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R E P O R T

2017

REUSE OF PUBLIC SECTOR INFORMATION ACT - ONE YEAR AFTER COMING INTO EFFECT.



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Introduction

For quite some time now, there has been growing interest in public data¹ – interest expressed by the governments, business and citizens. The cumulative size of the Open Data market in the EU 28+ between 2016 and 2020 is estimated at 325 bn EUR². Andrus Ansip, Vice President of the European Commission and European Commissioner for Digital Single Market said in one of his speeches: “If I had to express my views about the digital future – that of Europe or of whole world - I could do it with one word. The word is data.”³ The use of public data brings a lot of benefits such as improvement of the administration works, increasing the quality of data collected by the public sector, development of business and social initiatives, solving broadly defined social problems (through innovative solutions based on the use and analysis of data) or strengthening the position of citizens towards the authorities and through civic participation.

Making public data available, however, is only the first step to fully exploit their social potential. The second step is to create a simple and effective mechanism of public sector information reuse (hereafter: ISP) conditioning the process of benefitting from public data. Uncomplicated practice in this field is indispensable to both public subjects and citizens

– especially in the context of creating innovative products and information services. In the report covering the market related aspects of the use of public sector information, Graham Vickery states that the economic value of ISP directly results from the fact that in the economy based on information, knowledge is always the source of competitive advantage.⁴

We decided to take a closer look at how the Act of 25 February 2016 on reuse of public sector information (hereafter: Act or Reuse Act) functions in practice⁵, how it is useful to applicants and how it is applied by public subjects. We submitted 40 requests regarding public information access to the selected institutions obliged to apply the Act in Poland. Each of the selected⁶ units was asked to respond to several questions regarding the implementation of the Reuse Act in the period: June 16, 2016 – April 24, 2017.

1We understand public data as public sector information as defined in Par. 2 Point 1 of the Act of 25 February 2016 on reuse of public sector information (Journal of Laws item 352): “Public sector information shall be understood as any content or its part, independently of the method of its preservation, especially in paper, electronic, audio, visual or audiovisual form, being owned by subjects mentioned in Par. 3”.


2 The advantages of using data from the European Data Portal: <https://www.europeandataportal.eu/pl/using-data/benefits-of-open-data>, accessed on June 18, 2017.

3 Speech by Vice-President Ansip at Bruegel annual meeting: “Productivity, innovation and digitalisation - which global policy challenges?”, https://ec.europa.eu/commission/commissioners/2014-2019/ansip/announcements/speech-vice-president-ansip-bruegel-annual-meeting-productivity-innovation-and-digitalisation-which_en, accessed on June 18, 2017.

4 Vickery Graham, Review of Recent Studies on PSI Re-Use and Related Market Developments, 2011, <https://ec.europa.eu/digital-single-market/en/news/review-recent-studies-psi-reuse-and-related-market-developments>, accessed on June 18, 2017.

5 The Act of 25 February 2016 on reuse of public sector information (Journal of Laws item 352):

6 Within the group of state institutions, we focused on the subjects which had already had experience in the implementation of the Directive and which take part in the governmental programme of opening public data, as well as on the subjects which should practically apply regulations of the Act most often due to the type of data they own.




In the presented material, we discuss topics related to public sector information reuse gathered from the 40 selected public institutions among which 24 are cultural institutions, others are state institutions. The report analyzes issues concerning:

- the number of reuse requests submitted to public institutions in the period of the conducted research,
- the subject of submitted requests,
- decisions of public institutions regarding the submitted requests,
- agreements granting the exclusive right to use public sector information by public institutions.

Public sector information constitutes the enormous base of knowledge and information. The authors of the report entitled The market of products, services and digital content based on public sector information reuse (ISP) in Poland⁷ estimated that altogether, the Polish administration structure owns approx. 1.5 million datasets. It implies a great number of both institutions having ISP and applied IT solutions, formats and standards of data write. The number is impressive, although it doesn't include cultural heritage resources.

⁷ Sonia Buchholtz, Jan Strycharz, Aleksander Śniegocki, dr Alek Tarkowski, "Rynek produktów, usług i treści cyfrowych opartych na ponownym wykorzystaniu informacji sektora publicznego (ISP) w Polsce", https://www.polskacyfrowa.gov.pl/media/1215/POPC_WISECC_ISP_raportkoncowy_922015.pdf, accessed on June 18, 2017.



Reuse of public sector information in the practice of state institutions

In order to monitor the Reuse Act implementation in state institutions, we sent out questions concerning the practices of public sector information reuse to 16 of them, including selected ministries and offices.

1. How many public sector information reuse requests were submitted to the given institution in the period: June 16, 2016 – April 24, 2017?

2. Please indicate the subject of the requests referred to in Point 1, i.e. define what specific information the requests related to.

3. Please indicate:

a. the institution's decisions with regards to each of the submitted requests referred to in Point 1 by defining whether:

i. the requested public sector information was provided to the applicant for reuse without defining the terms and conditions of such reuse,

ii. the applicant was informed about the lack of the terms and conditions of reuse in case the applicant owns public sector information,

iii. the applicant received the offer containing the terms and conditions of information reuse,

iv. the applicant was informed about the level of fees for reuse (in such case, also indicate the fee – established by the institution – for information reuse and the final fee to be covered by the applicant),

v. the applicant received the decision on refusal to approve public sector information use,

vi. another decision was given.

4. Did the institution conclude any agreements granting the exclusive right to use public sector information in the period: June 16, 2016 – April 24, 2017?

5. In the case of responding positively to the question posed in Point 4, please give access to all

agreements concluded by the institution in the subject granting the exclusive right to use public sector information.

All questioned institutions responded at due time.

Among the 16 questioned public institutions, one subject received 207 requests, others – from 1 to 6 requests, while 5 institutions did not receive any requests. According to the obtained information, institutions which did not receive requests are: Central Statistical Office in Poland, National Health Fund, Chancellery of the Prime Minister, Head Office of Geodesy and Cartography and Chief Inspectorate of Environmental Protection.

The most requests – 207 – were submitted to the Institute of Meteorology and Water Management – National Research Institute (hereafter: IMGW PIB).

A small number of submitted requests, however, doesn't have to signify little interest in public sector information reuse. It's possible to take advantage of the direct mode (without the need of submitting a request) of public sector information reuse, including the use of data made available in the Central Repository of Public Information.

| Public institution | Number of received reuse requests |
|---|-----------------------------------|
| Ministry of Education | 1 |
| Central Statistical Office in Poland | 0 |
| Ministry of Foreign Affairs | 3 |
| Ministry of Agriculture and Rural Development | 1 |
| Ministry of Family, Labour and Social Policy | 6 |
| National Health Fund | 0 |
| Chancellery of the Prime Minister | 0 |
| Institute of Meteorology and Water Management – National Research Institute | 207 |
| Ministry of Finance | 6 |
| Ministry of Health | 5 |
| Head Office of Geodesy and Cartography | 0 |
| Ministry of Justice | 2 |
| Ministry of Environment | 3 |
| Ministry of the Interior and Administration | 2 |
| Chief Inspectorate of Environmental Protection | 0 |
| Ministry of National Defence | 1 |

The subject of the submitted requests was determined by specific activities performed by the questioned public institutions.

The most requests (207) concerned data owned by IMGW PIB, i.e. data related to climate (e.g. concerning air temperature, humidity, air pressure or the direction of the wind). IMGW PIB indicated that some applicants submitting reuse requests are directed to the Institute's portal at <https://dane.imgw.pl/> (hereafter: "Portal"). The Portal defines the few terms and conditions of information reuse: pointing to the source of information and informing of reused information processing.

The other 15 institutions' responses suggested that public sector information reuse requests directed to the questioned subjects primarily concerned:

- the ins and outs register of the Ministries and the Ministers' calendar of meetings
- access to information included in the polakzagrana.msz.pl portal in the form of the programme's interface
- information about financing national parks; reports on performing financial plans by national parks.

In most cases, the applicants were provided with public sector information for further reuse. IMGW PIB did not respond negatively to any of the 207 reuse requests (however, the Institute underlined that the given response is based on incomplete data available at the time of formulating the response). In some cases, the decision was given to refuse access to the requested public sector information. It also happened that the obliged subjects informed the applicants that the requested information is not public sector information (particularly, with regards to the ins and outs register of the Ministries and the Ministers' calendar). According to the obtained responses, in none of the cases the applicant was offered information about the level of fees for reuse.

According to the received responses, none of the 16 institutions indicated that, in the given period, any agreements granting the exclusive right to reuse public sector information was concluded. This situation should be observed with contentment as it means that the public sector information market is not limited and everyone has a chance to access the same data.

Reuse of public sector information in the practice of cultural institutions

The Reuse Act was meant to revolutionize access to culture and to influence its business and social potential. It's the first time the cultural heritage was considered public sector information which not only should be made available but also reused by users, independently of the character of their activity (commercial or non-commercial).

Even though the legislator decided to implement the Directive in the narrowest possible scope in terms of obliged subjects and obligations to make their resources available actively, they also created a system in which culture users should have easy access to creative works. Before the Act was implemented, Polish institutions had been excluded from directly applying public information reuse regulations. Nevertheless, many of them used to share their content for reuse both commercially and non-commercially, usually within the frames of digitalization projects.

In order to analyze the influence of the Act on reuse of cultural heritage and the ways cultural institutions adjusted to the new law, we sent out public information requests to 24 cultural institutions ⁸ (5 libraries, 5 archives, 13 museums and 1 gallery). 20 of them replied to our letters. We deliberately sent an access to information request to Zachęta – National Gallery of Art in Warsaw which – being a public gallery – is not obliged to apply the Act. We assumed, however, that this isn't common knowledge and individuals wishing to use the resources of Zachęta also request public sector information reuse. Unfortunately, we did not receive any response to our letter in due time, therefore we could not confirm our supposition.

The cultural institutions were asked the following questions:

1. How many public sector information reuse requests were submitted to the given institution in the period: June 16, 2016 – April 24, 2017?
2. What public sector information did these requests relate to?
3. What was the institution's decision – was public sector information provided to the applicant (if so, under what conditions)? Was the decision negative (if so, on what premises)?
4. How does the given institution establish the level of fees for public sector information reuse? Is there a price list – if so, where is it available?

The majority of the questioned institutions had not been addressed any requests to reuse their resources.

8 1. National Digital Archive 2. Museum of the History of Polish Jews Polin 3. National Museum in Warsaw 4. National Museum in Cracow 5. State Archives in Warsaw 6. State Archives in Poznań 7. State Archives in Lublin 8. State Archives in Gdańsk 9. National Library 10. Zachęta Gallery 11. Książnica Pomorska im. Stanisław Staszic in Szczecin 12. The Silesian Library in Katowice 13. The Public Library of the Capital City of Warsaw - Main Library of the Mazowieckie Voivodship 14. The Public Library of the Mazowieckie Voivodship Marshal Józef Piłsudski in Łódź 15. Museum of World War II in Gdańsk 16. National Museum in Wrocław 17. National Museum in Kielce 18. National Ethnographic Museum in Warsaw 19. Museum of Polish History 20. Museum of Warsaw Uprising 21. Museum of Modern Art in Warsaw 22. Museum of King Jan III Sobieski Palace in Wilanów 23. Museum - Castle in Łańcut 24. Museum of the Royal Castle in Warsaw.

| CULTURAL INSTITUTION | NUMBER OF SUBMITTED REQUESTS |
|---|---|
| Silesian Library | 0 |
| Library of the Capital City of Warsaw | 0 |
| National Library | 0 |
| Książnica Pomorska | 0 |
| Ethnographic Museum in Warsaw | 20 |
| Museum of Polish History | 0 |
| Museum of World War II in Gdańsk | 0 |
| National Museum in Kielce | 44 |
| National Museum in Kraków | FROM JUNE TO DECEMBER 2016 – 1578 REQUESTS, FROM JANUARY TO MAY 2017 – 300 REQUESTS |
| National Museum in Warsaw | 3 |
| National Museum in Wrocław | 91 |
| Museum of Modern Art in Warsaw | 0 |
| Museum of the Royal Castle in Warsaw | 0 |
| Museum of King Jan III Sobieski Palace in Wilanów | 0 |
| Warsaw Rising Museum | 1 |

It should be emphasized that no requests were submitted to libraries, being the subject of this research. In terms of the number of received requests, the National Museum in Kraków takes the first place, however on the basis of the institution's response to the posed questions (it lacked information on which specific objects the requests concerned), it is difficult to establish why it was this Museum's collection that attracted such interest in the context of reuse.

All requests concerned images of items from the museums' collections (used mainly for publications) with the exception of the request submitted to the Warsaw Rising Museum which concerned the database of the Warsaw Rising civil victims. The example of the above requests shows that public sector information use is only narrowly considered in terms of images of resources, while no interest is attracted by databases or metadata owned by cultural institutions which are in fact a rich source of information.

None of the questioned institutions admitted refusing access to ISP (apart from the National Museum in Warsaw which referred to the lack of a given item in the collection). This implicates either considerable openness of these museums or high awareness of culture users who do not submit requests concerning still copyrighted works which don't have to be made available for reuse.

There is a correlation between cultural institutions owning price lists and requests submitted by users – it may be assumed that the existing price lists are the result of receiving such requests. Due to the small number of existing price lists, it is impossible to present conclusions concerning tendencies concerning the level of fees for public sector information reuse. The Ethnographic Museum in Warsaw decided to use the fee rates set by the Regulation of the Minister of Culture and National Heritage from July 5, 2016 in the subject of maximum fee rates for public sector information reuse imposed by state and local government museums, while the National Museum in Warsaw created their own price list according to the existing limitations in this field.

Conclusions

20 cultural institutions and 16 state institutions which responded to our public information requests do not constitute the majority of subjects obliged to apply the Act, however with regards to their resources and scale of activities we may say that it's a representative group. One conclusion comes to mind: The Reuse Act did not revolutionize the way public resources are used, including the cultural heritage resources. In order to explain such situation, it would be useful to query individuals who would be potentially interested in data reuse, who do not submit requests, and – what seems obvious – who do not create new products and services based on ISP. A thesis could be formulated that two answers are possible. Either public resources are not attractive to users or there is no knowledge on how information reuse regulations should be applied according to the law, e.g. in the case of cultural heritage, without fear of copyright infringement. Our experience in cooperation with institutions makes us lean towards the latter. We cannot, however, exclude the possibility that the potential of public data reuse pointed out at the beginning of this report, is overestimated and, in fact, we observe here a few elite projects from which mass users benefit but only few work on them.

We are reluctant to blame anyone for that state of affairs, e.g. the obliged subjects, especially cultural institutions for which the Act itself is often incomprehensible and internally incoherent.

The Reuse Act proves that the very implementation of the EU regulations does not guarantee achieving the goals of these regulations. Educating and raising awareness, encouraging to use new mechanisms and inducing both obliged subjects and citizens to openness and creativity are just as important as creating legal frames for such phenomenon.

Therefore, we recommend initiating actions which would make the Act a practical tool. It is not sufficient to proactively publish public resources (which already happens in the case of many Ministries) but it's necessary to educate users.

Trainings and continuing education

Applying legal regulations requires special preparation. Not only to fulfil all of the formal requirements but, first of all, to meet the goals of these regulations. The authors of the report are content about the funds secured for public officials' trainings in the government's programme of opening public data – although the reserved amount can only cater for some of the needs. Creating a real system of access to data requires introducing changes in collecting, exchanging and sharing information globally, on the level of the administration. More means should be invested – and we believe this is a beneficial investment – in educating public officials in the field of preparing data in an open form so that by building the openness policy in offices, an efficient process of sharing data for reuse could be ensured.

Monitoring of using the resources

A crucial drawback of the Act is the lack of effective mechanisms of monitoring its usage and evaluation of its results. It is worth to consider introducing the monitoring of the usage of specific resources by each of the obliged subjects, e.g. through quarterly reports created on the basis of monitoring the Internet with regards to using data via keywords. We are aware of the fact that this mechanism is imperfect but as it's impossible to demand from applicants and users to provide the strictly defined aim of information use, it is a method which at least approximately allows us to recognize the degree of using ISP of the defined kind.

Reducing the Act to indispensable regulations with simultaneous revision of separate regulations in order to unify the rules of public sector information reuse

The Act seems to include too many regulations which makes the procedure initiated with submitting the reuse request complicated, without explicit justification. Not copyrighted public sector information should be made available without the possibility to define the terms and conditions because this could be limiting to the user.

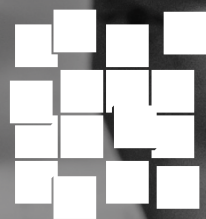
ISP Reuse Competence Centre

The systemic approach to ISP reuse could be supported by creation of a competence centre aimed at implementing accepted standards and increasing competences of people involved in sharing and reusing ISP, through educating and promoting activities. The model of competence centres has already proved effective in the field of cultural heritage digitalization. The example of such institution is the British Open Data Institute. The second separate competence centre in the field of reuse should be built for cultural institutions considering the challenges related to sharing cultural heritage resources.

Financing reuse projects

More interest in ISP reuse can be triggered by organization of contests aimed at ISP use in the context of solving specific problems or addressing specific needs. Such contest is organized in Great Britain – Open Challenge Series – lead by NESTA.

To sum up, we recommend acquiring the systemic thinking in reference to ISP reuse – making public resources available is insufficient to fully use the potential of public sector information which gains real value only on the reuse stage.



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Reuse of Public Sector Information Act - One Year After Coming into Effect.
REPORT (selected fragments)

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