

## 24<sup>th</sup> Meeting of APPSI 17<sup>th</sup> September 2009

### Agenda Item: APPSI Update

**Topic:** APPSI opinion on Commission Communication on Directive 2003/98/EC

**Lead:** Chris Corbin

### Introduction

APPSI submitted a detailed submission (38 pages)<sup>1</sup> to the European Commission public online consultation on the impact of the Directive 2003/98/EC and also submitted a response to the European Commissions Member State consultation.

The APPSI detailed submission included seven recommendations and these appear at Annex 1 of this document.

The Commission published the responses received where permission was granted during November 2008. The documents published included under PSI Stakeholders the APPSI document submitted as part of the public consultation. The Commission did not publish the APPSI response to the Member State questionnaire.

On the 7<sup>th</sup> May 2009 the Commission published the Communication *Re-use of Public Sector Information – Review of Directive 2003/98/EC – [SEC(2009) 597]*<sup>2</sup> The Communication has been transmitted to The European Parliament, The Council, The European Economic and Social Committee, The Committee of the Regions and also the Permanent Representatives of the European Union for consideration.

The UK Parliament has considered the Commissions Communication.

**The House of Commons European Scrutiny Committee** Twenty-second Report of Session 2008–09 published on the 25 June 2009 states on page 59:

*10 Documents not raising questions of sufficient legal or political importance to warrant a substantive report to the House*

*Ministry of Justice*

(30643)                      *Commission Communication on Re-use of Public Sector Information -  
9780/09                      Review of Directive 2003/98/EC.*  
+ ADD 1  
COM(09) 212

**The House of Lords European Union Committee Progress of Scrutiny Committee** - Ninth Report published on the 16 June 2009 states:

*PART II: DOCUMENTS WHICH HAVE CLEARED SCRUTINY IN THE HOUSE OF LORDS*

*i. Documents cleared from scrutiny by the Chairman of the Committee on 2 and 9 June 2009.*

*9780/09 COM (09) 212 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Review of Directive 2003/98/EC of 17 November 2003 on the Re-use of Public*

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<sup>1</sup> <http://www.appsi.gov.uk/reports/ecsubmission-07-2008.doc>

<sup>2</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52009DC0212:EN:NOT>

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### Proposal to APPSI

1. That APPSI produce and publish publicly a response to the Commission's Communication. As part of the process APPSI should request a copy of the written submission (OPSI-MoJ) to the UK Houses of Parliament (as it is not in the public domain).
2. That APPSI review annually progress on the recommendations and publish a public statement (either separately or within the APPSI annual report)

### Basis for the proposal

APPSI made a number of recommendations in the APPSI submission. The Commission Communication in summary has not accepted the recommendations and has proposed that Member States take action to address the issues together with Commission actions (that have already been commenced and initiated). Further more the Commission has indicated that a further review will be undertaken in 2012 and at that time consideration will be given to the possibility of amending the Directive.

The UK Government – for example exclusive arrangements, has addressed a number of the APPSI recommendations.

The Commission communication is part of a process that is still active for example the consideration within the European Institutions.

### Annex 1

#### APPSI Recommendations

##### 6.4.4 (page 24)

*APPSI recommends that, with certain explicit exceptions, PSBs should be required to make PSI available for re-use. At the very least, guidance should be issued creating a presumption that PSI should be available unless the specified exceptions apply. We recommend that UK action is taken to ensure that all PSBs should at least have to meet the requirements of IFTS, revised if necessary to include the Regulations.*

##### 6.6.2 (page 25)

*APPSI recommends that the Directive be amended to ensure that PSI originally created as part of the public task of a PSB or integral to the discharge of a public function should be within the scope of the Directive.*

##### 6.6.7 (page 27)

*APPSI recommends that high-level policy guidance be provided by the Commission on interpretation of the concept of 'public task' and that the UK government put in place a process for its definition and periodic review. This process should involve public consultation and the process should not be solely the preserve of the individual PSB.*

##### 6.8.5 (page 28)

*APPSI recommends that the Directive be amended to clarify the scope of the exclusion of documents in which third parties own intellectual property rights, so as to bring within the scope of the Directive documents where the third party is another EU public sector body; documents containing re-usable content that is not protected by the third party rights; and documents where the third party has licensed the document for re-use.*

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6.10.10 (page 31)

*APPSI recommends that guidance be provided to give much greater force to the encouragement in the Directive for adoption of a marginal cost regime (for most documents), and to clarify whether, and the extent to which, the costs that can be re-charged to re-users should relate to the documents in question or to documents in general; and also that guidance be provided on principles that should apply to the calculation of costs, following best practice in Member States. The bulk of the APPSI members urge the UK government to move to a marginal cost pricing model for PSI.*

6.11.2 (page 32)

*APPSI recommends that wherever exclusive arrangements remain, a justification should be published, and that all such information about exclusive arrangements should appear in one place for each Member State.*

6.12.2 (page 32)

*APPSI recommends that the UK government launches an awareness-raising campaign for the merits of PSI re-use and that consideration is given to provision of modest funding if necessary to oil the process. APPSI stands ready to help OPSI and Ministers define an appropriate communications strategy and support for the campaign.*