

Do current licensing practices hinder the commercial reuse of open data?

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Abstract

This paper introduces a proposed discussion on the topic whether current licensing practices of open government data hinder its commercial reuse. A crucial principle indicated in open government data policies is that legal rights in publicly owned information must be exercised in a manner that is consistent with and supports the open accessibility and reusability of the data. In particular, where government information and data is protected by copyright, access should be provided under licensing terms which clearly permit its access and reuse. In the context of [Action 4.2.5](#) of the Interoperability Solutions for European Public Administrations (ISA) Programme of the European Commission we looked at the current licensing practices for open data across the EU and set a discussion on whether current licensing practices hinder the commercial reuse of open data.

Keywords: Open Data, European Union, EU, PSI, licences, interoperability, commercial reuse

Introduction

The greater the support for greater access to information and data held by public administrations the greater the awareness of the need for appropriate policy, technical and legal frameworks to achieve the desired economic and societal outcomes.

A crucial principle indicated in open government data policies is that legal rights in publicly owned information must be exercised in a manner that is consistent with and supports the open accessibility and reusability of the data. In particular, where government information and data is protected by copyright, access should be provided under licensing terms which clearly permit its access and reuse.

By looking at the current status on licensing practices for open data across the EU, the aim of this discussion paper is to question whether licensing practices hinder the commercial reuse of open data.

Our experience: analysis of licensing practices for open data across the EU

The analysis of licences used by open data portals at Member States and European Union level included 65 open data portals from 25 Member States and 3 European Union institutions and bodies.¹ 50 out of the 65 open data portals reviewed used open licences as

¹ The pan-European data portal is managed by the European Commission (DG CONNECT); the EU Open Data Portal is managed by the Publications Office of the European Union and portal on EU statistics by EUROSTAT.

their predominant licence, whereas the other portals used an amalgam of legal instruments, including public domain dedications, disclaimers, laws, legal notices and restrictive licences. The study identified only one case in which it was required to sign a contractual agreement² between the licensor and the user in order to use the data.³ Overall it appears that the preferred approach when publishing open data is to use standard attribution licences or specific licences.

Characteristics of custom licences

In the course of a [survey](#) and two workshops held in Spring 2014 we asked participants, mainly from public administrations, what are the main reasons that lead owners of public data to open up their data under custom licences. The main reasons brought forward and that might have an impact on the commercial reuse of open data are reported below.

Linguistic support: A key requirement for open data licences is to make them available in the national language of the public administration that releases open data.

Specific terms: In certain circumstances custom licences are used to impose more restrictive terms and conditions for the reuse of open data compared to standard licences. A typical examples entails restrictive the reuse for non-commercial purposes only.

Income generation: Safeguarding the business model of certain public administrations – i.e. the fear of losing direct revenues generated from the reuse of data – was often indicated as a key reason to select a custom licence instead of a standard one.

Limitation of liability: Organisations publishing open data want to avoid being held responsible for any damage resulting from the reuse of the data. In a custom licence, owners of open data have the opportunity to extensively describe clauses which limit their liability.

Ownership: Key reasons for public administrations and institutions to develop a custom licence relate to the ownership of the data. Publishers of open data often fear not be recognised and properly acknowledged when data are re-used.

Standard licences

Despite the reasons brought forward in favour of custom licences, the findings of this study demonstrated that standard licences are widely used within the EU. The main reasons brought forward to select standard licences related to the commercial reuse of open data are enlisted below.

Legal Comfort and Certainty: Standard licences are widely used, thus providing a sufficient degree of confidence about their capacity to meet public administrations and re-users' needs.

Foster (legal) interoperability: Standard licences are often adopted at the international level, thus improving the level of interoperability across nations.

Efficiency: Re-using a standard licence requires lower costs compared to the one derived from developing a new licence.

² Contract: <http://www.infotripla.fi/digitraffic/docs/Digitraffic-contract.pdf>

³ Malta <https://www.gov.mt/en/Pages/Terms-of-use.aspx>; Portugal <http://dados.gov.pt>; Slovenian Inspire geoportal <http://www.geoportal.gov.si/> (which refers to the Inspire Directive); Slovakian <http://www.nbs.sk/en/statistics> and <http://www.shmu.sk/sk/?page=1>

Benefits for the data re-users: While the aforementioned reasons entail advantages for the owner of the data, the licensor, the use of standard licences also entails many benefits for re-users of data. Since standard licences are more known compared to custom one, re-users are more familiar with their provisions and might feel more comfortable in re-using the data. In addition, the use of the same standard licence for different data sets facilitate the possibility to mix them and spares re-users from the obligation of reading different provisions that might apply to each data set and that might be available in different languages and that make reference to different national legislation. Furthermore, standard licences are not specific to the public sector as they can be used both inside and outside governments. Finally and more generally, the use of standard licences lowers the administrative burden for third parties when using open data.

Discussion points

1. Do current practices on open data licensing conditions hinder reuse?
2. Based on your experience are standard licences more appropriate for the reuse of open data for commercial purposes?
3. Which conditions are most cumbersome? Can you give some examples?
 - a. Giving attribution
 - b. Commercial use restrictions
4. How about Public Domain Dedication?
5. What are the main consequences of licences that limit reuse of data for non-commercial purposes only?
6. How does the use of non-commercial provisions affect the reuse of data?
7. What are the advantages of promoting the reuse of open data for commercial purposes? Who and how can benefit from it? Can you give examples?
8. Besides the examples identified in the course of our survey, what are additional obstacles that licences create to the commercial reuse of open data? Can you enlist concrete examples?

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