

Van Haren Publishing and the Office of Government Commerce: Progress Report

In July 2010, the Office of Public Sector Information (OPSI), part of The National Archives, published a complaint report under the Public Sector Information Re-use Regulations, in respect of Van Haren Publishing and the Office of Government Commerce (OGC):

<http://www.nationalarchives.gov.uk/documents/van-haren-publishing-and-the-office-of-government-commerce.pdf> .

In the report, we partially upheld the complaint, saying that OGC should further align the basis on which third parties and its official publishing contractor could re-use PRINCE2 core publications.

Overall Assessment

Having carefully considered the information supplied to us since the publication of our report, we consider that OGC has taken positive actions to respond to our recommendations and suggestions, notably:

- Planning to set up arrangements for licensees to obtain an electronic version of the PRINCE2 manual
- Amending the text of licence documents to reinforce the message that it is not trying to veto competitor publications
- Establishing a time span within which it would set an embargo period on publication of derivative material so that third parties and the official publisher would be on the same footing
- Publishing timescales to demonstrate speed of development and publication process as between third parties and the official publisher

There are three areas which we continue to monitor. A further progress report will be issued in six months' time. The areas in question are: steps towards renewal of contractual arrangements, consideration of the extent to which the designation "official" should be attached to non-public task publications, and consideration of further measures to mitigate tensions between publishing and re-use functions. We note that the latter two areas come under the heading of suggested areas for improvement rather than mandatory recommendations.

In the interim, there will be periodic regulatory engagement between OPSI and OGC.

Our complaints procedure includes provision for bringing the matter to the attention of Ministers should we consider that action has not been taken to comply with the PSI Regulations. We do not consider it necessary to refer the matter on to the relevant Ministers at this stage.

Summary of Actions

A summary of actions taken follows. Extracts from the original report with the relevant paragraph number precede the summaries.

OPSI Recommendations Section

68. OPSI recommends that, given the provisions of Regulation 13(2) and our finding that PRINCE2 derivative materials are outside the public task, a review of the basis on which the PSB's official publishing contract is let be initiated in advance of its renewal. This will be to ensure that the terms on which the official publisher re-uses PRINCE2 core material more fully equate to those which apply to third party applicants. The review should consider whether contractual separation between core and derived material will be necessary.

Actions taken:

OGC has briefly reviewed the business model it used when it appointed its official publisher as part of its initial consideration of this recommendation.

The appointment of the official publisher predated the implementation of the PSI Regulations. The existing contract with the official publisher remains in force until 31 December 2013 and there is the possibility of a further maximum extension of 3 years. A further review will be undertaken once the organisational business strategy for this area of activity has been agreed and a decision taken on when to re-compete the contract or contracts. In any future business model, the potential to separate the responsibility for the licensing scheme from any business with rights to re-use the material will be investigated.

Following machinery of government changes, OGC is now part of the Efficiency and Reform Group (ERG) in the Cabinet Office. Before undertaking a more thoroughgoing review of its contractual arrangements it will need to assess the organisational impact of this change which will not take full effect until the new financial year. It will also have to take into account any developments in government procurement and contracting policy which the ERG will play a key role in.

The length of the contract and the possibility of extension is of concern to OPSI, but we are satisfied that OGC will fully consult OPSI on the contract re-letting process prior to renewal. We also recognise that OGC has taken a number of steps to ameliorate concerns within the existing contractual arrangements. However, this recommendation will need to remain under review.

69. To ensure equity in bringing derivative PRINCE2 publications to market, the PSB should establish a fixed embargo period so that the official publisher and third parties have an equal time period within which to prepare derivatives for publication.

Actions taken:

OGC has considered how an embargo might work in the event that new core material is produced and would expect to apply a period of between 6 and 12 weeks after publication. One element in deciding the exact embargo period would be factoring in the time to produce an electronic text file version of the manual for use by applicants. The embargo period would apply to all derived products requiring licences as well as derivative products published by the Official Publisher pursuant to the contract.

OGC has recently updated its PRINCE2 core material and therefore does not expect to create new PRINCE2 core material in the near future. However, OPSI would expect the same rationale of an embargo period to be applied to future iterations of PRINCE core material. Subject to OGC settling on a timescale between the periods that it is considering and ensuring that the embargo period is implemented when a new iteration of core material occurs, OPSI considers this recommendation to be met.

70. An embargo period for the publication of derivatives will address the issue of timeliness of access to the raw material to be re-used. Electronic provision of the raw material would also be of potential benefit to applicants.

Actions taken:

OGC has agreed with its official publisher that, subject to a fee to cover costs, it will supply licence applicants with an electronic copy of the core PRINCE2 materials in basic text file format with separated diagrams. It is working towards putting this into effect from April 2011. Subject to implementation of this plan, OPSI considers this recommendation to be met.

71. We recommend that the PSB publishes an explanatory note on the circumstances in which its official publisher would produce material outside of its official publishing contract and the application process and conditions that it would be subject to. This would eliminate any perceived ambiguities in the existing arrangements.

Actions taken:

OGC has produced wording within its Frequently Asked Questions material on its website to explain the circumstances in which its official publisher would produce material outside of the official publishing contract. These FAQs will be published through the OGC website as well as its supporting brand websites. OPSI considers this recommendation to be met.

72. In the PSB'S Product Review process, testing whether a product "extends the range of products available by providing a product or service with a different purpose to the portfolio of Official Material" could be construed as constraining the activity of prospective re-users. We recommend that the PSB makes it clear that the intention of such clauses is to ensure that third party publications are clearly differentiated from the PSB's publications. It should be confirmed by the PSB that it does not intend to veto derivatives that occupy broadly the same market space as its own publications, but that it is simply seeking to ensure that third party publications do not replicate its official publications.

Actions taken:

OGC has updated the wording of both its copyright only and joint trade mark and copyright licensing schemes accordingly. For example:

http://www.ogc.gov.uk/copyright_licence_criteria.asp

OPSI considers this recommendation to be met.

73. The PSB has stated that the internal contract monitoring conditions to which its official publisher is subject are equally as rigorous as those which applicants need to go through. We recommend that the PSB publishes figures on the timescales for internal product review and approval of official derivatives as compared with third party product review and approval.

Actions taken:

OGC has produced and published information relating to timescales for both the copyright only and the joint trade mark and copyright licensing schemes. It has also released a table comparing the process and timescales as between third parties and the official publisher. One example of this work can be found here:

http://www.ogc.gov.uk/intellectual_property_frequently_asked_questions.asp#11

OPSI considers this recommendation to be met.

Suggested Areas for Improvement Section

75. We did not find that there is an overly restrictive approach to the permitted "look and feel" of rival products to the extent that trade marks and design rights being out of scope permitted us to look at this question. It is reasonable to require a third party licensee not to present its material in such a way as to claim endorsement by the PSB where no such endorsement has occurred, or to present its material so that it could be confused with a product of the PSB. However, given our analysis of public task, we do not advocate the use of the term "official" in respect of derivative PRINCE2 publications. We would expect to associate the promotion of official status and the consequent reliance that a consumer might expect to place on the material to be aligned with an organisation's public task.

Actions taken:

OGC has confirmed that it has stopped using the word “official” in the titles of its publications and that it will not use it in this form in the future. However, it has more difficulty in removing the designation entirely. It adopted the word official around the time of the PSI Directive in order to demarcate between the publications it had a responsibility for and those of third parties. It is also contractually obliged to include references to the products of its official publisher and accreditor in published materials.

OPSI would expect these designations to be reviewed at the time of contract re-letting. We will keep this suggestion under review.

76. The PSB’s official accreditor, which has some publishing rights which are intended to address its need to publish syllabus information, has the dual roles of official accreditor and the PSB’s combined trademark and copyright licensing sub-contractor. It can also function as a translation sub-contractor. We suggest that the PSB considers whether there are further ways in which the perceived tensions between these roles can be mitigated beyond the existing policy of confidentiality clauses and the option of independent product review in combined trademark and copyright licensing.

Actions taken:

OGC has carried out a review of these arrangements and decided that the embargo period on publication of derived material not related to the core business element of the contracts will be enforced.

In a future business model the potential to separate the licensing scheme from anyone with rights to re-use the material will be investigated. The practicalities of this will be based on the business model requirements of the ERG at that time.

We will keep this suggestion under review.

77. In the course of examining relevant documentation, the basis on which material is classed as “complementary” as opposed to “derivative” was not immediately apparent. We suggest that, in its Official Portfolio brochure, the PSB provides an explanation of the criteria under which material would be deemed to be complementary as distinct from derivative.

Actions taken:

OGC acknowledges that there has been confusion between the two terms. It has now included wording within a set of FAQs which will be published through the OGC website and its supporting brand websites to clarify the position.

OPSI regards this suggestion as having been acted upon.

OPSI, part of The National Archives, March 2011