

Workshop on Using Copyright to Promote access to Information and Creative Content

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USING COPYRIGHT TO PROMOTE ACCESS TO PUBLIC SECTOR
INFORMATION

prepared by Catherine Jasserand, LL.M and Professor P. Bernt Hugenholtz¹

¹ The views and opinions expressed in this Study are the sole responsibility of the authors. The Study is not intended to reflect the views of the Member States or the WIPO.

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EXECUTIVE SUMMARY

This study, which is part of a three-part report on *Using Copyright to Enhance Access to Information and Creative Content*, examines the role that copyright plays in facilitating access to and reuse of public sector information. As is increasingly acknowledged worldwide, promoting the re-use of government-produced documents and data and permitting its commercial exploitation by the private sector may provide important stimulus to emerging information economies.

This study briefly describes the laws, national policies and government practices relating to the reutilization of public sector information that are currently in place, or being developed, in seven WIPO Member States: France, Japan, Mexico, New Zealand, Uganda, United Kingdom and the United States.

This immediately raises the question whether public sector information is or can qualify as subject matter protected by copyright in the first place. As this study reveals, the answer differs – sometimes spectacularly – from country to country. While some countries provide for partial or even complete exclusion of public sector information from copyright protection, others assume full or near-complete government copyright ownership.

These diverging regimes are not in conflict with the Berne Convention (Article 2(4)), which leaves it to the Members of the Berne Union to decide whether official acts such as “texts of a legislative, administrative and legal nature, and (...) official translations of these texts” should be granted copyright protection. The notion of public sector information is, however, much broader than this limited category of official acts. It also includes reports, statistics, pictures, databases and all sorts of other works that are created or commissioned by the public sector.

Clearly, in those countries such as the United States, where government works are exempt from copyright protection (at least at the federal level), copyright has at best a very limited role to play in enhancing access to and re-utilization of public sector information. Perhaps not surprisingly, the first large scale government open data portal (data.gov) was established in the United States in 2009. Indeed, copyright protection of government information is often perceived as an obstacle to the reutilization of public sector information rather than as an enabling tool, and there are good reasons to limit the scope of copyright protection in government works, as is the case in many of the countries surveyed.

Nevertheless, as this study reveals, in countries where government works do enjoy (near-) complete copyright protection, such as the United Kingdom and New Zealand, open access policies based on open content licensing structures are being developed and successfully deployed. In such countries copyright therefore can play an important enabling role.

Based on the countries surveyed in this study, countries aspiring to enhance re-use of public sector information have a choice among three models: (1) placing all public sector information in the public domain; (2) excluding only official acts from copyright protection and allowing re-use of other types of public sector information under permissive (open) licenses or (3) protecting all public sector information but allowing re-use through copyright waivers or permissive (open) licenses. WIPO could play a dual role here by (a) drafting model legislation, and (b) educating lawmakers in member states and/or providing technical assistance.

All the same, the role of copyright in providing access to and re-use of public sector information, remains fairly limited. Of greater importance are rigorous laws on freedom of information that guarantee transparency of government institutions and allow citizens a right to access government information. Without such laws in place, re-use policies, whether based on open content (copyright) licenses or not, will remain largely illusory. Raising public awareness of the existence and operation of such laws is of course equally important.

In addition to freedom of information legislation, or as an integral part thereof, legislatures or governments must develop general and/or sector-specific policies setting out rules that clarify the copyright status of public sector information and allow re-use under generous and non-discriminatory conditions. Such policies might be implemented either by way of open data or open content licensing structures (based on copyright in government information), or otherwise, e.g. by way of regulation or government guidelines.

As this study reveals, three of the surveyed countries currently apply open content licenses to disseminate public sector information. France and UK have set up their own custom-made open licenses, whereas New Zealand encourages the use of Creative Commons licenses to facilitate the use and re-use of public data. Here again, WIPO could play a role, either by publishing best practices or by developing suitable standard license models.

Additionally, governments should be encouraged to set up their own national portals to facilitate the accessibility, dissemination and re-use of public sector information, taking into account the costs of maintaining and updating such portals.

INTRODUCTION

Governments and public entities produce a vast amount of information in their daily tasks in fields as varied as environment, weather, geography, business, statistics or legal matters. The information takes the form of reports, statistics, charts, audiovisual archives, databases, etc. Usually information held, produced and collected by public sector in its public tasks is identified as public sector information (PSI). The topic of public sector information is linked to the law on access to information, also called freedom of information law or act, and which as old as 200 years when the first law permitting the access to public information was adopted in Sweden. The purpose of the freedom of information act is to protect citizens against corruptions and abuses from the Government by making its decisions more transparent and its civil servants accountable. Most of the laws on freedom of information have been adopted around the world in the course of the 20th Century. The notion of public sector information itself is however a recent notion, which has emerged over the past decade in discussions involving a better use or re-use of government-produced documents and data, notably to permit its commercial exploitation by the private sector and thus stimulate emerging information economies. Most of the laws on freedom of information grant access to public information but do not guarantee such secondary uses. However, in recent years several governments have developed policies to actively disseminate public data and made them accessible to those seeking reutilization by setting up national portals.

This study, which is part of a three-part report on *Using Copyright to Enhance Access to Information and Creative Content*, examines the role that copyright might play in facilitating access to and reuse of public sector information. This immediately raises the preliminary question whether public sector information is or can qualify as subject matter protected by copyright in the first place. As this study reveals, the answer differs – sometimes spectacularly – from country to country. While some jurisdictions provide for partial or even complete exclusion of public sector information from copyright protection, others expressly recognize complete government copyright ownership. Clearly, in those countries, such as the United States, where government works are exempt from copyright protection (at least at the federal level), copyright has at best a very limited role to play in promoting access to PSI. By contrast, in countries where government works enjoy full copyright protection, such as the United Kingdom, copyright serves as the essential background law to the open content, open access and open data licenses that are increasingly, and successfully deployed.

This study briefly describes the laws and policies relating to the reutilization of PSI that are currently in place in seven selected countries (France, Japan, Mexico, New Zealand, Uganda, United Kingdom and the United States). Policies and strategies adopted by government to enhance access and accessibility to their public information will also be presented. The survey will conclude with a comparative analysis and draft recommendations.

This report is largely the result of desk-study. The limited scope of the commission did not allow the authors to conduct interviews on site. While the authors have undertaken all reasonable care to present reliable and verifiable information, due the impediments of geography and language, errors and omissions may have occurred.

The authors are grateful for any comments, corrections, additions and other feedback received on this draft.²

I. DESCRIPTION OF THE METHODOLOGY

Selection of countries:

In order to assess the role played by copyright systems on access to and re-use of public sector information, we have surveyed seven countries: France, Japan, Mexico, New Zealand, Uganda, United Kingdom and the United States. Our aim has been to respect a geographic balance and study at least one country per continent, among which a developing country and an “intermediary” country.³ Finally, we have been looking for balance in terms of numbers of countries following the common law tradition (four) and countries subscribing to the civil law system (the remaining three). Taking all parameters into account, our choice has also been guided by countries that have adopted Freedom of Information Laws that grant a right to access public (sector) information.

In Africa, since only six countries have adopted FOI laws,⁴ we have chosen a developing country for which literature already existed in that field,⁵ although little information on re-use of public sector information is available.

For the Latin American continent, the choice was among sixteen countries that have adopted FOI laws.⁶ Mexico was selected for its relatively strong FOI law.

In Europe, the topic of public sector information and in particular their re-use has been harmonized at EU level with the adoption of the Directive 2003/98/EC (referred hereinafter as the PSI Directive). Two countries that provide useful case studies in view of their active engagement in the Open Data movement have been selected: France and the United Kingdom. The Open Data movement consists in making more accessible and re-usable public sector information, through open licenses for example.

Even though US copyright law excludes works created by the federal government from copyright protection, a study on this topic could not be complete without describing the United States, where ‘open data’ initiatives have been pioneered.

Finally in Asia and the Pacific, we have selected two countries where access to PSI has been on the public agenda for some time: Japan and New Zealand respectively.

Collection and accuracy of resources:

First of all, the collection of raw data has been checked by local experts in Uganda, Japan and Mexico. For the other countries, existing literature has been used (see references at the end of the report). No interviews could be conducted, although this could have been useful.

² The authors may be contacted at hugenholtz@uva.nl or catherine.jasserand@yahoo.fr.

³ The notion of « intermediary » country is not a notion officially used but it is convenient to designate a country, which does not belong to the group of developed countries because of its lower level of development but which is more developed than countries belonging to the group of developing countries. We categorize Mexico as a country belonging to this group.

⁴ Angola, Ethiopia, Liberia, South Africa, Uganda and Zimbabwe, see <http://www.unesco.org/new/en/communication-and-information/freedom-of-expression/freedom-of-information/foi-in-africa/>

⁵ See for example Toby Mendel, *Freedom of Information: A Comparative Legal Survey*

⁶ <http://www.unesco.org/new/en/communication-and-information/freedom-of-expression/freedom-of-information/foi-in-latin-america-and-the-caribbean/>

Terminology:

In the report, the term “public (sector) information”, “government-held information”, “government information” and “public data” are used indistinctly. Although there is no universal definition of public sector information, it can be understood as information produced, held, collected, commissioned by public entities or government controlled entities.⁷

Themes:

First of all, we have made a distinction between access to public sector information, where copyright law might play a (limited) role and re-use of public sector information, where copyright law or specific policies can provide some rules or guidelines on how to license public information in a way that enhances and facilitates its re-use. The right of access does not automatically imply a right to re-use the information. While the issue of reutilization of PSI has generated an ongoing public debate in Europe and the USA, where public sector information was early seen as a valuable economic resource that might serve as input to a range of value-added-value goods and services, reuse of government information is much less visible on the public agenda in many other countries.

For each country, we have split our findings between regulatory frameworks and policy frameworks. The regulatory framework describes the relevant laws (and regulations) for access, re-use and copyright protection. It also provides the national definitions of public sector information (referring to their exact wording i.e. information, record, administrative documents or public information) and of public sector bodies (or depending on the country to a list of public entities). The copyright status of public sector information (containing possible exemptions) is also described as well as the legal provisions relating to the re-use of public sector information.

The second part of each case study describes the policy framework relating to both access to and re-use of public sector information. The purpose of this section is to establish whether the different countries under study have established policy instruments to facilitate the access or re-use of public sector information. The policy framework also describes the role played by specific administrative authorities, which can be in charge of the access and if relevant of the management of public sector copyright. We also provide examples of existing projects, which are concrete applications of licences existing in specific areas or sectoral websites facilitating access/ re-use. Finally we have deemed important to mention the existence or not of a national portal, permitting to disseminate public sector information and facilitate its exploitation.

The scope of the report is limited to the regulatory and policy frameworks relating to the access to and re-use of public sector information. In addition, only the rules applicable at central level (Government or federal level) are assessed. State and local levels are therefore excluded.

In each country chapter, the exceptions to the freedom of information laws are not detailed, unless they relate to copyright law or other intellectual property rights.

Other intellectual property rights:

The study focuses on copyright law. However other intellectual property rights could be relevant such as a database right in the collection of public sector information. The issue would be particularly interesting in the case of compilations, catalogues and portals relating to public sector information. Would public authorities be entitled to specific database rights, in addition to copyright, in those databases? No international rules exist in that field, with the exception of the

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Access Info Report (2010)

European Union's Directive on the legal protection of databases.⁸ The Directive grants an exclusive proprietary right for the database producers in the collection or compilation of non-copyrightable information (i.e. non-original information), provided they can show a substantial investment for the collection. Public entities that compile the databases, might therefore be entitled to database rights.

II. INTERNATIONAL LEGAL FRAMEWORK

The reutilization of PSI is governed, both at the national and international level, by two distinct legal regimes that have very little in common. While copyright protection (if available for government works) is part of the fabric of intellectual property law, and thereby subject to the familiar international treaties (notably the Berne Convention), the law of access to government is primarily linked to human rights and to the right to take part in public affairs (transparency and accountability).⁹ Both regimes collide where public authorities invoke copyright to prevent reutilization of public sector information. Conversely, government copyrights may also serve, more positively, background rights on which open data or open access policies can be based.

The Berne Convention

The Berne Convention does not refer to the right of access to or to the right of re-use of government-held information but leaves it to its Members to decide which copyright status should be granted to official texts. Article 2 (4) of the Convention refers to official texts as "texts of a legislative, administrative and legal nature, to official translations of such texts".

As a consequence, many countries around the world have excluded official texts from copyright protection. But the category of public sector information is much broader than the limited category of official texts. It may also include reports, statistics, pictures, databases and all sorts of other works that are created or commissioned by the public sector. While the Berne Convention remains silent on such subject matter, many national copyright laws do deal with copyright protection of public sector information in a broader manner, albeit in a far from uniform way. Some jurisdictions provide for partial or even complete exclusion of PSI from copyright protection, whereas others expressly recognize government copyright ownership.

The European PSI Directive

The European Directive on the re-use of public sector information (Directive 2003/98/EC) was adopted to provide a minimum set of rules with the aim of promoting re-use of public sector information under fair, proportionate and non-discriminatory conditions. The directive does not deal with access to public sector information but builds on existing freedom of information regimes. Likewise, the directive does not contain any obligation to allow the re-use of public sector information but leaves it to Member States to decide whether or not to authorize re-use of public sector information.¹⁰

The issue of intellectual property rights is briefly mentioned in the recitals of the Directive. Documents in which third parties holding intellectual property rights, understood as copyright and related rights, are excluded from the scope of the Directive.¹¹ Concerning PSI in which public sector bodies hold copyright, the Directive requires the public authorities to exercise their copyright in a way that facilitates re-use of PSI (Recital 22). No further guidance is provided, except that when public sector bodies allow the re-use of their PSI under conditions, they should

⁸ Directive 96/9/EC on the Legal Protection of Databases, OJ L 77, 27.03.1996, p.20-28

⁹ Toby Mendel (2008)

¹⁰ Recital 9, Directive 2003/98/EC

¹¹ Directive 2003/98/EC, Recital 22 and Article 1, paragraph 2 (b).

grant a license for re-use (Article 8). The conditions could include the re-use of copyright-protected materials.

UNESCO's Guidelines and OECD's Recommendation

In 2004, the UNESCO proposed guidelines to develop policies on access to public sector information and to promote government public domain information.¹² Later the OECD examined the social and economic implications of the use of public sector information and published a recommendation to improve the access and use of public sector information, taking into account legal requirements and restrictions, such as intellectual property rights.¹³ The copyright issue is one of them. The recommendation acknowledges that governments are dealing differently with copyright issues, from releasing PSI in the public domain to retaining copyright. It also provides some guidance on how governments might facilitate the re-use of copyright protected PSI, such as through waiver of copyright or through the use of simple and effective licenses.

III COUNTRY CHAPTERS

FRANCE

Regulatory Framework

The French constitution does not recognize a specific right to information but the French Council of State ruled in 2002 that access to public documents was a fundamental right under Article 34 of the Constitution.¹⁴

In 1978, the Parliament adopted the law on access to public documents (*Loi n°78-753 du 17 juillet 1978 portant diverses mesures d'amélioration des relations entre l'administration et le public et diverses dispositions d'ordre administratif, social et fiscal*).¹⁵ The law guarantees the right for any citizen to get a copy of any administrative document.

In 2005, the law was amended by an Ordinance to implement the PSI Directive on re-use (*Ordonnance n° 2005-650 du 6 juin 2005 relative à la liberté d'accès aux documents administratifs et à la réutilisation des informations publiques*)¹⁶ and completed by a decree (*Decree n°2005-1755 du 30 December 2005 on the freedom to access administrative documents and to re-use public information*).¹⁷

The Copyright aspects are to be found in Part I of the French Intellectual Property Code (*Code de la Propriété Intellectuelle*).

¹² Paul Uhlir (2004)

¹³ OECD Recommendation of the Council for Enhanced Access and More Effective Use of Public Sector Information [C(2008)36], available at <http://www.oecd.org/dataoecd/41/52/44384673.pdf>

¹⁴ Decision Ullman, 29 April 2002.

¹⁵ Available at www.legifrance.com

¹⁶ <http://admi.net/jo/20050607/JUSX0500084R.html>

¹⁷ Available at www.legifrance.com

Definitions

Public Sector Information

Law n°78-753 distinguishes administrative documents, which are accessible, and public information, which is reusable. According to Article 1, *administrative documents* are documents produced or received by public sector bodies. Some examples of these documents are provided, such as files, reports, studies, records, minutes, statistics, orders, instructions, ministerial circulars, memoranda or replies, letters, recommendations, forecasts and decisions. *Public information* is defined in Article 10 as information contained in documents produced or received by a public sector body in its mission of public service.

Public Sector Bodies

The State, territorial authorities, public law authorities or private-law organizations managing a public service constitute the category of public sector bodies to which Article 1 applies.

Copyright status of Public Sector Information

Neither Law n°78-753 nor the *Code de la Propriété Intellectuelle* contain specific provisions on copyright of public sector works. However Article L. 131-3-1 of the CPI states that copyright of works created by public agents is assigned to the State.

Concerning the categories of works that are excluded from copyright protection, the CPI is silent. However, it is generally admitted that official acts such as laws, case law and decrees are exempted from copyright protection.¹⁸ But Courts have established that this exception does not apply to commentaries or compilations of case law.¹⁹

Re-use

Chapter II of Law n°78-753 (Article 10 to Article 19) defines the re-use of public information and implements the PSI Directive.

Article 10 defines re-use as the use by a person of a document held by a public sector body for a purpose other than the initial purpose within that public sector body's public task for which the document was produced. The same article excludes from the scope of public information (in order to be re-used) information contained in documents on which third parties hold intellectual property rights (Article 10 (c)). However when the public authority holds, is granted or licensed intellectual property rights from third parties without any limitation on information contained in public document, this information can be licensed (Article 25).

Under Article 12, re-use of information is subject to the conditions that the information is not altered, its meaning not distorted and that its source and last update be mentioned.

Article 16 imposes the grant of a license for re-use when the re-use of public information is subject to the payment of a fee.

Finally when the copyright of a document containing a public information is held by a third party, the administrative authority must communicate the identity of the third party to the person who wishes to re-use the information (Article 25).

¹⁸ Lucas and Lucas (2001,) para. 106

¹⁹ Idem, para. 116

A. Policy Framework (access/ re-use)

No single policy framework presently exists in France but some standard licensing models for re-use of public information have been developed.

Administrative authorities:

The role of two administrative authorities is important: the CADA, *Commission d'Accès aux Documents Administratifs* (access commission to administrative documents) and the APIE, *Agence du Patrimoine Immatériel de l'Etat* (Agency for Public Intangible Assets in France). The CADA makes recommendations on access to administrative documents and gives advice on re-use of public information. The APIE supports administrations in the management of their public information and has developed tools such as standard licensing models to ensure the re-use of public sector information.

General Policy instruments:

The APIE has released on its website a license called General Conditions (*Conditions Générales de réutilisation*) in case the re-use is free of charge and two different licenses in case the re-use is subject to a fee.²⁰

The first license is applicable when public sector information does not require any update such as information contained in a public report. This license is called "*licence de réutilisation des informations publiques délivrées en application de la loi n°78-753 du 17 juillet 1978 et prévoyant une livraison unique des informations*" and corresponds to Article 16 of Law n.78-753.²¹

The second type of license targets public sector information that necessitates updates such as information contained in databases. This license is called "*licence de réutilisation d'informations publiques délivrées en application de la loi n°78-753 du 17 juillet 1978 et prévoyant une livraison successive des informations faisant l'objet de mises à jour régulières*" and is not provided by the Law n.78-753.²²

In case public authorities have been granted or licensed by third parties intellectual property rights (such as copyright or database rights) on information contained in administrative documents without any restriction, the license must identify the rights granted or licensed and authorize licensees (i.e. re-users) to exploit these rights in order to re-use public information.

Sectoral examples:

In application of Article 17 of Law 78-753, administrative authorities have the obligation to constitute catalogues or repertoires of the public data they hold (*répertoires des informations publiques*, also known under the acronym RIP). Several public bodies have taken this a step

^{20.} https://www.apiefrance.fr/sections/acces_thematique/reutilisation-des-informations-publiques/licencetype/downloadFile/attachedFile/Presentation_des_modeles_de_licence_de_reutilisation_d_informations_publicques_090206.pdf?nocache=1288881577.69

^{21.} https://www.apiefrance.fr/sections/acces_thematique/reutilisation-des-informations-publiques/licencetype/downloadFile/attachedFile_1/Licence_avec_livraison_unique_des_informations_090209.pdf?nocache=1288881577.69

^{22.} https://www.apiefrance.fr/sections/acces_thematique/reutilisation-des-informations-publiques/licencetype/downloadFile/attachedFile_2/Licence_avec_livraison_successive_des_informations_CG_100928.pdf?nocache=1288881577.69

further and have either implemented the standard licenses proposed by APIE or drafted their own licenses for re-use.

The National Geographic Institute (IGN-*Institut Géographique National*),²³ the National Institute for Industrial Property Licences (INPI-*Institut National de la Propriété Industrielle*)²⁴ but also the Data weather provider (*Météo France*)²⁵ are among the public authorities that have adopted standard licenses to permit the re-use of their information.

Recently the Ministry of Justice has released its own licenses, “Licences IP” (also called “Conditions of the reuse of public information that is freely reusable”).²⁶ These licenses are open licenses inspired by Creative Commons licenses.²⁷ They are non-exclusive, worldwide, permit a commercial use and derivative works as long as the source of the original document is indicated.

Data directories/portal:

In February 2011, the French Prime Minister officially announced the creation of Etalab,²⁸ a team in charge of setting up a single portal for public information under the format of data.gouv.fr.²⁹ The portal will make available raw data under a re-usable format (including an open and free license) and should develop further services for citizens. The project has been launched as one of the measures of the program “*France Numérique 2012*” (Digital France 2012), a plan for the development of the digital economy.³⁰ Uncertainty remains concerning the budget granted to the project and whether the economic model of the portal will be sustainable. Since May 2011, no central public authority is entitled to charge a fee for the re-use of its data, without being first registered on a list established by decree and under specific circumstances.³¹ The default rule is therefore the reuse of public sector information free of charge.

JAPAN

A. Regulatory framework

Article 21 of the Japanese Constitution provides for the right of expression³², which has been interpreted by the Japanese Supreme Court as including the right to know (*shiru kenri*).³³ In 1999, the Law Concerning Access to Information Held by Administrative Organs was adopted (hereafter AIDA).³⁴ The Law on Public Record Management adopted in 2009 can also be mentioned, although no English version of it is available. It should be mentioned that these laws only apply to central government. Local governments are regulated by ordinances at local level and are excluded from the study.

Law Concerning Access to Information Held by Administrative Organs and the Public Record Management Law do not contain provisions on the re-use of public information. But two

²³ <http://professionnels.ign.fr/41/licences/tarifs.htm>

²⁴ <http://www.inpi.fr/fr/services-et-prestations/reutilisation-des-donnees-de-l-inpi.html>

²⁵ <https://public.meteofrance.com/content/2010/7/23888-48.pdf>

²⁶ <http://www.rip.justice.fr/1932-simplified-licence-%C2%AB-conditions-of-the-reuse-of-public-information-that-is-freely-reusable>

²⁷ Guy Lambot (2010)

²⁸ http://www.gouvernement.fr/sites/default/files/communiqués/02.22_Communique_de_presse_-_Etalab.pdf

²⁹ <http://www.gouvernement.fr/premier-ministre/le-secretariat-general-du-gouvernement/etalab>

³⁰ <http://lesrapports.ladocumentationfrancaise.fr/BRP/084000664/0000.pdf>

³¹ Décret 2011-577 du 26 mai 2011 relatif à la réutilisation des informations publiques détenues par l'Etat et ses établissements publics administratifs, available at: www.legifrance.com

³² http://www.kantei.go.jp/foreign/constitution_and_government_of_japan/constitution_e.html

³³ See Toby Mendel (2008)

³⁴ http://en.wikisource.org/wiki/Act_on_Access_to_Information_Held_by_Administrative_Organs

sectoral laws, on Statistics (Statistics Act) and Geospatial Information (Basic Act on the Advancement of Utilizing Geospatial Information and Survey Act) can be mentioned.

The copyright issues are dealt with in the Copyright Law, n° 48 of 6 May 1970.³⁵

Definitions

Public Sector Information

Article 2 (2) of the AIDA defines *administrative document* as “a document, drawing, and electromagnetic record (meaning a record created in a form that cannot be recognized through one’s sense of perception such as in an electronic form or magnetic form), that having been prepared or obtained by an employee of an administrative organ in the course of his or her duties, is held by the administrative organ concerned for organizational use by its employees”.

Article 2 of the Public Record Management Act also refers to public documents as defined in the AIDA and to corporate documents as well as historical documents (that are transferred to the National Archives of Japan).

Are excluded from the scope of public sector information: “items published for the purpose of selling to many and unspecified persons, such as official gazettes, white papers, newspapers, magazines and books” and “in the case of archives and other organs designated by Cabinet Order, items that are specially managed as either historical or cultural materials, or as materials for academic research” (Article 2, para. 2 (1) and (2)) of the AIDA).

Public Sector Bodies

Article 2 (1) of the AIDA does not define public sector bodies but provides a list of administrative organs (understood as government departments but also public service corporations) to which the law applies.

Copyright status of Public Sector Information

The Copyright Act does not differentiate between public sector information and other types of works. In application of Article 13 of the Copyright Act, the following works are not protected by copyright: the Constitution and other laws and regulations; notifications, instructions, circular notices and the like issued by public entities; judgments, decisions, orders and decrees of law courts; translations and compilations of those materials mentioned in the preceding items, made by public entities.

Re-use

No general provisions on re-use exist. However, in the Statistic Act of 2007, Article 32 provides for the secondary use by the administration of information collected through statistical survey and recorded in documents, pictures or electromagnetic records.

In the field of Geospatial Information, Articles 29 and 30 of the Survey Act provide that the approval of the Geospatial Information Authority is requested for the copy and re-use of survey results (such as maps, diagrams, final result table, photograph or document).³⁶

³⁵ <http://www.wipo.int/wipolex/en/details.jsp?id=8881>

³⁶ <http://www.gsi.go.jp/common/000051205.pdf>

B. Policy framework (access/re-use)

There are no general policies or guidelines. Concerning complaints relative to access to public information, no internal appeal is possible. The public agency concerned first refers to the Information Disclosure Review Board. Decisions of the Board (denials of access) can be appealed before a District Court.³⁷

Administrative authorities

No specific administrative authority is in charge of managing access to public sector information. Complaints relative to access are lodged before a Court.

General Policy Instruments

To our knowledge, there are no general policy instruments to facilitate access and re-use of public sector information.

Sectoral examples

However, some sectoral examples can be mentioned.

For example, the website of the Official Statistics of Japan (e-Stat) is a “one-stop service for official statistics” and contains information gathered “from statistical department of Ministries and Agencies”. According to the terms of use on the website, the reproduction of information for personal use is permitted as long as the source is mentioned. Reproduction for commercial use needs to be authorized by the relevant ministries or agencies.

Data directories/portal:

Finally the Japanese Government has launched in May 2010, an Open Government Portal, Openlabs.go.jp.³⁸ The website does not provide public data but resources to locate public information.

MEXICO

A. Regulatory framework

Article 6 of the Constitution establishes a very detailed and broad right to information, subject to very limited restrictions on access for public interest reasons and guaranteeing to put in place systems to rapidly access public information.³⁹ Mexico is one of the first Latin American Countries to adopt a freedom of information act. In 2002, the Federal Transparency and Access to Public Government Information Law (*Ley Federal de Transparencia y Acceso a La Información Pública Gubernamental*, known under the Spanish acronym LFTAIPG) was adopted.⁴⁰ The law does not contain any provision on the re-use of public information.

³⁷ Banisar (2006), Japan, p.95-97

³⁸ http://www.epsiplus.net/news/news/japanese_government_s_open_government_portal_is_live; Information available on Openlabs.go.jp has not been updated since August 2010.

³⁹ <http://www.diputados.gob.mx/LeyesBiblio/pdf/1.pdf>

⁴⁰ <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB68/laweng.pdf> (English translation); Original version of the law, as amended (in Spanish) available at <http://www.diputados.gob.mx/LeyesBiblio/pdf/244.pdf>

Copyright is regulated in the Federal Copyright Law (*Ley Federal del Derecho del Autor*) (1996)⁴¹ completed by the Federal Copyright Law Regulations (*Reglamentado de la Ley Federal del Derecho de Autor*) (2006).⁴² Only the federal regime is covered in this Chapter.

Definitions

Public Sector Information

Article 3, Sections III and V of the LFTAIPG defines respectively the terms information and documents. Information is any information contained in documents that public bodies issue, obtain, acquire, transform or preserve. Documents mean any records (files, reports, studies, certificates, resolutions, official communications, correspondence, directives, etc), regardless of their form and that relate to the exercise of the functions or activities of public bodies and public servants, regardless of their source or date of issuance.

Public Sector Bodies

Article 3, Sections IV and XIV of the LFTAIPG distinguishes between public bodies and “agencies and entities”, which represent essentially the executive branch of the government and the federal public administration, and other types of public bodies, composed of the federal legislative branch, the federal judicial branch, autonomous constitutional bodies, federal administrative bodies and any other federal body. Agencies and entities are subject to stricter obligations and to a more rigorous oversight.

Copyright status of Public Sector Information

According to Article 46 of the Federal Copyright Law, “works made in the official service of the Federation, federative entities or municipalities” are copyright protected.

In application of Article 14, Section VIII of the Federal Copyright Law, the following works are excluded from copyright protection: “legislative, regulatory, administrative or judicial texts, as well as their official translations. In the event of being published, they will be attached to the official text and they will not confer exclusive right of edition”. But “concordances, interpretations, comparative studies, annotations, comments and other similar works that involve, on the part of their author, the creation of an original work” are subject to copyright protection.

Re-use

No general provision on re-use exists in Mexico

B. Policy framework (access/ re-use)

There is no known policy on access to public sector information and re-use of public sector information.

Administrative authorities

Article 33 of the LFTAIPG provides for the creation of the Federal Institute of Access to Public Information (Spanish acronym, *IFAI*), an independent and autonomous body charged with enforcing the Federal Law on Transparency with the departments and agencies of the executive branch, and reviewing the cases in which public authorities refuse access to public information.

⁴¹ http://www.wipo.int/wipolex/en/text.jsp?file_id=199536; English translation: <http://www.ifai.org.mx/English>

⁴² http://www.wipo.int/wipolex/en/text.jsp?file_id=199557; English translation: <http://www.ifai.org.mx/English>

No known authority is in charge of the management of government held copyright.

General Policy Instruments

No general policy and tools to facilitate access to and re-use of public sector information are known

Sectoral examples

The research did not permit to identify sectoral examples (such as websites in a specific area), which are facilitating access to and/or re-use of public information.

Data directories/portal

A global portal called INFOMEX provides access and accessibility to (federal) public information, i.e. to more than 230 institutions of the executive branch, through online requests.⁴³ The portal does not contain any information on secondary use or re-use of public sector information. Registration as a user is necessary to gain access to information.

NEW ZEALAND

A. Regulatory framework:

The laws relating to access of New Zealand public sector information are the Official Information Act of 1982 (OIA) at federal level⁴⁴ and the Local Government Official Information and Meetings Act of 1987 at local level.⁴⁵ However these laws do not contain any provisions or principles of re-use of public sector information. This chapter will only cover the federal level.

Copyright provisions are to be found in the Copyright Act of 1994.⁴⁶

Definitions

Public Sector Information

Section 2 (1) of the Official Information Act defines *official information* as “any information held by a department, a Minister of the Crown in his official capacity or any organization” (as named in the Official Information Act or in the Ombudsmen Act). The Official Information Act grants access to official information as well as to certain documents. *Document* is also defined under Section 2(1) as “a document in any form”. The section contains a list of examples such as writing on any material, recorded information, label, book, map, plan, photograph, film, tapes.

⁴³ <https://www.infomex.org.mx/gobiernofederal/home.action>

⁴⁴ <http://www.legislation.govt.nz/act/public/1982/0156/latest/DLM64785.html>

⁴⁵ <http://www.legislation.govt.nz/act/public/1987/0174/latest/DLM122242.html>

⁴⁶ http://www.legislation.govt.nz/act/public/1994/0143/latest/DLM345634.html?search=ts_act_Copyright+Act_resele&p=1&sr=1

Public Sector Bodies

The Official Information Act does not provide any definition of public sector bodies but refers to the list of organizations to which the act applies and detailed in Schedule 1 of the Official Information Act,⁴⁷ as well as to the list of organizations to which the Ombudsmen Act applies.⁴⁸ The term Crown in its broadest sense covers the whole system of government (executive, legislative and judicial arms and in a more restrictive sense refers to the executive branch of the government. Finally the term make references to the historical tie existing between the United Kingdom and the Commonwealth territories (including New Zealand).

Copyright status of Public Sector Information

The Crown owns copyright in works “made by a person employed or engaged by the Crown under a contract of services, a contract of apprenticeship or a contract for services. (...) The Crown is the first owner of any copyright in the work” (Section 26 (1) and (2) of the Copyright Act).

Copyright does not subsist in all information. The following materials are excluded from copyright protection: bills, legislations, bylaws, parliamentary debates, reports of select committees laid by the House of Representatives, judgments of any court or tribunal, and any report of a Royal commission, commission of inquiry, ministerial inquiries or statutory inquiries (Section 27 of the Copyright Act). All these documents are therefore in the public domain.

Re-use

The principle of re-use of public sector information is not enshrined in any regulatory provision. The Official Information Act is silent on licensing copyright material released by government.

B. Policy Framework

In 1997 the Policy Framework for Government held information (PFGHI)⁴⁹ was published to guide Government departments in managing government-held information. The framework covers eleven principles (availability, coverage, pricing, ownership, stewardship, collection, copyright, preservation, quality, integrity and privacy). Several discussions were engaged and on 6 August 2010, the New Zealand Minister of State Services launched the New Zealand Government Open Access and Licensing framework (NZGOAL).⁵⁰

Administrative authorities

No central agency administers the Crown Copyright. Complaints concerning access to public information are brought before the Office of Ombudsmen.⁵¹

⁴⁷ http://www.legislation.govt.nz/act/public/1975/0009/latest/DLM431204.html?search=ts_act_Ombudsmen+Act_resel&p=1#DLM431204

⁴⁸ <http://www.legislation.govt.nz/act/public/1975/0009/latest/DLM430984.html>

⁴⁹ <http://www.e.govt.nz/policy/information-and-data/policy-framework-for-government-held-information>

⁵⁰ http://www.e.govt.nz/policy/nzgoal/html-version#P144_19802

⁵¹ <http://www.ombudsmen.govt.nz/>

*General policy instruments*⁵²

Principle 7 of the PFGHI is of particular interest as it provides that “information created by departments is subject to Crown Copyright but where wide dissemination is desirable, the Crown should permit use of its copyright subject to acknowledgment of source”. The purpose of the policy framework was to open-up Government non-personal information, which was locked as “specific department asset”. However, the policy did not deal with re-use of Government information or with the management of copyright and licenses in the digital area. Therefore the NZGOAL was adopted. This policy gives guidance to State services that release copyright and non-copyright works to third parties. It provides a series of open licensing and open access principles and recommends the use of a “no known rights” statement for non-copyright materials. Concerning copyright materials, it recommends the use of the Creative Commons Attribution (BY) license as the default license. In case a copyright restriction applies, one of the five other Creative Commons licenses can apply.

The NZ Department of Affairs is currently working on updating the Policy Framework for New Zealand Government Held Information to “create the conditions that encourage use and re-use of non-personal New Zealand government information and data for the benefit of the New Zealand economy and New Zealanders”.

Sectoral examples

The New Zealand Geospatial Strategy was developed in 2006 to improve management, knowledge and access to geospatial information.⁵³ Thanks to the principles provided in the Strategy, “geospatial information is easy to understand, integrate, interpret and use”. The re-use of geospatial information is not one of the goals of the Strategy; however “access arrangements should be geared to maximize the ability to discover access and use the geospatial resources that public agencies hold. The access arrangements implemented will need to make explicit any constraints of use” such as licenses.

In the environmental field, the Land Cover Database and the Land Environments New Zealand are available for free and licensed under the Creative Commons Attribution (BY) license.⁵⁴

Data directories/portal

A central government pilot, Data.govt.nz, was launched in November 2009. The site does not host data but provides links to datasets held by the public sector. The portal has been conceived as a catalogue for all publicly available data. Until the launch of the portal, public data was spread among different websites, which made access difficult.⁵⁵ Data.govt.nz provides links to datasets from a broad range of agencies that are available under Creative Commons licenses. Commercial use of the data is not a given. Users wishing to commercially exploit data must contact each administration to determine whether he is allowed to do so.

UGANDA

A. Regulatory framework:

The right of access is enshrined in Article 41 (1) of the Constitution adopted in 1995: “every citizen has a right of access to information in the possession of the State or any other organ or

⁵² ePSIplatform Topic Report No : 15, New Zealand

⁵³ <http://www.geospatial.govt.nz/geospatial-strategy/>

⁵⁴ <http://www.mfe.govt.nz/issues/land/land-cover-dbase/index.html>

⁵⁵ <http://www.beehive.govt.nz/release/government-takes-steps-demystify-data>

agency of the State except where the release of the information is likely to prejudice the security or sovereignty of the State or interfere with the right to the privacy of any other person”.⁵⁶

The constitutional right of access has been given effect in the Uganda Access to Information Act adopted in July 2005.⁵⁷ The law does not contain any provision on the re-use of public sector information.

The copyright aspects of public sector information are dealt with in the Copyright and Neighbouring Rights Act (Copyright Act), adopted in May 2006.⁵⁸

Definitions

Public Sector Information

Article 4 of Access to Information Act defines the terms *information* and record. Information “includes written, visual, aural and electronic information”. Record “means any recorded information in any format in the possession or control of a public body, whether or not that body created it”.

Public Sector Bodies

According to Article 4 of Access to Information Act the term public body means “a government, ministry, department, statutory corporation, authority or commission”.

Copyright status of public sector information

According to Article 8 of the Copyright Act, economic rights of civil servants are vested in government when the work is created under the direction or control of the government and unless otherwise agreed.

In application of Article 7 of the Copyright Act, the following materials are excluded from copyright protection: “official documents such as enactment (act, statute, decree, statutory instruments or other law made by the legislature or other authorized body); decree, order and other decisions by a court of law for the administration and any official translation of them; report made by a committee or commission of inquiry appointed by Government or any agency of Government; [et cetera]”.

Re-use

The Access to Information Act does not contain any provision or principle on re-use of public sector information. Likewise, the Copyright act does not contain specific provisions concerning the licensing of government-held information.

B. Policy framework

No policy general framework exists, whether for the access to or for the re-use of public sector information.

⁵⁶ Available at http://ugandaembassy.com/Constitution_of_Uganda.pdf

⁵⁷ http://freedominfo.org/documents/uganda_ati_act_2005.pdf

⁵⁸ http://www.wipo.int/wipolex/en/text.jsp?file_id=141975

Administrative authorities

No administrative authority is in charge of guaranteeing access to the information. Complaints relating to access are lodged with the Chief Magistrate according to Article 27 of the Access to Information Act.

General Policy instruments

To our knowledge, no general policy instruments exist.

Sectoral examples

In the field of environment, the Uganda National Environment Management Authority has issued *best practices* in environmental information management to enhance access to environmental information (via a resource center to improve (physical) access and use of environment information).⁵⁹

In the legal field, the Uganda Legal Information Institute provides legal information to the public via a *database* containing Courts decisions, legislations and some publicly available secondary legal materials.⁶⁰ The terms of use of the website contain a notice on copyright of the materials made available: unless otherwise specified by Courts or government bodies, the legal materials can be copied, printed, and distributed by users free of charge and without any other authorization from the Uganda Legal Information Institute, provided the Institute is identified as the source of the document. Ugandan Courts are also making their Statutes, decisions and judgments available on the website of the Judiciary of the Republic of Uganda.⁶¹

Data directories/portals

No general portal, where all public information can be found or links to public sector information, presently exists.

UNITED KINGDOM

A. Regulatory framework

The right of access in the United Kingdom does not find its roots in the Bill of Rights (Constitution) but in the Freedom of Information Act (FOIA), adopted in 2000,⁶² and in the Environmental Information Regulations of 2004.⁶³ It should be noted that the Freedom of Information Act did not enter into force before 2005. Only provisions relating to the main Freedom of Information Act will be detailed in this chapter.⁶⁴

The right of re-use has been introduced through the Re-use of Public Sector Information Regulations of 2005, implementing the PSI Directive in the UK.⁶⁵

Provisions on copyright are to be found in the Copyright, Designs and Patent Act (CDPA) of 1998.⁶⁶

⁵⁹ <http://www.grida.no/files/publications/UgandaCaseStudy.pdf>

⁶⁰ www.ulii.org

⁶¹ www.judicature.go.ug

⁶² <http://www.legislation.gov.uk/ukpga/2000/36/contents>

⁶³ <http://www.legislation.gov.uk/uksi/2004/3391/contents/made>

⁶⁴ Scotland benefits from a separate regime and freedom of information law

⁶⁵ <http://www.legislation.gov.uk/uksi/2005/1515/contents/made>

⁶⁶ <http://www.legislation.gov.uk/ukpga/1988/48/contents>

Definitions

Public Sector Information

Information is defined in Section 84 of FOIA as information recorded in any form and held at the time of the request by a public body. The information is considered as held by a public body if it not holds on behalf of a third party but also if a third party holds the information on behalf of the public body.

The Regulations on re-use refer to the notion of *content* and *document* and not to information (Regulation 2). Content is defined as the information recorded in any form, whereas document means any content, including any part of such content, whether in writing or stored in electronic form or as a sound, visual or audio-visual recording, other than a computer program.

Public Sector Bodies

The FOIA does not contain a definition of what constitutes a *public body* but refers to a list of entities contained in Schedule 1 of the Act. In addition, the Re-use of Public Sector Information Regulations (Regulation 3) extends the list of *public sector bodies* to all government departments, legislative bodies, armed forces and individually listed bodies, as well to public-owned corporations (either wholly owned by the Crown or a public body other than a Government department).

Copyright status of Public Sector Information

A distinction is made between Crown Copyright and Parliamentary Copyright. According to Section 163, CDPA, *Crown Copyright* applies to works “made by an officer or servant of the Crown in the course of its duties”. It includes a wide range of materials such as laws, government codes of practice, Ordnance Survey maps, reports, official press releases and public records. Copyright and database right of works produced by employees of the Crown (and servants) in the course of their duties are subject to Crown Copyright or Crown database right.

Parliamentary copyright applies to works “made by or under the direction or control of the House of Commons or the House of Lords” (Section 165, CDPA), but the notion does not extend to works “commissioned by or on behalf of” the House of Commons or the House of Lords.

According to Section 164 of the CDPA, all laws (i.e. acts of the Parliament and measures of the General Synod of the Church of England) are Crown Copyright and belong to her Majesty the Queen.

Re-use

Provision of information under the FOIA or the Environmental Information Regulations, i.e. access law and regulations, does not grant an automatic right to re-use information. Re-use needs to be permitted.

The Regulations on re-use defines the concept of re-use as “the use by a person of a document held by a public sector body for a purpose other than the initial purpose within the public sector body’s public task for which the document was produced” (Regulation 4). A public sector body may impose conditions on re-use provided it does not restrict the way in which the document can be re-used or competition (Regulation 12).

Finally a public sector body is entitled to charge to allow re-use of public information. If so, it should establish standard charges (Regulation 15). Charges should not exceed costs of

collection, production, reproduction and dissemination of documents and a reasonable return on investment.

B. Policy framework

According to the National Archives website, the UK Government Licensing Framework (UKGLF) “provides a policy and legal overview for licensing re-use of public sector information, both in central government and the wider public sector”.⁶⁷ This licensing framework sets out the licensing principles for the re-use of public sector information and recommends the use of a new license, the UK Open Government Licence (OGL).⁶⁸

Administrative authorities

The Office of Public Sector Information (OPSI) is in charge of setting standards, receiving complaints from users for access and re-use, and providing access.

Her Majesty’s Stationery Office (HMSO) is the central agency administering Crown Copyright on behalf of her Majesty the Queen. The Controller of the HMSO licenses uses of Crown Copyright materials and also authorizes other bodies to license their own material. Before the adoption of the OGL, copyright used to be waived but is now licensed through the OGL.

General Policy instruments:

The *Open Government Licence (OGL)* developed under the UKGLF replaces the previous *Click-Use Licence*. The scope of the OGL is much broader. It covers public information protected under copyright and database right. The license however does not apply to information where copyright (or database right) has expired or if the information is in the public domain or subject to patents, trademarks or design rights. Information that can be used and re-used under the OGL is non-personal information collected and produced by government and public sector, including works subject to copyright and database right. It also includes previously unpublished datasets released by the public sector on portals and (original) open source software and source code.

The OGL is a common open license encouraging the re-use of PSI protected by copyright (including Crown Copyright). It is the default license for most Crown-owned information. The license grants the right to re-use, republish the information and produce derivative works, under the condition that the source of the information is acknowledged. The license is perpetual, world-wide and royalty free.

The license, which is available in a machine-readable format, is interoperable with other types of licenses (such as the Creative Commons Attribution Licence and the Open Data Commons Attribution Licence).

⁶⁷ <http://www.nationalarchives.gov.uk/information-management/uk-gov-licensing-framework.htm>

⁶⁸ <http://www.nationalarchives.gov.uk/information-management/government-licensing/the-framework.htm>

Sectoral examples:

The UK's national mapping agency, the *Ordnance Survey* provides datasets under licenses⁶⁹ either free of charge (OS OpenData licence, which incorporates the Open Government Licence) or subject to charges (such as the Multi-Client Contractor Licence).

Until recently, the UK Government's Information Asset Register (*IAR*), managed by OPSI, compiled a catalogue of unpublished information held by the Government. The list was accessible through a website.⁷⁰ Since the adoption of the Open Government Licence, the catalogue has only historical value. However, individual departments, such as the department for business, innovation and skills (BIS),⁷¹ the Home Office⁷² or the Department for Work and Pensions (DWP)⁷³ have kept their own registers of unpublished information.

Data directories/portal

The portal data.gov.uk was launched in January 2010 and is a search engine of available public information (under the format of datasets searchable by keywords, public body, category or department agency and explaining how to access the data). Data and datasets are available under the Open Government Licence, unless otherwise specified for specific datasets. The data is licensed "as is", i.e. the portal does not accept any liability or provide any warranties for the data. The portal is interactive since it allows users to submit their ideas and applications to permit re-use of public sector information.⁷⁴ The project is a part of the Government's Transparency Agenda (opening up data held by Government bodies).⁷⁵

UNITED STATES

A. Regulatory framework

The right to access public information is not granted by the Constitution but is guaranteed by Freedom of Information Act that was adopted in 1966.⁷⁶ The Paper Reduction Act of 1995, through its various amendments, has added several obligations for agencies concerning the dissemination of public information.⁷⁷

The principle of re-use is not dealt with in the Freedom of Information Act.

Relevant copyright provisions can be found in the US Copyright Act, 1976.⁷⁸

⁶⁹ See <http://www.ordnancesurvey.co.uk/oswebsite/licensing/agreements.html>
⁷⁰ www.inforoute.hmso.gov.uk
⁷¹ <http://www.bis.gov.uk/site/foi/information-asset-register>
⁷² <http://data.gov.uk/dataset/home-office-information-asset-register>
⁷³ <http://www.dwp.gov.uk/publications/information-asset-register/>
⁷⁴ <http://data.gov.uk/terms-and-conditions>
⁷⁵ <http://www.cabinetoffice.gov.uk/content/transparency-frequently-asked-questions-faqs>
⁷⁶ FOIA, 5.U.S.C. § 552
⁷⁷ 44 U.S.C. §3506 (d)(1)-(4)
⁷⁸ <http://www.copyright.gov/title17/>

Definitions

Public Sector Information

The law on Freedom of Information refers to the term *record*, which is defined as “any information that would be an agency record (...) when maintained by an agency in any format, including an electronic format” (paragraph (f)(2)).⁷⁹ The US Copyright Act also refers to public sector information in the sense that Section 101 defines a *work of the United States Government* as “a work prepared by an officer or employee of the United States Government as part of that person’s official duties”.

Public Sector Bodies

An *agency*, subject to the obligation of disclosure of PSI, includes “any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President) or any independent regulatory agency”(paragraph (f)(1)).

Copyright status of Public Sector Information

As a general rule, any work of the United States Government is exempted from copyright protection and directly placed in the public domain (Section 105, Copyright Act). However Section 105 does not apply to works of the US Postal Services and to certain works of the National Institute for Standards and Technology.⁸⁰ The US Government can always receive or hold copyright “transferred to it by assignment, bequest or otherwise” (Section 105) and protect its works under the jurisdiction of other countries.⁸¹

It should be mentioned that the US Copyright Act is not applicable to State Governments, which are free to grant copyright protection to State works.

Re-use:

No statutory provisions are available.

B. Policy Framework

The policy framework concerning the access to and re-use of data is set out in OMB Circular A-130.

Administrative authorities

Complaints concerning access to public sector information are lodged before a U.S. District Court. No public authority is in charge of managing copyright of government-held information.

General Policy instruments

The main document underpinning re-use of public sector information is the OMB (Office of Management and Budget) Circular A-130, which was issued in 2000. The Circular is the data access and re-use policy framework of the federal Government. It applies to all agencies of the

⁷⁹ http://www.justice.gov/oip/foia_updates/Vol_XVII_4/page2.htm

⁸⁰ Compendium II, Copyright Office Practices, 2060 02 (a) and (b)

⁸¹ Epsiplatform : Timothy Vollmer, Topic Report n° 25 : Public Sector Information in the United States, available at

executive branch department of the federal Government.⁸² In the document, “government information” is defined as any information created, collected, processed, disseminated, or disposed of by or for the federal government.⁸³

The Circular sets out policies for the management of federal information and requires, for example, that agencies avoid improperly restrictive practices (such as charging fees higher than the cost of dissemination or charging fees or royalties for the reuse, resale or re-dissemination of the information).⁸⁴ The Circular acknowledges the role of the federal government as being the “largest single producer, collector, consumer, and disseminator of information in the United States”.

In 2009, the OBAMA administration released a Memorandum on Transparency and Open Government,⁸⁵ leading to the development of an Open Government Directive.⁸⁶ The Memorandum and the Directive constitute the Open Government Initiative.⁸⁷

No standard re-use license is however proposed.

Sectoral examples

In the field of geospatial data, the National Spatial Database Infrastructure constitutes a “one-stop” providing access to all available metadata providing access to geographic data.⁸⁸

The National Oceanic and Atmospheric Administration disseminates a broad range of information, especially in the field of weather data, and stimulates its re-use.⁸⁹

Data directories/portal

An important part of the Open Government Initiative was the launch of *data.gov*⁹⁰, a large open data portal that provides access to federal raw data and tool catalogues (hyperlinks to agency tools or websites containing datasets). The purpose of the portal is to “increase public access to high value, machine-readable datasets generated by the Executive Branch of the Federal Government”.⁹¹ The portal contains hundreds of thousands records in its geodata catalog, and thousands of records in its raw data and tools catalogs.⁹² The future of the data.gov portal is threatened by the economic crisis since it is financed by public budget.⁹³

⁸² Section 4, OMB Circular A-130, http://www.whitehouse.gov/omb/circulars_a130_a130trans4#4

⁸³ Section 6 (h), OMB Circular A-130

⁸⁴ Section 8 (7) (a) and (b), OMB Circular A-130

⁸⁵ http://www.whitehouse.gov/the_press_office/TransparencyandOpenGovernment

⁸⁶ http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_2010/m10-06.pdf

⁸⁷ <http://www.whitehouse.gov/open>; see also ePSIplatform Topic No.25, Timothy Vollmer.

⁸⁸ <http://www.fgdc.gov/framework/frameworkfaq>

⁸⁹ <http://www.economics.noaa.gov/?file=about>

⁹⁰ <http://www.whitehouse.gov/Open/>

⁹¹ <http://www.data.gov/about>

⁹² See ePSI platform Topic No.25, Timothy Vollmer.

⁹³ <http://fcw.com/articles/2011/05/25/egov-budget-cuts-fedspace-data.gov.aspx>

IV. COMPARATIVE ANALYSIS

DIFFERENT MODELS

The preceding country-by-country survey shows major differences, both in the legal framework and actual policies relating to copyright and PSI. While all the selected countries recognize a right of access to public sector information, not all of them acknowledge a right to reuse the information.

All the countries under study have adopted freedom of information laws, which in all cases guarantee access to public information but only rarely contain provisions on the re-use of the information by third parties. Implementing the EU Directive on PSI (Directive 2003/98/EC), France and the United Kingdom have amended their freedom of information law (France) or adopted specific regulations (United Kingdom) on re-use. New Zealand and the United States have adopted policy frameworks to facilitate the re-use of public sector information. The three remaining countries (Japan, Mexico and Uganda) do not at present seem to have any provisions or general policies on the re-use of public sector information.

The copyright status of public sector information is usually not dealt with in the context of freedom of information legislation but in national copyright laws. No direct link presently exists between the regulatory or policy regimes on PSI and the laws of copyright.

All in all, the role played by copyright in the access to and dissemination of public sector information is still limited, or even non-existent, such as in the United States, where works produced by the federal government are exempt from copyright. As the survey indicates, copyright law functions as an enabler mainly in those countries such as the United Kingdom and New Zealand that have implemented open content or open data policies based on copyright protection for government works.

Definitions

The notions of public sector information and public sector body are defined at national level and little harmonization exists in that field. The term “public sector information” itself is not used in the national legislations under study. However it can be found in international documents, such as the OECD Recommendation on PSI, where it is defined as “information, including information products and services, generated, created, collected, processed, preserved, maintained, disseminated, or funded by or for the Government or public institution”.⁹⁴ The European Directive on PSI re-use (2003/98/EC) also mentions the notion in its title and recitals but does not define it.

The same remark can be made for the notion of “public sector body”. The notion greatly differs from one country to another. As already analyzed in the “Policy Guidelines for the development and promotion of governmental public domain information”⁹⁵, the notion is influenced by the culture and history of each country and can be composed of public entities and bodies financially supported with public funds. Among the countries surveyed, Japan, New Zealand and the United Kingdom do not define public sector bodies but refer to a list of public entities to which the freedom of information law applies.

⁹⁴ OECD Recommendations of the Council for Enhanced and More Effective Use of Public Sector Information (2008)

⁹⁵ Paul Ullmer (2004)

Copyright status of public sector information:

From a copyright perspective, the countries included in the survey fall in three categories: (a) countries that exempt public sector information from copyright protection (e.g. the United States); (b) countries that distinguish between public sector information that is copyright protected and public sector information that is in the public domain (e.g. France, Japan, Mexico, New Zealand and Uganda); and finally (c) countries where copyright law covers a wide range of public sector information (e.g. UK and New-Zealand).⁹⁶

The case of Crown copyright deserves particular attention. Among the seven countries surveyed, the United Kingdom and the New Zealand are characterized by Crown copyright, defined as copyright claimed by governments of Commonwealth Countries. However there is a major difference between these two countries: whereas in United Kingdom, the Crown Copyright applies to all government works and statutory materials, official acts such as bills and bylaws are excluded from copyright protection in New Zealand.

General policy instruments:

Among the surveyed countries, four countries, namely France, New Zealand, the United Kingdom and the United States, have adopted specific policy instruments to facilitate the access and re-use of public sector information. However in France, the instruments composed of standard models of licenses permitting the re-use of public sector information, do not constitute a general policy, contrary to the three other countries. New Zealand has released the New Zealand Government Open Access and Licensing Framework; the United Kingdom the UK Government Licensing Framework; and the United States rely on the OMB-Circular 130.

These policies not only establish a framework for the access and re-use of public sector information but they also promote the use of open licenses. In France, an administrative agency in charge of promoting public tangible assets (APIE) has released two models of standard licenses. In the United Kingdom, a new open license, the Open Government Licence, has been developed based on the model of the Creative Commons licenses to encourage the re-use of PSI protected by copyright (including Crown copyright). The Government of New Zealand promotes the use of 'pure' Creative Commons licenses for government copyright materials.

Sectoral examples

Particularly in countries that have not yet developed general policy on access to or reuse of public sector information, some sectoral practices are worth mentioning. In Japan, for example, the Official Statistics of Japan (e-Stat) offers a one-stop service for all statistics. In Uganda, the Uganda Legal Information Institute (ULII) provides legal information through its database. It is interesting to note that in both cases the terms of conditions of the websites allow the re-use of the information. In the case of the ULII website, the conditions of re-use seem to be inspired by open licenses since users can copy, print, distribute the legal materials available free of charge and without further authorization, provided they identify the source. The e-Stat website only allows re-use for a personal purpose (expressly excluding a commercial use) provided that the source is also indicated.

Existence of national portals to guarantee access and accessibility to public sector information:

With the exception of Uganda, the six other countries under study have established or have plans to set up national portals to centralize access to public sector information. The models presented are however quite different. Whereas in the United States, New Zealand, UK and

⁹⁶ This classification has already been established by Access Info in its consultation report (2010)

France (project under development) the national portals give direct access to datasets and/or data, portals in other countries seem to be more restrictive or more limited in scope. Most of these portals embrace the principles of Open Government Data in the sense that the information made available can be freely used, re-used and redistributed.⁹⁷ However these portals, currently financed by public budget, might face financial difficulties in the future.

POSSIBLE DEVELOPMENTS

Promotion of a national portal on the model of data.gov

The US data.gov, launched in May 2009, is the first national portal to enhance government transparency and “increase public access to high value, machine readable datasets generated by the Executive Branch of the Federal Government”.⁹⁸ Since its release, other countries have followed and initiated their own portals (UK, New Zealand, France, and to some extent Japan). The advantage of a national portal is to concentrate in a single site access to all available public sector data, either directly or via hyperlinks to other sources. National data catalogues offer a comprehensive overview of the data (documents) and datasets that third parties can freely use. Another advantage of national portals is that they permit the development of citizen-driven catalogues (usually created by open government data advocates) based on the data registry of the national portal.⁹⁹

To ensure the success of a national portal several precautions should be taken.¹⁰⁰ First of all, the copyright status of the raw data contained in the catalogue should clearly permit secondary use of the data. Ideally, the raw data should be released under an open license. Secondly, the data catalogues should be presented in an interoperable and open format.

Use of open licenses

Three of the surveyed countries apply open licenses to disseminate public sector information. France and UK have set up their own custom-made open licenses, whereas New Zealand encourages the use of Creative Commons licenses to facilitate the use and re-use of public data. Concerning Creative Commons licenses, the licenses are not specifically meant for data and datasets and some license types do not seem to be suitable to share public sector information (as they can prevent secondary uses and commercial exploitation). The less restrictive license, i.e. the Creative Commons Attribution as well as the specific Creative Commons Zero (in which the copyright owner has waived all his rights) seem to be the most appropriate.¹⁰¹

Identified obstacles to further open data:

Several obstacles might prevent to open up data to public. First of all, even if a law on access to information has been adopted and is implemented, citizens are not always aware of their rights. According to a UNESCO Report of 2009,¹⁰² in large parts of Africa the enforcement of the freedom of information laws as well as the public awareness of a right of access to government information is still in its infancy. However, in Uganda, a court case of 2010

⁹⁷ <http://opengovernmentdata.org/what/>

⁹⁸ <http://www.data.gov/about>

⁹⁹ Info Access Report (2010)

¹⁰⁰ see footnote 91

¹⁰¹ See Naomi Korn and Professor Charles Oppenheim (2011)

¹⁰² Freedom of Information (FOI) and women's rights in Africa (2009)

concerning a request of access to official information may demonstrate an increasing awareness among citizens.¹⁰³

The mismanagement of public records and registries in some countries, especially countries that have been politically instable, can also constitute a major obstacle to access to public information.¹⁰⁴

A third obstacle might be linked to the IT infrastructure. In less developed countries, the quality of telecommunications networks and limited Internet literacy may prevent an efficient deployment of national portals.

Finally, the costs of maintaining national portals and open databases should also be taken into account.

V. RECOMMENDATIONS

In conclusion we offer the following recommendations:

(1) For any model of promoting access to and re-use of government information, having rigorous freedom of information laws in place is a sine qua non. There are still numerous countries in the world that have yet to adopt such laws.¹⁰⁵ In those countries that already have such laws in place, public awareness thereof needs to be raised.

(2) Governments should be encouraged to clear the copyright status of public sector information and other intellectual property rights that might restrict the public from accessing and re-using public sector information.

(3) Governments should have the choice among three models: (1) placing all public sector information in the public domain; (2) excluding only official acts from copyright protection and allowing re-use of other types of public sector information under permissive (open) licenses or (3) protecting all public sector information but allowing re-use through copyright waivers or permissive (open) licenses. WIPO could play a dual role here by (a) drafting model laws, and (b) educating lawmakers in member states and/or providing technical assistance.

(4) Governments should be encouraged to set up their own national portals to facilitate the accessibility, dissemination and re-use of public sector information. However, the decision to set up and maintain a governmental portal should be taken following an assessment of the financial sustainability of the model.

¹⁰³ Charles Mwanguhya Mpagi & Izama Angelo v. Attorney General (Miscellaneous Cause No 751 of 2009) [2010] Uganda Court of Nakawa (3 February 2010); not available online

¹⁰⁴ See Denise Rosemary Nicholson and Dick Kawooya (2008)

¹⁰⁵ See David Banisar, Freedom of Information Around the World 2006 : a Global Survey of Access to Information Laws, Privacy International 2006, available at : http://www.freedominfo.org/documents/global_survey2006.pdf

(5) In those countries where public sector information is (fully or partially) protected by copyright, this should be released under an open license, either by way of a (standard) Creative Commons license or a tailored-made license. Here again, WIPO could play a role, either by publishing best practices or by developing suitable standard license models. Alternatively, countries might consider setting legal standards by regulatory means, such as laws or guidelines, permitting reutilization of public sector information under generous conditions.

Bibliography

Access Info (2010), *Beyond Access: Open Government and the 'Right to Reuse'*, available at http://www.access-info.org/documents/Beyond_Access_10_Aug_2010_consultation.pdf

Best Practices in Environmental Information Management in Africa (2009), the Uganda Case Study, available at <http://www.grida.no/files/publications/UgandaCaseStudy.pdf>

Keitha Booth, ePSIplatform Topic Report No : 15, New Zealand, available at http://www.epsiplus.net/topic_reports/topic_report_15_new_zealand_moves_to_embrace_psi_re_use_and_open_data

European Commission (1999), *Public Sector Information: A key resource for Europe (Green Paper on public sector information in the information society)*, available at http://ec.europa.eu/information_society/policy/psi/docs/pdfs/green_paper/gp_en.pdf

European Commission (2009), Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Re-use of Public Sector Information, Review of Directive 2003/98/EC*, COM (2009) 212 final

European Commission (2009), Commission staff working document accompanying the Communication on the re-use of Public Sector Information, Review of Directive 2003/98/EC, COM (2009) 597

Anne Fitzgerald (2010), *Open access and public sector information: policy developments in Australia and key jurisdictions*, in: *Access to Public Sector Information, Law, Technology & Policy*, vol. 1, edited by B. Fitzgerald, Sydney University Press

Robert Gellman (2004), *the Foundations of the United States Government Information Dissemination Policy*, in *Public Sector Information in the Digital Age: Between Markets, Public Management and Citizen's Rights* (Edward Elgar Publishing)

Naomi Korn and Professor Charles Oppenheim, *Licensing Open Data : A Practical Guide*, May 2011, available at http://discovery.ac.uk/files/pdf/Licensing_Open_Data_A_Practical_Guide.pdf

Guy Lambot, *Données moi*, Revue Lamy Droit de l'Immatériel (RLDI n° 62 juillet 2010) pp. 94-103

A. Lucas and H. Lucas, *Traité de la Propriété Littéraire et Artistique*, 2nd edition, 2001

Office of Fair Trading (2006), *the commercial use of public information (CUPI)*, available at http://www.oft.gov.uk/shared_oftr/reports/consumer_protection/oft861.pdf

Organisation for Economic Co-Operation and Development (2006), *Digital Broadband Content: Public Sector Information and Content*, available at <http://www.oecd.org/dataoecd/10/22/36481524.pdf>

Organisation for Economic Co-Operation and Development (2008), *OECD Recommendations of the Council for Enhanced and More Effective Use of Public Sector Information*, available at <http://www.oecd.org/dataoecd/0/27/40826024.pdf>

PIRA International (2000), *Commercial Exploitation of Europe's Public Sector Information*, available at:

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

Rufus Pollock (2008), *The Economics of Public Sector Information*, University of Cambridge, available at: http://rufuspollock.org/economics/papers/economics_of_psi.pdf

Toby Mendel, *Freedom of Information: A Comparative Legal Survey*, 2nd edition, 2008, available at: http://portal.unesco.org/ci/en/files/26159/12054862803freedom_information_en.pdf/freedom_information_en.pdf

Denise Rosemary Nicholson and Dick Kawooya, *the Impact of Copyright on Access to Public Information in African countries : a perspective from Uganda and South Africa*, available at: <http://www.scribd.com/doc/51713174/The-Impact-of-Copyright-on-Access-to-Public-Information-in-African-Countries>

Paul Uhler, *Policy Guidelines for the Development and Promotion of Government Public Domain Information*, commissioned by UNESCO, 2004, available at: <http://unesdoc.unesco.org/images/0013/001373/137363eo.pdf>

United Nations Educational, Scientific and Cultural Organization (UNESCO: *Freedom of Information (FOI) and women's rights in Africa*, 2009, available at: <http://www.unesco.org/new/en/communication-and-information/resources/publications-and-communication-materials/publications/full-list/freedom-of-information-foi-womens-rights-in-africa/>

Mireille van Eechoud & Brenda van der Wal. (2007), *Creative Commons licensing for public sector information-Opportunities and Pitfalls*, Amsterdam, Institute for Information Law, available at: http://www.ivir.nl/publications/eechoud/CC_PublicSectorInformation_report_v3.pdf

Timothy Vollmer, ePsiPlatform, Topic Report n° 25 : Public Sector Information in the United States, available at: http://www.epsiplus.net/topic_reports/topic_report_no_25_state_of_play_public_sector_information_in_the_united_states

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