



BVA/ABA Copyright and public sector information webinar 29.11.21

Rights to access & reuse public sector information: copyright problems

Mireille van Eechoud | m.vaneechoud@uva.nl

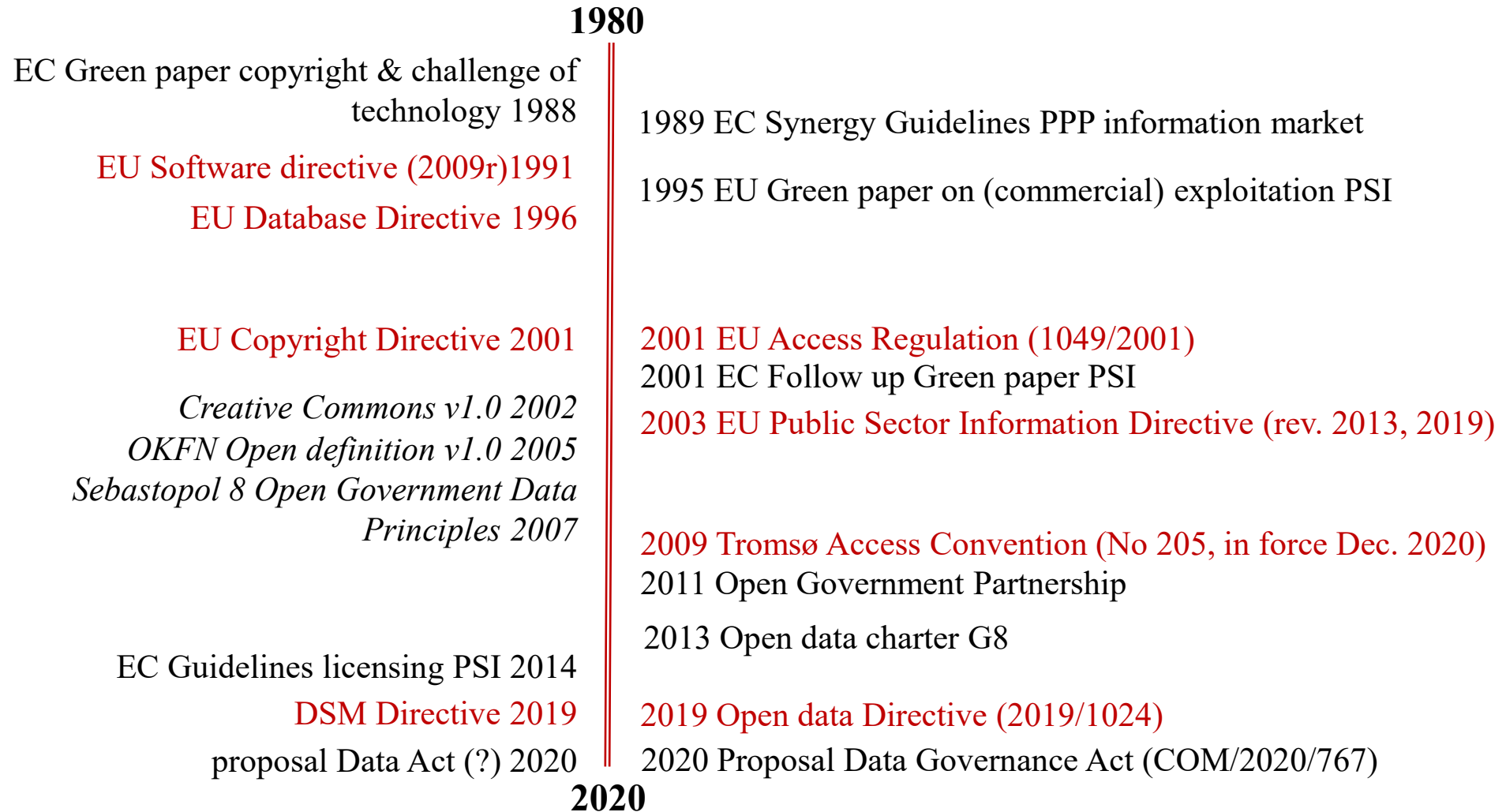


What is the problem?

- Inherent tension between copyright (+ database rights) and right to (use) public sector information
 - Areas of law develop(ed) separately
 - Digitisation massively increases need to coordinate
- =
- Legal uncertainty in EU law (and many MS laws):
 - Status and ownership of public sector information under copyright/database right (harmonization gap)?
 - Relation (hierarchy) between regulation of access, reuse and intellectual property?



Access – reuse – copyright time line(s)



‘Open data’ instrument to...

- Stimulate economic growth and societal value through new information services/products (innovation/economic rationale)
- Improve accountability of public sector & enable better citizen participation in public policy making (political democratic rationale)
- Achieve better and more efficient public service delivery (efficiency rationale)

What is (truly) open data?

- Open technical > machine-readable, open format, metadata, etc.
 - Open legal > free from copyright/database/related rights restraints
- “**freely used, modified, and shared** by **anyone** for **any purpose**”
(subject, at most, to requirements that preserve provenance and openness).” *Opendefinition.org*
- Typical licenses: Creative Commons ('by', 'zero'), GPL, MIT, AFL, national open government licenses.

Open data (public sector information) directive:

- MS must ensure that documents public under domestic access regimes available for re-use.
- Re-use = any use for other purposes than initial public task for which information produced/collected
- Any terms and conditions: must be transparent, non-discriminatory, not unnecessarily restrict re-use possibilities
- Transparent pricing, default principle: free or marginal cost

Relationship copyright – access - reuse laws:

- Art. 13 Database dir; Art. 9 Copyright dir: no prejudice to law on access to public sector documents.
- DSM dir: silent, except Rec 84 > interpret and apply in accordance with [fundamental] rights and principles Charter.
- Open data dir: rights employees (authors) public sector to be respected, but: public sector must exercise copyright so re-use facilitated (Rec. 54). Exercise sui generis database right to limit re-use forbidden (art. 1(6) Directive). Not applicable to 3rd p IP.

European Copyright Code (Wittem group)

Art. 1.2 – Excluded works

The following works are not protected by copyright:

- a. Official texts of a legislative, administrative and judicial nature, including international treaties, as well as official translations of such texts;
- b. Official documents published by the public authorities.