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**Response from the Creative and Media Business Alliance (CMBA)
to the Commission Public Consultation on
“Public Sector Information -
PSI Raw Material for New Information Services and Products”**

September 2008

The Creative and Media Business Alliance (CMBA – <http://www.cmba-alliance.eu/>) is an informal coalition comprising trade associations and individual companies active in the advertising, broadcasting, film, music and publishing sectors. The CMBA’s written response to the questions posed by the European Commission in its Public Consultation on “Public Sector Information – PSI Raw Material for New Information Services and Products” emphasises the need for careful steps in the event of broadening the scope of the existing Directive, while respecting the added value that copyright protection brings to the creative sectors.

i Implementation and impact of the Directive

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

There is wide agreement that the present Directive set sound conditions at the time for effective dissemination and re-use of public sector information. The implementation and application of the directive however, proved that the Member States had a considerable margin of interpretation, which in the end did not result in a smooth functioning of the market related to the re-use of PSI.

Among the key barriers in re-use of PSI which continue to exist, is timing: the phrase “within a reasonable time limit” (Article 4, paragraph 1) is open to subjective interpretation and the business-model of the re-user runs the risk of losing its value; this is especially true for the dynamic type of data based business models.

Another aspect of the PSI which made re-use problematic, is the number of copyright claims of the public sector bodies. CMBA believes that PSI as defined by the current directive (i.e. not including any copyright works that might be held by publicly funded cultural institutions such as libraries and museums) should be excluded from copyright and database rights, as it is in the US and this should be made clear to all public authorities which hold re-usable data. If information were provided free of charge, then copyright would not be an issue. The dangers inherent in public sector bodies retaining IPR in PSI can be significantly neutralized by imposing fair trading rules on the licensing of data.



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

CMBA is not in a position to give specific examples of price charging, nor to provide a scientific benchmark. Despite this though we urge the Commission to promote the principle that charges should not exceed marginal cost recovery in supplying the data to the commercial user, which for many years has been the case for Federal Government PSI in the United States. If this is not acceptable by all MS or not applicable to specific information provided by small scale public bodies, then we would support the concept of PSI being sold at commercial prices, provided that the pricing is reasonable, non-discriminatory and transparent.

ii Scope of the Directive

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

CMBA would support in principle the widening of the scope of the Directive to include cultural establishments, education and research organisations and public service broadcasters.

We urge the Commission in the event of any expansion of the scope, to underline the importance of respecting the wishes of rights holders of copyright works and the protection of intellectual property rights in general.

This is a very crucial point as a major part of material held in cultural establishments (e.g. libraries and archives) is not created or produced by those establishments. Instead their collections consist of material protected by copyright. Commercial or non-commercial re-use of others' material is out of scope of the cultural establishments' mandates and subject to license agreements directly with the rightsholders. The same applies to a great extent to educational organisations (e.g. schools).

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

As long as copyright protection is respected, the information held by these institutions would provide the raw-material for further business models to develop.



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iii. Looking ahead

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

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

Guidelines designed to produce a more effective implementation would be welcomed but our preference would be for much clearer legal obligations on licensing, pricing, publication of asset lists and accessibility. This should be linked to an efficient monitoring mechanism to ensure the proper functioning of the market; especially for licensing, pricing and accessibility issues and to deal with anti-competitive behaviour.

In addition to the above, the Directive should be much clearer about charging policies and be more specific about what is expected by a “reasonable return on investment”.

Independent regulatory oversight at national level should be a requirement of compliance together with easy access to dispute resolution.

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