

OPEN LEGAL DATA FOR EUROPE

LAPSI / OPENLAWS WORKSHOP

UNIVERSITY OF AMSTERDAM, THE NETHERLANDS

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WORKSHOP REPORT

O. Salamanca & M. van Eechoud

(Institute for Information Law)

The EC funded openlaws.eu project and the LAPSI thematic network project joined forces for a workshop on open legal data for Europe. About 25 participants from academia, government, business and civil society discussed what the drivers are for opening up legal data for re-use in different jurisdictions and what barriers (perceived or real) exist. The outcome of the discussion will feed into the on-going work in the LAPSI network on legal barriers to re-use, and in the vision for Big Open Legal Data that will be developed as part of Openlaws.eu.

Welcome Note

Chair Professor **Mireille van Eechoud** (Institute for Information Law, University of Amsterdam, <http://www.ivir.nl>) welcomed everyone, especially the speakers/panelists: professor **Chris Marsden** of the University of Sussex, Ms. **Jo Ellis** from the National Archives, a driving force for open government data in the UK, open data advocate **Paul Suijkerbuijk** of the Dutch Ministry of the Interior, as well as **Marc de Vries**, a long-standing advocate of re-use by businesses.

Developing a Big Open Legal Data Vision: The Openlaws Project

Professor **Chris Marsden** (University of Sussex, <http://www.sussex.ac.uk/law/>) introduced the idea behind Openlaws and the envisaged roll-out of the project. At this workshop, the focus is on the vision for open data in terms of economic, institutional and legal drivers. What is already in place and needs to be done to enable better access to and sharing of legal information? That ties in with the strategic vision part of the Openlaws project, which

The University of Sussex runs with the London School of Economics (LSE) and the University of Amsterdam (UvA). The openlaws.eu project at its core is about building a platform for accessing linked data, in the pilot phase of legal data from the EU institutions, the Netherlands, UK and Austria. The lead developers are, in addition to the aforementioned institutions, Salzburg University of Applied Sciences, Alpenite srl and BY WASS GmbH, while Dr. Radboud Winkels at the University of Amsterdam's Law School is overall project leader (*please see openlaws.eu for full details*).

Explaining his interest in open legal data, **Chris Marsden** recounted his prior experience working on the UK Government Data-Mashing Laboratory study for the Ministry of Transport in the UK, back in 2006. The purpose of the project was to open up government data resources, such as transport-related schedules, maps and other public data. The study reflected on the legal, social and technological challenges while, at the same time, encouraging innovative propositions around the re-use of that data. Given that, unfortunately, the above project was shelved, Chris explained how keen he was to examine and 'resurrect' initiatives destined to encourage the practical application of data re-use.

Aiming to explain Openlaws and how it stands out against other initiatives, **Chris Marsden** highlighted that it will build on and interface with systems already in existence. He also put Openlaws in the context of other

current initiatives such as open access legal journals, the free access to law movement (FALM), BAILLI and other common law initiatives.

The initial findings of the case studies already showed that non-legal professional (civil servants and policemen, in particular) appear especially interested in accessing legal information. The Austrian RIS:App (www.openlaws.eu), the prototype software application, developed for the Austrian Chancellery and available free for iOS devices on the *App Store*, has so far been downloaded a total of 20,000 times whereas Austria only has 5,000 registered lawyers. In other words, society and government are eager to know more of each other.

The introductory video of Openlaws was then played to provide a clear and illustrative explanation of the project.

Opening (Legal) Data: Perspective of the Dutch Government

Paul Suijkerbuijk, closely involved in open data initiatives at the Ministry of Interior which bears chief responsibility for Dutch open data policy (notably the data.overheid.nl portal) shared his insights on the merit of open data and how public sector bodies can be brought around to the idea. It is important to bear in mind that the real challenge is to find uses for open data that actually solve real people's problems.

In tandem with the implementation of the PSI Directive into law, Dutch central government is currently establishing its own policy guidelines (work in progress). Issues tackled are the distinction between what is 'open data' (inter alia, free of charges, no use restrictions based in IP, no personal data) and public sector data; the existence of specific legal provisions that limit re-use of open data (and the possibility to encourage the use of CCO licences in various domains). Paul presented a large catalogue of objections and problems that were often raised by public sector bodies as reasons why open data policy is difficult to implement.

On the expectation of (re) users he illustrated that a no licensing scheme can be detrimental: Google for example refuses to use open data if not linked to a licensing scheme. Accessibility of open data should be unencumbered, but some bodies do make re-use subject to registration requirements, etc. Various other aspects of open data that the Dutch government is reviewing include the difficulty, and costs, of opening up data that is originally under non-open standards, as well the importance of making data capable of being machine-processed and permanent (i.e. not withdrawn once published).

The UK's Open Government Licence

Jo Ellis, from the National Archives in the UK shared her insights on the difficulties of identifying a suitable licence that would fit the needs of the National Archives and be interoperable with CC. The National Archives were under time pressure to produce a license and for various reasons the Creative Commons licensing scheme (v2 at the time) available for England and Wales could not be used. In January 2010, the *beta* version of the Open Government Licence was released, followed by the official version finally launched by the UK government in September 2010. As opposed to the CCv2, the OGL offered UK-wide coverage (including England, Wales, Scotland and Northern Ireland), inclusion of database rights and mechanisms for the protection of integrity (deemed necessary to for Crown copyright information). To ensure best user acceptance, research was done on CC type symbols and terminology. The feedback led National Archives to develop new symbols and terminology, based on the use of simple symbols such as ticks and exclamation marks.

Discussion led by Marc de Vries (*Citadel Consulting, LAPSI member*)

Discussion moved to the floor, moderated by **Mark de Vries**, who took the role of the *devil's advocate*. To the question of 'why Openlaws?' Chris answered that, although it is a small, 2-yr project, Openlaws is also a pioneering initiative of a service that is currently not supplied commercially. In that respect, one of the most interesting findings of Openlaws will be to provide insight into the level of critical mass that can be achieved, especially with limited funding. As **Chris Marsden** explained, the prototype in Austria has so far been successful. Given that, according to an Openlaws survey, most people continued to access the law via Google and no aggregator function exists so far, it may be the right time to work on exploring the feasibility of such a product as Openlaws.

Marc van Opijnen, expert on linked open data at the Dutch National Expert Centre for Official Governmental Publications stressed the fact that, in the Netherlands, at a domestic level, already some initiatives were being implemented. Indeed, as an example, he mentioned propositions that had tried to combine legal open data with legal information from commercial publishers. He stressed the importance of providing functionality for the user and enabling the linking of data. It should also be remembered that the biggest user of government open data so far has been the public sector itself.

Points raised by several participants were the challenge of operating in fields dominated by a few commercial players in legal information markets (examples mentioned included Aranzadi in Spain and Juris/Lexpress in Germany) as well as development of sustainable business models and engaging the target users of the project. Also, putting into practice the licensing mechanisms suitable for such a project was flagged as a challenge, especially in light of the experience of the National Archives in this respect.

Other questions put to the panel concerned the incentive legal practitioners / professionals would have to use Openlaws, and the rationale for investing on cross-border data given that most legal practitioners mostly focus on domestic legislation.

The Slovenian Information Commissioner's office confirmed there is a need for cross-border access. They are frequently approached by SMEs wanting to expand abroad, especially to Croatia, and thus wondering about the different laws on data protection, spamming etc. Participants agreed that many lawyers across the EU are interested in accessing, for example, free commentary from local law firms on landmark decisions at national level, such as the Google Spain case¹.

On user functionality **Chris Marsden** gave the example of Canada, where they are currently integrating an extra (social) layer of commentary to their case law database in order to make it more relevant to outside parties (*Chris mentioned the awkward situation created a couple of years ago by the lack of an (official), readily available, English translation of the Slovenian law on net neutrality - the existence of a 'social layer', that would have provided a translation at some speed, would have been useful to EU lawyers*)

A number of participants warned of the dangers of acting on the basis of de-contextualised information (statute texts presented or read in isolation, different languages, etc.) and how the use of commentary on that basis can lead to wrong interpretation of law and legal uncertainty.

In Italy, an important hurdle to a user-friendly access to legal decisions/texts is the required anonymization and its impact on keyword/search engine efficiency. In Slovenia, an important hurdle is the fact the cases are released in PDF format thus not making them machine-readable.

In the context of the usability of databases, it might indeed be useful to access case law if linked to the laws themselves. To enhance reliability, the use of a credential system for translators was suggested, as it would comfort users of legal databases, especially at supranational level. The overall conclusion is that making data open is just not enough.

Debate then moved on to the tension between public and private sector actors. In Germany, there is a long running dispute over exclusivity agreements reached by public bodies with commercial players. In this

¹ C-131/12 Google Spain SL, Google Inc. v Agencia Española de Protección de Datos, Mario Costeja González (ECJ 13 May 2014). Please revert to <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62012CJ0131>

particularly case, Juris, in turn 51% owned by the German state, has exclusive agreements with the German courts; the same courts that now have to decide about the validity of this agreement (currently being tried by the constitutional court). Similar tensions and disputes exist(ed) in Latvia and the Netherlands. Back in the 1980s, the Dutch central government had outsourced the production of its collection of law databases exclusively to commercial publisher Kluwer, assigning all IP rights. Part of the agreement was that Kluwer would commercially exploit the database, public sector bodies (e.g. local government) being major customers.

For the German situation, attention was drawn to the fact that federalism affects the uniformity of the available public data in Germany, given the authority the German Länder have when it comes to implementing the provisions of the PSI.

In other countries, the existence of (commercial) monopoly is not a controversial issue. In Slovenia, lawyers use the one commercial system that exists and no-one complains about the high prices. In Norway, a similar issue exists: a foundation, belonging to the University of Oslo, owns and runs the legal information on behalf of the government. However, complaints are few because, although the database is not open, it is a superior product. On open formats, the situation in Macedonia is that even though the laws in Macedonia are not IP-protected, the official government publisher offers only PDF versions for free. The general feeling was that mentality is a key success factor that should not be underestimated: some governments are simply reluctant to provide more information than they strictly have to.

Discussion moved to the sustainability of an open legal data platform. Part of the project (run primarily by LSE) studies both the socio-economic impact of (not) having efficient access to legal data) and possible alternative business models. Openlaws will continue beyond the EU funding period. Some ideas were suggested, including advertising (by e.g. commercial publishers or law firms), and peer production Wikipedia style (where legal professionals would donate time, if not actual money). One of the major tasks of Openlaws will be to demonstrate that the user groups of such a services are broader than what commercial publishers and governments might make it out to be (i.e. not limited to law firms and the like).

Open Legal Information at EU Level – A Special Case?

Chris Marsden presented the preliminary findings of the EU case study. The Openlaws project will produce 4 case studies (EU, UK, NL, AT) on legal, institutional and market aspects of current legal data dissemination. The EU case study is already underway and will serve as starting point for doing comparative research on said countries. Based on the initial findings, we suspect that access and dissemination of EU legal texts from the EU institutions (esp. Commission and Courts) is rather unique in terms of the drivers of the open system of the free online access in place. A significant characteristic of the EU is that, as opposed to large domestic markets such as France or the Netherlands, there's hardly a (commercial) market for EU legal instruments/texts (excluding

domestic implementations). Perhaps the only exception to this is the (relatively small) competition law information market, where the EU has executive powers. This might explain why there has been little commercial opposition to EU initiated free dissemination of legal information, which under EUR-Lex was made open by a decision of the EU parliament. Also, language diversity seems a factor why the EU took it upon itself to provide access and not rely on the private sector. The urgency to make laws widely available also seems driven by political motives (e.g. promoting Europe, facilitating harmonization of laws). In addition, the concentration of major law firms active at EU level seems to contribute to the availability of free legal comment on EU laws and cases, whereas at the national level this might be more limited to traditional publishing.

The participants discussed how the fact that EU legal texts are made freely available online does not, of course, say much about the quality of the legal data provided (structure of data, late and limited availability of consolidated versions of laws, inconsistencies in numbering between language versions, etc.)

We discussed how it is often the case that the 'central' entities tend to be more open than local bodies, such as the German Constitutional Court vs. the Länder, who decide what case law they release. That is, it seems that the higher the public instance, the higher level of active dissemination achieved. Debate ensued about the relationship between the position of state entities and demand for pro-active information services. Finally, the group reflected on the extent to which the EU publication strategy is a special case (in terms of institutional/financial/political drivers), and in that sense cannot serve as a template for conducting the country case studies. The Openlaws team will take this on board.

The chair thanked all present for their contributions and expressed the hope that the Openlaws team and LAPSI members will continue the dialogue and benefit from each other's work.
