

UNIVERSITY OF AMSTERDAM Institute for Information Law

BVA/ABA Copyright and public sector information webinar 29.11.21

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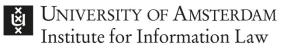
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Rights to access & reuse public sector information: copyright problems

Mireille van Eechoud | m.vaneechoud@uva.nl



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What is the problem?

- Inherent tension between copyright (+ database rights) and right to (use) public sector information
- Areas of law develop(ed) seperately
- 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)

1980

EC Green paper copyright & challenge of technology 1988 EU Software directive (2009r)1991 EU Database Directive 1996

EU Copyright Directive 2001

Creative Commons v1.0 2002 OKFN Open definition v1.0 2005 Sebastopol 8 Open Government Data Principles 2007

EC Guidelines licensing PSI 2014 DSM Directive 2019 proposal Data Act (?) 2020 2 1989 EC Synergy Guidelines PPP information market

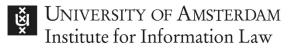
1995 EU Green paper on (commercial) exploitation PSI

2001 EU Access Regulation (1049/2001)
2001 EC Follow up Green paper PSI
2003 EU Public Sector Information Directive (rev. 2013, 2019)

2009 Tromsø Access Convention (No 205, in force Dec. 2020) 2011 Open Government Partnership

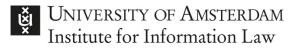
2013 Open data charter G8

19 2019 Open data Directive (2019/1024)
 20 2020 Proposal Data Governance Act (COM/2020/767)
 2020



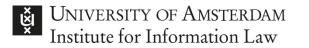
'Open data' instrument to...

- 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)



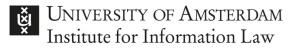
What is (truly) open data?

- 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.



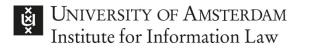
Open data (public sector information) directive:

- 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, nondiscriminatory, 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 excercise 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.