

EU Directive on the Re-Use of Public Sector Information: Guidance for museums

What is the EU PSI Directive?

In 2013, the **EU PSI Directive** was extended to cover “public museums, libraries (including university libraries) and archives” in the UK. The Directive means that under certain circumstances museums will be required to make some information available to other users for re-use. This is information produced by the museum as part of their “public task” - the stated purposes of the organisation derived from common administrative practice or Statute - and only where that information has already been made available to another user.

The PSI Directive is not intended to disrupt operating models where a museum, archive or library earns income from the licensing of material in which it owns the intellectual property rights (IPR) or where the creation of those documents has required substantial investment. Similarly, it is not intended to disrupt the museum's pursuit of their public task. However, it is intended to require museums to be transparent about what information can be re-used, the pricing of it, and the terms and conditions on which that re-use can take place.

Which museums does this apply to?

The NMDC Decision Tree will help establish whether or not a museum may be subject to the Directive. However, a museum is likely to be subject to the Directive if:

- It is wholly or mainly financed by another public sector body (including central and local government); or
- It is financed mainly or wholly by a university AND part of a university library; or
- It is subject to the management supervision of another public sector body; or
- More than half of the Board of Trustees (or equivalent) is appointed by one or more public sector bodies.

The Directive applies to all UK national museums.

It does not apply to university museums, or independent museums that have no financial, management or governance relationship with a public body.

What is public sector information?

Public sector information is data, documents, images and electronic files created by a public body during the course of its core business. In a museum context this may include statistical information, documents, collections management records, or images in which the museum owns the IPR.

The information a museum has to make available for re-use under the PSI Directive is that which has been created as part of its public task. Re-use is not mandatory for museums and a museum may choose not to make some information available to any users. The Directive does not stop a museum re-using the data for its own purposes, although if it does so for a reason outside the public task, that is considered re-use.

Third party IPR, trademarks and Freedom of Information

Third party IPR and trademarks are not subject to the Directive. The Directive is compatible with Freedom of Information legislation and does not over-ride this.

Public task

Each museum's public task will be different. It should be a clear statement of what the purpose of the museum is and what it does. It should be defensible and reflect what the Government/Local Authority and the public would reasonably expect the museum to be and do. National museums may wish to use Statutes as the basis for their public task; common administrative practice can also be used. All museums have to have a clear statement of purpose in order to achieve Accreditation, and therefore for non-national museums, this could form the basis of the public task. The public task needs to be made available via the museum's website. Further guidance on how to write a Public Task is available from [The National Archives](#).

Exceptions for museums

The Directive includes a number of exceptions for public museums, libraries and archives.

- Museums can apply a degree of discretion to what they make available: re-use is not mandatory.
- Museums (and libraries and archives) are able to charge "beyond minimal costs"¹ for re-use to re-coup the costs of producing the document and make a reasonable return on investment.
- Museums, libraries and archives will still be able to enter into time-limited exclusive arrangements (up to 10 years) with third parties if this provides the only realistic way in which material may be digitised and made available to the public.

Re-use is not mandatory

Re-use is not mandatory: it is only mandatory if the museum has already allowed the information to be re-used for a similar purpose. A museum can still apply some discretion. However, museums will not be able to discriminate between different users: it is the nature of the end use of the information that has to be judged and not the person or organisation requesting it.

For example, a museum may not allow re-use if:

- the end-use is deemed unsuitable or culturally insensitive;
- the re-use of the information would endanger the safety, security or privacy of staff or members of the public;
- the re-use of the information would endanger the collection or museum building;
- to make the information available would be prohibitively expensive; or
- the end-use would contravene museum policy, codes of practice or the law.

The museum should make it clear under what circumstances they would not allow re-use. These should be published on the museum's website.

Asset list

A museum may not reasonably be expected to list on their website all of the information that is available for re-use. However, it should indicate the sort of information that is available for re-use, and it would be good practice to include details of how the information can be obtained.

Charging for re-use

As licensing of information is a significant income stream for museums, they will be able to charge "beyond minimal cost" – market value – for the information. However, they will not be able to charge different fees to different users for the same piece of information where it is being used for a similar purpose. Therefore, a museum cannot offer a preferential rate for the same information for the same use to a charity, or for their own trading body (unless the trading body is carrying out a function of the museum's public task for the museum). Similarly, preferential rates cannot be applied to UK companies.

¹ More than the administrative cost of making the information available to the user

If information is requested which is in an inaccessible format, then re-use can be denied on the grounds that to make this information available would be too expensive.

Compliant licensing schemes

Organisations are encouraged to use standard licences. The National Archives has developed a number of licensing models which could be used, including the [Open Government Licence \(OGL\)](#). This is free and inter-operable with Creative Commons, and covers both copyright and database rights.

The National Archives has produced the [Charged licence](#) for use by public sector bodies that have a valid reason under the Amended Regulations to charge for the re-use of the information they produce, hold or disseminate.

The [Information Fair Trader Scheme \(IFTS\)](#) sets and assesses standards for public sector bodies, particularly those with delegated authority. It requires members to encourage the re-use of information and to reach a standard of fairness and transparency. Membership of the scheme is likely to ensure that a museum is compliant with the PSI Directive.

Exclusive arrangements

Museums will not have to re-negotiate existing agreements and contracts, but future agreements will have to comply with the Directive. Exclusive, though time-limited, agreements are allowed for museums if that is the only way in which large quantities of information can be digitized.

Information cannot be licensed for re-use on an exclusive basis.

Museum trading companies

Museum trading companies are independent of the museum and are wholly commercial in nature. Therefore, the PSI Directive does not apply to them and they will be considered as a user meaning museums may not be able to give their trading companies preferential access to information.

If a museum provides information to their trading company at a subsidised rate and would not be prepared to offer that to another organisation for the same use, then the museum will need to re-consider their contract with their trading company to make adjustments for any increase in rates charged for information.

However, it is common practice for a museum's trading company to carry out an activity which would be part of a museum's public task. Examples include the production of exhibition catalogues or the digitisation of works in the collection. It would be harmful to the operation of the museum if this was considered re-use. Therefore, it may be sensible to divide the functions of the trading company into two categories: merchandise (i.e. tea towels and mugs); and primary public task functions (i.e. production of catalogues and academic texts). It should be noted that The National Archives' Public Task Guidance does not presume that every element of the public task should be non-commercial.

Redress arrangements

Although the Office for Public Sector Information will seek to resolve any disputes between potential re-users and public bodies (and details of the formal process is provided by The National Archives), there will be an independent body which will have the power to make binding decisions over such disputes.

Further information

More detailed information and guidance about the EU PSI Directive is available from [The National Archives](#), including Guidance for Cultural Bodies and further information on drafting a Public Task.