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Cultivating ecologies of PSI regulation in Europe:

The role of soft regulation and Creative Commons licences in the implementation of PSI legislation in the cases of UK and Greece

Author: Prodromos Tsiavos, London School of Economics

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About the Author

Prodromos studied law at the University of Athens. He received his LL.M. in Information Technology and Telecommunications Law from Queen Mary, University of London, his M.Sc. in Analysis Design and Management of Information Systems from London School of Economics and his Doctorate (Ph.D.) from the Management Department of the London School of Economics.

Prodromos is the legal project lead for the Creative Commons -England and Wales (CC-EW) and Greece (CC-Greece) projects, and an associate in Avgerinos Law Firm in Athens. He is a visiting lecturer in the Informatics department of Oslo University and a research officer at the Innovation and Information System Group, Management Department of the London School of Economics. Prodromos has worked for the European Commission and Oxford University. He is advising various public sector organizations in the UK, Greece and Norway on open content and data management, licensing and innovation issues. Prodromos is an adviser for the Greek Special Secretary for Digital Planning on Public Sector Information, Open Government and Data issues and teaches in the Greek National School of Public Administration.

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Executive Summary

The Public Sector Information (PSI) Directive implemented into different European Union (EU) member states requires the reuse of public sector information under an appropriate licensing scheme. In a number of countries the licences used for this purpose are standardised public licences, mainly Creative Commons licence that are incorporated within a broader ecology of regulations and procedures so as to implement national legislation.

The report examines the way in which Creative Commons licences have been introduced in the PSI regulatory ecology paying particular attention to the contrasting approaches of the UK and Greece. Whilst the focus of this report is the EU, the approaches of jurisdictions, such as Australia and New Zealand, form part of the broader context. Both jurisdictions have introduced comprehensive guidelines as to how Creative Commons licences are to be incorporated in the releases of public information for reuse and these guidelines are valuable for appreciating the role Creative Commons licences play in the broader PSI regulatory ecology.

The report introduces the role of open government licensing and the significance of Creative Commons licensing for public bodies. It explains the Creative Commons project, the licensing options available and the simple licence wizard provided to guide users to choose an appropriate combination of elements for their licence.

Noting the benefits of use of Creative Commons Licences by public organisations because of their standardisation, widespread use, and their testing beyond the realms of government activity, the report identifies that the type of licences used vary depending on the needs of the relevant public bodies.

The report discusses the role of licensing frameworks in supporting the licensing of content and focuses on the UK Government Licensing Framework that recommends the use of the UK's Open Government Licence (OGL) for PSI. This framework provides a two tier licensing scheme that provides OGL interoperability with the Creative Commons Attribution and the Open Data Commons Attributions licences. The report considers scenarios for interoperability in order to show the scheme may potentially be over elaborate. It contrasts this approach with the Greek case where there is a direct mandate to use Creative Commons licences through decrees issued by the Prime Minister. Here there is no licensing framework but one could be introduced.

1. Introduction

The implementation of the Public Sector Information (PSI)¹ Directive in different European Union member states requires that they allow the reuse of public sector information under an appropriate licensing scheme. In a number of jurisdictions the licences used for this purpose are standardised public licences, mainly Creative Commons licences that are incorporated within a broader ecology of regulations and procedures so as to implement national legislation.

The objective of this report is to examine the way in which Creative Commons licences have been introduced in the PSI regulatory ecology in the cases of UK and Greece. These two jurisdictions have been selected in order to illustrate two different models of standardised licensing schemes could be implemented in order to allow the reuse of Public Sector Information. The UK has introduced a rather comprehensive schema for licensing Public Sector Information going beyond the minimum obligations set by the PSI Directive and mandating ways in which software is also to be licensed if produced by public institutions, creating a licensing framework and as part of it a specific Open Government Licence (OGL). Greece does not have a licensing framework or government specific licence. However, it has opted for a number of other instruments ranging from funding obligations to the standardisation of the public web-sites Terms and Conditions to achieve a similar result. The reasons behind the two different choices and the implications of each of the two strategies are further discussed in this paper.

While the focus of this report is Europe, the role of other jurisdictions, such as Australia and New Zealand are of particular relevance. This is because these two jurisdictions have been pioneering the introduction of comprehensive guidelines as to how the Creative Commons licences are to be incorporated in the release and reuse of Public Sector Information. It is also important to note that in all jurisdictions, where any open licensing scheme has been introduced, there has been a close collaboration between the "custodians" of the open licences, such as for the example the Creative Commons national projects, and the public administration. The Creative Commons national projects affiliates also having a close collaboration and continuous communication with each other through the Creative Commons International network of affiliates have greatly contributing in the discussion and dissemination of different licensing strategies for releasing Public Sector Information. In such a context, the development of Public Sector Information licensing schemes has to be seen as part of a greater ecology of regulations where the Creative

¹ Whenever the term Public Sector Information is used in the context of Directive 2003/98/EC or the national legislation implementing in the EU Member States, the acronym PSI is used. When there is reference to the actual information, the complete words are used.

Commons projects play a very crucial role.

The term "ecologies of regulation" is used in this paper to denote a regulatory environment where there is not a single source or form of regulation. In an ecological model for appreciating regulation, the poly-centricity of regulation is acknowledged and the state is seen as an important but not the sole source of regulation. In addition, besides the law, social norms, market forces, organisational arrangements, institutional inertia and technology are acknowledged as key regulatory forms or modalities. Finally, not all regulatory instruments are taken to be of the same level or to have the same regulatory force. In that sense, while the PSI Directive or the national laws play a crucial role, it is equally important to note the existence of licensing schemes, frameworks and guidelines, the role of funding contracts, standardisation legislation and practices, and technologies of indexing, storing, disseminating and documenting Public Sector Information. The concept of ecologies of regulation encompasses an appreciation of the complexity of a regulatory environment, the way in which seemingly unrelated pieces of legislation link to each other (e.g. standardisation, geospatial data, copyright law and PSI regulations) and the resulting unpredictability of the regulatory intervention. In that sense, it is more accurate to talk about an effort to *cultivate* a regulatory environment rather trying to *design* one.

In this paper I use the first person to address specific aspects of the use of Creative Commons licences in the area of Public Sector Information regulation. This is not merely a stylistic point rather it reflects the methodology of the action research paradigm. I have been actively involved in the drafting both of the Creative Commons licences and the relevant Open Government Licences both in the UK and Greece, and have been involved in the drafting of the relevant ministerial decrees and legislation in Greece. The insights from this involvement are presented in this paper and my theoretical positions are reflected in my contributions to the various licensing and legislative working groups I have been privileged to be part of. The action research approach ensures that a virtuous circle is established between academia and practice and it transcends the boundaries of participatory observation in the sense that the researcher actively informs the practitioners' group he is part of and *vice versa*.

The paper is structured as follows: Section 2 presents Public Sector Information as an ecology of regulations, explaining the reasons why, and the ways in which, Public Sector Information needs to be seen as an ecology of regulations. The following section, Section 3, explains how the concept of Open Government Licences fits into such a context, and Section four explains the basics of the Creative Commons project. Section 5, which deals with the relationship between the Creative Commons licences and the PSI Directive, is a pivotal section for this paper as it shows both the way in which the PSI Directive encourages the use of standardised public licences but also sets some basic features of such licences. The subsequent two sections present two

closely related but different approaches in the way in which licences are to be used by the public administration. Thus Section 6 presents the licensing framework model followed in the UK, whereas Section 7 explains the legislative approach followed but Greece. Finally, Section 8 concludes the paper by linking together all the threads presented and indicating the next steps in the integration of open licensing schemes in Public Sector Information regulatory ecologies.

2. Approaching PSI legislation as an ecology of regulations

The PSI Directive is normally transposed in Member States through legislation that is implemented in the form of regulations, laws or decrees, such as Law 3448/2006² in Greece³ or The Reuse of Public Sector Information Regulations 2005 in the UK. While such legislation constitutes the key regulatory instrument for the implementation of the PSI Directive, it is by no means the only instrument found in a single jurisdiction. Legislation on Public Sector Information is complemented by other legislation that refers to Freedom of Information, access to public documents, environmental information and geospatial data. For most of such legislative instruments specific European regulation exists, as is for example the case of the INSPIRE Directive. However, for other pieces of regulation, there is no specific regulatory instrument at the European level. Instead, a nexus of soft regulatory instruments and administrative measures make the PSI Directive truly operational.

The PSI Directive is normally implemented by a ministry, public or independent authority. Thus, for instance, in the UK the National Archives are responsible for the implementation of the PSI whereas in Greece the Ministry of Interior and Public Administration has undertaken this role. These organisations are responsible not only for dispute resolution but also for the monitoring of the way in which the legislation operates, the issuing of instructions of implementation and regular reports on the operation of the regulatory framework. In addition, these organisations also frequently create advisory boards and are involved in numerous initiatives of public consultation or consultation with relevant stakeholders. For example, the National Archives are supported by the Advisory Panel on Public Sector Information, the Government Knowledge Council, the Knowledge and Information Management Function, the Knowledge and Management Network (that supports the Knowledge and Information Management Function) and has initiated a series of Information Management Assessments to deliver measurable improvements in information management across the public sector. Finally, the National Archives runs the Licensing Forum, where licensing practitioners across government may share valuable experiences as to how licensing is to be conducted and what the latest policy developments are. Interestingly, the Licensing Forum does not only deal with

² FEK A/57/15.03.2006

³ As amended by Article 11 of Law 3613/2007 (FEK A/263/23.11.2007)

stricto sensu PSI issues it also considers INSPIRE and environmental data issues, assessing data sets for reuse and broader issues of public assets reuse.

In Greece, by contrast, no such formal institutions and arrangements exist. Instead, a number of recent initiatives indicate the intention of creating an ecology of related regulatory instruments and soft law institutions. There is the national geospatial data committee that Law 3882/2010 transposing the INSPIRE directive has established and a number of other informal arrangements that also support the sharing of public sector information and data. For instance, there is a continuous open call for the identification of data sets to be opened found at the open government web site. In addition, the Prime Minister's office eGovernment TaskForce is holding regular informal meetings between public sector institutions interested in the opening up of public data sets, particularly geospatial data, either as data users or data providers. The Prime Minister's office eGovernment TaskForce has issued a Memorandum of Understanding (MoU) that contains a data sharing declaration, a set of ground rules regarding the way in which data should be shared and then a list of signatories operating both as data providers and users. It is important to note that the MoU does not contain specific licensing arrangements regarding the way in which the data are to be shared but rather identifies data sets and expresses the commitment of the relevant stakeholders to share them.

Within the same context an equally important part of the ecology is the Digital Greece 2020 Forum. This includes a specific working group on Free / Open Source Software (FOSS) and Open Data which operates at two levels: producing firstly a specific report on the status of FOSS and Open Content in Greece and secondly a set of specific policy recommendations relating both to the European 2020 Agenda and the individualities of the Greek political economy. These actions are complemented by the activities of the Greek FOSS Corporation that regularly organises events with respect to the opening up and sharing of public sector data and information. Finally, another informal institution that is acquiring increasing importance in the Greek public sector context is that of the public sector IT Directors meeting, a regular meeting where key issues of Greek public sector policies and problems are discussed, declarations are made and MoUs considered.

It is important to appreciate the way in which the ecology of regulations model operates in the context of PSI legislation. The laws implementing the PSI Directive operate as the basic legislative framework within which policy making activities, soft regulatory instruments, organisational arrangements and informal institutions operate. All these form a complex regulatory ecology within which the opening of public information and data takes place.

In each of the two jurisdictions there is an institution which is legally and actually responsible for supporting policies of Public Sector Information reuse. In the UK, the

National Archives is legally assigned the task. In Greece, the situation is more complex. While the Ministry of Interior is legally assigned the role, it has a close collaboration with the Prime Minister's eGovernment TaskForce in order to advance and implement Public Sector Information reuse initiatives. This is because the latter is a much more agile institution which has the ability to implement policies at the highest level. Another instrument interesting in the Greek context is the MoUs, which operate as soft regulation commitments that allow public stakeholders to gradually commit to opening up their information and data, and assess the implications of such an act both in terms of administrative burden and operational cost. Such arrangements are supported by a series of meetings with relevant stakeholders under the auspices of the PM's eGovernment TaskForce. In addition, the regular IT Directors' meeting is an instance where MoUs are further divulged and endorsed by different parts of the public sector and the policies operationalised. These actions are supplemented by the Greece2020 FOSS and Open Data report that feed into the formation of national policy. This policy making process is similar to the one which led to the Digital Britain Report⁴ though operating in a much less institutionalised context due to the different structuring and operation of the public sector in the two countries.

These initiatives require technological and economic support. In terms of technologies used, in the UK case, the infrastructure is provided by the national budget and is part of the broader governmental informational infrastructure. In the Greek case the relevant infrastructure is funded by the Digital Strategy Unit in the Ministry of Development with budget being allocated specifically to the Ministry of Interior to create a public sector information and open data repository.⁵ In both Greece and the UK, the CKAN⁶ open source software has been used as the preferred registry for the opening up of data sets particularly of a geospatial character.

3. Open Government Licensing

This sections considers how Open Government Licensing fits into an ecology of regulations on Public Sector Information. While both the PSI Directive and PSI national legislation makes reference to the obligations of the public authorities to make Public Sector Information available for reuse, the way in which this is to be done is not fully specified. Recital 17 of the PSI Directive makes reference to the use of licences and highlights the role that public standardised licences could play, but it

⁴ <http://interactive.bis.gov.uk/digitalbritain/>

⁵ There have been two related calls for proposal from the Special Secretary for Digital Planning, Call 23 for the creation of data centers supporting Cloud Computing and Software as a Service applications in the Greek Public Administration and Call 20.2 for the creation of a national open data repository.

⁶ CKAN is an open registry of data and content packages. <http://www.ckan.net/>

is explicit that this is not the sole way to allow reuse of Public Sector Information.⁷

Within this context, we have a series of licensing schemes introduced and implemented by different public bodies. The Creative Commons licences are frequently featured among such licences. The formal Creative Commons list indicates use of Creative Commons licences by public bodies in 17 different jurisdictions from the Prime Minister's or the President's office and ministries to local governments, public offices and organisations. The use of the licences may be either mandated by the law or be the result of specific needs and circumstances.

The work conducted by the Australian and New Zealand jurisdictions is significant, as has been reported in ePSIplatform topic reports. Creative Commons teams worked closely with these national governments to produce comprehensive guidelines and road maps towards opening up public sector information and data. These road maps and policy documents have exercised great influence on both the UK and Greece agencies operating in the PSI area.⁸

4. The Creative Commons Project

The Creative Commons is a project that provides a set of licences that support the sharing reusing and remixing of digital content primarily in online environments. The Creative Commons project was founded by Lawrence Lessig while he was a professor at Harvard Law School's Berkman Centre for Internet and Society. The core concept of the project was to allow novel forms of creativity, that were taking place on the internet, to be conducted in a legal way. Underlying this was the acknowledgement that they were often based on pre-existing works and that the obtaining of permission from the original rights-holders was becoming increasingly difficult. The idea was to reduce legal friction for commons-based forms of creativity. Lessig and colleagues initially sought a solution via the U.S. Copyright Office; however, when the office suggested that there was no available legal instrument to solve the problem, Lessig proposed introducing a novel regulatory instrument: the Creative Commons licences. These would exist in the middle-ground between no-rights-reserved (i.e. public domain) and all-rights-reserved (as used by copyright based industries) licenses.

⁷ "In some cases the reuse of documents will take place without a licence being agreed. In other cases a licence will be issued imposing conditions on the reuse by the licensee dealing with issues such as liability, the proper use of documents, guaranteeing non-alteration and the acknowledgement of source. If public sector bodies license documents for reuse, the licence conditions should be fair and transparent. Standard licences that are available online may also play an important role in this respect. Therefore Member States should provide for the availability of standard licences."

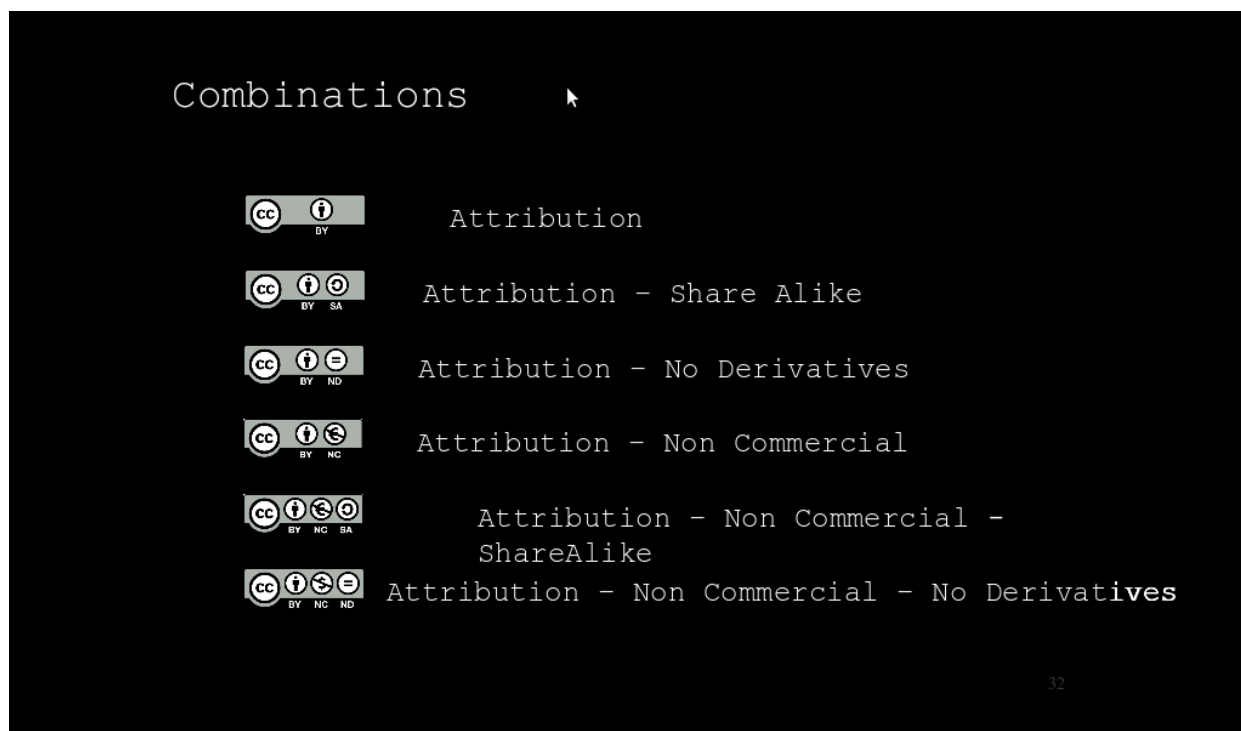
⁸ The National Archives maintain close communication with the Creative Commons Australia and New Zealand teams and have had extensive discussions as to how they could put in place a scheme for the licensing of open data. The Greek PM's eGovernment TaskForce has close links to the Creative Commons UK team and is using the Australian and New Zealand policy documents in order to derive its national open data policies.

At a legal level, there are six variations of the licences: a combination of one fixed [Attribution (BY)] and three variable Licence Elements [ShareAlike (SA), NonCommercial (NC), NoDerivative Works (ND)]. See Schema I.



Schema I: The Fixed Attribution and three variable licence elements

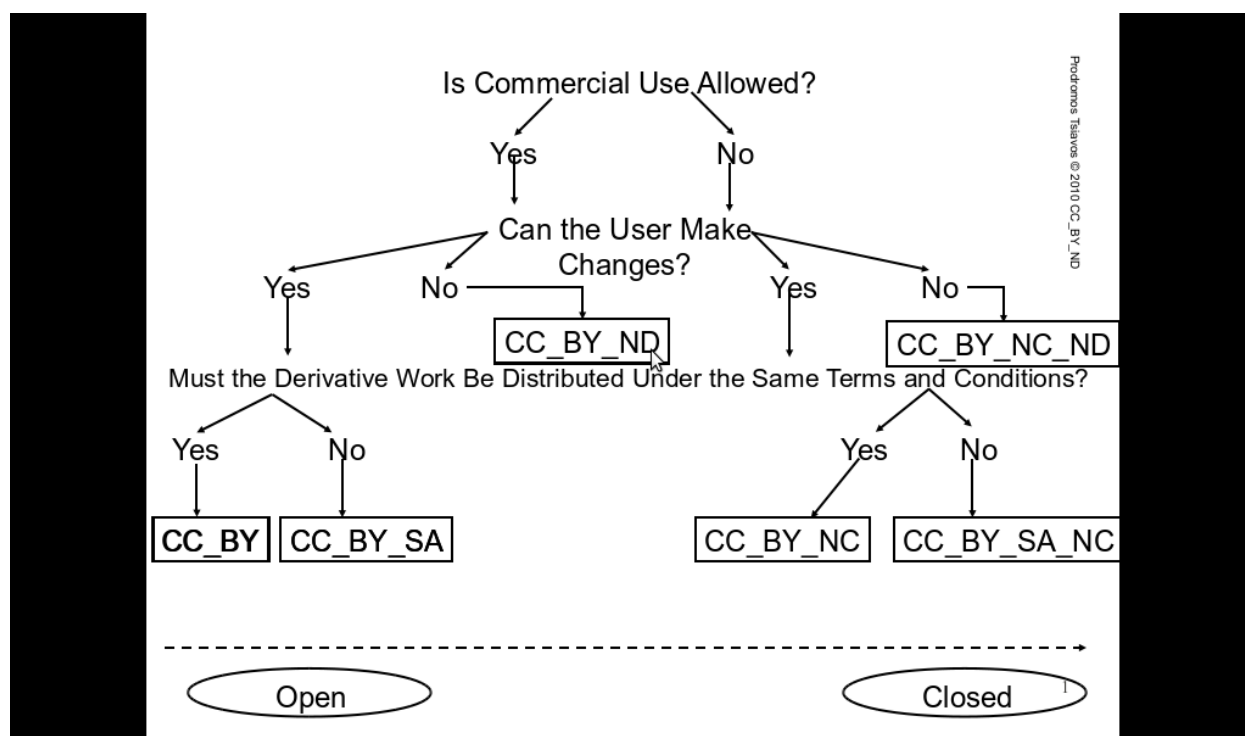
The Creative Commons licences are thus of a modular nature: they comprise of two parts: First, a basic template, common in all licences allowing free verbatim copying of the content as long there is proper attribution and all copyright notices remain with the work. Second, the three variable Licence Elements (ShareAlike, NonCommercial and NoDerivative) constitute distinct modules of legal functionality that may be freely combined to produce the six Creative Commons licence variations. These appear in the Schema II below:



Schema II: The Fixed Attribution element and three Variable elements are combined to form six Creative Commons Licences

Once licensors decide to distribute a work under a Creative Commons licence, they follow a “licence wizard” on the Creative Commons website. This helps them to choose the appropriate combination of elements for their licence and also allows them to tag the work with appropriate metadata describing the licence chosen. Schema III shows the decision making tree behind the Creative Commons licence wizard.

This metadata allows search engines to locate works with particular licences (e.g. all photographs that can be commercially shared with attribution). Because Creative Commons licences are intended to be used by a broad range of individuals, most of whom will not be legal specialists, the licences are expressed in plain language and use simple icons so that they are both easy to use and easy to understand.



Schema III: The decision making tree behind the Creative Commons licence wizard

5. Creative Commons licences and PSI

Standard, public licences play a key role in the implementation of PSI legislation across Europe. The PSI Directive explicitly encourages the use of standard licences in paragraph 2, article 8.⁹ The national implementations of the PSI Directive set the key principles for the reuse of public sector information leaving the operationalisation of such principles to the national legislator that will normally choose some form of standardised licensing scheme to implement them.

In such a context, the specific licensing framework that a country chooses to implement becomes paramount for understanding the ways in which the PSI legislation is operationalised. The PSI Directive leaves ample space to the national legislator to adapt standard licences to the specific needs of its jurisdiction. However, standard licences remain very attractive, since they allow maximum interoperability between each other, they have been already thoroughly used and researched and they also have a competent body of experts to support their operation. Hence, they enable the combination of material from different sources at the lowest possible transaction

⁹ “In Member States where licences are used, Member States shall ensure that standard licences for the reuse of public sector documents, which can be adapted to meet particular licence applications, are available in digital format and can be processed electronically. Member States shall encourage all public sector bodies to use the standard licences.”

cost, materialising thus the objectives of both the PSI Directive and the various related EU Communications¹⁰ and policy initiatives.¹¹ It is therefore necessary to assess the degree to which standard public licences that allow reuse of content may be deployed by public administrations in order to materialise the PSI Directive objectives.

The Creative Commons licences, being the most widespread form of standard licensing in the area of open content are also the ones that are most likely to be used by administrations in the context of Public Sector Information legislation. The reason behind the choice of the Creative Commons licences as the preferred licensing scheme for the dissemination of content by public organisations is their widespread use and hence testing beyond the realms of governmental activity, but also their standardisation that especially in cases of copyleft¹² content is necessary for the frictionless mixing of content. The objective of this section is to explore the ways in which Creative Commons licences are used (or could be used) by public sector organisations so that they may reduce frictions and maximise content reusability. More specifically, this section explains the most common applications of Creative Commons licences in the public sector depending on the type of

¹⁰ See e.g. Communication of 23.10.2001 'eEurope 2002: Creating an EU framework for the exploitation of public sector information'. COM(2001) 607 final and Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 26.08.2010, A Digital Agenda for Europe, COM(2010) 245 final/2.

¹¹ See e.g. 'i2010 - a European Information Society for growth and employment and Digital Agenda and Europe's Digital Agenda for 2020.

¹² Copyleft or ShareAlike is a condition found in some open licences (e.g. the General Public Licence or the Creative Commons ShareAlike licences) stipulating that the licensee is allowed to make derivative works insofar as she further disseminates such derivative works under exactly the same terms and conditions as the licence under which the original work was offered to her. The utility from the use of copyleft provisions may be seen as being maximised in three main cases (a) in cases where the objective is to stop any attempt to release content/ data/ software with All Rights Reserved licences and hence increase the pool of content/ data/ software that is freely accessible and re-usable (b) in cases where the developed object is the result of multiple incremental contributions that cannot stand on themselves but rather have meaning or function as part of a greater whole which is gradually and incrementally developed. This is the case particularly in software and this explains the reasons behind the original use of copyleft there. (c) in cases where the objective is to force commercial exploitation of the work only toward the direction of value added services rather than the content itself without using the NonCommercial element. In such a model the licensee may use both the original and the derivative work for commercial purposes but also has the obligation to disseminate the derivative work under the same licence. In that sense it is unlikely that anyone (other than perhaps the first recipient of the derivative work) would be willing to pay any price just for the work (unless moved by motives other than having access to the work) since once the work is out, anyone could effectively use it for free. Such model has the net result of pushing the commercial exploitation of the work in the direction of value added services rather than selling the actual work. In addition, it resolves the problem of non-commercial definition. While there has been an extensive study by Creative Commons regarding what constitutes NonCommercial use, because of the inconsistent use of the term in different legal instruments in the same jurisdiction. The problem is intensified across jurisdictions and in case the uncertainty it causes to the user of NonCommercial licences increases the risk and hence cost of their use and may lead to two results: (a) abandoning such content all together or (b) seeking for additional clarifications or permissions by the rights holder. In that sense, the use of a ShareAlike instead of NonCommercial clause may effectively have a very similar effect without increasing the uncertainty and thus the friction of using the licences.

licence and explores the interaction between the Creative Commons licences and the PSI regulatory framework. The types of licences used vary depending on the needs of the relevant public bodies. Appreciating what is the most suitable licence type for each public organisation is necessary for the most efficient and effective implementation of the PSI Directive. The following sections refer specifically to the Creative Commons licence types described above.

When the objective of the public body is simply the dissemination of information without aiming at allowing reuse, one of the NonDerivative licences is used.¹³ These licences are also used where the issuer of the content wishes the material to remain unaltered in order to prevent confusion as to what its exact content is. It is important to appreciate what the objective of the law is, i.e. whether it is to prevent the change of the content or to preserve the link between the source of the data and the actual document. If the former is the case, then the NonDerivative licences are the best option. However, if the latter is the case, then any Creative Commons licence would suffice. This approach seems to ignore one of the key features of all Creative Commons licences which is the obligation of the licensee to differentiate the original from the derivative when the latter is disseminated, and not to imply any endorsement by the original author both in the case of the production and dissemination of the original copy and of a derivative work.¹⁴ These non-endorsement obligations that are found in all Creative Commons licences along with an obligation to keep the information in repositories in a linked-data form, with fixed URIs, could be part of the national implementation of the PSI Directive which could solve many of the provenance issues. By having the original information positioned at a place where it could always be retrieved, and by introducing procedures with respect to the authentication of the source of the information, the risk of having documents presented as being the original is minimised. The non-endorsement provisions are found in the Creative Commons licences, whereas the existence of linked-data structures and fixed URIs is more the result of an Open Access and Licensing Policy Frameworks at a national level, as are the ones that Australia,¹⁵ New Zealand¹⁶ or the UK¹⁷ have implemented and which we will explore in more

¹³ I.e. Creative Commons Attribution No Derivatives or Attribution Non Commercial No Derivatives

¹⁴ See Creative Commons Attribution Non Commercial Share Alike, Unported, v.3.0 Sec.4(d): “**Restrictions.** The license granted in Section 3 above is expressly made subject to and limited by the following restrictions: (...) If You Distribute, or Publicly Perform the Work or any Adaptations or Collections, (...) You may not implicitly or explicitly assert or imply any connection with, sponsorship or endorsement by the Original Author, Licensor and/or Attribution Parties, as appropriate, of You or Your use of the Work, without the separate, express prior written permission of the Original Author, Licensor and/or Attribution Parties.”

¹⁵ See Fitzgerald, Anne M. and Hooper, Neale and Foong, Cheryl (2010) *Creative Commons & Government Guide : Using Creative Commons 2.5 Australia Licences on Government Copyright Materials*. <http://eprints.qut.edu.au/32519/>.

¹⁶ See New Zealand Government Open Access and Licensing (NZGOAL) framework <http://www.e.govt.nz/policy/nzgoal>

¹⁷ See The UK Government Licensing Framework (UKGLF) <http://www.nationalarchives.gov.uk/information-management/uk-gov-licensing-framework.htm>

detail in the following section.

As discussed above, the issue of choosing licences containing the NonDerivative element is closely related to the problem of non-endorsement and attribution of the source. It has been explained how all the Creative Commons licences cover the non-endorsement requirements. What needs to be established is the degree to which the PSI Directive provides a rule of non-endorsement or a rule of non-derivatives.

Returning to the text of the PSI Directive and observing its implementation in Greece and the UK allows an appreciation of the relationship between these concepts. As noted above, Recital 17 of the PSI Directive¹⁸ stipulates that the use of a standard licence should among others, ensure that conditions are imposed that deal with issues of "proper use of documents, guaranteeing non-alteration". Read in its literal sense, Recital 17 could be interpreted as assuming that no derivative works should be allowed in any licence implementing the PSI Directive in national legislation. Taken to its extreme such interpretation would only allow the unaltered use of verbatim documents for purposes other than their original ones. However, such literal interpretation would unnecessarily limit the scope of reuse and to a great extent hinder the materialisation of the PSI Directive's objectives which are to foster economic activity and reduce transaction costs. In addition, in cases where the only possible uses of public sector information would involve transformative uses, as is the case with economic data, such interpretation would make no sense. If, for instance, someone wishes to take excerpts from a financial database and create a subset, then this would amount to the creation of a derivative work. This is a common use in the case of data reuse and any licensing framework that would not allow such re-utilisation would be detrimental to the objectives of the PSI Directive. Another argument in favor of an interpretation allowing derivative works comes from the European Commission Decision of April 2006 on the reuse of Commission information. This stipulates in Article 9 that typical conditions under which Commission documents may be licensed include the obligation to acknowledge the source of the document and not to distort the original meaning or message of the document, rather than the document itself.¹⁹ Article 9 also makes it clear that such conditions should not unnecessarily restrict possibilities for reuse. All the above provisions advocate the implementation of a licensing scheme that enforces the differentiation between the original source and the subsequent disseminator or the original and the derivative work. As explained above, this would be any of the Creative Commons licences and not only those containing the NonDerivative licence

¹⁸ See Supra Note 7.

¹⁹ "The reuse of documents may be allowed without conditions or conditions may be imposed, where appropriate through a license or through a disclaimer. Typical conditions for reuse include the obligation for the reuser to acknowledge the source of the documents, the obligation not to distort the original meaning or message of the documents, and non-liability of the Commission for any consequence stemming from the re- use. The conditions shall not unnecessarily restrict possibilities for reuse."

element.

This broad interpretation is further supported by the INSPIRE directive as well as the directive on the use of Environmental data, which are in the same family of regulatory interventions aiming at the maximisation of the reuse of publicly funded information for purposes of economic growth, job creation²⁰ and cost reduction for public administration.²¹

The Greek PSI Law repeats the wording of Recital 17 in paragraph 3 of article 6 which is titled "Principles of Documents Dissemination" stipulating that:

"The further use of documents is subject to the limitation that their content should not be altered or misused in any way, as well that there is reference to their source as well as the date of its last update."

Again, this wording cannot be interpreted to impose a ban on the creation of Derivative works, but should be taken to mean that derivative works should not be presented as if they were the original.

The term "mislead" appears in the context of the UK OGL to serve similar objectives, closely related to the Attribution obligations and related to the PSI Regulations.²²

It hence becomes clear that the need to avoid alteration is not a condition that should be interpreted literary but rather a pointer related to the function of public documents, and to the need to be accurate and not to misrepresent the source of the public sector information. In the case of the further use of data, e.g. statistical, environmental or geodata, it is necessary to allow derivative uses while ensuring that the original is not confused with the derivative work. The non endorsement provisions and Attribution provisions of the Creative Commons licences can address these considerations.

²⁰ PSI Directive, Recital 5: "One of the principal aims of the establishment of an internal market is the creation of conditions conducive to the development of Community-wide services. Public sector information is an important primary material for digital content products and services and will become an even more important content resource with the development of wireless content services. Broad cross-border geographical coverage will also be essential in this context. Wider possibilities of re-using public sector information should inter alia allow European companies to exploit its potential and contribute to economic growth and job creation."

²¹ See PSI Directive Recitals 2, 3 and 4: "(2) The evolution towards an information and knowledge society influences the life of every citizen in the Community, inter alia, by enabling them to gain new ways of accessing and acquiring knowledge. (3) Digital content plays an important role in this evolution. Content production has given rise to rapid job creation in recent years and continues to do so. Most of these jobs are created in small emerging companies. (4) The public sector collects, produces, reproduces and disseminates a wide range of information in many areas of activity, such as social, economic, geographical, weather, tourist, business, patent and educational information."

²² The UK Open Government Licence for Public Sector Information stipulates: "You must, where you do any of the above: (...) ensure that you do not use the Information in a way that suggests any official status or that the Information Provider endorses you or your use of the Information; ensure that you do not mislead others or misrepresent the Information or its source;"

Most importantly, as mentioned in Recital 8 of the PSI Directive,²³ the standards set in the Directive are the minimum ones and the Member States could always decide to opt for more liberal options of disseminating their public information, as they are indeed encouraged to do in the recitals of the PSI Directive.. In other words, the wording of Recital 17 has to be interpreted in the broadest possible way, so as to invite the implementation of licensing schemes that allow the production of derivative works as long as the non-endorsement conditions are satisfied.

Another licence element that is frequently used by public sector bodies is the NonCommercial one, without, however, providing clarity as to how this licence element contributes to the objective of maximum information dissemination.²⁴ The NonCommercial element is normally used when the public authority would like to reserve the right of commercial exploitation of the information. Such a strategy may prove to be fruitful only when the following conditions are met: (a) there is a consistent plan regarding the exploitation of the information by the public sector authorities (b) licences allowing commercial use and exploitation are available with a clear and non-discriminatory pricing scheme. Ideally these would have to be standardised and the process automated. It is important to underline the fact that the NonCommercial licences do not preclude the commercial use of the work but rather reserves such uses to a sub-class of users that are willing to purchase such licences. A frequent problem with the NonCommercial element is that there is no commonly agreed definition and hence it is necessary to have the content owner to provide guidance as to what the content of the NonCommercial clause is.

The ShareAlike element²⁵ is used in cases where the content provider wishes to create a community of users around a specific resource and at the same time ensure that the derivative content also finds its way into the common pool of resources. Whereas the ShareAlike element ensures that all derivative works will be shared by the community, it may also create a series of problems when the objective is to allow the creation of value-added services without wishing to fragment the commons. Most copyleft licences contain their own conditions for the production and dissemination of derivative works, these being the result of the specific communities within which they have been developed. Such terms are in most cases not compatible with each other because of the need to share the derivative works under the exact same terms and conditions. Multiple copyleft or ShareAlike licences that are mutually incompatible will fragment the commons and curtail the benefits from the free reuse of information.

²³ “Member States' policies can go beyond the minimum standards established in this Directive, thus allowing for more extensive reuse.”

²⁴ See Supra Note 9.

²⁵ See Supra Note 9.

This is rather problematic in the case of data,²⁶ where copyleft conditions could lead to a severe fragmentation of the commons or actively discourage commercial use of open data.²⁷

Currently, the most widespread licences for public authorities appear to be Attribution only licences. This class of licences seems to be gaining momentum as they enforce the minimum limitations for the licensees and are the ones that are most likely to lead to secondary uses of the material without any unnecessary restrictions.

The issue of Attribution has to be viewed in relation with two more issues: first, the linking with moral rights and particularly the condition of non-derogatory treatment of the material and second, the clear differentiation between original and derivative work. The explicit reference to moral rights ensures that the material is not used in any way that would be detrimental for the reputation of the original work or the author. The differentiation between the original and the derivative work with the explicit inclusion of non-endorsement clauses ensures that there is no approval of the

²⁶ Ibid; while the use of the ShareAlike element may be desirable in some cases, it may also be the reason for grave concern in cases where the objective is to maximise the re-usability of the relevant information. As mentioned under note 9, the ShareAlike element may be used in order to control the commercial exploitation of the work. Commercial organisations may be reluctant to invest time in the production of derivative works if they are not able to recuperate their investment. Such organisations have an incentive to contribute in such information or software if they would like it to become a de-facto standard or they see it as information infrastructure upon which they may offer other competitive products or services. As long as the latter premium products or services may be distinguished from the content/ software that is licensed under a copyleft/ ShareAlike licence or this will allow the creation of a new market or the increase of market-share, then a commercial organisation has an incentive to contribute to their production and in that sense we see such contributions e.g. in software that has become a commodity. However, if there is a risk that a commercial organisation may compromise some of its key assets or lose its competitive advantage as a result of it being involved in such a process it is very likely that it will refrain from participating in the development of such products. In cases of Public Sector Information, there needs to be a very careful use of the ShareAlike element and there has to be some strategy behind its application, else there is the risk that one of the key objectives of the PSI Directive, which is sustainable economic development, to be annulled. This is particularly relevant in the case of data, where there are steady flows of data from public sources and the objective is to minimise frictions rather than introducing further barriers.

²⁷ The problem appears more intensely in cases where there is a differentiation between the database and the product that the end-user perceives. In such cases it could be that the ShareAlike covers only the final product but not the changes made to the database that make such derivative product possible. For example, in the case of geospatial data base, changes in the rendering algorithm would entail the use of a subset of the database with additional elements in order to produce a new map. If the new map is the only output presented to the end-user, it could be that the map as a picture is provided under e.g. a Creative Commons Attribution ShareAlike licence, whereas the changes to the database or the rendering algorithm remain with the creator of the derivative work. This in the Creative Commons_BA_SA context would be possible, since there is no provision that requires that the underlying database or the rendering algorithm are also made available to the public. The Open Data Commons Open Database Licence (ODC-ODbL) licence however contains a particular version of copyleft that ensures that either the underlying database or the rendering algorithm are also made available to the public. This may serve all the purposes mentioned under note 9, but it is questionable the degree to which it satisfies the developmental objectives of the PSI Directive or the EU 2020 Digital Agenda.

source to any subsequent uses of the material. As discussed, allowing derivative works and remaining within the scope of the PSI Directive, would require the existence of provisions ensuring both proper Attribution and non-endorsement of the derivative work or the disseminator of the content, as well as a positive obligation on the licensee to clearly differentiate the original from the derivative work.

It is important to note that the Attribution and non derogatory treatment provisions of the Creative Commons licences satisfy a range of different regulatory concerns. In the Copyright context they come to address Moral Rights concerns,²⁸ whereas in the PSI Directive context non-endorsement, proper use of documents and non-alteration provisions.

The issue of Attribution becomes more difficult in the case of data points and data sets. Where there are Attribution obligations as a result of a licence with respect to the use of data, the "Attribution Stack" problem may appear. This is the case where multiple data points are used in order to produce a new data set. These points, coming from different data sets or different data producers may require multiple

²⁸ See e.g. In Creative Commons Attribution Non Commercial ShareAlike Unported v.3.0 sections 4d (attribution) and 4f (non-derogatory treatment).

4d: If You Distribute, or Publicly Perform the Work or any Adaptations or Collections, You must, unless a request has been made pursuant to Section 4(a), keep intact all copyright notices for the Work and provide, reasonable to the medium or means You are utilizing: (i) the name of the Original Author (or pseudonym, if applicable) if supplied, and/or if the Original Author and/or Licensor designate another party or parties (e.g., a sponsor institute, publishing entity, journal) for attribution ("Attribution Parties") in Licensor's copyright notice, terms of service or by other reasonable means, the name of such party or parties; (ii) the title of the Work if supplied; (iii) to the extent reasonably practicable, the URI, if any, that Licensor specifies to be associated with the Work, unless such URI does not refer to the copyright notice or licensing information for the Work; and, (iv) consistent with Section 3(b), in the case of an Adaptation, a credit identifying the use of the Work in the Adaptation (e.g., "French translation of the Work by Original Author," or "Screenplay based on original Work by Original Author"). The credit required by this Section 4(d) may be implemented in any reasonable manner; provided, however, that in the case of a Adaptation or Collection, at a minimum such credit will appear, if a credit for all contributing authors of the Adaptation or Collection appears, then as part of these credits and in a manner at least as prominent as the credits for the other contributing authors. For the avoidance of doubt, You may only use the credit required by this Section for the purpose of attribution in the manner set out above and, by exercising Your rights under this License, You may not implicitly or explicitly assert or imply any connection with, sponsorship or endorsement by the Original Author, Licensor and/or Attribution Parties, as appropriate, of You or Your use of the Work, without the separate, express prior written permission of the Original Author, Licensor and/or Attribution Parties.

4f: Except as otherwise agreed in writing by the Licensor or as may be otherwise permitted by applicable law, if You Reproduce, Distribute or Publicly Perform the Work either by itself or as part of any Adaptations or Collections, You must not distort, mutilate, modify or take other derogatory action in relation to the Work which would be prejudicial to the Original Author's honor or reputation. Licensor agrees that in those jurisdictions (e.g. Japan), in which any exercise of the right granted in Section 3(b) of this License (the right to make Adaptations) would be deemed to be a distortion, mutilation, modification or other derogatory action prejudicial to the Original Author's honor and reputation, the Licensor will waive or not assert, as appropriate, this Section, to the fullest extent permitted by the applicable national law, to enable You to reasonably exercise Your right under Section 3(b) of this License (right to make Adaptations) but not otherwise.

different attributions. The problem is that as the used data points multiply, so are the required attributions that may end up being of greater size than the actual data files. In that sense, in the case of data points or data sets that are not protected by copyright and are not governed by EU PSI regulations, there is no obligation directly from the law to provide attribution and the Creative Commons licences do not impose any related contractual obligations. This needs to be further elucidated.

All Creative Commons licences, while covering databases, provide a two layer regime: if the database is protected by Copyright Law, then all the terms and conditions found in the licences also apply to them; if, however, the database is only protected by the Database Directive *sui generis* right, such right is explicitly waived. One reason behind this approach is the need to reduce the negative effects of yet another proprietary right over information and thus decreasing transaction costs that such right may entail. An additional purpose is to avoid the contractual export of this additional right to jurisdictions, such as the US, Australia or New Zealand, where such right does not exist, but the Creative Commons licences have widespread used.

Because of the nature of the Creative Commons licence, the inclusion of a *sui generis* right in the Creative Commons licences, especially the ones containing the viral element of ShareAlike, would lead either to incompatibilities between the licences or the contractual enclosure of material that would otherwise be outside copyright protection. If, for instance, person A would license her works under a *sui generis* ShareAlike Creative Commons licence in Germany and these data were to be remixed with content from another non European licence where the *sui generis* right does not exist, there would have to be a mechanism for ensuring that the terms of the licences had exactly the same content so that they could be freely remixed. That would mean that if the *sui generis* right were to remain, the other national licences would also have to contractually recognise it and hence introduce a limitation to data that would otherwise be without any limitations in their jurisdictions.

The problem is not as great in the case of Attribution Licences compared to ShareAlike licences, since there are no obligations as to how the derivative works are to be used, but an Attribution requirement, unless properly managed, could increase the costs for the users of information. Considering these problems, in addition to the Attribution stack problem, constitutes a good indication why Creative Commons has opted for a waiver rather than expansion via contractual means of the *sui generis* right.

However, because of the PSI Directive and the way it has been implemented in a number of EU Member States, having explicit Attribution and non-endorsement requirements for all types of Public Sector Information raises serious concerns as to how the Creative Commons licences are to be used in the PSI context. In countries like Australia or New Zealand where no *sui generis* rights exist and where the threshold for database protection has been fairly low, compared for example with the

US, there has not been any problem with using Creative Commons licences for Public Sector Information. In cases, however, like the UK, there has been great concern as to how the PSI Attribution, non-endorsement requirements would be fulfilled in the case of data.

As I present in the following section, the UK has opted for the creation of an Open Government Licensing Framework first and an OGL later. Both the licence and the framework seem to serve the same objectives but in different levels of specificity: they provide three different types of publicly produced information with different types of licences: (a) the General Public Licence for Software (b) the Creative Commons Attribution licence for all content that is not data and (c) the Open Data Attribution Licence for all data related content. This approach, besides some issues related with the compatibility of the different licences presented in the following section, is a rather thorough approach that makes use of the standardisation and wide adoption of the Creative Commons licences, while also providing for attribution for data as required by the PSI Directive.

The problem of the Attribution stack, while quite important in cases of multiple databases or data points from different sources, may be mitigated through the use of standard procedures and technological means. More specifically, following the Australian and New Zealand approach, the UK has opted for a single attribution statement for the whole of the public administration reducing thus substantially any potential costs of having to attribute every public body or agency separately. In addition, the use of machine readable attribution or the provision of attribution as a service would also facilitate the reduction of costs.

While there seems to be an issue with the way Attribution is mandated in the PSI Directive, it is not necessary that this is the standard that all EU Member States would have to adhere to. As discussed above,²⁹ the Member States could always go beyond the EU PSI Directive Standard to allow reuse of Public Sector Information and in that sense they could omit Attribution and non-endorsement legal obligations (see e.g. the Netherlands). This could be done with the use of Creative Commons Zero that would effectively waive all copyrights while introducing attribution rules in the form of non-legally binding soft norms. This approach along with an easy to use technical application allowing easy attribution could solve a lot of problems and genuinely serve the objectives of the PSI Directive.

6. Use of licensing frameworks

The discussion, in section 5, on the use of different standard open public licences to

²⁹ See EU PSI Directive Recital 8

achieve objectives is followed, in this section, by a discussion on the issue of the interaction between licensing frameworks and specific licensing forms. More specifically this section illustrates the ways in which the UK Open Government Licensing Framework and the UK OGL interact with each other, and with the Creative Commons licences, and seeks to explore the boundaries of the interoperability between standard Creative Commons licences and the custom made OGL. This is a particularly relevant discussion as the OGL constitutes a key initiative in Europe and is the first one to transfer some of the experience seen in Australia and New Zealand, and it may be adopted in the future as a model by different EU Member States.

While the standardised Creative Commons licences are important for the final dissemination of the material, the licences as such are not enough for the effective reuse of public sector information. This is mainly because the public sector information forms part of a greater lifecycle and the licensing of the content is only the last part in a chain of other events that allow the development of publicly owned content. For this reason, the public authorities mandating the use of Creative Commons licences also produce a series of procedures, protocols or frameworks that are to support the use of the Creative Commons licences. We have already made a brief reference to the way in which the Australian and New Zealand frameworks operate. Policy frameworks comprise of a series of steps that are to be followed in order to implement a specific Public Sector Information policy and a set of guidelines that specify the way in which the licences could be used in the context of a specific jurisdiction.

The UK Government Licensing Framework is a good example of such an initiative.

It:

"...provides a policy and legal overview for licensing the reuse of public sector information both in central government and the wider public sector. It sets out best practice, standardises the licensing principles for government information and recommends the use of the UK Open Government Licence (OGL) for public sector information".³⁰

While in the UK the Open Licensing Framework is clearly differentiated from the OGL, there is a very close link between the two. This is because the OGL, as it currently stands, effectively operates as a springboard for the specific licences that are to be used by the UK public administration: it assigns the types of licences that are most appropriate for each type of public information, whether content or data³¹

³⁰ <http://www.nationalarchives.gov.uk/information-management/government-licensing/the-framework.htm>

³¹ Note that while software is excluded from the scope of the PSI Directive and the PSI Regulations in the UK, software is included in the Open Government Licensing Framework. This is because the framework provides detailed guidelines as to how different forms of Intellectual Property Rights are

using standard licences that may be used for the re-licensing of the relevant information.

As illustrated below, the fact that the OGL (a) contains conditions that make it usable only by the UK public administration and (b) allows relicensing under the Creative Commons Attribution and the Open Data Commons Attribution licences, makes these two licences effectively the legal instruments public information is going to be licensed under. While this may lead to the conclusion that the OGL is not really necessary or relevant, this is not accurate. The OGL operates as the link between the PSI regulations and the standardised public licences, making all the references necessary to ensure compliance with the EU PSI Directive. In addition, precisely because of the OGL's transitory character, it is an important step to make the administration adopt such standard licences. In that sense OGL constitutes an evolution from the Crown Copyright Click Use licences that could not interoperate with other public open licence as well as the OGL does.

However, it is also important to highlight that the OGL is still very close to a springboard licence and it has to be viewed as such. In other words, it is a licence that sets a number of conditions but allows relicensing under standard licences. This means that after the first use of the OGL any licensee may relicense the content under Creative Commons-BY or ODC-BY. In that sense, the OGL does not introduce any new licensing form. Any other approach could lead to an unnecessary proliferation of the licences and introduction of incompatible licence clauses, hampering rather than fostering the growth of informational commons.

In order to limit the introduction of unnecessary legal complexity and new licensing forms, the UK National Archives have set up the OGL to provide a two tier licensing scheme that allows interoperability with the Creative Commons Attribution and the Open Data Commons Attribution licences depending on whether the content is copyrighted or protected under the *sui-generis* right. If the information is protected under copyright then, it is licensed under Creative Commons Attribution; if it is protected under the *sui generis* right, it is licensed under the ODC Attribution.

It is important at this stage to explore the interoperability scenarios between OGL and CCBY or OGL and ODCBY. More specifically with respect to the "interoperability" element there are two scenarios (or classes of scenarios):

(a) The material is first licensed under OGL. There are then two possible sub-scenarios:

to be handled by the government. In addition, the OGL specifies the licences that are to be used but is limited only to information (copyrighted material and databases protected by the *sui generis* right) and not software, being thus consistent to the scope of the PSI Regulations.

(aa) One uses the same material and re-licenses it under CCBY. Here is where the licence compatibility issue emerges. The only possible issue emerging here is the one related to the clause stipulating that the licensee should "ensure that you do not mislead others or misrepresent the Information or its source". While this may appear as an issue regarding the compatibility with the Attribution requirements appearing in the Creative Commons licences, it is not necessarily a problem. It is difficult to think of a use case, where a licensee would misrepresent the information or its source or mislead others without infringing the terms of CCBY or violate any related legislation (libel, personality protection laws or passing off). In addition, the licensee could effectively use any other licence, even an All Rights Reserved (ARR) one as long as such licence did not violate the conditions set out in OGL. There is no economic incentive to do so, but this does not mean that someone could not do it. Hence, someone could in principle re-licence with any ODBL, Creative Commons or whatever other licence as long as they remained compatible with the minimum provisions set in the licence and this is indeed the meaning of the word "any".

(ab) One creates a derivative work and re-licenses it under ANY licence (including CCBY). With respect to the derivative work there are no limitations. The licensee could do whatever she wants with it, even without providing attribution. But with respect to the original content she would still have to adhere to all conditions set out in OGL and have the same limitations as the ones described under (aa).

(b) The material is first licensed under CCBY. Here there are there are three scenarios:

(ba) One cannot re-licence CCYBY-licensed content, since CCBY does not allow licensing under any other terms of the licence (s.4a CCBY 3.0 Unported). This is clearly different from what the OGL stipulates. This has also been made very clear in the discussions Creative Commons UK had with the NA in the process of drafting the relevant framework.

(bb) If A licenses under OGL a work deriving from a CCBY, work there are two options:

(bba) A is not a UK based public body. In this case, most probably A cannot use the OGL. This is because of the definitions of information provider and Licensor:

'Information Provider': means the person or organisation providing the Information under this licence.

'Licensor': means any Information Provider which has the authority to offer Information under the terms of this licence or the Controller of Her Majesty's Stationery Office, who has the authority to offer Information subject to Crown copyright and Crown database rights and Information subject to copyright and database right that has been assigned to or acquired by the Crown, under the terms of this licence.

My understanding is that though other countries may opt to follow an OGL-like model, OGL is not a public licence. It is addressed only to UK Public Authorities and does not require any link-back. The explicit reference to Her Majesty's Stationery Office makes its use by non-UK Public Bodies who are governed by other Administrative Laws very difficult and hence it does not lead to licence proliferation.

(bba) A is a UK based Public Body and wants to create a derivative work from CCBY content. With respect to the derivative work there are no limitations as to what conditions it could impose. As a result, it could use even an ARR licence or a CCZero licence. But it would still have to attribute the author as prescribed under section 4b of CCBY 3.0 Unported.

This does not contravene any of the obligations of OGL and this is something I need to further explain. OGL's full title is "Open Government Licence for Public Sector Information". The PSI Directive was transposed in UK law in 2005 with the PSI Regulations. Article 5 contains exclusions from the Regulations:

- 5(1) These Regulations do not apply to a document where -*
- (a) the activity of supplying the document is one which falls outside the public task of the public sector body; or*
 - (b) a third party owns relevant intellectual property rights in the document.*

5(1)(b) is of course something that could be excluded from the Regulations, but it is really relevant for our case. OGL's purpose is to ensure that there is a standard way in which information (copyrighted content) may freely flow between different governmental agencies and to the public. In other words, any content that is copyright cleared could be licensed under OGL to flow between UK public authorities or from UK public authorities to other parties. Hence, OGL's purpose was to ensure that even in cases where the 2005 PSI Regulations would not apply, the OGL could take care of the free flow of information. The interoperability with CCBY would ensure that there was no need for a clearance procedure and the information could freely flow within the UK public administration. This is the reason behind the interoperability clause.

In terms of a flow from CCBY to OGL this model of seamless reuse of content could work since there are no additional obligations placed by the OGL other than yet another layer in the attribution stack. In other words, the licensee of an OGL+CCBY licence would have to attribute both the CCBY licensor and the Crown. This is something that is implied by the wording assuming clearance before the copyrighted material to be licensed under OGL and the fact that CCBY imposes the same (or less) attribution/ non endorsement obligations as (or than) OGL.

Here, I have a problem with the word 'ANY'. What I meant was any Attribution ONLY licence not any licence CONTAINING the Attribution element. This may be rectified either with an addition of the phrase "any Creative Commons Attribution licence only" or with explanation in the FAQs. My suggestion is to start with the latter and then move it to the licence later. The FAQ addition is necessary because the National Archives have to create a standard procedure for attribution of CCBY works from which they would like to create derivative works.

With respect to the incorporation of CCBYSA or ODBL SA in works further to be licensed by the National Archives under OGL, the real life risk here is low: the Crown would have as part of their clearance procedures reject any works licensed with licenses imposing conditions on the distribution of derivative works that exceed the limitations set by OGL and hence all ShareAlike licences would fail that test.

7. The legislative solution

In contrast to this rather elaborate approach, in the Greek case we have a direct mandate of Creative Commons licences through decrees issued by the Prime Minister. The licences used here are the Creative Commons Attribution 3.0 Greek version licences that allow full use of the material with only the attribution obligation. While no licensing framework is used for the dissemination of public sector information in Greece, this could be achieved through the standardisation of public sector web sites Terms of Service. According to Article 27 of Law 3731/2008, there is an obligation to standardise among others the Terms of Service in public sector websites, although the relevant Ministerial Decree has not been issued as yet. The ministerial decree will have to be followed by a circular stipulating the terms of its implementation, whereas the standard for the public sector websites Terms of Service will then have to be ratified by a Technical Advisory Group and the Director of the Information Systems Development Division of the Ministry of Interior which is legally responsible for the implementation of the national interoperability policy. In this schema the use of Creative Commons or other open licensing schemes could be standardised, made a national Terms of Service standard and be publically available through the "Transparency" procedure of law 3861/2010. While such a solution could lead to the same results as in the UK case, it would still

need some form of framework licence in order to cover all data, software and content which could become a standard template as well.

The reason behind the non-adoption of a licensing framework by the Greek Administration as yet is because of the way the Greek administrative law operates, the public administration cannot commit any act that is not prescribed in the law. According to this principle, the administration cannot produce a licensing framework or indeed cannot decide on a specific licence without a specific regulation being in place. Thus, for instance, we have had up to now one Ministerial Decree and one Prime Ministerial stipulating how public information is to be further reused or the content of a public website licensed. While there seems to be scattered legislation governing the way public information is to be used, there is still a requirement for a Ministerial Decree that would either provide for a specific type of licences used per ministry or to standardise the way in which the Terms and Conditions of all public administration web sites would be. In the absence of such decrees it is not possible to put a licensing framework in place or even to standardise the licensing terms and conditions to achieve a result similar to the UK OGL.

8. Conclusion

PSI related regulation has to be seen not as a stand-alone piece of legislation but rather as a complex and dynamic ecology of different regulatory instruments, institutions, processes and standards. In such an ecology we need to focus on two cornerstones: the PSI legislation itself and the licences that stipulate the way in which public sector information is to be accessed and further reused. In order to appreciate how this works we need to think both at the vertical and horizontal level. In the vertical level we need to appreciate how different layers of regulation, such as law, MoUs, Policy Documents, Advisory Boards, Public Institutions and licences accumulate in order to reduce friction and increase the re-usability of PSI.

The PSI law provides the generic framework, but this may be operationalised only through the involvement and gradual capacity improvement of the different public sector organisations that are to release public information and data. The MoUs, as well as the operation of Advisory Boards and Meetings at different levels, allows the gradual cultivation of a culture of sharing. This is in contrast to a culture of turf fighting which is endemic in large organisations. The use of MoUs is again an introductory instrument, in less mature public sector environments or in cases where full legislation has not been implemented as yet, in order to achieve commitment and make the first step toward an integrated but open PSI environment. The licensing framework that comes to be added at the end is the final add on that gives the detailed set of rules for the information to be released.

To fully appreciate the reason why the licensing frameworks need to be

complemented by specific standardised public licences it is necessary to think in terms of the horizontal dimension. This views the PSI as the informational infrastructure upon which further content and data are to be produced both by the public and private sector, and value-added services are to be offered. To achieve this leveraging effect it is necessary to lower frictions as much as possible. This means that the licences used have to bear the absolutely minimum restrictions and allow the maximum reuse of information and data. In that sense the licences have to be public and standardised so that they interact with other open content that does not come from the public sector. In addition, they have to be the licences with the greatest compatibility options. The Public Domain Dedication or Creative Commons Zero licences are possibly the most frictionless licences but do not satisfy conditions of attributions, non-endorsement and respect of moral rights that still remain valid concerns of the public administration. Extra care should be also placed in the way licensing frameworks are being drafted so that while ensuring that all types of information (content, software, data) are covered, they do not introduce unnecessary complexity, incompatibilities or friction. For that reason, the UK National Archives have been involved in lengthy consultation with the public licences custodians such as Creative Commons and Open Knowledge Foundation and have placed extra care in ensuring that the information has been consistently licensed. The Greek administration has not reached that stage as yet but is currently using a single licence (Creative Commons Attribution) for all public content. This issue is to be resolved in the future through the standardisation of the public web sites Terms of Service and the possible introduction of a licensing framework to that purpose.

The implementation of the PSI Directive is the result of a complex process of creating a variety of norms that may be expressed in the form of legislative texts, soft norms, informal institutions, accreditation and standardisation schemes or standardised licences. While Creative Commons licences play a crucial role in this process, they cannot perform their role only by being used by the government. It is necessary that they are complemented by frameworks that provide instructions as to how they are to be used but also that ensure they interoperate with content that the public sector produces. While the creation of frameworks makes such position very clear it may lead to ambiguities as to the way in which the licences interoperate with standardised licensing schemes and in that sense it may be more prudent to directly adopt one of the existing Creative Commons licences.