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The Use and Re-use of Public Sector Information (PSI): Some Legal and Policy Reflections

Abstract: This paper will draw upon the duality of PSI and point out the influence of technology on its availability and accessibility. It mentions some of the different types of law that determine the availability of PSI in Europe, and the main differences compared to the U.S. and Canada.

Résumé: Cet exposé analyse la dualité existant au sein des données publiques, et déterminera l'influence de la technologie sur la disponibilité et l'accessibilité de l'information au sein du secteur publique. Il mentionnera également différents types de legislation qui concernent cette disponibilité en Europe, ainsi que les différences importantes avec les U.S.A. et le Canada.

1. Situating Public Sector Information:

The public sector, in exercising its public tasks, is probably one of the biggest generators of information. It is argued (Onsrud, 1998, p. 1) that the resulting body of information that is freely accessible for use by all constitutes a public commons in information. this information commons has substantial positive effects on the well being and growth of society. However, this information risks as a result of government policies responding to digitally formatted information, to be increasingly the subject of commercialization. Thus contributing to what is called the tragedy of the commons.

Definitional Issues:

In my opinion one should, before bringing up the definition of public sector information, make a clear distinction between data and information. Data, in this paper, covers every symbol, sign or measure that is in a form that can be directly captured by a person or a machine. Conventionally, the most useful data is that which represents (or purports to represent) real-world facts and events (Clarke, 1999, p. 3). Information is something more. Although different definitions of information exist, we will, as Walters (2001, p. 17) does, consider it as a limitation of or a selection from possibilities, as ordering or forming the randomness and chaos of data. The definition of information as a selection and arrangement of data resembles that of a 'compilation', which is found in many copyright statutes including the Canadian Copyright Act.

Public sector information and government information are notions difficult to define. Since they are often used as synonyms. It's therefore important to clearly distinguish them. Public sector information could be defined as all the information that is or has come into possession of the public sector in the exercise of its activities (Burkert, 1995, p. 4). Public sector bodies may, on their turn, be defined as those bodies established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character; having legal personality; and financed, for the most part, by the state, or regional or local authorities, or other bodies governed by public law (European

Commission, 2001, p. 8 and Directive 92/50, art. 1). Government information is more restrictive, covering that part of public sector information relating to the executive branch.

Further categorization of public sector information is possible. One could like, Wells Branscomb (1994, p. 164), make a distinction on the basis of functionality and thus perceive: 1) that information which is necessary for the citizens to acting in their roles as voters engaging responsibly in the electoral process, 2) that which is necessary for law-abiding residents in order to comply with the legislative enactments and judicial decisions that are the law of the land, 3) that information which is mandated by the purpose for which the agency is established, for example, to provide medical, environmental, commercial, technical or educational information, 4) that information upon which the very essence of the deliberative process rests, and which cannot be collected reliably and accurately in the private sector, such as census data and sensitive economic data - necessary in the aggregate but damaging or invasive of privacy if disclosed with identifying attributes.

The problem with this categorization of public sector information is that this is a very delicate exercise. Especially since this is done in a rather normative way and based on the supposed essential general or democratic importance of public sector information (ICRI, 2002, p. 16).

2. The Functionality of Public Sector Information

Notwithstanding these difficulties, it appears that public sector information is subject to a number of tensions. On the one hand is pubic sector information the object of a fundamental democratic right, in its turn part of the process of checks and balances as required by constitutional law in parliamentary democracies. At the same time however, and in particular the last couple of decades, PSI has become attractive for commercial purposes.

The Democratic Value of PSI

It is argued (Janssen & Dumortier, 2003, p. 185) that public sector information is vital for the citizens to participate fully in a democratic society and to be aware of the extent of their rights and duties. In order for people being capable to participate in social, economic, or political processes one is greatly dependent on the information that can be gathered about those processes and the way to approach them. Access to government information may give citizens a sense of ownership of their society, and it creates a confidence in the legitimacy and appropriateness of government administration (CSTB, 2001, p. 156). Historically, the public's right to information held by the State must be understood as part of a broader set of rights of citizens, aimed at giving them control of state power and of shielding them from the arbitrary use of it (Mackaay, 1992, p. 168). In Europe it goes back to the time when Kingdoms where characterised by personal governance and the veil of secrecy that existed on the role of the King's counsellors. Gradually, along with the evolution of a government based on pluralistic forces, came the need for accountability. As Birkinshaw (1996, p. 85) argues, accountability is impossible in any real sense unless, the body exercising power accounts to whoever asserts the right to expect an explanation, a justification for action or inaction, for prerogative acts and for policy. Knowing who did what is the first step to rendering an institution or person

accountable. In Brittan, until the middle of the 19th century, the battle for information had largely been fought out in a constitutional struggle between the Crown and the Commons, and between courts and country. The growth of the press, the emergence of strong political parties and organised party political process and the development of interest group politics all contributed to a wider group beyond government that wished to be informed of public business (Birkinshaw, 1996, p. 92).
Nowadays many countries become to recognise that individuals have a right on access to information held by public bodies and that such legislation is needed. However, as a recent UNESCO-study notices (Mendel, 2003, p. 124), that in important areas divergences remain, like in definitional issues, procedures, the duties to publish, exceptions, and promotional measures. They are not only explained by the fact that some have further in developed their freedom of information legislation compared to others.

Another explanation to these divergences are the different viewpoints governments have with regard to the extent to which their information should be made available. These views can, according to Heeks (2000, p. 2), be represented as lying anywhere within a triangle between three extremes. One may consider public sector information as a private asset, a public asset, or not an asset at all.[1] In the case of public asset, public sector information is seen as owned by everyone since it has been gathered about and from everyone, often compulsorily. It should, in general, be made available as it can assist in both social and economic development, and citizens have a free right of access or at worst against cost. On the contrary, if public sector information is considered as a private asset, than it is seen as owned by the department where it resides. Here the view is that since the public sector has invested money in its production, often making it have a considerable commercial value, the information will be sold, including for citizens, at market price and constitute a revenue to the public sector. The third view is that public sector information is not an asset, and sees PSI as not important enough to warrant open consideration of issues of ownership, value and charging.

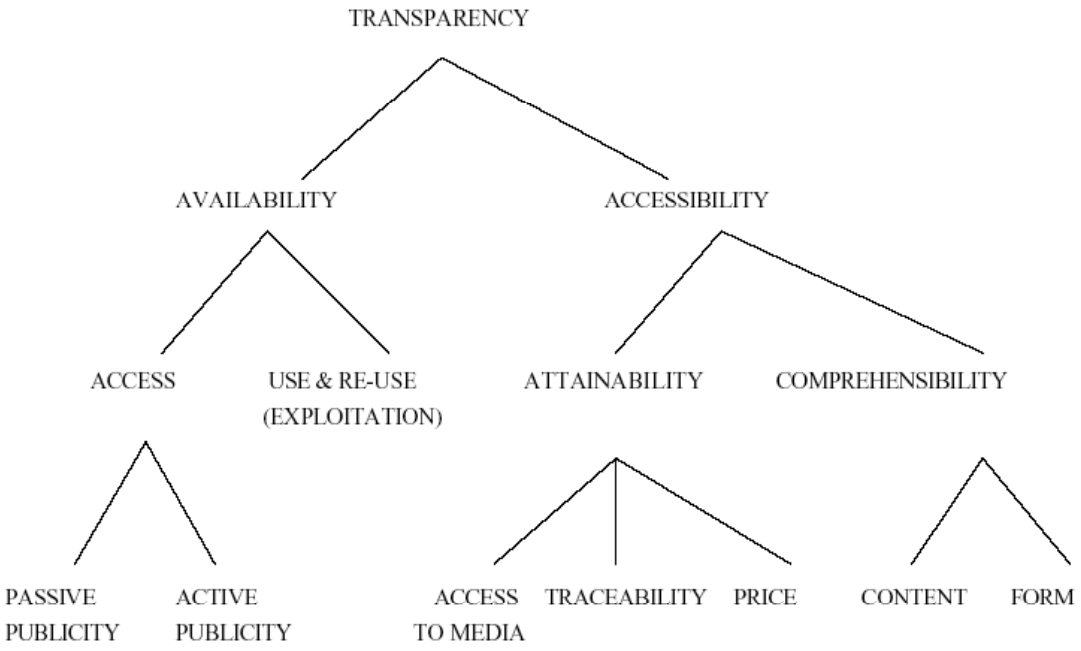
All the policies regarding freedom of information can be brought back, more or less, to one of these extremes. For example, at the federal level, the U.S. adheres the view that federal government information is a public asset. This is mainly due to the prohibition of copyright on federal government information, as stipulated in the 1976 U.S. Copyright Act,[2] and to the First Amendment in the U.S. Constitution that generally prohibits any government effort to limit freedom of expression and information. Most European States take more moderate positions, with copyright in public information being permissible, but only under some circumstances and only if expressly reserved (Perrit, 1994, p. 14). The United Kingdom, for example, adhered to the view that public sector information was to be considered a private asset, thus placed at the opposite end of the spectrum from the U.S. Its 1988 Copyright Designs and Patents Act recognizes the principle of "Crown Copyright", according to which the Queen is considered to be the owner of creations by its public agents in central administrations when the work was created within the framework of their professional activities. In practice "Her Majesty's Stationary Office" (HMSO) deals with the policy and exercise of the copyright. The diffusion policy of public data by the UK has changed substantively over the last six years in an effort to offer greater access to citizens and economic actors (Le Forum des Droits sur Internet, 2003, p. 7). Since the introduction of the 2000 Freedom of Information Act the general principle is that public data is freely available, which, in practice, is done by way of "click & use" licences.

The way in which public sector information is conceived, anywhere between a public or private asset, is of course of great importance in relation to commercialization. However, besides the democratic value of public sector information, which, from a citizens' point of view, should encourage towards maximum accessibility, public sector information also has a commercial value making it favourable to minimum accessibility. Indeed, for public sector information to keep its commercial value, free accessibility should be kept limited. This duality, the tension between maximum and minimum free accessibility, poses particular difficulties as is also reflected within some government's policies (Heeks, 2000, p. 12).

The Attractiveness of PSI for Commercialization:

According to Poullet (1995, p. 2), the willingness of certain administrative bodies and certain companies to commercialize data held by the civil service can be explained by the characteristics inherent to government information, namely *because* it's being collected by a public authority. Since the information is considered as being complete (all citizens targeted by the legislation in question being required to provide it), reliable (sanctions are envisaged for anyone giving false information) and, perhaps most important, inexpensive (civil services function on a non-profit basis). One could rightfully state that this has always been the case, so why bother with it now? In the past this value in a more or lesser degree remained only a potential value. The big problem in the past was to effectively commercialise public sector information concerned the problem of accessibility. It is held by the transparency-model in Figure 1 below, as developed by the Rathenau Institute (Baten & van der Starre, 1996; de Vries, 2001), that in order for public sector information to be disclosed or transparent, it not only should be *available*, but it also should be *accessible*. Availability comprises the whole legal framework that allows one to disclose information held by the public sector, and that determines the extent, the manner and the conditions under which this is to be done. Accessibility covers the degree of attainability and comprehensibility, and relates to the more practical barriers to public sector information. Like obtaining the necessary media, to successfully trace the information, to be able to afford the price of it, the form in which it exists to be compatible, and to understand the contend. There's a mutual dependency between accessibility and availability, since it's useless to provide a whole system of laws and regulations that make the information (legally) available to you, when (practical) barriers like absence of the necessary media or an elevated price prevent you from making use of this availability (de Vries, 2001, 14; Steyaert & Van Gompel, 2001, 13).

Figure 1 : Transparent government information



(Figure 1 from Steyaert en Van Gomperl, 2002, p. 12)

The absence of wide accessibility thus explains for a large part why the commercialization of public sector information has only relatively recently popped up as an issue within the public policy discussion. Indeed when, from the seventies on, IT started to be widely used within the public sector, this also meant the advent of greater accessibility. Indeed, as Solove (2002, p. 1154) correctly points out, for a long time, public records were accessible only in the various localities in which they were kept, and the practical difficulties in gaining access to them remained obscure. In sum, the increasing digitization of documents enabled more documents to be retained by eliminating storage constraints, increased ability to access and copy documents and permitted the transfer of documents en mass. It is not a coincidence that during the nineties and at the beginning of the 21st century, a period during which IT has been integrated in the public sector's daily use, also the availability of public sector information went crescendo in different countries through the implementation of 'freedom of information laws' or 'government in the sunshine acts'.

However, parallel to a greater accessibility and availability, it is argued (CSTB, 2001, p. 159) that in particular technology has created incentives for the private sector to create value-added products from the raw data produced by government agencies. With records being increasingly computerized, entire record systems, rather than individual records can be easily searched, copied and transferred. Private sector organisations sweep up millions of records from record systems throughout the country and consolidate those records into gigantic record systems (Solove, 2002, p. 1152). Some (Steyaert & Van Gompel, 2002, p. 15) argue that this led to the existence of a chaotic environment, in which it becomes difficult for governments to control their information assets. The relationship between the public sector and the private information sector, and their respective tasks and responsibilities in making information accessible (e.g. making it traceable in a context of

information overload) then needs to be considered, and translated into a new framework for structuring the public sectors' information chain.

3. The Issue of the Commercialization of PSI in the Europe, the U.S., and Canada: A Comparison of their Legal Frameworks

As follows from the transparency-model (see supra), the availability of public sector information covers the legal framework. Not only as regards legally providing access to public sector information, but also concerning the use one is able or entitled to make of it, as an individual, but also as a private company to commercially exploit it. According to Perrit (1994, p. 12) there are several types of law that shape the commercialization of public sector information: affirmative authority for public agencies to engage in commercial activity, public access laws, human rights laws, copyright and other intellectual property laws, data protection laws, and public tender laws. With regard to commercialization one could argue that some of these laws should prevent commercialization from reducing the availability of some public sector information (like freedom of information laws), while other categories of laws (like data protection laws, or intellectual property laws) have to reduce or limit the availability of public sector information.

When comparing the legal framework that determines the availability public sector information in the E.U., U.S. and Canada, a number of differences will surface that are of particular relevance with regard to the commercialization of public sector information. This paper will therefore spend particular attention to the laws on public access, data protection, copyright or related intellectual property rights, and competition.

The Availability of Public Sector Information within Europe:

Both the institutions of the European Union and those of the Council of Europe (further named "the Council") have contributed to a legal framework on government information within their member states, but not in the same way. The Council has contributed more to accessibility than the E.U. did. The latter was more involved with data protection, copyright and other intellectual property rights. Its highly political character may explain the Council of Europe's involvement in the issue of access. The more political[3] character of access, compared to commercialization, may partly explain the Councils role. However, from a legal point of view its role in this development is not evident, since the Council's most important instrument, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), does not explicitly mention the right of access to government information. It therefore required different cases before the European Court of Human Rights, and the in the meantime abolished Commission, to interpret the provisions of the Convention in a way that information held by governments would be included.[4] Article 10 is considered to include the freedom of information, since implicit in the fundamental right to receive information, if such information is generally accessible under domestic law. It is an indirect fundamental right dependant on the public accessibility of such information under domestic law (Beers, 1992, p. 201). The Council of Europe has also influenced the accessibility framework of its members by another mean. Its political bodies have made important moves towards recognising the right of freedom to information as a fundamental human right (Mendel, 2003, p. 9). Although its

recommendations on this matter[5] are not legally binding, they had an important moral influence on its members.

The European Union, according to some (Van Gompel & Steyaert, 2002, p.8) inspired by the efforts of the Council of Europe, has in the past taken a number of initiatives to establish a framework regarding public sector information. Nevertheless, the results of a community policy, from an access point of view, remained rather poor. There are only two matters in which the E.U. has established substantial legislation: access to environmental information[6] and public access to documents of the institutions of the E.U.[7] Despite mentioning the right of access in the Convention on Fundamental Rights within the European Union, [8] it appears that the E.U.'s concerns are no longer with the issue of access to government information.

In bringing up the issue of commercialization of public sector information, one tends to immediately think of the negative consequences this could have for the protection of personal data and privacy. The public sector is in possession of probably our most intimate and personal information. In Europe data protection has a tradition of extensively been dealt with, both by the Council of Europe,[9] the OECD[10] and the E.U, as well as their member states. In general one can say that, compared to others as we will see later, Europe has a broad system of data protection. The E.U. data protection directive, in article 2, defines personal data as any information relating to an identified or identifiable natural person (data subject); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity. Furthermore is data to be lawfully and fairly processed, meaning that it can only be processed in a way that is compatible to the specific, explicit, and legitimate purposes for which it was collected. The latter poses particular difficulties concerning commercialization. Personal data are usually not collected by the public sector in order to be communicated in bulk to the private sector for commercialization. But if this is the case, such transfer usually implies a change of purpose, and is admissible on some or all of these conditions: if there is individual consent, if there is an overriding public interest or if the interest of the receiver supersedes the interest of the person concerned (Burkert, 1992, p. 232). Thus, making the re-use of public sector databases containing personal data very difficult because they cannot be complete if even a few data subjects cannot be reached to obtain their permissions or if they withhold permission (Perrit, 1994, p. 16).

Intellectual property rights, copyright laws and the laws on databases are of particular relevance for shaping the legal borderlines on commercialization. The presence or absence of intellectual property rights on public sector information is of great importance with regard to its value. According to Perrit (1994, p. 14) intellectual property protection is as central to commercialization as public access laws, but in the opposite direction. If a public entity can hold a copyright in public information, it has the legal means to exclude the private sector or to establish and maintain exclusive arrangements with preferred private-sector providers. If on the contrary, such an intellectual property right would be absent, than this is the case for all. Meaning that besides the private entity that wants to exploit the information by obtaining it at minimum cost, every other interested party can do so too. Thus reducing the commercial value of the said information.
Within Europe differences exist as to whether the public sector holds intellectual property rights on the information it generated; this depends on how the public sector perceives the information it holds: as a public or a private asset (see supra). These differences find their legal origin in the Berne Convention (Paris Text of 1971), to which all members of the

E.U. are part. It stipulates in article 2 (4) that it shall be a matter of national legislation to determine the protection granted to official texts of a legislative, administrative and legal nature and translation thereof. Taking into account the two, arguable, functions of copyright –to guarantee the integrity of the work and to ensure financial compensation for this work- it may be somewhat difficult to understand to which extend these privileges are meant to help the public sector as the creator of works. According to Burkert (1992, p. 236) copyright for the public sector may perhaps be understood in terms of a trustee function for the creative work of public servants in as far as it does not affect the 'publicity' function of the public sector.
With regard to the law on databases generally no specific provision is provided for public sector databases. Contrary to copyrights -official documents are often being exempt from protection- the 1996 E.U. Database Directive does not provide anything particular. As a result, one is legally obliged to obtain permission from the public sector concerned to re-use the database as a whole, or part of it, even when it covers official documents that are normally not covered by copyright. It is argued (ICRI, 2002, p. 108) that the latter could lead to the public sector abusing its sui generis rights on databases.

Commercialization of public sector information does not only mean the commercial exploitation by private actors. It also means that public sector bodies themselves can exercise commercial activities, outside their public tasks. It is the particularly the latter that has become a policy issue in the recent years, and has brought up some important differences between Europe and the U.S. In either way, commercialization of public sector information will bring up the question of what the appropriate role of the public sector may be, and how it directly or indirectly influences fair competition. In particular the rules on cross-subsidies and state support, on abuse of dominant position, and on anti-trust or concerted practices will be of relevance. Within E.U. competition law article 81 of the Treaty explicitly prohibits agreements, horizontal and vertical, that disturb fair competition. With regard to the commercial exploitation of public sector information by the public sector itself, this has a number of important consequences. First, this prohibits member states from imposing agreements between undertakings, for example regarding the price of information products sold at third parties. Secondly will public sector bodies that, when considered as acting as an undertaking, conclude exclusive agreements with private parties act in violation with article 81. In practice this is of particular importance to licensing agreements. One should however keep in mind that, due to being charged with its public tasks, some important exemptions and exceptions for the public sector exist. It is argued (Reinsma & van der Sluijs, 2002, p. 90) that unfair competition by the public sector can be justified in order to guarantee public sector information being provided against affordable prices, or to stimulate competition in a monopolistic market of products and services that are based on public sector information.
If the public sector itself would commercialise its own information, the danger of distorting fair competition would exist in the abuse of a dominant market position (article 82 of the Treaty) by that public sector body. A dominant position refers to the phenomenon where an undertaking can exercise a preponderant influence on the market, it can act without taking into account its competitors' reactions, while they must take its reactions into consideration: it therefore means that it is shielded from effective competition (Waelbroeck & Frignani, 1999, p. 224). It is by the way of a number of criteria (product market, geographical market, situation of the undertaking etc.) that the existence of effective competition, and thus of a dominant position is being determined. The mere existence of a dominant position, which in the case of commercialization by the public sector itself of its own information is very probable, is not, as such, in violation with the provisions of the treaty. The actual violation consists in an abuse of that position

affecting community trade, like for example imposing excessive high or low prices, refusing to supply, tying, abusing intellectual property rights over essential facilities... Often public sector bodies will when they commercialize as an undertaking their own information, find themselves in a dominant or even monopolistic situation. In that case it will be very important for them to keep their activities, those as an undertaking and those in the exercise of the public task, clearly separated (Reinsma & van der Sluijs, 2002, p. 87). A third aspect of unfair competition, state aid (article 86 of the Treaty), is also to be taken into account. It is particularly relevant with regard to so called "public private cooperation". Especially the price against which the public sector provides an undertaking with information it possesses is important, and should, like any other relevant condition, be reasonable.

The U.S. and Canadian Experience

This paper will not extensively draw upon each of the relevant types of law determining the availability of public sector information in the U.S. and Canada. It will however point out the most striking differences compared to the European situation.

One should bear in mind that in Europe, contrary to the U.S., access and use or re-use are considered as conceptually different activities. In Europe access is considered as a matter of human rights, while use and re-use as an activity based mainly on the principles of competition and intellectual property laws (Papapavlou, 2000, p. 3). In the U.S. the commercialization of public sector information is not seen as a separate issue. Access and re-use are considered to be part of the same right. Furthermore, while in the U.S. cultural traditions favor commercialization of public information and commercialization is a well-established practice, the question raised there is whether commercial activities by the public sector are appropriate and if public sector bodies should be allowed to commercialize their own information. The opposite presumption is the norm in Europe, where the question is rather if commercial exploitation of public information can be justified at all (Perrit & Rustad, 2000, p. 404). In brief, one could state that the United States federal system on accessing government-generated information is a system that basically assumes all government held data to be public asset (Heeks, 2000, p. 3), by which, as a consequence, any person can access it *and* use it. There are a number of mainly legal reasons to this. First, there is the absence of any copyright protection to governments at the federal level, where a system of open records exists. The basis of this system lies in the Federal Constitution and the Copyright Law, with the former prohibiting any government restriction regarding freedom of expression and information, and the latter excluding copyright[11] on works of the federal government. In the U.S. the information theoretically flows from the people to the state and the people retain ownership of the information (Monty, 1996, p. 492). This absence of copyright on federal documents, is exceptional compared to other countries.[12] Indeed, in European countries such as France, Germany, the United Kingdom and Sweden, government information can, as described in the above, benefit from copyright protection.
Secondly, there is the different approach in dealing with the tension between access and privacy. European and U.S. positions on privacy and freedom of information are mirror images of each other: while Europe has comprehensive systems reflecting a commitment to protection of privacy, the U.S. has rather a patchwork of incomplete protections reflecting uncertain commitment to privacy (Perrit, 1994, p. 7). At the same time, historically, the U.S. has a well-established legal framework guaranteeing access to federal government information, while in Europe this is not the case.

Canada and the United States both have historical ties with the English Crown. Despite the latter, the policies and practices concerning public access to government information are told to mirror the basic differences in philosophy and approach that grew out of each country's development (Prophet, 1999, p. 1). These fundamental differences in philosophy find their legal expression, among others, in the issue of copyright. In Canada government documents can benefit from copyright protection. As mentioned in the above, this has important consequences with regard to commercialization. The existence of copyright is a remainder of the British parliamentary tradition, in which representatives are acting on behalf of the Crown and the Crown retains ownership (Monty, 1996, p. 492). Canada's federal Access to Information Act (AIA), and the freedom of information legislation within different provinces, have in relation to commercialization -besides the fact of copyright being allowed- two other interesting provisions. First, all of the acts contain an exemption for information, the disclosure of which would prejudice the commercial position of the government (article 18 Canada AIA; Peterson Dando, 1993, p. 3). Second, article 68 of the AIA exempts from application the information that is already been published or can be obtained by the public. Both of these provisions have created some interesting case law on the federal and provincial level (see Roberts, 1998, p. 43-47), and would require a paper on their own. Nevertheless they needed to be mentioned. These provisions have been brought up as the main legal reasons behind the problems the increased accessibility by IT created for freedom of information laws. More particular have they done so by encouraging commodification of public sector information and thus endangering access to government information (Roberts, 1998, p. 43; OICC, 1994, p. 12).

4. Conclusion:

Not withstanding the important differences mentioned above, the E.U. seems to be convinced of the benefits of commercial exploitation, thereby basing itself, wrongfully on the present U.S. situation. The European Commission argues that besides the important perspectives commercialization opens for the private information industries, it would also increase transparency and the participation of citizens and business (2001, p. 3). Or put differently, it is being upheld that private exploitation would contribute to increasing the transparency of the public sector and the accessibility of its information for all citizens. This remains however to be proven. As far as it stands now the legislation regarding the use of public sector information, in particular Directive 2003/98 on the use of public sector information does, not seem to contain the necessary guarantees to do so.

One should not, in arguing in favour of a system of commercial exploitation within the E.U., refer to the advantages of a system where the conceptual ideas on access and re-use are different and where major differences exist in related types of law. The differences between the E.U. and the U.S. are too big in this matter, for the latter to serve as a reference. Besides the earlier mentioned conceptual difference, others like in privacy, copyright for governments and the appropriate role governments have to play in providing information render a comparison very delicate.

References:

Literature:

- D. BANISAR (2003), *Freedom of Information and Access to Government Record Laws Around the World*, http://www.freedominfo.org/survey.htm, 6/4/2004.
- I. BATEN & G. VAN DER STARRE (1996), *Elektronische Toegankelijkheid van Overheidsinformatie*, (Electronic Accessibility of Public Sector Information), The Hague, Rathenau Institute, 88 p.
- T. A. L. BEERS (1992), 'Public Access to Government Information towards the 21st Century' in W. F. KORTHALS ALTES, E. J. DOMMERING, P. B. HUGENBOLTZ & J. J. C. KABEL, *Information Law Towards the 21st Century*, Deventer, Kluwer, p. 177-214.
- H. BURKERT (1992), 'The Commercial Use of Government Controlled Information and its Information Law Environment in the EEC' in W. F. KORTHALS ALTES, E. J. DOMMERING, P. B. HUGENBOLTZ & J. J. C. KABEL, *Information Law Towards the 21st Century*, Deventer, Kluwer, p. 223-246.
- R. CLARKE (1999), 'Freedom of Information? The Internet as Harbinger of the New Dark Ages', *First Monday*, Vol. 4,Nr.11, http://firstmonday.org/issues/issue4_11/clarke/index.html, 26/8/2002.
- COMPUTER SCIENCE AND TELECOMMUNICATIONS BOARD – CSTB (2001), *Global Networks and Local Values. A Comparative Look at Germany and the United States*, Washington, National academy Press, 241 p.
- M. DE VRIES (2001), *Met Elektronische Informatie het Nieuwe Millenium In: hoe het was, hoe het is en hoe het worden moet*, (Electronic Government Information in the New Millennium: The Past, Present and Future), the Hague, Rathenau Institute, 116 p.
- LE FORUM DES DROITS SUR INTERNET (2003), *Recommendation. Quelle Politique de Diffusion des Données Publiques?*, 14 April 2003, http://www.foruminternet.org/recommendations/lire.phtml?id=543, 13/6/2003, 60 p.
- R. HEEKS (2000), 'Government Data: Understanding the Barriers to Citizen Access and Use', *Information Systems for Public Sector Management Working Paper Series*, Nr. 10, Institute for Development Policy and Management, University of Manchester, http://www.man.ac.uk/idpm/idpm_dp.htm#isps_wp, 24/3/2004, 15 p.
- K. JANSSEN & J. DUMORTIER (2003), 'Towards a European Framework for the Re-use of Public Sector Information', *International Journal of Law and Information Technology*, Vol. 11, Nr. 2, p. 184-201.
- E. MACKAAY (1992), 'The Publics' Right to Information' in W. F. KORTHALS ALTES, E. J. DOMMERING, P. B. HUGENBOLTZ & J. J. C. KABEL, *Information Law Towards the 21st Century*, Deventer, Kluwer, p. 167-175.
- T. MENDEL (2003), *Freedom of Information: A Comparative Legal Study*, New Delhi, Unesco, 134 p.
- V. MONTY (1996), 'Due North: Issues in Access to Government Information, A View From Canada', *Journal of Government Information*, Vol. 24, Nr. 4, p. 491-497.
- H. J. ONSRUD (1998), The Tragedy of the Information Commons' in F. TAYLOR (ed.), *Policy Issues in Modern Cartography*, Oxford, Elsevier Science, p.141-158.
- G. PAPAPAVLOU (2000), 'Public Sector Information Initiatives in the European Union', *UNESCO Info-ethics 2000*, http://webworld.unesco.org/infoethics2000/report_2_131100.html#first, 3/2/2004.
- H.H. Jr. PERRIT (1994), 'Commercialization of Government Information: Comparisons Between the European Union and the United States', *Internet Research*, Vol. 4, Nr. 2, p. 7-23.
- H.H. Jr. PERRIT & Z. RUSTAD (2000), 'Freedom of Information Spreads to Europe', *Government Information Quarterly*, Vol. 17, Nr. 4, p. 403-417.

- L. PETERSON DANDO (1993), 'A Case for the Commercialization of Public Information' in W. BAMBERGER & N. SHERWOOD, *Marketing Government Geographic Information: Issues and Guidelines*, Washington, URISA, also available at: http://www.spatial.maine.edu/tempe/dando.html, 20/4/2004, 6 p.

- Y. PLUIJMERS (2002), 'The Economic Impacts of Open Access Policies for Public Spatial Information', *FIG XXII International Congress*, Washington, 19-26 April 2002, available at http://www.fig.net/figtree/pub/fig_2002/Ts-6/Ts3-6/Ts3_6_pluijmers.pdf, 2/7/2002, 14 p.

- K. PROPHET (1999), 'Threats to Public Access to Federal Government Publications in Canada and the United States', *Government Information in Canada/Information Gouvernementale au Canada*, Nr. 18, available at: http://www.usask.ca/library/gic/18/prophet.html, 20/4/2004.

- Y. POULLET (1995), 'A Study of Comparative Law and European Law' in C. DE TERWANGNE, H. BURKERT & Y. POULLET, *Towards a Legal Framework for a Diffusion Policy for Data held by the Public Sector*, Deventer, Kluwer, p. 2-21.

- M. REINSMA & H. VAN DER SLUIJS, *Naar een Ruimere Openbaarheid en een Vrij Gebruik van Bestuurlijke Informatie*, (Towards an Increased Openness and Free Use of Administrative Information), Report ordered by the Dutch Ministry of the Interior and Kingdom Relations, December 2002, available at http://www.nrc.nl/redactie/Doc/RapportReinsmanVanderSluijs.pdf, 23/4/2003, 174 p.

-A. ROBERTS (1998), *Limited Access: Assessing the Health of Canada's Freedom of Information Laws*, Queens University School of Policy Studies, available at: http://qsilver.queens.ca/~roberta/, 20/4/2004, 84 p.

- A. H. ROBERTSON & J. G. MERRILLS (1996), *Human Rights in the World*, Manchester, Manchester University Press, 355 p.

- D. J. SOLOVE (2002), 'Access and Aggregation: Public Records Privacy and the Constitution', *Minnesota Law Review*, Vol. 86, p. 1137-1218.

- R. VAN GOMPEL & J. STEYAERT, 'Going beyond access: accessibility of government information in the electronic media age', *Intercultural Communication 23 Conference and General Assembly IAMCR*, 21-26 July 2002, Barcelona, 30 p.

- M. WAELBROECK & A. FRIGNANI (1999), *European Competition Law*, Ardsley, Transnational Publishers, 1040 p.

- G. J. WALTERS (2003), *Human Rights in the Information Age. A Philosophical Analysis*, London, University of Toronto Press, 335 p.

- A. WELLS BRANSCOMB (1994), *Who Owns Information? From Privacy to Public Access*, New York, Basic Books, 241 p.

Official and Legislative Documents:

- Canada Federal Access to Information Act, enacted in June 1982, and subsequently amended in 1992, 1999 and 2001, *R.S.*, 1985, c. A-1, available at: http://laws.justice.gc.ca/en/A-1/index.html, 20/4/2004.

- Office of the Information Commissioner of Canada, *Information technology an Open Government*, Ontario, Minister of Public Works and Government Services,1994, available at: http://www;infocom.gc;ca:publications/pdf_en/GOV_E.PDF, 20/4/2004, 52 p.

- THE COUNCIL OF THE EUROPEAN COMMUNITIES (1990), Directive 90/313/EEC on the Freedom of Access to Environmental Information, *OJ L*, 158, 23 June 1990 and also available at http://europe.eu.int/eur-lex/en/lif/dat/1990/en_390LO313.html.

- THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN

UNION (1995), Directive 95/46/EC of 24 October 1995 on the Protection of individuals with regard to the processing of personal data and on the free movement of such data, *OJ L*, 281, 23/11/1995.

- THE COMMISSION OF THE EUROPEAN COMMUNITIES (2001), Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions, *eEurope 2002: Creating a framework for the exploitation of public sector information, COM (2001) 607 Final*, 23/10/2001, http://www.cordis.lu/econtent/psi/psi_policy.htm, 17/6//2002, 15 p.

- Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information, *OJ-L*, 345, 31/12/2003, p. 90.

- United States Copyright Act (1976), *Pub. L.*, Nr. 94-553, 90, Stat 2541, October 19, 1976.

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[1] Although Heeks speaks of 'public data', I think the same goes for public sector information, as defined in the above.

[2] United States Copyright Act of 1976, *Pub. L.*, Nr. 94-553, 90, Stat 2541, October 19, 1976.

[3] This issue is historically linked closely with the system of checks and balances and human rights (see supra).

[4] Eur. Court H. R., *The Sunday Times case*, 26 April 1979, Series A, Nr. 30; Eur. Commission H.R., *X v. Federal Republic of Germany*, 3 October 1979, Decisions and Reports, 17; Eur. Court. H.R., *Leander case*, 26 March 1987, Series A, Nr. 116. All judgments of the Court can be found at http://www.echr.coe.int/Eng/Judgements.htm. Beers (1992, p. 195) also refers to a number of unpublished decisions by the European Commission on Human Rights that remained unpublished: Eur. Commission H. R., *X v. federal Republic of Germany*, 10 December 1984, Application Nr. 9296/81; Eur. Commission H. R., 7 December 1981, Application Nr. 8878/80; and Eur. Commission on H. R., *X v. United Kingdom*, 13 May 1986, Application Nr. 11516/85.

[5] For example Council of Europe, Parliamentary Assembly, *Recommendation on Access by the Public to Government Records and Freedom of Information*, 1 February 1979, Nr. 854; Council of Europe, Committee of Ministers, *Recommendation on the Access to Information Held by Public Authorities*, 25 November 1981, Nr. R(81)19; Council of Europe, Committee of ministers, *Recommendation on Access to Official Documents*, 21 February 2002, Nr. R(2002)2.

[6] Council Directive 90/313/EEC of 7 June 1990 on the Freedom of access to information on environment, *OJ L*, 158, 23/6/1990 amended by Directive 2003/34 of the European Parliament and the Council of 28 January 2003 on Public access to environmental information and repealing Council Directive 90/313/EEC, *OJ L*, 41, 14/2/3003.

[7] Article 255 of the Treaty and Regulation 2001/1049/EC of the European Parliament and of the Council of 30 May 2001 on Public Access to European Parliament, Council and Commission Documents, *OJ L*, 145, 31 May 2001.

[8] Article 41 & 42 of the Convention on Fundamental Rights within the European Union, part of the Draft Treaty Establishing a Constitution for Europe, 13 June 2003,http://european_convention.eu.int/Drafttreaty.asp?lang=En, 11/2/2004, p. 56.

[9] See for example Council of Europe, Committee of Ministers, Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data, 28 January 1981, available with amendments and protocols at: http://www.coe.int/T/E/Legal_affairs/Legal_co-operation/Data_protection/Documents/, 12/4/2004.

[10] OECD, Council of Ministers, Recommendation, Guidelines for the Protection of Privacy and Transborder Flows of Personal Data, 23 September 1980, available at: http://www.oecd.org/document/18/0,2340,en_2649_34255_1815186_1_1_1_1,00.html, 12/4/2004.

[11] Although some exceptions do exist, like for example the 1994 act that introduced the National Technical Information Service as part of the federal Department of Commerce, as a clearinghouse for the collection and dissemination of scientific, technical and engineering information created by other federal agencies. Since it is required to be self-sustaining, it must set prices for its information products and services that will cover its costs. One result is that the prices for many NTIS documents exceed the costs of reproduction. Gellman, R., 'The American model of access to and dissemination of public information',

Stockholm 1996 Conference: Access to Public Information: A key To Commercial Growth and Electronic Democracy, 1996, http://europa.eu.int/ISPO/legal/stockholm/en/gellman.html, 16/7/2002, p. 5.
[12] M., REINSMA & H., VAN DER SLUIJS, Naar Ruimere Openbaarheid en een Vrij Gebruik van Bestuurlijke Informatie, (Towards a Larger Publicity and Free Use of Administrative Information), Report to the Dutch Ministry of Internal Affairs, December 2000, http://www.nrc.nl/redactie/Doc/RapportReinsmanVanderSluijs.pdf, 23/4/2003, p. 66.