

Audiovisual Heritage 2.0

The following article:

Public Sector Information and Audiovisual Archives

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is an extract from the publication IRIS *plus* 2013-5
"Audiovisual Heritage 2.0".

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Foreword

*“...let us save what remains;
not by vaults and locks which fence
them from the public eye and use
in consigning them to the waste of time,
but by such a multiplication of copies,
as shall place them beyond
the reach of accident.”*

Thomas Jefferson

The destruction of the Library of Alexandria is a symbol of knowledge lost forever. Although the facts about this historical event are not entirely clear, the myth of a centralised source of knowledge ravaged by the flames remains in the collective conscience as a reminder of the fragility of cultural heritage.

Many centuries after its alleged destruction, the dream of a digital library of Alexandria seems to have entered the realm of the possible. Indeed, digital technologies allow for the inexpensive reproduction and transmission of text, audio and video content. In theory, a single website could harbour digital copies of all works available in public libraries and museums around the world. A mouse click away. There are already some prominent examples of projects which aim at achieving this objective: think of Google Books or the Europeana project.

This dream is permeated by what could be called the “Internet Zeitgeist”, an illusion of total and free access to information and entertainment. Paraphrasing Queen’s song, we want it all and want it now. But this utopian vision of perfect accessibility to our cultural heritage has to undergo a necessary reality check. First of all, preservation costs money. Digitisation requires time, equipment, skills and manpower. Server space and bandwidth have to be provided for. And then there is copyright: works that are still protected cannot be given access to or even be digitised without the authorisation of rightsholders. Given that the copyright term of protection in the EU is seventy years after the death of the last surviving author, this excludes most of the works made in the twentieth century! On top of that, many of those works which are still protected are “orphaned”, that is, their rightsholders are unknown or cannot be located, and hence they cannot even be asked to permit the preservation and making available of their works.

This publication presents three different aspects of this conundrum and the solutions that are proposed at EU level. The Lead Article describes the main lines of the recently amended Directive on the re-use of public sector information. This Directive provides “a minimum set of rules governing the re-use and the practical means of facilitating re-use of existing documents held by public sector bodies of the member states.” The Directive does not regulate access to such information, which remains a competence of member states, but focuses on the economic aspects of re-use of information and encourages the member states to make as much information available for re-use as possible. The Related Reporting section retraces the most recent developments concerning digital preservation of cultural heritage at EU level. Finally, the Zoom section introduces the reader to the EU rules that allow certain uses of orphan works.

Strasbourg, October 2013

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Public Sector Information and Audiovisual Archives

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I. Introduction

Digitisation is a means to unlock the value of audiovisual archives and to prolong the life expectancy of analogue format. It will ensure access in the future and will allow the development of new services.¹ Digitisation turns cultural resources into economic assets for the creative and innovative business at national and European level.

In recent years, several audiovisual archives have been participating in projects to make their collections and data accessible online. This is the case of the *Nederlands Instituut voor Beeld en Geluid* (Dutch Institute for Sound and Vision), which is one of the partners of the biggest digitisation initiative in Europe, Images for the Future.² The project aims at unlocking more than 100 000 hours of audiovisual materials for education and the public at large. On the basis of this project, the Dutch media platform Open Images was launched in 2009.³ Supported by the Dutch Institute for Sound and Vision in collaboration with the Dutch think tank Knowledgeland, Open Images offers online access to fragments of audiovisual collections. The purpose of the platform is to stimulate creative re-use.⁴ Access to the content is granted through Creative Commons licensing models.⁵ The platform contains approximately 2 000 videos.⁶ A small part has been marked as belonging to the public domain and therefore they can be freely re-used and redistributed, without any limitations.⁷ The British Film Institute (BFI) has also launched a funding programme, the BFI Archives for the Future,⁸ to digitise 10 000 films and “make the UK’s entire screen heritage digitally accessible” in the long run.⁹ Besides the digitisation of audiovisual content, the BFI has made available millions of digitised film-related materials such as film reviews and newspaper cuttings.¹⁰ At European level,

* Many thanks to Nico van Eijk and Mireille van Eechoud for valuable discussions and suggestions; any mistake or omission is the sole responsibility of the author of the article.

- 1) *Images for the Future: Unlocking the Value of Audiovisual Heritage*, Museums and the Web 2009, available at: www.museumsandtheweb.com/mw2009/papers/oomen/oomen.html
- 2) *Beelden voor de Toekomst*; the other partners are the EYE Film Institute Netherlands, the National Archives and Knowledgeland, see <http://imagesforthefuture.com/en>
- 3) www.openimages.eu
- 4) www.openimages.eu/blog/2011/03/03/looking-back-on-2010
- 5) Creative Commons licences offer several options to rightsholders to allow them to decide how their work will be re-used, see <http://creativecommons.org>
- 6) www.openimages.eu/blog/2012/05/31/2000th-video-on-open-images
- 7) The platform contains 83 videos, which have been marked as belonging to the public domain. See www.openimages.eu/media?q=&p=383&date=&uploaded=&_searchlang=&license=18937&sf=created&so=down&max=10&offset=0#video
- 8) The BFI Archives for the Future is a part of the five-year plan, *Film Forever*; see www.bfi.org.uk/sites/bfi.org.uk/files/downloads/bfi-film-forever-2012-17.pdf
- 9) *Film Forever*, report, p. 41, FN 8.
- 10) See press release, 18 January 2013, available at: www.bfi.org.uk/news-opinion/bfi-news/bfi-digitises-4m-newspaper-cuttings

audiovisual archives are also the partners of initiatives making their audiovisual content available and searchable through aggregators and portals such as the digital library Europeana,¹¹ or the audiovisual specialised portals the European Film Gateway, Filmarchives online¹² or EU Screen.¹³

To benefit from the new economic opportunities that the digital cultural assets represent for the internal market, the European Commission proposed to include cultural institutions in the revised scope of the Directive on re-use of public sector information (hereinafter the PSI Directive).¹⁴ The original PSI Directive, adopted in 2003, aimed at developing a European information market based on information collected, produced and disseminated by public authorities.¹⁵ It harmonised at a minimum level rules on re-use but not the rules on access to public information, which remains the sole and exclusive competence of member states.¹⁶ After 18 months of intense negotiations between the European institutions, the scope of the PSI Directive has been revised to include museums, archives and libraries among the public sector bodies subject to the rules on re-use.¹⁷

This article proposes to explain the new rules on re-use that will apply to audiovisual archives and to analyse how they will affect their policies to make their materials available. Following an overview of the PSI Directive to set up the background and the revision process in Section II, the scope of applicability of the revised Directive will be analysed in Section III. Section IV will focus on the rules on re-use applicable to audiovisual archives. Section V will analyse the impact that copyright rules, such as the rules on the term of protection and on the IP ownership, will have on the scope of re-usable information.

As a foreword, audiovisual archives should be understood as covering audiovisual heritage institutions but as excluding archives belonging to public service broadcasters since they remain outside the scope of the Directive, as this will be explained. Examples of national policies and practices of film heritage institutions will be provided as illustrations. They should in no case be considered as an exhaustive list of practices or policies.

II. Background on the PSI Directive and its revision

This section presents the elements of the discussion to understand the rationale of the PSI Directive and the reasons of the inclusion of cultural institutions (including audiovisual archives) in the scope of the revised PSI Directive.

1. Overview on the PSI Directive

Adopted in 2003, the PSI Directive aimed at stimulating the economic potential of information produced, collected, processed and disseminated by public authorities in the performance of their public tasks. The Directive was conceived as a means to boost the European information market, considered uncompetitive and underdeveloped in comparison with its US counterpart, which

11) <http://pro.europeana.eu/web/guest/about>

12) Filmarchives online provides a fast and easy access to the catalogues of film archives all around Europe, see www.filmarchives-online.eu

13) The European Film Gateway is the point of access of 24 film archives in Europe, and the aggregator for Europeana in the film domain, see www.europeanfilmgateway.eu ; EU Screen provides online access to television archives, see www.euscreen.eu

14) Impact assessment accompanying the proposal for a revision of the PSI Directive [hereinafter Impact Assessment], SEC (2011) 1552 final, 12 December 2011, p. 27; Proposal for a Directive of the European Parliament and of the Council Amending Directive 2003/98/EC on re-use of public sector information, COM (2011) 877 final, 12 December 2012.

15) Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information [2003], OJ L 345, p.90 [hereinafter the PSI Directive].

16) Impact Assessment, p. 5 and 20, FN 14.

17) Directive 2013/37/EU of the European Parliament and of the Council of 26 June 2013 amending Directive 2003/98/EC on the re-use of public sector information, OJ L 175 p. 1 of 27 June 2013 [hereinafter the amending Directive] available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:175:0001:0008:EN:PDF>; Within 24 months of the publication of the amending directive, member states will have to implement the rules in their national laws.

benefited from inexpensive and easily accessible public sector information.¹⁸ To overcome the national obstacles preventing the development of the information market, the European Commission proposed a Directive to set up a minimum framework of rules applicable in the member states. The issue of access to public sector information was left at national level in the absence of general competence of the European Community to regulate the right of access to public information in the member states. Because of the objections and concerns expressed by member states and public sector bodies, the Directive did not oblige member states to make all their public sector information available for re-use but instead encouraged them to do so.¹⁹ Once they chose to allow re-use, they had to apply the conditions set in the Directive. The notion of public sector information as originally understood was very traditional. It included information held by ministries and public bodies: legal, administrative, business or financial information but also geographical, weather or traffic information. But public sector information understood as educational information, cultural information or information held by public service broadcasters was specifically excluded from the scope of the Directive.²⁰ Arguments on these specific exclusions will be developed in Section III.

2. Revision of the scope of the PSI Directive

In 2008, the European Commission conducted a first review of the PSI Directive on its scope. After consultation of the stakeholders and the member states, the European Commission maintained the status quo on the exclusion of cultural institutions.²¹ A second phase of revision of the scope started in 2010 and resulted in a proposal of revision of the PSI Directive in December 2011.²²

2.1. The Open Data context

The European Commission presented its proposal of revision of the PSI Directive as a part of its Open Data Strategy. In addition to the revision of the PSI Directive, its Open Data Policy Framework is composed of a Communication on Open Data and the revision of the European Commission's decision on the re-use of its own documents.²³ The Commission sees new economic opportunities in the open data movement and encourages member states to adopt the concept of open data.²⁴

Neither the proposal of revision of the PSI Directive nor its impact assessment defines the concept of open data. Although there is no official definition, the notion has become very familiar in recent years. It is often understood as "a piece of data or content" that "everyone is free to use, reuse and redistribute ... subject only, at most, to the requirement to attribute and/or share alike".²⁵ The concept shares the same philosophy as the open content movement, the open licences movement or the open source movement.²⁶ A subset of the notion is the open government data movement,²⁷ which aims at making public data more accessible, more transparent and freely re-usable.²⁸ This

18) *Public Sector Information: A key resource for Europe*, Green Paper on public sector information in the information society, COM (1998) 585.

19) On the background, see Katleen Janssen, *INSPIRE and the PSI Directive: public tasks versus commercial activities*, workshop paper, available at: www.ec-gis.org/Workshops/11ec-gis/papers/303janssen.pdf

20) Article 1(2)(d), (e) and (f) of the PSI Directive; other exemptions relate to the protection of data under access regimes and privacy laws (Article 1(2)(c)).

21) Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the re-use of public sector information, COM (2009) 212 final, 7 May 2009.

22) Proposal for a Directive of the European Parliament and of the Council Amending Directive 2003/98/EC on re-use of public sector information, COM (2011) 877 final, 12 December 2012.

23) See Commission's Communication, *Open Data, an Engine for Innovation, Growth and Transparent Governance*, COM (2011) 882 final, 12 December 2011 and Commission Decision of 12 December 2011 on the reuse of Commission documents, 2011/833/EU [2011], OJ L 330 p. 39.

24) Communication on Open Data, p. 5, see FN 23; Impact Assessment, p. 5, FN 14.

25) <http://opendefinition.org/>; Definition provided by Open Knowledge Foundation, a non-profit organisation dedicated to the promotion of open data and open government, see for further details <http://okfn.org/about>

26) See http://en.wikipedia.org/wiki/Open_Data

27) Born in the United States in 2007 and embraced by several European member states.

28) See for examples the 8 Open Government Data Principles adopted in the USA in 2007 by open government activists.

movement supports democracy and citizens' participation. In the context of open government information, open data is perceived as a way of improving governance (and democracy) as well as growth.²⁹

Applied to cultural institutions, open data is the way these institutions can "open up control to their data and ... make digital copies of public domain works easily accessible and re-usable."³⁰

2.2. *The economic value of cultural information*

The inclusion of the cultural institutions in the scope of the PSI Directive has been widely discussed. Member states and stakeholders have expressed their opinions and concerns during the two phases of revision, in 2008 and 2010. The European Commission on its side has backed up its position with two economic studies: the first one on the "Economic and Social Impact of the Public Domain",³¹ the second one on "PSI re-use in the cultural sector".³²

Cultural institutions expressed concerns on the administrative burden and high costs (IPR related) that the extension would induce. In addition, those that are drawing revenues from the sale of their materials also expressed fear with regard to loss of revenues.

Other respondents to the European Commission's public consultations highlighted the economic potential of cultural resources and the positive impact of the extension on the development of the European information market.

At European level, the importance of the cultural sector was recognised as early as 2000 but in terms of public investments and not of return on investment. The economic value of the cultural sector as economic driver was established in 2006 in a report on the economy of culture, which revealed the contribution of the cultural sector to the European GDP (2.6% in 2003).³³

The first economic study, mandated by the European Commission to assess whether the cultural sector was ready to adopt the principles contained in the Directive, did not find enough evidence in favour of the extension at the current level of activities. Although it acknowledged the growing role of cultural institutions in the creation of content and the significant potential value of their materials for re-users, it concluded that further investigation was necessary.³⁴

The first study found however that 32% of cultural institutions surveyed were charging for the re-use of their content. On the basis of this finding and in the perspective of the second review of the PSI Directive, the European Commission commissioned another study to "assess the importance of re-use in terms of revenues for cultural institutions and to estimate trends in the development of the re-use market for cultural material".³⁵ The study found that some cultural institutions were already making their collections available for re-use and charging for third-party re-use. It also established that many cultural institutions were trying to find a balance between their public task of dissemination and the necessity to generate income to support their activities. The study concluded that cultural institutions were looking for "opportunities to re-use their content". On the basis of the study, the European Commission considered that opening up public domain materials held by cultural institutions for re-use would contribute to "stimulating PSI re-use across the EU". As a conclusion, "the scope of the Directive should be revised to encompass cultural establishments" but taking into account the specificities of the sector.³⁶

29) See the latest development in the field of open data: the G8 Open Data Charter, available at www.gov.uk/government/publications/open-data-charter/g8-open-data-charter-and-technical-annex

30) See Neelie Kroes exhorting cultural institutions to take the opportunities offered by opening up their data, *Foreword in Uncommon Culture*, Vol. 2 N.3/4 (2011).

31) *Economic and Social Impact of the Public Domain, EU Cultural Institutions and the PSI Directive*, Rightscom, 2009.

32) *PSI re-use in the cultural sector*, Curtis+Cartwright, 2011.

33) *The Economy of Culture in Europe*, Chapter 3, Mapping out the economy of culture in figures, KEA study, 2006

34) Rightscom study, 2009, p. 5, FN 31.

35) Impact Assessment, p. 35, FN 14.

36) Impact Assessment, p. 37, FN 14.

III. Scope of application of the revised Directive

The PSI Directive aims at stimulating the economic potential of public sector information by harmonising the rules and practices on re-use of public sector information in the member states.

Article 1 of the PSI Directive defines the general principle of applicability of the Directive, i.e. the rules on re-use only apply to documents held by public sector bodies and supplied in the performance of their public task. The term “public sector information”, which is used in the title of the Directive, is not defined. Instead Article 2(3) refers to and defines “document”. A public sector document covered by the Directive is “any content whatever its medium” (i.e. written or on paper, or stored in an electronic form or as a sound, visual or audiovisual recording) and “any part of such content”. The notion of documents covers both content (such as audiovisual content, film) and data (such as statistics on films, datasets). In this section, the expressions “information”, “documents” and “materials” held by public sector bodies are used indistinctly.

The Directive does not prescribe to which type of public sector information or organisations the rules on re-use apply. Instead the Directive defines its scope by a list of exclusions. Criteria of application can be deduced a contrario from these exclusions. The first criterion relates to the type of public sector bodies. The second criterion concerns the activity of the public sector bodies. The third one pertains to the status of the documents supplied by public sector bodies.

1. Type of public sector bodies

Since its origin and until the proposal of revision of the PSI Directive in 2011, Article 1(2)(f) of the Directive excluded cultural institutions from its scope. Cultural institutions were identified in a non-exhaustive list as museums, libraries, archives, orchestras, operas, ballets and theatres. They were excluded due to the status of the materials they held (most of them were acknowledged as being covered by third party’s intellectual property rights) and to their own status as “carriers of culture and knowledge” in society.³⁷ As explained in the previous section, during the first review of the PSI Directive, the European Commission concluded that there was no evidence that the potential benefits of the application of the PSI Directive to cultural institutions would outweigh the high burden they would have to carry. After a second assessment, the European Commission concluded that public domain materials held by cultural institutions had to be unlocked and should be subject to the rules on re-use of the PSI Directive. The proposal of revision extended the scope of the Directive to three categories of cultural institutions, museums, archives and libraries, which are considered as holding a vast amount of public domain materials valuable for re-use. All the other types of cultural institutions and their related archives remain outside the scope.³⁸ In particular the exclusion of “orchestras, operas, ballets and theatres” has been maintained because of their nature as performing arts establishments and the big volume of third-party protected documents they hold (Recital 18 of the amending Directive).

In order to be considered as a public sector body under the PSI Directive, audiovisual archives must meet the criteria defined in its Article 2.³⁹ They either have to be publicly financed or controlled bodies, at state, regional or local level, or they have to be “established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character”. As inferred from Recital 10 of the PSI Directive, state-owned companies are excluded from the definition of public sector bodies.

37) Proposal for a Directive of the European Parliament and of the Council on the re-use and commercial exploitation of public sector documents, [2002], OJ C227 E, p. 382.

38) Article 1(2)(f) of the revised PSI Directive: [This Directive shall not apply to ...]: “documents held by cultural establishments other than libraries, museums and archives” and Recital 18 of the amending Directive.

39) The definition of public sector bodies is the one established in the EU Procurement Directives; see Recital 10 of the PSI Directive.

According to the European Commission's findings on the implementation of the Recommendation on Film Heritage, most film heritage institutions are governmental institutions, at national or regional level, and are financed with public funds. As such they should fall within the definition of public sector bodies.⁴⁰ As a matter of illustration, the French *Centre National du Cinéma et de l'Image Animée* (National Centre for Cinematography and Moving Image – the CNC)⁴¹ or the German *Bundesarchiv-Filmarchiv* (Federal Archives-Film Archives)⁴² are public administrative authorities operating under the authority of different ministries. Other film heritage institutions are organised under the form of non-profit associations pursuing a mission of public service (such as the *Cinémathèque française*)⁴³ or charitable organisations attached to their governmental department of culture (such as the *British Film Museum*)⁴⁴ and are receiving most of their funding from the government.

As already mentioned, public service broadcasters and their subsidiaries are excluded from the scope of the PSI Directive. Brief explanations on their exclusion are contained in the proposal of Directive.⁴⁵ Excluding them permitted to avoid any doubt about their qualification as public sector bodies and reflected their particular status as recognised in the Protocol to the Amsterdam Treaty.⁴⁶ The European Commission's impact assessment on the proposal of revision of the PSI Directive further developed the argument. The European Commission considered that subjecting PSBs to the rules of the PSI Directive would interfere with their remit and competence to organise their commercial exploitation as acknowledged in the Protocol to the Amsterdam Treaty. Besides their specific status, the European Commission provided a second argument based on the high volume of third party copyright protected materials held by PSBs: "third party intellectual property rights (e.g. music rights) form an integral part of virtually all broadcast material, i.e. not only of acquired or commissioned productions but also of programme material produced entirely by the PSB itself." As a consequence and because materials covered by third party rights are excluded from the scope of the Directive, nearly all broadcast materials held by PSBs would be excluded from the scope.⁴⁷

2. Nature of the task performed by the audiovisual archives

In application of Article 1(2)(a) of the PSI Directive, documents provided by a public sector body in the performance of a task falling outside its public mission⁴⁸ are excluded from the scope of the Directive. "Commercial" activities beyond the public task of public sector bodies are not subject to the rules on re-use.⁴⁹ A traditional example of such commercial activity is the delivery of customised weather forecasts by the public body in charge of gathering meteorological data. The production of meteorological data is a part of its public mission, whereas the commercial exploitation of the data falls outside its public mission.

Only information supplied by public sector bodies in the exercise of their public tasks is covered by the PSI Directive. The problem is the absence of definition or harmonisation of the notion of public task at EU level. The Directive has however set some criteria to allow member states to determine whether a specific task is considered to be a public task: the task has to be vested in

40) Third implementation report of the 2005 EP and Council Recommendation on Film Heritage, SWD (2012) 431 final, 7 December 2012, p. 6.

41) The CNC is under the authority of the French Ministry of Culture, see www.cnc.fr/web/fr/le-cnc

42) The Bundesarchiv is under the authority of the German State Ministry of Culture and the German Commissioner for Culture and the Media, see www.bundesarchiv.de/bundesarchiv/organisation/abteilung_fa/index.html.en

43) See the bylaws of the Cinémathèque française, available at: www.cinematheque.fr/data/document/statuts-cinematheque-francaise-20-juin-2011-signature.pdf

44) See the Royal Charter of 18 July 1983, amended on 19 April 2000, setting up the British Film Institute.

45) Proposal of the PSI Directive, 2002, see FN 37.

46) Protocol on the system of public broadcasting in the member states, (1997) OJ C340, 19 November 1997, p.109.

47) Impact Assessment, p. 33, FN 14.

48) In this sub-section the terms public mission and public task are used indistinctly.

49) Recital 9 of the PSI Directive: "activities falling outside the scope of the public task will typically include supply of documents that are produced and charged for exclusively on a commercial basis and in competition with others in the market".

a public sector body and be defined at national level by law or any other binding measures or in the absence of such measures, by common administrative practices.⁵⁰ Recital 8 of the PSI Directive provides examples of activities considered as public tasks: collection, production, reproduction and dissemination of documents.

Concerning audiovisual archives, and more specifically film heritage institutions, another European policy document provides indications on activities that fall within the public missions of film archives. The European Recommendation on Film Heritage defines their public tasks as the systematic collection, cataloguing, preservation, restoration and making accessible for educational, cultural, research or other non-commercial uses of cinematographic and audiovisual works.⁵¹ In its third report on the implementation of the Recommendation on Film Heritage, the European Commission notes an evolution of the public tasks of film heritage institutions. Their traditional task of preservation of collections has been completed, in many institutions, by the task of providing access to their collections. This evolution is mainly due to the use of and possibilities offered by the new technologies. The report mentions the new collection policy of the British Film Institute (BFI), which gives “equal priorities as objectives” to preservation and access.⁵² In Sweden as well, providing access to the film collections is also one of the public tasks of the Swedish Film Institute. Its other tasks are the acquisition, cataloguing, preservation and restoration of the collections.⁵³

Another question that arises is whether the public mission of preservation encompasses the task of digitisation. The report of the “Comité des Sages” on digitisation, online accessibility and preservation of cultural heritage considers that digitisation is the main responsibility of the public sector, even if it could involve the private sector for its execution.⁵⁴ The revised PSI Directive does not take position on this issue but acknowledges the importance of digitisation as “an important means of ensuring greater access to and re-use of cultural material”.⁵⁵ Determining whether digitisation is a public task or not is therefore left at national level. In Hungary, for example, the Hungarian Digital Archive and Film Institute is in charge of digitising the entire Hungarian cultural heritage as a part of its public missions.⁵⁶

Finally, the criteria set by the Directive to determine a public task might not take into account the hybrid nature of some audiovisual archives. Despite their industrial and commercial nature (as acknowledged by their status at national level), some audiovisual archives are cumulating a mission of public service with commercial activities. On one side, they are compelled to provide access to their holdings, on the other side they exploit them to finance new services. The French *Institut National de l'Audiovisuel* (National Audiovisual Institute – INA) is a good example. It is organised under the form of a public body of industrial and commercial nature (French category of *établissement public à caractère industriel et commercial* – EPIC).⁵⁷ As such, it should be excluded from the scope of the Directive. However the administrative practice in France has shown that a judge does not assess the nature of a public body on a given qualification but rather on its missions. In the case of INA, administrative courts have already acknowledged its dual nature.⁵⁸ The issue would be then to determine whether the public body supplies the information as part of its public mission or as part of its commercial activities.

50) New Article 1(2)(a) of the PSI Directive, completed by Recital 10 of the amending Directive.

51) Point 2 of the Recommendation of the European Parliament and the Council on film heritage and the competitiveness of related industrial activities, 2005/868/CE [2005], OJ L323/57 [hereinafter Recommendation on Film Heritage].

52) The BFI collection policy, 16 November 2011, p. 22, available at: www.bfi.org.uk/sites/bfi.org.uk/files/downloads/bfi-collection-policy-2011-11-16.pdf

53) The Policy of Archival Film Collections of the Swedish Film Institute, December 2012, available at www.sfi.se/Filmarvet/Om-filmarkivet

54) *The New Renaissance*, Report of the “Comité des Sages” 10 January 2011, pp. 9-10.

55) Recital 19 of the amending Directive [2013], FN 17.

56) See Answers to questionnaire on the implementation of the Recommendation on Film Heritage, http://ec.europa.eu/avpolicy/docs/reg/cinema/report_3/hungary_en.pdf

57) See www.ina.fr

58) For example Administrative Court of Appeal, Paris, 29 June 2004, N° 01PA03112; a specific notion of “*établissements publics à double visage*” has been created by the doctrine to reflect the dual nature of some public bodies.

3. Status of the information held by the audiovisual archives

The status of the information provided by the public sector body is the third condition that can narrow the scope of application of the Directive. Documents can be excluded on the basis of two grounds:

- They are not accessible or exempted from disclosure at national level to protect public or private interests (linked to public security, business secret or personal data) as provided by the new Article 1(2)(c to cc) of the PSI Directive;
- Third parties hold intellectual property rights in public sector information. Article 1(2)(b) excludes documents for which third parties hold intellectual property rights, even if these documents are accessible at national level under access laws. IPRs are understood as copyright and related rights (including database rights).⁵⁹ This means that documents in which third parties hold IPRs could only be made available by the rightsholders or with their permission. In addition, it should be noted that the Directive does not affect civil servants' IPRs they might have under national laws, such as the authors' rights that French civil servants benefit from (Article L. 111-1 of the French Code of Intellectual Property).

Recital 9 of the amending Directive broadens the scope of the IPR exclusion for documents held by cultural institutions. According to that recital, documents that were initially owned by third parties and for which the term of protection has not expired are treated like documents for which third parties hold intellectual property rights. The potential impact of this extension on the volume of materials available for re-use will be assessed in Section V.

Once it has been established that audiovisual archives are public sector bodies supplying public documents in the exercise of their public tasks and that the documents are not protected by a third party's IPR, the rules on re-use will apply.

IV. Rules set up by the revised PSI Directive

The amending Directive has introduced a duty for member states to allow the re-use of accessible documents.⁶⁰ This duty has however been adjusted to the specificities of cultural institutions, which benefit from several exemptions or exceptions. This section explains the general principle of re-use and describes the different conditions of re-use as applicable to audiovisual archives: available format, rules governing charges, licences, transparency and discovery, as well as rules concerning exclusive arrangements.

1. Interface between access to and re-use of audiovisual information

The PSI Directive does not harmonise the right of access to public sector information at EU level. As constantly repeated by the European Commission, the Directive is not a freedom of information act.⁶¹ The EU does not have a specific and direct competence to regulate access to public information held in the member states.⁶² Instead it builds on existing national access regimes, without changing the existing rules.⁶³ The rules on re-use only apply to documents that have been accessed under

59) Recital 22 of the PSI Directive: "the term 'intellectual property' refers to copyright and related rights only (including sui generis form of protection). This Directive does not apply to documents covered by industrial property rights".

60) Compare the wording of the original Article 3 of the PSI Directive: "member states shall ensure that, *where the re-use of documents held by public sector bodies is allowed*, these documents shall be re-usable" with the wording of the new Article 3 of the PSI Directive: "member states shall ensure that documents to which this Directive applies ... shall be re-usable" [italics added].

61) Impact Assessment, p.5, FN 14.

62) See LAPSI Policy Recommendation N°6, *Rights on Access to Public Sector Information*, available at: www.lapsi-project.org

63) See Recital 7 of the amending Directive, FN 17; and new Article 1(3) of the PSI Directive.

national freedom of information laws or that have been publicly disseminated.⁶⁴ For audiovisual archives, this principle means that materials and data supplied cannot be re-used unless they have been made available or have been disseminated in application of national laws (as explained in Section III).

The minimum framework of rules set up in the PSI Directive has led to diverging implementations at national level. Some member states expressly linked the right of re-use to a right of access; whereas other member states did not.⁶⁵ To create legal certainty and clarify the interface between the two concepts, the PSI Directive contains in its revised Article 3 the obligation for member states to allow the re-use of documents of which access is neither restricted nor excluded.

What does re-use mean?

In application of Article 2(4) of the PSI Directive, re-use covers any use by any natural or legal person for a purpose other than the initial purpose for which the document was produced (i.e. in the performance of the public task). Re-use can be made for commercial and non-commercial purposes. This includes both uses by the public sector body in a commercial activity outside its public task and uses by third parties creating added value products on the basis of the public information.

Re-use by the audiovisual archives can consist for example of the licensing of moving images to commercial entities, the licensing of films and videos to broadcasters and third parties or the sale of digitised content (such as the digitised copy of a film), either online or through their on-site shop.⁶⁶ Re-use by third parties can be the use of digitised content to create a new product (film extracts website).

2. Availability of documents out of copyright

As explained in the previous section, the obligation to make available documents for re-use applies to documents not protected by third parties' intellectual property rights. The obligation potentially covers documents for which public sector bodies hold intellectual property rights, in addition to out-of-copyright documents.

However for cultural institutions, the revised Directive has limited the scope of the obligation to out-of-copyright documents. In application of the new Article 3(2) of the PSI Directive, documents for which cultural institutions hold intellectual property rights are not subject to the obligation of re-use. Instead, cultural institutions have the choice to allow the re-use of their documents. If they do so, the conditions of re-use laid down in the revised version of the Directive should apply. Although the new Article 3(2) does not specify it, it is understood that either member states or the cultural institutions themselves can authorise the re-use.⁶⁷

In application of the rule, audiovisual archives can decide to give access to their datasets and allow their re-use under the conditions of re-use described below.

3. Available format

According to the new Article 5(1) of the PSI Directive, documents should be provided "in any pre-existing format or language and where possible and appropriate, in open and machine-readable

64) Impact Assessment, p. 5, FN 14.

65) Recital 7 of the amending Directive, FN 17.

66) For more examples, see the Curtis study 2011, pp. 14-15 and 21, FN 32.

67) This faculty is inferred from Recital 9 of the PSI Directive that explained what the original rule on re-use was: "This Directive [i.e. the Directive adopted in 2003] does not contain an obligation to allow re-use of documents. The decision whether or not to authorise re-use will remain with the member states or the public sector body concerned".

format together with their metadata". Concerning the format of the information, audiovisual archives will only have the obligation to deliver the information in its existing format. The new provision of the PSI Directive does not oblige them to provide an open and machine-readable format but encourages them to do so and to deliver their metadata. This provision leaves some leeway to member states, which can introduce stricter obligations.⁶⁸ On the issue of formats, the European Commission plans to provide further guidance (through guidelines or recommendations).⁶⁹

The supply of the information does not induce an obligation for audiovisual archives to "create or adapt documents or provide extracts ... where this would involve disproportionate effort, going beyond a simple operation" (new Article 5(2) of the PSI Directive). Since the origin of the PSI Directive, the aim has been to impose a minimum burden on public sector bodies.

4. Charges

The regime for charging for re-use is contained in the new Article 6(1) of the PSI Directive. It limits charges to marginal costs, which cover costs for "reproduction, provision and dissemination of documents".

Pursuant to an exception applicable to cultural institutions, audiovisual archives can charge at costs recovery limited to the "cost of collection, production, reproduction, dissemination, preservation and rights clearance together with a reasonable return on investment" (new Article 6(4) of the PSI Directive). Reasonable return on investment is not defined by the Directive but can be established by comparison with the prices charged by the private sector for the use of the same or similar documents (Recital 23 of the amending Directive).

The rationale of the cost recovery exception is to enable cultural institutions to generate revenues to contribute to the fulfilment of their duty to disseminate culture.⁷⁰ The study on *PSI re-use in the cultural sector* has revealed that the income of certain cultural bodies depended on the sale of their information to finance part of their operations.⁷¹

In case audiovisual archives re-use the information they hold to include it in a commercial activity (such as the sale of DVDs), which is not part of their public task, they will be subject to the same conditions of re-use and charges as the ones applicable to the private sector re-using the same information (Article 10(2) of the PSI Directive). The goal of the PSI Directive is to ensure a level playing field between public and private sector entities, which are offering new services or products on the basis of public sector information.

Audiovisual archives will also have to comply with an obligation of transparency concerning the terms and conditions applicable to charges. Following the new Article 7 of the PSI Directive, audiovisual archives will have to pre-establish (i.e. objectively and in respect of competition rules) and publish (on their websites if possible) the conditions and amounts of standard charges or the criteria used to determine other types of charges (new Article 7(1) and (2) of the PSI Directive).

5. Licences

The provision on licensing is defined in Article 8 of the PSI Directive and gives some leeway to member states and public sector bodies.

68) In the UK for example, the Freedom of Information Act was amended in 2012 to provide that all information released has to be in a re-usable and machine-readable format, see www.legislation.gov.uk/ukpga/2012/9/part/6/enacted

69) Impact Assessment pp. 30-31, FN.14; Recital 36 of the amending Directive, FN 17.

70) Impact Assessment, p. 37, FN 14.

71) See the Curtis study, FN 32.

In application of the new paragraph 1 of Article 8 of the PSI Directive, audiovisual archives can set conditions of re-use of their documents. At their choice, they can allow re-use with or without conditions. Conditions can be imposed through a licence.

When a licence is used, member states should ensure that standard licences are available in digital formats and encourage audiovisual archives to use them (Article 8(2) of the PSI Directive). Content of standard licences is decided at national level. The Directive only provides indications of possible conditions such as the acknowledgment of the source or the acknowledgment of any change introduced in the document by the user (Recital 26 of the amending Directive). The only obligation that the Directive imposes when conditions are set is to ensure that “these conditions [do] not unnecessarily restrict possibilities for re-use and [are] not used to restrict competition.”

The revised PSI Directive does not impose the use of open licences but requests member states to encourage their use. The objective is to promote open licences as common practices in the EU despite the lack of definition of “open licences” in the revised Directive. Several models have already been issued such as the Creative Commons licensing models or the Open Data Commons Licences, which can both be used for public domain materials.⁷² At national level, three member states at least have set up their own open licences for the re-use of public sector information: the “Licence Ouverte” in France, the “Italian Open Data Licence” and the “Open Government Licence” in the UK.⁷³ The French Ministry of Culture has already recommended the use of the French open licence model for the dissemination and re-use of cultural data.⁷⁴

6. Discoverability of the information

Concerning the discoverability of information, member states have the obligation to put in place tools to facilitate the search of public information and its re-use. Examples of tools are asset lists of main documents with relevant metadata, accessible where possible and appropriate online and in machine-readable format, and portal sites that are linked to the asset lists (new Article 9 of the PSI Directive). Where possible member states shall facilitate the cross-linguistic search for documents.

The PSI Directive does not impose on audiovisual archives any obligation to make their materials discoverable. But at national level, member states can create such as an obligation.

In the audiovisual field, the existing portals and aggregators such as Europeana, the European Film Gateway and EU Screen could be further used. As of 2011, audiovisual and sound content amounted to only 2% of the material made available through Europeana. The European Commission encourages Europeana to increase this volume in line with its Strategic Plan 2011-2015.⁷⁵ The Dutch Institute for Sound and Vision has already made more than 1 500 videos available on Europeana through its platform Open Images. The collections available contain among others some of the Dutch newsreels owned by the Dutch Institute.⁷⁶ EU Screen, providing free access to materials from EU broadcasters and audiovisual archives, has set up its own portal on Open Images to make a small selection of videos available for creative re-use.⁷⁷

72) For more information on open licences, see Ilaria Buri, *Accessing and Licensing Government Data under Open Access Conditions*, IViR, publications 2012.

73) Respectively available at: www.data.gouv.fr/Licence-Ouverte-Open-Licence; www.dati.gov.it/i odl/2.0/ and www.nationalarchives.gov.uk/doc/open-government-licence/version/2

74) See *Guide Data Culture*, “Pour une stratégie numérique de diffusion et de réutilisation des données publiques numériques du secteur culturel”, March 2013, available at: <https://semaphore.culture.gouv.fr/documents/10746/1502772/GUIDE+DATA+CULTURE>

75) Recital 15, Commission Recommendation of 27 October 2011 on the digitisation and online accessibility of cultural material and digital preservation 2011/711/EU [2011], OJ L 283, p. 39. See also Europeana Strategic Plan 2011-2015 available at: www.pro.europeana.eu/publications

76) See www.openimages.eu/blog/2012/05/16/open-images-in-europeana and the collection available at: www.europeana.eu/portal/search.html?query=europeana_collectionName%3A+2021601*

77) www.openimages.eu/blog/2012/11/09/euscreen-portal-on-open-images

7. Exclusive arrangements (such as public-private partnerships)

As a general principle set up in Article 11 of the PSI Directive, agreements between public sector bodies and third parties that grant exclusive rights are prohibited. The new paragraph 2a of Article 11 sets an exception for the digitisation of cultural resources to take into account the benefits that public-private partnerships can offer for the access and re-use of cultural information (Recital 30 of the amending Directive).

The conditions under which audiovisual archives will be able to contract public-private partnerships are the following ones:

- Exclusive rights can be granted to the private partner to allow it to recoup its investment for a period of 10 years.
- If the period exceeds 10 years, the exclusive arrangement should be reviewed on the 11th year and afterwards, if applicable, every 7 years.

The period of exclusivity granted by the PSI Directive is longer than the one advised in the European Commission Recommendation of 2011 on the digitisation and online accessibility of cultural material. Based on the Comité des Sages' Report, the European Commission recommended a period of 7 years maximum.⁷⁸

The revised Directive imposes obligations on private partners. They should provide a copy of the digitised materials to the cultural institutions at no cost (free of charge). At the end of the period of exclusivity, that copy will be made available for re-use. Audiovisual archives will not have the choice whether or not to allow its re-use. They will have the obligation to make it available.

Does the provision affect ongoing digitisation projects? The new Article 11(4) of the PSI Directive introduces a limited retroactive clause. Agreements concluded before the entry into force of the Directive and that do not qualify for the exceptions will be maintained until the end of the agreement. In the case of open-ended agreements, they will have to be terminated within a maximum of 30 years after the entry into force of the amending Directive.

V. Impact of the rules of the revised PSI Directive: some challenges ahead?

In determining the scope of re-usable information, audiovisual archives may face two challenges: assessing which information is out of copyright and becoming familiar with the notion of re-use.

1. IPR status of information held

Three legal issues may hinder the re-use of audiovisual materials: the determination of the expiration of the IP protection of a work, the determination of the IP ownership and the extension of the scope of materials covered by third party IP protection.

1.1. Term of copyright protection

First of all, the EU Term Directive, as last amended, has harmonised the term of protection of copyright and related rights.⁷⁹ The rule is the protection of copyright works until 70 years after the

78) Annex 1 of the Commission Recommendation of 27 October 2011 on the digitisation and online accessibility of cultural material and digital preservation, 2011/711/EU [2011], L283/39; *The New Renaissance*, Report of the "Comités des Sages" 10 January 2011, p. 40.

79) Codified version of the European Directive on the term of protection of copyright and certain related rights, Directive 2006/116/EC [2006], OJ L372/12, as amended by Directive 2011/77/EC [2011], OJ L265/1; This section briefly summarises the issues of the term of protection as analysed in the IRIS *plus* article of Christina Angelopoulos, *Determining the Term of Protection for Films: When Does a Film Fall into the Public Domain in Europe*, IRIS *plus* 2012-2.

death of the author, unless one of the several exceptions applies (such as in a co-authorship situation or in case of an anonymous/pseudonymous work). For audiovisual works, the determination of the term is rendered more complex by the multiplicity of authors and the cumulation of several layers of protection in the same work (copyright and related rights).⁸⁰ In addition, the uneven national implementations of the Term Directive, through the preservation of national exceptions extending the length of the term, creates some uncertainties on the exact expiration date of the term of protection.⁸¹

1.2. Orphan works

Second, the volume of orphan works, i.e. works for which rightsholders cannot be identified or located, constitutes another issue.⁸² According to a survey undertaken by the *Association des Cinémathèques Européennes* (ACE, European Association of Film Archives), 21% of the films held by European film archives are orphan works (i.e. about 225 000 films). Most of the films identified as orphan works are early movies from the 1920s or pre- and post WWII. But other films might be orphans because the chain of rights cannot be traced (in the absence of well-documented assignments of rights or due to bankruptcy of the film producer).⁸³ The Orphan Works Directive, adopted in 2012, does not provide solutions to determine the IP ownership of a work identified as orphan.⁸⁴ The Directive only permits certain non-commercial uses of an orphan work by cultural institutions. After a fruitless search to find the rightsholder, cultural institutions (including film and audio heritage institutions) can use the work to perform their public missions, such as the dissemination of materials for educational and cultural purposes.⁸⁵ The solutions provided by the Orphan Works Directive are not suitable for the commercial re-use of orphan works. The revised PSI Directive on its side does not address the issue of orphan works. As a consequence, a substantial amount of audiovisual works held by audiovisual archives will be excluded from the scope of re-use.

1.3. Scope of materials covered by third party's rights

Recital 9 of the amending Directive has introduced a limitation to the volume of materials available for re-use. In application of that recital, documents first owned by third parties and for which the term of protection has not elapsed are considered as "documents for which third parties hold intellectual property rights". They are as such excluded from the scope of the PSI Directive. Drafted in vague terms, this recital might create more confusion than it will bring clarifications. It has been argued by the LAPSI professional network, providing legal analysis to the European Commission on the re-use of public sector information, that this recital broadens the scope of the exclusion. In its policy recommendation paper, the LAPSI professional network considers that a vast amount of materials, such as donated materials that were first owned by third parties as well as commissioned works first owned by their creators, would fall outside the scope of the Directive. As a consequence only documents internally produced or generated by the cultural institutions would be subject to the PSI Directive.⁸⁶ The recital might create uncertainty on the notion of documents covered by third party's IPRs. However, it could also be argued that the statement it contains has not been transcribed in any article of the Directive and therefore does not bind member states.

80) See *Film Copyright in the European Union*, Pascal Kamina, (Cambridge University Press, 2002) p. 84 et seq.

81) National exceptions have been maintained for example in France, Spain and the UK, see IRIS *plus* 2012-2, FN 79.

82) "An orphan work can be defined as a copyright-protected work (or subject matter protected by related rights), the right owner of which cannot be identified or located by anyone who wants to make use of the work in a manner that requires the rights owner's consent", in Stef van Gompel and P. Bernt Hugenholtz, "The Orphan Works Problem: The Copyright Conundrum of Digitizing Large-Scale Audiovisual Archives, and How to Solve it", *Popular Communication - The International Journal of Media and Culture*, 2010-1, pp. 61-71.

83) On the general issue of orphan works, see Anna Vuopala, *Assessment of the Orphan Works Issue and Costs for Rights Clearance*, May 2010.

84) Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works [2012], OJ L299/5 [hereinafter Orphan Works Directive].

85) Article 6(2) and Recital 18 of the Orphan Works Directive, FN 84.

86) See LAPSI Policy Recommendation N°5 on *the proposed inclusion of cultural and research institutions in the scope of the PSI Directive*; available at www.lapsi-project.org

1.4. Audiovisual archives' data and metadata

Considering the issues identified above, it might be that a very small amount of materials held by audiovisual archives will be subject to the rules on re-use. However, materials held and generated by audiovisual archives are not limited to audiovisual elements of their collections. Audiovisual archives are producing reports, statistics or other data relating to their collections. They also generate metadata. But the rules on re-use applicable to the materials they own are different. Audiovisual archives are not obliged to make them available for re-use. They can decide whether or not to allow their re-use. The interest of the PSI Directive might lie in the opening of the data cultural institutions own. However, this interest is less appealing in the absence of an obligation of re-use. Nevertheless, the French *Centre National du Cinéma* has already released 30 datasets on the French governmental portal, Etalab, that are re-usable under the "Licence Ouverte".⁸⁷ Concerning metadata, audiovisual archives are merely encouraged to supply them together with the documents they provide access to.

2. Notion of re-use

The revised version of the PSI Directive has introduced a "right to re-use" out-of-copyright materials held by audiovisual archives. The duty to ensure that out-of-copyright materials are re-usable is borne by member states. Audiovisual archives on their side will have to implement the national rules in their policy of dissemination of their collection.

As mentioned in the economic study on *PSI re-use in the cultural sector*, cultural institutions are not familiar with the concept of re-use.⁸⁸ Concerning film heritage institutions, the difficulty they might have to implement the notion can be reinforced by the European policy guidelines that member states and film archives have followed until now. The leading policy document is the Recommendation on Film Heritage that targets a better preservation and exploitation of film heritage.⁸⁹ The Recommendation, adopted in 2005, called on member states to introduce appropriate measures to ensure that "cinematographic works forming part of their audiovisual heritage are systematically collected, catalogued, preserved, restored and made accessible for educational, cultural, research or other non-commercial uses of a similar nature". Public tasks carried out by film archives include making available materials they hold but for non-commercial uses. Making available audiovisual works for commercial re-use is not one of the objectives of the Recommendation.

As a consequence, film heritage institutions that have implemented this Recommendation have not taken into account the dissemination of their collections for commercial re-use.⁹⁰ By way of exception, the management collection policy of the British Film Institute (BFI) of 2011 mentions the re-use of collections data and works as part of the promotion of access to its collection. More specifically, in the context of online access, the BFI allows "free access to collections data, to read, refer to and re-use" as well as "free access to digital surrogates (where available) for reference and re-use, for works that are BFI-owned or out of copyright".⁹¹

It remains to be seen whether the Recommendation on Film Heritage will be adapted to take into account the rules set up in the PSI Directive. It should be however mentioned that the EU Recommendation on Film Heritage has been completed by the European Commission

87) www.etalab.gouv.fr/article-de-nouveaux-jeux-de-donnees-du-ministere-de-la-culture-et-de-la-communication-116421284.html

88) The Curtis Study, 2011, p. 27, FN 32.

89) Recommendation 2005/865/CE of the European Parliament and of the Council of 16 November 2005 on film heritage and the competitiveness of related industrial activities [2005] OJ L323/57.

90) Third implementation report of the 2005 EP and Council Recommendation on Film Heritage, SWD (2012) 431 final, 7 December 2012.

91) BFI Collection Policy, 2011, available at: www.bfi.org.uk/sites/bfi.org.uk/files/downloads/bfi-collection-policy-2011-11-16.pdf

policy on digitisation and online accessibility of cultural materials.⁹² The European Commission Recommendation targets all cultural institutions (including film heritage institutions) and promotes access and re-use for commercial and non-commercial purposes of digitised materials in the public domain.

VI. Conclusion

With the inclusion of libraries, museums and archives in the scope of the revised PSI Directive, audiovisual archives will be subject to the rules of the Directive. However, public service broadcasters' archives as long as they are subsidiaries of public service broadcasters, will remain exempted from the rules. From the early negotiations of the PSI Directive in 2002 through its different revision stages, public service broadcasters and their archives have remained outside the scope of the Directive mainly by reason of their special status.

The impact of the rules of the revised Directive on audiovisual archives appears contrasting.

On one side, the effects might be limited due to the narrow scope of re-usable materials. First of all, only out-of-copyright materials will be subject to the rules on re-use. The determination of which audiovisual materials have fallen in the public domain will not be easy to reach. Several obstacles can be identified: the difficulty to precisely determine the date of expiration of the term of protection as well as the difficulty to determine the IP ownership. The scope might even be further narrowed by the exclusion of materials that were first owned by a third party and for which the term of protection has not elapsed.

Second, beside the materials in their collections, audiovisual archives own data (reports, statistics) and produce metadata. If they are not compelled to supply their data, they are strongly encouraged to share their metadata. The decision to allow the re-use of their data will belong to them. The interest of the PSI Directive for audiovisual archives might lie precisely in the opening of the data they own and not in the opening of the collections they hold. However in that respect, the revised PSI Directive leaves broad freedom to member states and cultural institutions by applying the old rule of the original PSI Directive (choice to allow re-use) to cultural information. This seems to be far from the starting point of the European Commission, which wanted to place the revised PSI Directive in a context of Open Data.

On the other side, although the decision to widen the scope of the PSI Directive was not based on a cost/analysis study for each category and sub category of cultural institutions, the revised PSI Directive offers economic opportunities to audiovisual archives. First of all, the Directive has taken into account the fear of revenue loss expressed by cultural institutions and adjusted the rules on charges to their needs. Cultural institutions can charge for the re-use of materials at cost recovery together with a reasonable return on investment. The revised PSI Directive also provides some room for public-private partnerships to ensure access and re-use of cultural resources.

92) Commission Recommendation of 27 October 2011 on the digitisation and the online accessibility of cultural material and digital preservation, 2011/711/EU [2011], OJ L283/39; reinforced by the Council conclusions of 10 May 2012 on the digitisation and online accessibility of cultural material and digital preservation [2012], OJ C169/5.