risen many times faster than inflation since 1986 (Suber, 2007; Kyrillidou and Young, 2002; the same, 2003; the same, 2005).³³ Fortuitously, just as journal prices were becoming unbearable, the Internet emerged to offer an alternative.

The Internet has played a catalytic role in the evolution of the *Openness/Open Access* movement because of the radical changes it has imposed in the process of authoring, publishing, distributing, and pricing content via the Internet networked public sphere. The evolution of the Web into Web 2.0³⁴ and Web 3.0³⁵ has enabled more interaction and participation among users and empowered them to undertake action both as readers and authors, publishers and distributors, in the process of production and consumption of knowledge. Since the beginning of the Internet era, *Openness* of scientific knowledge, art, and culture has been fostered and cultivated in way that indicates that *Openness* or *Open Access* is somewhat intrinsically connected to the hierarchical anarchy of the Net. While *Open Access* was born because of the need to remove price barriers (subscriptions, licensing fees, pay-per-view fees), it was soon realized that its survivability was subject to the need to remove

³¹ Lessig, L., (2012), Answers to Written Questions. The Senate Judiciary Committee, “*The Microsoft Settlement: A Look to the Future*”, available at http://www.judiciary.senate.gov/imo/media/doc/lessig_testimony_12_12_01.pdf [last check, April 5, 2015].

³² See Suber, P., (2009), *Timeline of the Open Access Movement*, revised February 9, 2009, available at <http://legacy.earlham.edu/~peters/fos/timeline.htm> [last check, April 5, 2015].

³³ See Suber, S. (2007), *Open Access Overview, Focusing on open access to peer-reviewed research articles and their preprints*, revised June 19, 2007, available at <http://www.earlham.edu/~peters/fos/overview.htm> [last check, April 5, 2015]. See also Kyrillidou, M., and Young, M., (2002), *ARL Statistics 2001-2002*, Association of Research Libraries; the same, (2003), *ARL Statistics 2002-03*, Association of Research Libraries; the same, (2005), *ARL Statistics 2004-05*, Association of Research Libraries, available through <http://www.arl.org/publications-resources/search-publications/search/summary> [last check, April 5, 2015].

³⁴ *Web 2.0* is associated with web applications that facilitate participatory information sharing, interoperability, user-centred design, and collaboration on the World Wide Web. A Web 2.0 site allows users to interact and collaborate with each other in a social media dialogue as creators (prosumers, i.e. producers + consumers) of user-generated content in a virtual community, in contrast to websites where users (consumers) are limited to the passive viewing of content that was created for them. The term ‘prosumers’ was coined in 1980 by Alvin Toffler to describe the dual role of a producer-consumers, i.e. generating content online as producer and at the same time consume content that other have produced. Examples of Web 2.0 include social networking sites, blogs, wikis, video sharing sites, hosted services, web applications, mashups and folksonomies. See Toffler, A., (1980), *The Third Wave*, New York, bantam Books; see, also, Tapscott, D., and Williams A., D., (2006), *Wikinomics: How Mass Collaboration Changes Everything*, Portfolio, who coined the related term ‘prosumption’, i.e. production + consumption, to refer to the creation of products and services by the same people who will ultimately use them.

³⁵ *Web 3.0* is associated with the Semantic Web. The Semantic Web is a collaborative movement led by the international standards content in web pages, the Semantic Web aims at converting the current web body, the World Wide Web Consortium (W3C). The standard promotes common data formats on the World Wide Web. By encouraging the inclusion of semantic dominated by unstructured and semi-structured documents into a “web of data”. The Semantic Web stack builds on the W3C’s Resource Description Framework (RDF). The Semantic Web provides a common framework that allows data to be shared and reused across application, enterprise, and community boundaries. The term “Semantic Web” was coined by Tim Berners-Lee for a web of data that can be processed by machines.

permission barriers as well (most copyright and licensing restrictions).

Major *Openness* or *Open Access* opinion-leading organizations include the *Free Software Foundation*³⁶ and the *Open Source Initiative*³⁷ that have set the terms of “*Free/Libre and Open Source Software*” (Stallman, R.)³⁸, as well as the definitions of “*Free Cultural Works*”³⁹ and “*Open Knowledge*”⁴⁰ which are a source of inspiration toward the definition of *Openness* principles in the Creative Commons licenses (Haughey, M., 2003).⁴¹ There’s also the *Open Knowledge Foundation*⁴² which stressed the importance for the adoption of the *Panton Principles for Open Data in Science*⁴³ as well as the Open Knowledge Foundation’s *Principles on*

³⁶ The *Free Software Definition* contains *four essential freedoms* and provides interpretations of what they include and do not include; see more at <http://www.gnu.org/philosophy/free-sw.html> [last check, April 5, 2015]; see, also, at <http://www.gnu.org/philosophy/open-source-misses-the-point.html> [last check, April 5, 2015].

³⁷ See the *Open Source Definition* criteria available at <http://www.opensource.org/docs/osd> [last check, April 5, 2015] and a commented version available at <http://www.opensource.org/docs/definition.php> [last check, April 5, 2015].

³⁸ Supporters of free software regard the idea of free/libre software as part of their ethical and social ideas of respecting other people’s freedom and the principle of solidarity. As of 1998, supporters of open source software have been riding on the free/libre software ideology with the intention of improving the business chances of free software. See more at Stallman, R., (not dated), *Why Open Source Misses the Point of Free Software*, available at <http://www.gnu.org/philosophy/open-source-misses-the-point.html> [last check, April 5, 2015]; the same, (non-dated), *Why Free Software is better than Open Source*, available at <http://www.gnu.org/philosophy/free-software-for-freedom.html> [last check, April 5, 2015]; see, also, Jaeger T., Metzger, A., (2006), *Open Source Software*, Beck Juristischer Verlag, p.20.

³⁹ See the definition of *Free Cultural Works* available at <http://freedomdefined.org/Definition> [last check, April 5, 2015]. The definition was created by a group of people that was initiated by Erik Möller, a free software developer, author and long-time Wikimedian, and joined by Hill, Mia Garlick, General Counsel of Creative Commons, and Angela Beesley, elected trustee of the Wikimedia Foundation. The original draft of the definition received input by Richard Stallman and Lawrence Lessig and it was released for open editing in May 2006.

⁴⁰ See the *Open Knowledge Definition*, addressing not only works but also data and government information, available at <http://opendefinition.org/> [last check, April 5, 2015]. The scope of the definition is content such as music, films, books, data be it scientific, historical, geographic or otherwise, and government and other administrative information. Software is excluded because it is already adequately addressed by previous work of other organizations. The definition of Open Knowledge closely follows that of the Open Source Definition. The first license for open content other than software was developed by David Wiley in 1998. By that time Wiley, while a graduate student in educational technology at Brigham Young University developed the first free license specifically for content closely following the model of the GPL GNU license. He coined the term *open content* and founded the *Open Content Project*; see Open Content Project at <http://opencontent.org/> [last check, April 5, 2015], and the definition of *open* in Open Content at <http://opencontent.org/definition/> [last check, April 5, 2015]. See, also, *The Three Meanings of Open* by the Open Knowledge Foundation, available at http://okfn.org/three_meanings_of_open/ [last check, April 5, 2015], as well as the *Open Software Service* definition available at <http://opendefinition.org/software-service/> [last check, April 5, 2015] which pertains to online services which might be open like Wikipedia, or not like Google Maps.

⁴¹ In June 2003 in a Creative Commons press release David Wiley declared: *When I saw the Creative Commons team, and all their expertise, I saw that they ‘got it.’ I slowly came to the somewhat painful realization that the best thing I could do for the community was to close the Open Content project and encourage people to adopt the Creative Commons licenses.* See Haughey, M., (2003), *Creative Commons Welcomes David Wiley as Educational Use License Project Lead*, Press Release June 23, 2003, available at <http://creativecommons.org/press-releases/entry/3733> [last check, April 5, 2015]. Wiley also announced that Open Content Project is officially closed. Wiley opted for closing Open Content because he was confident that Creative Commons is doing a better job of providing licensing options which will stand up in court. He announced that the Open Content License and Open Publication License would remain online for archival purposes in their current locations. However, no future development would occur on the licenses themselves.

⁴² *Open Knowledge Foundation Greece (OKF GRE)* is the official Chapter of Open Knowledge Foundation—Open Knowledge in Greece. See OKF GRE at <http://okfn.gr/> [last check, April 5, 2015].

⁴³ See the *Panton Principles for Open Data in Science* available at <http://pantonprinciples.org/> [last check, April 5, 2015].

*Open Bibliographic Data*⁴⁴ which are leveraged upon in the creation of Open Knowledge Foundation's *Open Database License (ODbL)*⁴⁵ which are all of great usefulness to works produced either by legal entities or natural persons no matter whether they are operating and producing in the private or in the public sectors.

ODbL was included in the set of *Open Data Commons* licenses and dedications developed by *Open Knowledge Foundation* with the aim to create a licensing suit focused on the protection of databases in the EU legal environment. The Open Data Commons licensing suit includes the *Open Data Commons Attribution license (ODC-By)* which allows licensees to copy, distribute and use the database, to produce works from it and to modify, transform and build upon it for any purpose.⁴⁶ If content is generated from the data that content should include or accompany a notice explaining that the database was used in its creation. If the database is used substantially to create a new database or collection of databases, the licence URL or text and copyright/database right notices must be distributed with the new database or collection. The *ODC-By* is a simplified version of the *ODbL*. It grants the same rights, and contains most of the same restrictions, with the exception that it does contain neither the share-alike requirement nor the prohibition against including the database with technological protection measures. This makes it a very open license, and as long as the notices are kept intact, it is very easy to comply with.

The project for the creation of *ODbL* was started as an independent work by Jordan Hatcher and Prof. Charlotte Waelde in 2007 and was funded by the software company Talis in an effort to create the successor to the Talis Community License. The development of *ODbL* finally replaced the *Talis Community License*.⁴⁷ This first effort produced the *ODbL*. The spark for the *ODbL* creation was the realization that the Creative Commons licensing suit, at least until version 3.0 of CC licenses, was not covering the database right specifically which the *ODbL* creators believed left some institutions in Europe at potential risk due to market failure as they could license only their Copyright and not the database *sui generis* right. It was therefore felt

⁴⁴ See Open Knowledge Foundation's *Principles on Open Bibliographic Data* available at <http://openbiblio.net/files/2011/01/POBD.pdf> [last check, April 5, 2015]. See, also, *Discovery Open Metadata Principles* promoted by the Joint Information Systems Committee in the UK, available at http://discovery.ac.uk/files/pdf/Discovery_Open_Metadata_Principles.pdf [last check, April 5, 2015].

⁴⁵ See *ODC ODbL v.1.0 Greek* version available at <http://opendatacommons.gr/> [last check, April 5, 2015] created by Marinou Papadopoulou, legal lead & creator, Petros Tanos, creator, and Charalampos Bratsas, project lead for the Open Knowledge Foundation Greece.

⁴⁶ See the *ODC Attribution* license available at <http://opendatacommons.org/licenses/by/> [last check, April 5, 2015].

⁴⁷ See *Talis Community License* at <http://web.archive.org/web/20130923083859/http://tdnarchive.capita-libraries.co.uk/tcl> [last check, April 5, 2015]; for the replacement of *Talis Community License* by *ODbL* see <http://opendefinition.org/licenses/tcl/> [last check, April 5, 2015].

that a database specific license was needed (Guadamuz, A., Cabell, D., non-dated).⁴⁸ **The ODbL license** grants the following rights:

1. **Extraction and re-utilization** of the whole or a substantial part of the contents.
2. **Creation of a derivative database**; e.g. this includes any translation, adaptation, arrangement, modification, or any other alteration of the database or of a substantial part of the contents.
3. **Inclusion of the database in unmodified form as part of a collection** of independent databases.
4. Creation of temporary or permanent **reproductions** by any means and in any form, in whole or in part.
5. **Distribution, communication, display, lending, making available, or performance** to the public by any means and in any form.

In exchange, the user must fulfil several conditions. These include **the obligation to keep copyright and database notices intact, and this being a share-alike license, the user must release any derivatives under the terms of the ODbL**. The user is also forbidden from releasing derivatives imposing any form of technological protection measure. Most of the other provisions in the license are similar to those found in CC licenses.

⁴⁸ Guadamuz, A., Cabell, D., (non-dated), *Data mining White Paper: Analysis of UK/EU law on data mining in higher education institutions*, pp.18-19, available at <http://www.technollama.co.uk/wp-content/uploads/2013/04/Data-Mining-Paper.pdf> [last check, April 5, 2015].

2 Directive 2003/98/EC as amended by Directive 2013/37/EU & the Creative Commons licensing model (Copyleft licensing)

The issue of implementation of Openness/Open Access in the works or data produced by the Public Sector organizations or individuals producing copyrighted works in the framework of their duties and professional life in the Public Sector is relevant to the provisions of the so called PSI Directive as it was first passed in 2003 and later amended in 2013. Directive 2003/98/EC on the re-use of Public Sector Information known as the PSI Directive⁴⁹ harmonises the rules and practices relating to the exploitation of public sector information. According to the Preamble 9 of said Directive,⁵⁰ “*public sector bodies should be encouraged to make available for re-use any documents held by them.*” However, the decision whether or not to authorize re-use remains with the EU Member States or the public sector body concerned.⁵¹ As of June 2013 a revision of Directive 2003/98/EC has been adopted by the European legislator through Directive 2013/37/EU of June 26, 2013.⁵² This amendment of the PSI Directive through Directive 2013/37/EU has made permitting re-use of existing and generally accessible documents that public sector bodies create, collect or hold as mandatory in most cases.⁵³ Directive 2013/37/EU has introduced the principle that all public information, i.e. all information held by the public sector bodies, which is publicly accessible under national law is

⁴⁹ *Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information*, OJ 2003 L345, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:345:0090:0096:EN:PDF> [last check, April 5, 2015]; see also, Kalfin, I., (2012), *Amendment of Directive 2003/98/EC on re-use of public sector information, Proposal for a directive COM(2011)0877-C7-0502/2011-2011/0430(COD)*, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bCOMPARL%2bPE-496.525%2b01%2bDOC%2bPDF%2bV0%2f%2fEN> [last check, April 5, 2015]; the same, (2012), *Draft Report on the proposal for a directive of the European Parliament and of the Council on amending directive 2003/98/EC on re-use of public sector information (COM(2011)0877-C7-0502/2011-2011/0430(COD))*, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bCOMPARL%2bPE-492.922%2b01%2bDOC%2bPDF%2bV0%2f%2fEN> [last check, April 5, 2015].

⁵⁰ The PSI Directive has been implemented in Greece through Law 3448/2006 on the re-use of public sector information and the regulation of issues within the competency of the Ministry of Interior, Public Administration and Decentralisation. Law 3448/2006 has been amended with article 11 of Law 3613/2007.

⁵¹ See Recital 7 of Directive 2013/37/EU.

⁵² See *Directive 2013/37/EU of the European Parliament and of the Council of June 26, 2013, amending Directive 2003/98/EC on the re-use of public sector information* available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:175:0001:0008:EN:PDF> [last check, July 1, 2015] which has been implemented in the Greek legal system through law 4305/2014 titled *Open access and reuse of documents, data and public sector information, amendment of law 3448/2006 (A' 57), adapting national legislation to the provisions of Directive 2013/37/EU of the European Parliament and of the Council, further strengthening of transparency, regulation of matters related to Introductory Examination of ESDDA, and other provisions.*

⁵³ See article 2 of Law 4305/2014 which amended article 2 of Law 3448/2006 implementing Directive 2013/37/EU article 3(1); see article 6§1 of Presidential Decree 28/2015 on Codification of provisions on access to public documents and records.

reusable for both commercial and non-commercial purposes.⁵⁴ Exceptions from the scope of the amended PSI Directive apply in certain cases, including on grounds of data protection⁵⁵ and copyright law.^{56 57} Additionally, the amended PSI Directive extends the PSI Directive’s scope to cover public sector information held by public sector museums, libraries (including university libraries) and archives where they allow their information to be made available for re-use. It also introduces the principle that charges for re-use should be set at marginal cost, with exceptions in certain circumstances.⁵⁸ And finally, the amended PSI Directive introduces a means of redress operated by an impartial review body with the power to make binding decisions on public sector bodies.⁵⁹

The PSI Directive on the re-use of public sector information is inspired by the U.S. legal framework for re-use of federal government information (European Commission, 1998).⁶⁰ The U.S. legal framework combines an absence of Copyright in federal information and an active dissemination policy, encouraging the private sector to exploit public sector information commercially. In 1989 the European Commission published “*Guidelines for improving the synergy between the public and private sectors in the information market*” (Commission of the European Communities, 1989).⁶¹ These aimed at improving access to public sector data for commercial re-use: public sector bodies should regularly review which of their data are suitable for re-use, publicize their availability, and as far as possible develop harmonized licenses and pricing regimes (Commission of the European Communities, 1989).⁶² The general idea of these guidelines has been taken forward in the PSI Directive as of 2003 and enhanced

⁵⁴ See Directive 2013/37/EU article 3(1).

⁵⁵ See Recital 11 of Directive 2013/37/EU; see article 3§5 of Law 4305/2014 which amended article 3§2 of Law 3448/2006.

⁵⁶ See Recital 12 of Directive 2013/37/EU; the provisions of PSI Directive *should be without prejudice to the rights, including economic and moral rights that employees of public sector bodies may enjoy under national rules*. See, also, Recital 34 of Directive 2013/37/EU according to which *This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, including the protection of personal data (Article 8) and the right to property (Article 17). Nothing in this Directive should be interpreted or implemented in a manner that is inconsistent with the European Convention for the Protection of Human Rights and Fundamental Freedoms*.

⁵⁷ See article 7 of Presidential Decree 28/2015.

⁵⁸ See Recitals 22, 23, and 25; see also amended article 6(1) of Directive 2013/37/EU.

⁵⁹ See Recital 28, and amended article 4(3)(4) of Directive 2013/37/EU.

⁶⁰ See the European Commission, (1998), *Public Sector Information: A key resource for Europe, Green Paper on Public Sector Information in the Information Society*, COM (1998)585, available at http://ftp.cordis.europa.eu/pub/econtent/docs/gp_en.pdf [last check, April 5, 2015]; Dulong de Rosnay, M., (2010), *ibid*, pp.59-69.

⁶¹ Commission of the European Communities, (1989), *Guidelines for improving the synergy between the public and private sectors in the information market*, Directorate-General for Telecommunications, Information Industries and Innovation, available at http://ec.europa.eu/information_society/policy/psi/docs/pdfs/brochure/1989_public_sector_guidelines_en.pdf [last check, April 5, 2015].

⁶² Commission of the European Communities, (1989), *ibid*, pp.10-12.

through the amendment of Directive 2013/37/EU. The 2003 PSI Directive establishes only minimum standards, that is to say Member States may opt for a more liberal re-use regime (Commission Decision of December 12, 2011).⁶³ An important aim of the 2003 PSI Directive is to help create a level playing field in situation where public sector bodies compete, e.g. through commercial branches, with private sector actors on the basis of information produced in the context of public tasks (Directive 2003/98/EC).⁶⁴ At the same time, the aim of the 2003 PSI Directive and of all EC documents issued as a consequence of it regarding public sector information is to stimulate content markets (European Commission, 2011; Uhler, P., 2010)⁶⁵ within the EU by making public sector information available on transparent, effective and non-discriminatory terms (Commission Decision of December 12, 2011).⁶⁶

The 2003 PSI Directive and its amendment through Directive 2013/37/EU apply to ‘documents’ held by public sector bodies only (Directive 2003/98/EC)⁶⁷ (Greek Law 3448/2006).⁶⁸ A document is any part of content whatever its medium, e.g. written on paper or stored in electronic form or as a sound, visual or audiovisual recording (Directive 2003/98/EC; Commission Decision of December 12, 2011)⁶⁹ (Greek Law 3448/2006⁷⁰ and Presidential

⁶³ Commission Decision of December 12, 2011, *2011/833/EU, on the reuse of Commission documents*, L.330/39, Preamble 6, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:330:0039:0042:EN:PDF> [last check, April 5, 2015].

⁶⁴ See Preambles 5, 6 of the PSI Directive.

⁶⁵ See European Commission, (2011), *Proposal for a Directive of the European Parliament and the Council, Amending Directive 2003/98/EC on re-use of public sector information*, COM(2011)877 Final, p.3, available at http://ec.europa.eu/information_society/policy/psi/docs/pdfs/directive_proposal/2012/en.pdf [last check, April 5, 2015], according to which *A recent study estimates the total market for public sector information in 2008 at € 28 billion across the Union. The same study indicates that the overall economic gains from further opening up public sector information by allowing easy access are around € 40 billion a year for the EU27. The total direct and indirect economic gains from PSI applications and use across the whole EU27 economy would be in the order of € 140 billion annually.* See, also, Uhler, P., (2010), *Measuring the Economic and Social Benefits and Costs of Public Sector Information Online: A Review of the Literature and Future*, First Communia Conference, available in audio at http://www.communia-project.eu/communiafiles/conf2008_Paul%20Uhlir.mp3 [last check, April 5, 2015].

⁶⁶ See Commission Decision of December 12, 2011, *ibid*, Preamble 3.

⁶⁷ See Preamble 10 of the 2003 PSI Directive according to which the definitions of ‘public sector body’ and ‘body governed by public law’ are taken from the public procurement Directives 92/50/EEC OJL 209, 24.7.1992, p.1., Directive as last amended by Commission Directive 2001/78/EC OJL 285, 29.10.2001, p.1, 93/36/EEC OJL 199, 9.8.1993, p.1, Directive as last amended by Commission Directive 2001/78/EC, and 93/37/EEC OJL 199, 9.8.1993, p.54, Directive as last amended by Commission Directive 2001/78/EC, and 98/4/EC OJL 101, 1.4.1998, p.1. Public undertakings are not covered by these definitions.

⁶⁸ For the meaning of ‘Public Sector Bodies’ in the implementing instrument of PSI Directive in Greece see article 4§1 of L.3448/2006 according to which *Public sector bodies means the state, central or local authorities, first and second tier local authorities, other legal entities governed by public law in accordance with paragraph 2 of this Article and associations formed by one or several such bodies governed by public law.* And in §2 of the same article the law posits that *Body governed by public law means any body: a) established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character. b) having legal personality, and c) financed, for the most part, by the State, regional or local authorities (O.T.A.) or other bodies governed by public law, or subject to management supervision by those bodies or having an administrative, managerial or supervisory organ, more than half of whose members are appointed by the State, regional and local authorities (O.T.A.) or by other bodies governed by public law.*

⁶⁹ See article 3(a) & (b) of the 2003 PSI Directive; see article 3§1(a) & (b) of Commission Decision of December 12, 2011, *ibid*.

Decree 28/2015⁷¹). Documents in which third parties own intellectual property are outside the scope of the Directive (Directive 2003/98/EC; Commission Decision of December 12, 2011; Greek Law 3448/2006).⁷² Otherwise, the 2003 PSI Directive applies to content regardless of its status under Copyright or other intellectual property. The 2003 PSI Directive does not affect the existence or ownership of those rights of public sector bodies. Nor does it limit the exercise of these rights, that is, beyond the express provisions on licensing of said Directive (Directive 2003/98/EC; Greek Law 3448/2006).⁷³ Considering the broad scope of Copyright and database protection, prior permission will be required for the re-use of much public sector information (Commission Decision of December 12, 2011).⁷⁴

According to the Preamble of the 2003 PSI Directive, public sector bodies should exercise their Copyright in a way that facilitates re-use (Directive 2003/98/EC).⁷⁵ One could argue that to act within the spirit of the 2003 PSI Directive and its amendment through the 2013 PSI Directive public authorities should not invoke their Copyright to prevent access (just as they should not invoke Copyright to refuse access under freedom of information law) (Dulong de Rosnay, M., 2010).⁷⁶ But this issue, as a matter of principle, the 2003 PSI Directive leaves it to the EU

⁷⁰ For the meaning of ‘Documents for re-use’ in the implementing instrument of 2003 PSI Directive in Greece see article 4§3 of L.3448/2006 according to which *Document for re-use* “means any document which is issued or held by public sector bodies, especially surveys, minutes, statistical data, circulars, replies by administrative authorities, opinions, decisions, reports, whatever the medium (i.e. written on paper, stored in electronic form or as a sound, visual or audiovisual recording), as well as any part of such document. For the implementation of the provisions of this law, “documents” also means private documents which are held in public sector bodies’ records and were used or taken into consideration so as to define their administrative purpose. See, also, for the meaning of ‘reuse’ article 3§2 of Commission Decision of December 12, 2011, *ibid*, according to which *reuse means the use of documents by persons or legal entities of documents, for commercial or non-commercial purposes other than the initial purpose for which the documents were produced. The exchange of documents between the Commission and other public sector bodies which use these documents purely in the pursuit of their public tasks does not constitute reuse.*

⁷¹ See article 8§3 of Presidential Decree 28/2015 which describes the provisions of article 4 of L.4305/2014 that amended article 4 of L.3448/2006.

⁷² See article 2(b) of the 2003 PSI Directive; see Preamble 22 of the 2003 PSI Directive; see article 2(b) of Commission Decision of December 12, 2011, *ibid*. See article 3§1(b) of L.3448/2006. See, also, European Commission, (2011), *ibid*, COM(2011)877 Final, Preamble 7.

⁷³ See Preamble 22 of the PSI Directive. See article 3 of L.3448/2006.

⁷⁴ See article 4 of Commission Decision of December 12, 2011, *ibid*, according to which for the reuse of Commission documents, all said documents shall be available without the need to make individual application for said reuse, unless it is provided otherwise in accordance with article 7 of Commission Decision of December 12, 2011, *ibid*. Article 7§1 of said Commission Decision posits that *Where an individual application for reuse is necessary, the Commission services shall clearly indicate this in the relevant document or notice pointing to it and provide an address to which the application is to be submitted.* Also, article 7§4 rules that *Where an application for reuse of a document is refused, the Commission service or the Publications Office shall inform the applicant of the right to bring an action before the Court of Justice of the European Union or to lodge a complaint with the European Ombudsman, under the conditions laid down in Articles 263 and 228, respectively, of the Treaty on the Functioning of the European Union.* And in case the refusal to make available a Commission document is based on reason which is beyond the scope of Commission’s Decision 2011/833/EU, then article 7§5 posits that *the reply to the applicant shall include a reference to the natural or legal person who is the rightholder, where known, or alternatively to the licensor from which the Commission has obtained the relevant material, where known.*

⁷⁵ See Preamble 22 of the 2003 PSI Directive.

⁷⁶ Dulong de Rosnay, M., (2010), *Creative Commons Licenses Legal Pitfalls: Incompatibilities and Solutions*, IViR, available at http://www.creativecommons.nl/downloads/101220cc_incompatibilityfinal.pdf , p.68. See article

Member States themselves to determine which information is made accessible (Directive 2003/98/EC).⁷⁷

The amended in 2013 PSI Directive removed many barriers to the re-use of public sector information across the European Union. Directive 2013/37/EU enhances Directive 2003/98/EC with clarity of any charges to be made for re-use (with an explanation of basis of the charge being available on request) and with total income not to exceed the cost of collection, production, reproduction and dissemination, together with a reasonable return on investment;⁷⁸ it also makes provisions for allowing re-use of documents in a timely, open and transparent manner; it provides for application of fair, consistent and non-discriminatory processes; it considers for transparency of terms, conditions and licences for the re-use of public sector information;⁷⁹ it provides for the ready identification of public sector information that is available for reuse;⁸⁰ it includes provisions for the prohibition of exclusive licences except in exceptional cases.⁸¹

Re-use is defined in article 2§4 of the 2003 PSI Directive as: *“the use by persons or legal entities of documents held by public sector bodies, for commercial or non-commercial purposes other than the initial purpose within the public task for which the documents were produced. Exchange of documents between public sector bodies purely in pursuit of their public tasks does not constitute re-use”* (Directive 2003/98/EC; Greek Law 3448/2006).⁸² A broad array of public sector bodies is subject to the re-use regime.

The definition of public sector body is borrowed from the Directives on public procurement (Directive 2003/98/EC):⁸³ *“the State, regional or local authorities, bodies governed by public law and associations formed by one or several such authorities or one or several such bodies governed by public law”* (Directive 2003/98/EC; Greek Law 3448/2006).⁸⁴ A ‘body governed by public law’ is anybody that meets three cumulative criteria: *“1) to be established for the*

5§3(b) of L.3448/2006 regarding denial of re-using documents including public sector information due to third parties’ copyright or industrial property rights.

⁷⁷ See Preambles 15, 17, 23, 25, and articles 1, 2(a) of the 2003 PSI Directive.

⁷⁸ See article 6(1) of Directive 2013/37/EU according to which *Where charges are made for the re-use of documents, those charges shall be limited to the marginal costs incurred for their reproduction, provision and dissemination.*

⁷⁹ See article 7 of Directive 2013/37/EU.

⁸⁰ See Preamble 21 and article 2(2) of Directive 2013/37/EU.

⁸¹ See Preamble 32 and amended article 11(b)2a, 11(c), and 11(d) of Directive 2013/37/EU.

⁸² See article 4§4 of L.3448/2006 according to which *Re-use means the use, by persons or legal entities, of documents held by public sector bodies, for commercial or non-commercial purposes, other than the initial purpose within the public task for which the documents were produced. Exchange of documents between public sector bodies purely in pursuit of their public tasks does not constitute re-use.*

⁸³ See Preamble 10 of the 2003 PSI Directive.

⁸⁴ See article 2§1 of the 2003 PSI Directive. See, also, article 4§§1, 2 of L.3448/2006.

specific purpose of meeting needs in the general interest not having an industrial or commercial character, 2) to possess legal personality and 3) to be closely dependent—as regards financing, management or supervision—on the State, regional or local authorities or other bodies governed by public law” (Directive 2003/98/EC; Dulong de Rosnay, M., 2010).⁸⁵ From the re-use regime are exempted universities and schools, public broadcasting companies, libraries and museums (Directive 2003/98/EC; Greek Law 3448/2006; Greek Law 4305/2014).⁸⁶ The 2003 PSI Directive does not apply to them, because “*their function in society as carriers of culture and knowledge give them a particular position*” (Directive 2003/98/EC; Commission of the European Communities, 2002)⁸⁷ (Greek Law 3448/2006)⁸⁸ However, the 2011 proposal for an amendment of the PSI Directive considers that the scope of application of the PSI Directive must be extended to libraries (including university libraries), museums and archives.⁸⁹ And

⁸⁵ See article 2§2 of the PSI Directive; for the European Court of Justice’s interpretation for the definition of ‘*public sector body*’, see inter alia *Case C-360/96 BFI Holding* [1998] ECR I-6821; *Case C-44/96 Mannesmann v. Strohal* [1998] ECR I-73; *Case C-214/00 Commission v. Spain* [2003] ECR I-4667; *Case C-373/00 Adolf Truley* [2003] ECR I-1931, *Case C-283/00 Commission v. Spain*, [2003] ECR I-1697 and *Case C-18/01 Korhonen* [2003] ECR I-5321. See, also, Dulong de Rosnay, M., (2010), *ibid*, p.68.

⁸⁶ This exemption is also applicable in the implementation of the 2003 PSI Directive in Greece through article 3§1(e) of L.3448/2006. The amendment of art.3§1(e) L.3448/2006 through art.4 of L.4305/2014 does not include in the exemption of the application of said law documents, information or data which are available through the libraries of universities, cultural foundations, museums and archives. . See Recital 15 of Directive 2013/37/EU according to which *One of the principal aims of the establishment of the internal market is the creation of conditions conducive to the development of Union-wide services. Libraries, museums and archives hold a significant amount of valuable public sector information resources, in particular since digitization projects have multiplied the amount of digital content products and services and have a huge potential for innovative re-use in sectors such as learning and tourism. Wider possibilities for re-using public cultural material should, inter alia, allow Union companies to exploit its potential and contribute to economic growth and job creation.*

⁸⁷ See article 1§2(d), (e), and (f) of the 2003 PSI Directive; see, also, Commission of the European Communities, (2002), *Proposal for a European Parliament and Council Directive on the re-use and commercial exploitation of public sector documents*, (COM (2002) 207), available at http://www.ec-gis.org/docs/F12293/PUBLIC_SECTOR_PROPOSAL_FOR_DIRECTIVE_EN.PDF [last check, April 5, 2015].

⁸⁸ See article 3§1(e) of L.3448/2006 according to which *Documents under cases (d)*, i.e. documents held by broadcasters and their subsidiaries or by other bodies and their subsidiaries, aimed at fulfilling a public mission in the form of sound and television broadcasting, *and (e)*, i.e. documents held by educational, research and cultural establishments, such as schools, Higher Education Institutes (AEI), Technological Educational Institutes (TEI), archives, libraries, museums, orchestras, operas, theatres as well as research establishments or other organizations established for the record-keeping of research results, *may be supplied for re-use, only in the case that this laid down in the general provisions or the provisions governing the body concerned.*

⁸⁹ See Preamble 17 of Directive 2013/37/EU according to which *Since the differences in national rules and practices or the absence of clarity hinder the smooth functioning of the internal market and the proper development of the information society in the Union, minimum harmonisation of national rules and practices on the re-use of public cultural material in libraries, museums and archives should be undertaken.* See, also, Preamble 18 of the aforesaid Directive, according to which *The extension of the scope of Directive 2003/98/EC should be limited to three types of cultural establishments – libraries, including university libraries, museums and archives, because their collections are and will increasingly become a valuable material for reuse in many products such as mobile applications. Other types of cultural establishments (such as orchestras, operas, ballets and theatres), including the archives that are part of those establishments, should remain outside the scope because of their ‘performing arts’ specificity. Since almost all of their material is covered by third party intellectual property rights and would therefore remain outside the scope of that Directive, including them within the scope would have little effect.* Additionally, see Preamble 30 of said Directive according to which *Following the extension of the scope of Directive 2003/98/EC to libraries, including university libraries, museums and archives, it is appropriate to take into account current divergences in the Member States with regard to digitisation of cultural resources, which could not be effectively accommodated by the current rules of that Directive on exclusive arrangements. There are numerous cooperation arrangements between*

indeed, Directive 2013/37/EU makes provisions for its application on documents held by libraries, museums and archives.⁹⁰ The Directive must not apply to other cultural institutions, such as operas, ballets or theatres, including the archives that are part of these institutions (European Commission, 2011).⁹¹ Therefore, the proposal for an amendment of Directive 2003/98/EC in article 1, as it was implemented through the amending 2013 PSI Directive, amends the subject matter related to its application upon documents held by universities and schools, public broadcasting companies, libraries and museums, i.e. article 1§2 of PSI Directive titled '*Subject matter and scope*' as follows: [The Directive shall not apply to] *documents held by educational and research establishments, such as research facilities, including, where relevant, organisations established for the transfer of research results, schools and universities (except university libraries in respect of documents other than research documents protected by third party intellectual property rights)* (European Commission, 2011).⁹² This means that the PSI Directive was proposed—and actually managed—to become applicable to university libraries in respect of documents other than research documents protected by third party intellectual property rights. For documents for which libraries (including university libraries), museums and archives have intellectual property rights, Member States shall ensure that, where the re-use of documents is allowed, these documents shall be re-usable for commercial or non-commercial purposes in accordance with the conditions set out in Chapters III and IV of the PSI Directive (European Commission, 2011; Directive 2003/98/EC).⁹³

The 2003 PSI Directive contains instructions on the form in which permissions are given and content is to be provided (Directive 2003/98/EC).⁹⁴ It instructs public sector bodies to process requests for re-use and make the content available, using electronic means where possible and

libraries, including university libraries, museums, archives and private partners which involve digitisation of cultural resources granting exclusive rights to private partners. Practice has shown that such public-private partnerships can facilitate worthwhile use of cultural collections and at the same time accelerate access to the cultural heritage for members of the public.

⁹⁰ See the amended article 1(2)f of Directive 2013/37/EU.

⁹¹ See European Commission, (2011), *ibid*, COM(2011)877 Final, Preamble 10.

⁹² See European Commission, (2011), *ibid*, COM(2011)877 Final, article 1§1(2): See, also, Directive 2013/37/EC art.1§2(iv) & (v) according to which the PSI Directive as amended shall not apply to *documents held by educational and research establishments, including organizations established for the transfer of research results, schools and universities, except university libraries and; documents held by cultural establishments other than libraries, museums and archives.*

⁹³ See European Commission, (2011), *ibid*, COM(2011)877 Final, article 3§2. See article 3§2 of Directive 2013/37/EC which posits that *For documents in which libraries, including university libraries, museums and archives hold intellectual property rights, Member States shall ensure that, where the re-use of such documents is allowed, these documents shall be re-usable for commercial or non-commercial purposes in accordance with the conditions set out in Chapters III and IV.*

⁹⁴ See articles 4 and 5 of the 2003 PSI Directive.

appropriate (Directive 2003/98/EC).⁹⁵ As to the format, the content must be supplied in any pre-existing format or language (Directive 2003/98/EC; Greek Law 3448/2006).⁹⁶ In the text of the 2003 PSI Directive public sector bodies did not have to create or adapt documents in order to comply with a request; this requirement has been changed through the 2013 PSI Directive, though (Directive 2003/98/EC; Greek Law 3448/2006; Directive 2013/37/EU).^{97 98}

These obligations mandated by the 2003 PSI Directive as it was amended by the 2013 PSI Directive are compatible with the Creative Commons licensing process and the online tools developed by the Creative Commons organization. The clause on formats in the amended PSI Directive is consistent with the ‘*as-is*’ clause in the Creative Commons licenses. The use of standard licenses is regulated in article 8 of the 2003 PSI Directive which provides that member states must develop “*standard electronic licences, which can be adapted to meet particular licence applications*” (Directive 2003/98/EC; Greek Law 3448/2006).⁹⁹ Public sector bodies must “*be encouraged to use the standard licences*” (Directive 2003/98/EC; Directive 2013/37/EU)¹⁰⁰ (Greek Law 3448/2006¹⁰¹ and Presidential Decree 28/2015¹⁰²). The amended PSI Directive’s preferences for making content available online and licensing it online through the use of standardized licensing obviously fits well with the way the Creative Commons model

⁹⁵ See article 4§1 of the 2003 PSI Directive.

⁹⁶ See article 6§1 of L.3448/2006.

⁹⁷ See article 5§1 of the 2003 PSI Directive. See article 6§1 of L.3448/2006. See article 5 of Directive 2013/37/EU which has amended article 5 of the PSI Directive as follows: *Public sector bodies shall make their documents available in any pre-existing format or language, and, where possible and appropriate, in open and machine-readable format together with their metadata. Both the format and the metadata should, in so far as possible, comply with formal open standards. Paragraph 1 shall not imply an obligation for public sector bodies to create or adapt documents or provide extracts in order to comply with that paragraph where this would involve disproportionate effort, going beyond a simple operation. On the basis of this Directive, public sector bodies cannot be required to continue the production and storage of a certain type of documents with a view to the re-use of such documents by a private or public sector organization.*

⁹⁸ See, also, article 10 of Presidential Decree 28/2015 describing the provisions of article 6 of L.4305/2006 which amended article 6 of L.3448/2006.

⁹⁹ See, also, article 7§1 of L.3448/2006 according to which *Public sector bodies may authorize the unconditional re-use of documents or may impose conditions through granting a licence or by other means, including the imposition of a charge. The conditions of the previous paragraph are determined by the competent Minister, as the case may be.*

¹⁰⁰ See also article 7 of the 2003 PSI Directive which provides that any applicable conditions and standard charges for the re-use of documents held by public sector bodies must be pre-established and published, preferably electronically. See, also, the amended article 7§§1, 2 of the 2003 PSI Directive through Directive 2013/37/EC according to which *In the case of standard charges for the re-use of documents held by public sector bodies, any applicable conditions and the actual amount of those charges, including the calculation basis for such charges, shall be pre-established and published, through electronic means where possible and appropriate. In the case of charges for the re-use other than those referred to in paragraph 1, the public sector body in question shall indicate at the outset which factors are taken into account in the calculation of those charges. Upon request, the public sector body in question shall also indicate the way in which such charges have been calculated in relation to the specific re-use request.*

¹⁰¹ See, also, article 7§2 of L.3448/2006 according to which *Where licenses are required for the re-use of documents, public sector bodies shall ensure, where possible, that standard licenses are available in digital format and can be processed electronically. These licenses may be adapted to meet particular license applications.*

¹⁰² See article 11 of Presidential Decree 28/2015 which describes the provisions of article 7 of L.4305/2014 that amended article 7 of L.3448/2006.

works (Dulong de Rosnay, M., 2010).¹⁰³ The license conditions should not unnecessarily restrict possibilities for re-use, or be used to restrict competition (Directive 2003/98/EC; Greek Law 3448/2006; Directive 2013/37/EU).¹⁰⁴ Alternatively, the re-use may take place without a licence being agreed in cases where the information is in the public domain; in such cases no standard licenses need to be used (Dulong de Rosnay, M., 2010).¹⁰⁵

Article 8(1) of Directive 2013/37/EU provides that public sector bodies may allow for re-use of documents without conditions or may impose conditions, where appropriate through a licence. These conditions shall not unnecessarily restrict possibilities for re-use and shall not be used to restrict competition. Recital 26 of Directive 2013/37/EU lists two such acceptable conditions by way of illustration: acknowledgment of source and acknowledgment of any modifications to the document. It also stipulates that licences, whenever used, should in any event place as few restrictions on re-use as possible, e.g. limiting them to an indication of source. The aforesaid 2013 Directive also encourages the use of standard licences, which must be available in digital format and be processed electronically (Article 8(2)). Recital 26¹⁰⁶ of the amending Directive encourages the use of open licences, which should eventually become common practice across the Union. Thus, by stressing the need to avoid *unnecessarily restricting re-use* and supporting the adoption of *common practice across the Union*, the 2013 PSI Directive urges Member States in their licensing policies to deliver openness and interoperability. The Open Knowledge Foundation has provided the principles and the definition of openness in consideration of which open licenses could be formed with the aim to be used in the framework of the provisions of the amended PSI Directive.¹⁰⁷ Licenses formed in consideration of this definition and principles supporting it promote unrestricted re-use of online content and are available on the web. Such licenses have been translated into many languages, centrally updated and already used extensively worldwide. Open standard licences include the most recent Creative

¹⁰³ Dulong de Rosnay, M., (2010), *ibid*, p.71.

¹⁰⁴ See article 8 of the 2003 PSI Directive. See, also, article 7§1 of L.3448/2006. See article 8§1 of Directive 2013/37/EC according to which *Public sector bodies may allow re-use without conditions or may impose conditions, where appropriate through a license. These conditions shall not unnecessarily restrict possibilities for re-use and shall not be used to restrict competition*.

¹⁰⁵ Dulong de Rosnay, M., (2010), *ibid*, p.70.

¹⁰⁶ According to Recital 26 of Directive 2013/26/EU *In relation to any re-use that is made of the document, public sector bodies may impose conditions, where appropriate through a licence, such as acknowledgment of source and acknowledgment of whether the document has been modified by the re-user in any way. Any licences for the re-use of public sector information should in any event place as few restrictions on re-use as possible, for example limiting them to an indication of source. Open licences available online, which grant wider re-use rights without technological, financial or geographical limitations and relying on open data formats, should play an important role in this respect. Therefore, Member States should encourage the use of open licences that should eventually become common practice across the Union.*

¹⁰⁷ See the Open Definition of Open Knowledge Foundation available at <http://opendefinition.org> [last check, July 1, 2015].

Commons (CC) licences (version 4.0) which could allow the re-use of public sector information without the need to develop and update custom-made licences at national or sub-national level. Specific provisioning for leveraging on the existence of such open licensing tools may be found in national law and are depicting nationally the need to leverage on pre-formatted licensing texts with the aim to implement smoothly the amended PSI Directive.¹⁰⁸

It is recommended (European Commission, 2014)¹⁰⁹ that open licensing used in the framework of the amended PSI Directive should define the temporal and geographical scope of the rights covered by the licensing agreement, the types of rights granted and the range of re-use allowed. In order to proactively promote the re-use of the licensed material, it is advisable that the licensor grants worldwide (to the extent allowed under national law), perpetual, royalty-free, irrevocable (to the extent allowed under national law) and non-exclusive rights to use the information covered by the license. It is advisable that rights not covered by the license be set out explicitly and the types of right granted (copyright, database right, and related rights) be defined broadly. Finally, the broadest possible wording could be used to refer to what can be done with the data covered by the license (terms such as: use, re-use, share can be further described by an indicative list of examples). Where licenses are required by law and cannot be replaced by simple notices, it is advisable that they cover attribution requirements only, as any other obligations may limit licensees' creativity or economic activity, thereby affecting the re-use potential of the documents in question. The aim of attribution requirements is to oblige the re-user to acknowledge the source of the documents in a manner specified by the licensor (public sector body). It is recommended that (depending on the law applicable) the obligations be kept to a minimum, requiring at most: a) a statement identifying the source of the documents; and b) a link to relevant licensing information (where practicable).

The primary objective of the amended PSI Directive stimulating re-use to encourage economic activity means that public sector bodies are encouraged to make content available for free or at charges that do not exceed the marginal costs for reproducing and disseminating it (European Commission, 2011).¹¹⁰ Charging for a maximum of dissemination costs seems compatible with the 'royalty-free' provision in all Creative Commons licenses, since such fees do not relate to the use of the content. However, the amended PSI Directive allows public

¹⁰⁸ See article 11§2 of Presidential Decree 28/2015.

¹⁰⁹ See European Commission, (2014), Information from European Union Institutions, Bodies, Offices and Agencies, Commission Notice, *Guidelines on recommended standard licenses, datasets, and charging for the reuse of documents* (2014/C 240/01).

¹¹⁰ See European Commission, (2011), *ibid*, COM(2011)877 Final, article 6§1 according to which *Where charges are made for the re-use of documents, the total amount charged by public sector bodies shall be limited to the marginal costs incurred for their reproduction and dissemination.*

sector bodies to charge more (Directive 2013/37/EU)¹¹¹—within the limits of laws that govern their activity, of course— up to the total costs of collecting, producing, reproducing and disseminating information, topped with a reasonable return on investment (Greek Law 3448/2006;¹¹² Presidential Decree 28/2015¹¹³). The charges must be calculated in line with the accounting principles applicable to the public sector bodies involved, and should be cost-oriented over the appropriate accounting period (Directive 2003/98/EC; European Commission, 2011; Directive 2013/37/EU).¹¹⁴ In the case of university libraries, museums and archives, the amended PSI Directive leaves room for charges that exceed the marginal costs for the re-use of documents that they hold (Directive 2003/98/EC; European Commission, 2011; Directive 2013/37/EU).¹¹⁵

¹¹¹ See article 6 of Directive 2013/37/EC according to which 1. *Where charges are made for the re-use of documents, those charges shall be limited to the marginal costs incurred for their reproduction, provision and dissemination. 2. Paragraph 1 shall not apply to the following: (a) public sector bodies that are required to generate revenue to cover a substantial part of their costs relating to the performance of their public tasks; (b) by way of exception, documents for which the public sector body concerned is required to generate sufficient revenue to cover a substantial part of the costs relating to their collection, production, reproduction and dissemination. Those requirements shall be defined by law or by other binding rules in the Member State. In the absence of such rules, the requirements shall be defined in accordance with common administrative practice in the Member State; (c) libraries, including university libraries, museums and archives. 3. In the cases referred to in points (a) and (b) of paragraph 2, the public sector bodies concerned shall calculate the total charges according to objective, transparent and verifiable criteria to be laid down by the Member States. The total income of those bodies from supplying and allowing re-use of documents over the appropriate accounting period shall not exceed the cost of collection, production, reproduction and dissemination, together with a reasonable return on investment. Charges shall be calculated in line with the accounting principles applicable to the public sector bodies involved. 4. Where charges are made by the public sector bodies referred to in point (c) of paragraph 2, the total income from supplying and allowing re-use of documents over the appropriate accounting period shall not exceed the cost of collection, production, reproduction, dissemination, preservation and rights clearance, together with a reasonable return on investment. Charges shall be calculated in line with the accounting principles applicable to the public sector bodies involved.'*

¹¹² See, also, article 8 of L.3448/2006, according to which *Where charges are made, either in accordance with the provisions of this law or the provisions currently in force, the total income from the licence for the re-use of documents may not exceed the cost of collection, production, reproduction and dissemination, together with a reasonable return on investment in which the public body concerned has entered, taking into consideration a potential cost for further processing, in accordance with Article 3(2) of this law. Charges should be cost-oriented over the appropriate accounting period and calculated in line with the accounting principles applicable to the public sector bodies involved. And in §2 it says that Where the public sector body issues or holds documents which include information and uses this information within the scope of its economic activities, it shall not impose higher charges than the ones provided for in the previous paragraph.*

¹¹³ See article 12 of Presidential Decree 28/2015 which describes the provisions of article 8 of Law 4305/2014 that amended article 8 of Law 3448/2006.

¹¹⁴ See article 6 of the 2003 PSI Directive as well as article 6 of the 2013 PSI Directive. See, also, European Commission, (2011), *ibid*, COM(2011)877 Final, article 6§2 according to which *In exceptional cases, in particular where public sector bodies generate a substantial part of their operating costs relating to the performance of their public service tasks from the exploitation of their intellectual property rights, public sector bodies may be allowed to charge for the re-use of documents over and above the marginal costs, according to objective, transparent and verifiable criteria, provided this is in the public interest and subject to the approval of the independent authority referred to in Article 4(4), and without prejudice to paragraphs 3 and 4 of this Article.'*

¹¹⁵ See European Commission, (2011), *ibid*, COM(2011)877 Final, article 6§3. See article 6§2(c) of Directive 2013/37/EU according to which *Paragraph 1 of article 6 which posits that where charges are made for the re-use of documents, those charges shall be limited to the marginal costs incurred for their reproduction, provision and dissemination shall not apply to the following: ... libraries, including university libraries, museums and archives ; see also article 6§4 of the same according to which Where charges are made by the public sector bodies referred to in point (c) of paragraph 2, the total income from supplying and allowing re-use of documents over the appropriate accounting period shall not exceed the cost of collection, production, reproduction, dissemination, preservation and*

Practice has shown that in the context of the re-use of public sector information, the three main cost categories relate to: (a) data production (including collection and maintenance); (b) data distribution; and (c) sales and marketing or the provision of value-added services. When these categories are compared with what could be considered as marginal costs according to the amended PSI Directive, it is clear that (a) and (c) go beyond reproduction, provision and dissemination. Instead, the principle of marginal cost charging fits best within the broad category of ‘*data distribution*’, which in the context of data re-use could be defined as costs directly relating to, and necessitated by, the reproduction of an additional copy of a document and making it available to the re-users. In calculating charges, costs which could be regarded as eligible may include: 1) infrastructure: cost of development, software maintenance, hardware maintenance, connectivity, within the limits of what is necessary to make documents available for access and re-use; 2) duplication: cost of additional copy of a DVD, USB key, SD card, etc.; 3) handling: packaging material, preparation of the order; 4) consultation: phone and e-mail exchanges with re-users, costs of client service; 5) delivery: postage costs, including standard postage or express carriers; and 6) special requests: costs of preparing and formatting data on request.¹¹⁶

The Directive stipulates that total income from supplying and allowing re-use cannot exceed the cost of collection, production, reproduction and dissemination, together with a reasonable return on investment. Practice has shown that the following direct costs may be regarded as eligible:¹¹⁷ A) Costs relating to the creation of data, which may include costs on 1) production: generation of data and metadata, quality-checking, encoding; 2) costs on collection: gathering and sorting of data; 3) costs on anonymisation: deletion, obfuscation, impoverishment of databases; B) Costs relating broadly to ‘distribution’ which may include 1) costs on infrastructure: development, software maintenance, hardware maintenance, media; 2) costs on duplication: cost of additional copy of a DVD, USB key, SD card, etc.; 3) costs on handling: packaging material, preparation of the order; 4) costs on consultation: phone and e-mail exchanges with re-users, costs of client service; 5) costs on delivery: postage costs, including standard postage or express carriers; C) Costs specific to libraries (including university libraries), museums and archives which may include 1) costs on preservation: data curation and storage costs; 2) costs on rights clearance: time/effort spent identifying and obtaining permission from

rights clearance, together with a reasonable return on investment. Charges shall be calculated in line with the accounting principles applicable to the public sector bodies involved.

¹¹⁶ See European Commission, (2014), *ibid*, (2014/C 240/01).

¹¹⁷ See European Commission, (2014), *ibid*, (2014/C 240/01).

rights-holders. Regarding the overhead costs, only those strictly related to the above categories may be eligible.

The Creative Commons licensing model makes possible licensing of content either for commercial or for non-commercial use. **Through the CC licenses one cannot simultaneously license the same work under different Creative Commons licenses to different groups.** However, the amended PSI Directive allows simultaneous or differential licensing (Directive 2003/98/EC).¹¹⁸ This means that in cases of works where differential licensing is preferred, the use of the Creative Commons licenses may have limited advantages for the public sector bodies. If a public sector body licenses under the Creative Commons license Attribution+Non-Commercial (BY-NC) for example, because it does not want to charge for non-commercial use, it will still need its own standard licenses that allow for commercial use (Dulong de Rosnay, M., 2010; Queensland Spatial Information Office, Office of Economic and Statistical Research, Queensland Treasury, 2006).¹¹⁹ **The non-discriminatory character of the Creative Commons licenses is compatible with the re-use framework of the PSI Directive as it was amended,** even though differential treatment is not possible within the Creative Commons licensing model. The public sector body has to choose one and only one Creative Commons license from the suite and anyone can use the information under those licensing terms. Where differential treatment is needed, the less liberal of the Creative Commons licenses such as the Attribution+Non-Commercial+No-Derivatives (BY-NC-ND) could be combined with the licensing of commercial uses under terms specified by a public sector body individually. Said combination requires meticulous consideration upon the true sense of the provisions of PSI legislation.

Actually, the less liberal of the Creative Commons licenses seem to distance themselves from the Mertonian reasoning that rests with the amended PSI Directive and the availability of public sector information to its users. As in the Mertonian ethics,¹²⁰ the amended PSI

¹¹⁸ See Preamble 19 of the 2003 PSI Directive according to which *Conditions for re-use should be non-discriminatory for comparable categories of re-use. This should, for example, not prevent the exchange of information between public sector bodies free of charge for the exercise of public tasks, whilst other parties are charged for the re-use of the same documents. Neither should it prevent the adoption of a differentiated charging policy for commercial and non-commercial re-use.*

¹¹⁹ Dulong de Rosnay, M., (2010), *ibid*, pp.72-73; see, also, Queensland Spatial Information Office, Office of Economic and Statistical Research, Queensland Treasury, (2006), ***Government Information and Open Content Licensing: An Access and Use Strategy***, Stage 2 Report, October 2006, available at <http://www.gilf.gov.au/files/file/Resources/Stage%20%20Final%20Report%20-%20PDF%20Format.pdf> [last check, April 5, 2015].

¹²⁰ Robert Merton, a sociologist of science, in his work ***The Normative Structure of Science***, (1942), introduced the *Merton Thesis* explaining some of the causes of the scientific revolution and providing the *Mertonian norms* of science often referred to by the acronym of CUDOS. *These Mertonian norms* include: 1) *Communalism*, i.e. the common ownership of scientific discoveries, according to which scientists give up intellectual property in exchange

Directive's core provisions—probably with the exception of the principle that charges for re-use should be set at marginal costs—cater only for a minimum attribution to authors of public sector information that has been produced by funding coming directly or indirectly through the tax-payers' contribution. In the Mertonian sense, the substantive findings of any public sector information are a product of social collaboration and should thus be assigned to the community.¹²¹ They constitute a common heritage in which the equity of the individual producer is severely limited. The creation of new works necessarily builds on prior works such as public sector information and works produced based or leveraging on them. Every author is therefore both interested in protection for her own works and in access to and re-use of existing works. Thus, property rights in public sector information should be whittled down to a bare minimum by the rationale of the scientific ethic.¹²² For Merton, the scientist's claim to 'his' or 'her' intellectual 'property' should be limited to that of recognition and esteem.

In consideration of the provisions of the amended PSI Directive, a major drawback of the non-commercial clause of the Creative Commons licenses has to do with the fact that it severely restricts not only the type of uses that may be made, but also excludes all users that are not an individual or a non-profit organisation from becoming licensees. This makes the use of a non-commercial license inconsistent with the re-use framework of the PSI Directive, at least if the Creative Commons license is the only license applied (Dulong de Rosnay, M., 2010).¹²³

Also, for those public sector bodies that have to supply information under some form of cost recovery regime, the Creative Commons licensing model may only have a complementary role to play. This is for two reasons: first, because where anything more than the cost of dissemination must be recovered, fees tend to be charged that include a royalty; and second, because public sector bodies will normally attain their recovery targets by differentiating

for recognition and esteem; 2) *Universalism*, according to which claims to truth are evaluated in terms of universal or impersonal criteria, and not on the basis of race, class, gender, religion, or nationality; 3) *Disinterestedness*, according to which scientists are rewarded for acting in ways that outwardly appear to be selfless; 4) *Organized scepticism*, i.e. all ideas must be tested and are subject to rigorous, structured community scrutiny. Actually, Merton based the ethos of science on communism and supported that the substantive findings of science are a product of social collaboration and are assigned to the community leaving room for intellectual property only to the point of attribution, recognition and self-esteem for the author. What's very interesting in the case of Robert Merton is the fact that he expressed the *Mertonian norms* founding the ethos of science on communism only a few years before the McCarthyism in the U.S. And yet, Merton survived McCarthyism and received multiple awards and distinctions for his contribution to science and sociology.

¹²¹ For the demise of Copyright in the academic environment, see Shavell, S., (2010), Should Copyright of Academic Works be Abolished?, 2 Journal of Legal Analysis, 1, pp.301-358, available at <http://jla.oxfordjournals.org/content/2/1/301> [last check, Jul.1, 2015].

¹²² See, also, Hugenholtz, P.B., (2001), *Owning Science: Intellectual Property Rights as Impediments to Knowledge Sharing*, speech delivered in second Communia Conference in Turin, available in audio at http://www.communia-project.eu/communiafiles/Conf%202009_%20Au_KS_Hugenholtz.ogg [last check, Jul.1, 2015].

¹²³ Dulong de Rosnay, M., (2010), *ibid*, p.74.

licenses (re-selling versus value adding, commercial versus non-commercial uses, single use versus repeated use, etc.) which is not compatible with the Creative Commons licensing model (Dulong de Rosnay, M., 2010).¹²⁴

The amended PSI Directive asks Member States to encourage the creation of online indices of available content (Directive 2003/98/EC; Greek Law 3448/2006).¹²⁵ The Creative Commons licensing system enables licensors to tag licensed content, and provides the means for general purpose search engines to identify such content. In effect it combines the identification of available content, determination of licensing terms, and supply of the information itself (Dulong de Rosnay, M., 2010).¹²⁶ The Creative Commons licensing model can be used in combination with online indices in a number of ways: a prospective re-user identifies which information he or she wants to re-use on the basis of online indices, files a request for re-use, and the content is made available with an appropriate Creative Commons license. Alternatively, the indices could not only specify which content is available under Creative Commons, but also link to the place where the content is actually made available.

¹²⁴ Dulong de Rosnay, M., (2010), *ibid*, pp.75-76.

¹²⁵ See Preamble 15 of the 2003 PSI Directive, according to which *Member States should encourage the creation of indices accessible online, where appropriate, of available documents so as to promote and facilitate requests for re-use*. See, also, article 10 of L.3448/2006, according to which *Public sector bodies ensure that the necessary measures are taken in helping re-users search for documents for re-use, such as the creation and availability of lists of main documents, accessible online, as well as the creation of websites linked to decentralized lists*.

¹²⁶ Dulong de Rosnay, M., (2010), *ibid*, pp.71, 73.

3 Conclusions

Openness in the Public Sector implemented through *Open Access* licensing has emerged as another essential copyright tool for works produced by public sector organizations i.e. *State, regional or local authorities, bodies governed by public law and associations formed by one or several such authorities or one or several such bodies governed by public law* for expanding cultural and scientific participation either of the tax-payers or others in the copyrighted output of public sector organizations. *Open Access* licenses, *Copyleft licensing* as is widely known (Free Software Foundation, 1996)¹²⁷ is a means for licensing copyrighted works that does not replace Copyright, but rather is based upon it. In that contractual practice, authors or other rights holders agree to waive many of the exclusive rights they hold under Copyright law, enabling others to use the work more freely. Contracts replace the traditional in Copyright Law “*all rights reserved*” by the legally founded notion of the “*some rights reserved*” approach, employing standardized licenses where no or minimum compensation is sought by the Copyright holder. The result is an agile, low-overhead copyright-management, and technologically savvy regime benefiting both Copyright holders and users of copyrighted works licensed with *Copyleft licensing*, i.e. both licensors and licensees.

The Creative Commons licensing much like other similar licensing options such as the ODbL of Open Knowledge is suitable for the *Copyleft licensing* approach in the Public Sector organizations’ copyrighted output. There is a variety of ways in which Public Sector bodies regulate the use of their information and copyrighted works. Other Public Sector bodies may supply information with ‘*standard terms*’ that are not tailored for public access and re-use purposes. Others may refrain from making a Copyright reservation completely. Many Public Sector bodies may state their Copyright reservations in consideration of traditional Copyright law. More common, though, are specific reservations made in publications, on websites, etc. The use of the Creative Commons licensing model has various advantages over such modes of regulating use and over the use of separate licensing schemes by each public sector body,

¹²⁷ Copyleft is a way of using of the Copyright e.g. on a software program. It is a general method for making a program (or other work) free, and requiring all modified and extended versions of the program to be free as well. It doesn’t mean abandoning the Copyright; in fact, doing so would make Copyleft impossible. To copyleft a program, the creators first state that it is copyrighted; then they add distribution terms, which are a legal instrument that gives everyone the rights to use, modify, and redistribute the program’s code or any program derived from it but only if the distribution terms are unchanged. Thus, the code and the freedoms become legally inseparable. See more at Free Software Foundation, (1996), *What is Copyleft?*, available at <http://www.gnu.org/copyleft/copyleft.en.html> [last check, April 5, 2015].

because (Dulong de Rosnay, M., 2010):¹²⁸

1. Creative Commons licenses are '*ready to use*', automated and standardized; public sector bodies do not need to draw up their own licenses but can benefit from the expertise brought together in the Creative Commons licensing mode.
2. Use of the Creative Commons licenses, nationally and internationally, is expanding quickly, aiding recognition and acceptance.
3. The Creative Commons licenses are standardized which adds to transparency for the user; at the same time however the licensor still has a fair amount of flexibility because the optional conditions of use, enables a public sector body to choose the license most suited to its information policy for particular data/content.
4. The icons and the human readable Commons Deed are user friendly and give citizens (including businesses, interest groups) a much clearer indication of which rights are reserved and to what extent, and what kind of use is allowed.
5. The licensing information is linked to the content, in the metadata of the website, its pages or individual files providing stable clarification of which documents (or works) fall under the license and which do not.
6. The Creative Commons and the iCommons organizations offer community based development of free tools to improve the infrastructure for licenses and standards, allowing public sector bodies to share knowledge and benefit from the work of others.
7. The technical implementation of the Creative Commons licenses makes it easier to search for re-usable works.
8. The Creative Commons licensing model stimulates interoperability of its licenses with other open information licenses.

¹²⁸ Dulong de Rosnay, M., (2010), *ibid*, pp.80-81.

References

- Barlow, J. P., *A Declaration of the Independence of Cyberspace*, available at <https://homes.eff.org/~barlow/Declaration-Final.html> [last check, April 5, 2015].
- Bollier, D., (2008), *Viral Spiral: How the Commoners Built a Digital Republic of their Own*, The New York Press, available at URL: <http://www.viralspiral.cc/download-book> [last check, April 5, 2015].
- Brown, P., Cabell, D., Chakravarti, A., Cohen, B., Delamoth, T., Eisen, M., Grivell, L., Guedon, J-C., Hawley, S., Johnson, R., Kirschner, M., Lipman, D., Lutzker, A., Marincola, E., Roberts, R., Rubin, G., Schloegl, R., Siegel, V., So, A., Suber, P., Varmus, H., Velterop, J., Walport, M., Watson, L., (2003), *The Bethesda Statement on Open Access*, available at <http://www.earlham.edu/~peters/fos/bethesda.htm> [last check, April 5, 2015].
- Centivany, A., and Glushko, B., (2010), *Open Educational Resources and the University: Law, Technology, and Magical Thinking*, available at <http://ssrn.com/abstract=1680562> [last check, April 5, 2015].
- Chan, L., Cuplinskas, D., Eisen, M., Friend, F., Genova, Y., Guedon, J-C., Hagemann, M., Harnad, S., Johnson, R., Kupryte, R., Manna, M., Rev, I., Segbert, M., Souza, S., Suber, P., Velterop, J., (2002), *The Budapest Open Access Initiative*, available at <http://www.soros.org/openaccess/read.shtml> [last check, April 5, 2015].
- Commission of the European Communities, (1989), *Guidelines for improving the synergy between the public and private sectors in the information market*, Directorate-General for Telecommunications, Information Industries and Innovation, available at http://ec.europa.eu/information_society/policy/psi/docs/pdfs/brochure/1989_public_sector_guidelines_en.pdf [last check, April 5, 2015].
- Commission Decision of December 12, 2011, *2011/833/EU, on the reuse of Commission documents*, L.330/39, Preamble 6, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:330:0039:0042:EN:PDF> [last check, April 5, 2015].
- Commission of the European Communities, (2002), *Proposal for a European Parliament and Council Directive on the re-use and commercial exploitation of public sector documents*, (COM (2002) 207), available at http://www.ec-gis.org/docs/F12293/PUBLIC_SECTOR_PROPOSAL_FOR_DIRECTIVE_EN.PDF [last check, April 5, 2015].
- Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information*, OJ 2003 L345, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:345:0090:0096:EN:PDF> [last check, April 5, 2015].
- Directive 2013/37/EU of the European Parliament and of the Council of June 26, 2013, amending Directive 2003/98/EC on the re-use of public sector information* available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:175:0001:0008:EN:PDF> [last check, April 5, 2015].
- Duke Law School supported by the Center for the Public Domain, *Conference on the Public Domain*, November 9—11, 2001, available at <http://law.duke.edu/pd/> [last check, April 5, 2015].

Dulong de Rosnay, M., (2010), ***Creative Commons Licenses Legal Pitfalls: Incompatibilities and Solutions***, IViR, available at http://www.creativecommons.nl/downloads/101220cc_incompatibilityfinal.pdf, [last check, April 5, 2015].

Echoud, van M., and Wal, van der B., (2008), ***Creative commons licensing for public sector information—Opportunities and pitfalls***, IViR, available at http://learn.creativecommons.org/wp-content/uploads/2008/03/cc_publicsectorinformation_report_v3.pdf, p.III [last check, April 5, 2015].

European Commission, (1998), ***Public Sector Information: A key resource for Europe, Green Paper on Public Sector Information in the Information Society***, COM (1998)585, available at ftp://ftp.cordis.europa.eu/pub/econtent/docs/gp_en.pdf [last check, April 5, 2015].

European Commission, (2011), ***Proposal for a Directive of the European Parliament and the Council, Amending Directive 2003/98/EC on re-use of public sector information***, COM(2011)877 Final, available at http://ec.europa.eu/information_society/policy/psi/docs/pdfs/directive_proposal/2012/en.pdf [last check, April 5, 2015].

Free Software Foundation, (1996), ***What is Copyleft?***, available at <http://www.gnu.org/copyleft/copyleft.en.html> [last check, April 5, 2015].

Gruss, P., (2003), ***The Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities***, The Max Planck Society, available at <http://oa.mpg.de/berlin-prozess/berliner-erklarung/> [last check, April 5, 2015].

Guadamuz, A., Cabell, D., (non-dated), ***Data mining White Paper: Analysis of UK/EU law on data mining in higher education institutions***, available at <http://www.technollama.co.uk/wp-content/uploads/2013/04/Data-Mining-Paper.pdf> [last check, April 5, 2015].

Haughey, M., (2003), ***Creative Commons Welcomes David Wiley as Educational Use License Project Lead***, Press Release June 23, 2003, available at <http://creativecommons.org/press-releases/entry/3733> [last check, April 5, 2015].

Jaeger T., Metzger, A., (2006), ***Open Source Software***, Beck Juristischer Verlag.

Kalfin, I., (2012), ***Amendment of Directive 2003/98/EC on re-use of public sector information, Proposal for a directive COM(2011)0877-C7-0502/2011-2011/0430(COD)***, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONGML%2bCOMPARL%2bPE-496.525%2b01%2bDOC%2bPDF%2bV0%2f%2fEN> [last check, April 5, 2015];

Kalfin, I., (2012), ***Draft Report on the proposal for a directive of the European Parliament and of the Council on amending directive 2003/98/EC on re-use of public sector information (COM(2011)0877-C7-0502/2011-2011/0430(COD))***, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONGML%2bCOMPARL%2bPE-492.922%2b01%2bDOC%2bPDF%2bV0%2f%2fEN> [last check, April 5, 2015].

Kyrillidou, M., and Young, M., (2002), ***ARL Statistics 2001-2002***, Association of Research Libraries.

Kyrillidou, M., and Young, M., (2003), ***ARL Statistics 2002-03***, Association of Research

Libraries.

Kyrillidou, M., and Young, M., (2005), **ARL Statistics 2004-05**, Association of Research Libraries.

Lessig, L., (2012), Answers to Written Questions. The Senate Judiciary Committee, “**The Microsoft Settlement: A Look to the Future**”, available at http://www.judiciary.senate.gov/imo/media/doc/lessig_testimony_12_12_01.pdf [last check, April 5, 2015].

Organisation for Economic Cooperation & Development, (2007), **Giving Knowledge for Free: The Emergence of Open Educational Resources**, available at <http://www.oecd.org/edu/ceeri/givingknowledgeforfreetheemergenceofopeneducationalresources.htm> [last check, April 5, 2015].

Queensland Spatial Information Office, Office of Economic and Statistical Research, Queensland Treasury, (2006), **Government Information and Open Content Licensing: An Access and Use Strategy**, Stage 2 Report, October 2006, available at <http://www.gilf.gov.au/files/file/Resources/Stage%202%20Final%20Report%20-%20PDF%20Format.pdf> [last check, April 5, 2015].

Rens, A. J., and Kahn, R., (2009), **Access to Knowledge in South Africa: Country Study Version 2.0**, available at <http://ssrn.com/abstract=1455623> [last check, April 5, 2015].

Rossini, C.A.A., (2010), **Green-Paper: The State and Challenges of OER in Brazil: From Readers to Writers?**, Berkman Center Research Publication No.2010-01, available at <http://ssrn.com/abstract=1549922> [last check, April 5, 2015].

Rufus, P., and Jo, W., (2008), **Open Knowledge: Promises and Challenges**, Communia Workshop 2008, available at http://www.communia-project.eu/communiafiles/ws01p_Open%20Knowledge%20Promises%20and%20Challenge.s.pdf [last check, April 5, 2015].

Stallman, R., (non-dated), **Why Open Source Misses the Point of Free Software**, available at <http://www.gnu.org/philosophy/open-source-misses-the-point.html> [last check, April 5, 2015].

Stallman, R., (non-dated), **Why Free Software is better than Open Source**, available at <http://www.gnu.org/philosophy/free-software-for-freedom.html> [last check, April 5, 2015].

Suber, P., (2012), **Open Access**, MIT Press, available at http://mitpress.mit.edu/sites/default/files/titles/content/9780262517638_Open_Access_PDF_Version.pdf [last check, April 5, 2015].

Suber, P., (2009), **Timeline of the Open Access Movement**, revised February 9, 2009, available at <http://legacy.earlham.edu/~peters/fos/timeline.htm> [last check, April 5, 2015].

Tapscott, D., and Williams A., D., (2006), **Wikinomics: How Mass Collaboration Changes Everything**, Porfolio.

The **Debian Free Software Guidelines**, http://www.debian.org/social_contract#guidelines [last check, April 5, 2015], part of the **Debian Social Contract** available at http://www.debian.org/social_contract [last check, April 5, 2015].

Toffler, A., (1980), **The Third Wave**, New York, bantam Books.

Uhlir, P., (2010), **Measuring the Economic and Social Benefits and Costs of Public Sector Information Online: A Review of the Literature and Future**, First Communia Conference, available in audio at <http://www.communia->

project.eu/communiafiles/conf2008_Paul%20Uhlir.mp3 [last check, April 5, 2015].

Yale Bulletin & Calendar, ***Private Censorship and Perfect Choice*** Conference to explore Speech and Regulation on the Net, April 5-12, 1999 Volume 27, Number 27 available at <http://www.yale.edu/opa/arc-ybc/v27.n27/story3.html> [last check, April 5, 2015].

About the Authors

Dr. Marinos Papadopoulos is an Attorney-at-Law registered at the Athens Bar Association since 1996. He is a PhD/JSD holder acquired from Athens Law School of the National & Kapodistrian University of Athens in the subject of Copyright on the Internet with a focus on Openness (PhD/JSD title: *Copyright in Digital Era: Openness in Greek and American Law*). He holds a degree from Athens Law School (JD) and a Master of Science (MSc) from Boston University in the discipline of Corporate Communication & Corporate Public Relations. He also has graduate studies at Harvard University in the discipline of Internet Law as well as the George Washington University in the discipline of Management. Marinos Papadopoulos is an active participant in international fora related to Internet Law (Information Technology and Law), Information Society, and Digital Strategy, and has rich professional experience in Information Law cases (Criminal, Civil, and Business Law) of clients from Greece and abroad. He has been the Legal Lead and the creator of the Creative Commons licenses v. 2.5 & v. 3.0 in Greece; he is a founding member and member of the Board of Directors of Open Knowledge Foundation Greece and the creator of the Greek Open Data Commons (ODC) Open Database License (ODbL) of Open Knowledge Foundation. He also has extensive experience as specialized scientist and legal advisor in innovation projects funded by the European Commission and implemented in Greece and abroad (Turkey, Lithuania, Azerbaijan, French, United Kingdom, Italy, et.al.). His authorship includes many scientific papers and articles as well as academic and science publications in Greece, USA, UK and India.

Dr. Charalampos Bratsas is the founder of the Greek Chapter of the Open Knowledge Foundation and the President of its Administration Board, and he is a special member of the teaching staff in the School of Mathematics of the Aristotle University of Thessaloniki. He teaches in the Departments of Mathematics, Journalism, Biology and Geology and on the MSc of Complex Systems in AUTH. He has extensive experience in Semantic Web with a focus on Linked Open Data Internationalization and Ontology engineering. Additionally he has been involved in ten EU research projects; his research interests include Data Mining algorithms, Semantic Web, Social Semantic Web, Internationalization of Linked Data, he is coordinator of Greek DBpedia, Applications of Statistical Knowledge, Data Journalism, as well as Neuroinformatics. He is the author of two theses, six chapters in books, eleven articles in journals, and more than thirty of his articles have been published in International conference proceedings. He has served as a programme committee member for more than fifteen

conferences and acted as a reviewer for international journals.

Copyright information

© 2015 European PSI Platform – This document and all material therein has been compiled with great care. However, the author, editor and/or publisher and/or any party within the European PSI Platform or its predecessor projects the ePSIplus Network project or ePSINet consortium cannot be held liable in any way for the consequences of using the content of this document and/or any material referenced therein. This report has been published under the auspices of the European Public Sector information Platform.

The report may be reproduced providing acknowledgement is made to the European Public Sector Information (PSI) Platform.

