

Response to the Consultation on the UK implementation of Directive 2013/37/EU amending Directive 2003/98/EC on the Re-Use of Public Sector Information by the National Museum Directors' Council (NMDC)

This response is submitted on behalf of the National Museum Directors' Council (NMDC). The NMDC represents the leaders of the UK's national collections and major regional museums. Our members are the national and major regional museums in England, Northern Ireland, Scotland and Wales, the British Library, the National Library of Scotland, and the National Archives. While our members are funded by government, the NMDC is an independent, non-governmental organisation. For more information on our activity and a full list of members see our website: www.nationalmuseums.org.uk

Summary

The EU Public Sector Information Directive is of particular interest and concern to the members of the NMDC because as well as seeking to ensure greatest possible access to their collections for the public, they yet also have to maximise the income they are able to generate from their assets (particularly as they have all faced substantial cuts to public funding). It is UK Government policy to encourage publicly-funded museums to become less reliant on public funding, and one way in which museums seek to do this is to licence some of what is defined as "information" in the Directive.

Most large museum services have trading subsidiaries and much of a museum's business activity, including retail, licensing and publishing, is conducted by the trading subsidiary. However, where it is prudent, these trading subsidiaries conduct some of what the public would sensibly assume is core "museum work" and would therefore appear in an institution's public task. This would include the publication of exhibition catalogues, for example. The UK implementation of the Directive cannot prejudice "public" museums' ability to conduct their public task, or can it cause serious detriment to the business operating model of the institution. This would be disruptive at any time, but as it would coincide with average public funding cuts to national and local authority museums of between 20% and 40% since 2010, it would be particularly damaging. Similarly, the Directive cannot prejudice a museum's ability to conduct academic research or form partnerships to do so. This is particularly important given that universities and research institutes are exempt from the Directive.

There exists a complex variety of governance arrangements for museums in the UK. Although there is no question that the national museums will be subject to the Directive, it becomes less clear when considering the non-national sector. Numerous collections and museums previously managed, owned and/or supported by local authorities have been transferred to trusts, independent charitable organisations or are managed by an umbrella body or company. There needs to be very clear criteria for what is considered a "public museum" for the purposes of this Directive, as the sector can no longer be simply split into national, local authority and independent museums. There also needs to be clarity regarding the position of university museums, many of which operate as a department of a university and are therefore presumably exempt.

Questions 1 – 3

The redress measures outlined in the document seem fair and transparent.

Question 4

With regard to question 4, Article 6(4) of the Directive has a self-contained regime for charging by libraries, museums and archives, with the calculation to be in line with the accounting principles applicable to the public sector bodies involved (and in many cases this would be the principles of charitable status). Article 6(4) alone should apply to charging by libraries, museums and archives. It may be incorrect and potentially confusing to apply the "objective, transparent and verifiable" wording from Article 6(3) which does not apply to the Article 6(4) bodies. The phrase "objective, transparent and verifiable criteria laid down by Member States" may be problematic because it assumes that the Member State will be in a position to assess what is a reasonable rate for re-use of a piece of information, rather than the institution for whom this is a core part of their business.

Question 5: Implications to be considered

Museum trading subsidiaries

Consideration needs to be given to the impact of the Directive on the relationship between a museum and their trading subsidiary. A museum's trading subsidiary is not subject to the Directive – they are wholly commercial in nature (though their profits are returned to the parent institution) – however, they provide the means by which the museum is able to finance (or in some cases complete) their core business. Income from trading subsidiaries is increasingly significant as UK public museums (at both a national and regional level) have to rely less on their public funding.

However, museums also utilise their trading subsidiary to complete some of what would be included in the public task, including the production of exhibition catalogues and visitor guides, and it would be seriously detrimental to museums if this was considered to be re-use. It would mean that the curator's text and high resolution images would either have to be bought at market rate by the trading subsidiary or be made available at the reduced rate to commercial publishing companies. The consequence of this would be that part of a museum's core purpose could be unnecessarily subject to competition. It would also risk the emergence of a two-tier system, as university museums could continue to publish exhibition catalogues via their university press without having to make the material contained in the catalogue available to competitors on request. Museums need to have confidence that the Directive will allow them to differentiate between the two categories of use of information by their trading subsidiary:

- information passed to the trading company at no cost for the completion of something which appears in the public task; and
- the use of information by the trading subsidiary for a purely retail purposes, such as the production of a range of tea towels inspired by the collection or museum.

An additional cost to the museums that now come within the scope of the Directive which has not been accounted for in the Impact Assessment is the administrative cost of altering the internal charging regimes between the museum and its trading subsidiary to ensure that they are compliant with the Directive.

Governing statutes

Caution should be exercised when considering a national museum's founding statute (or subsequent revision) as a basis for the assessment of the museum's public task. The public task needs to consider what activities the public would sensibly consider to be core museum business i.e. the public would expect a museum to produce some sort of visitor guide to the institution, or catalogues for temporary exhibitions.

Nevertheless, the 1992 Museums and Galleries Act makes provision for the Boards of several national museums (including Tate, National Gallery, National Portrait Gallery and Wallace Collection), to form bodies of a corporate nature, providing the function of the company supports the public function of the national institution. The Act – the relevant section of which is [\(3\) Power of Boards to form companies](#) – outlines the commercial activity which the companies can undertake on behalf of the Museum. However, the Act does not cover all

national museums (and there is no equivalent for local authority owned, managed and supported collections) and other founding Acts of Parliament (or their subsequent revisions) are neither as detailed nor reflect contemporary administrative practice, yet all will operate similarly to those covered by the 1992 Museums and Galleries Act.

Academic activity and research

National and major regional museums conduct ground-breaking primary research, and supporting academic research is a core purpose of the Museum. For example, the Natural History Museum (NHM) employs 300 scientists and has numerous partnerships with universities, research institutes, charitable bodies and commercial organisations and this is the means by which the NHM will achieve the scientific research it would include in its public task. This activity forms the foundation on which the NHM builds their public programme, interpretation and learning initiatives and collections management. Universities and research institutes are not subject to the Directive, and therefore caution needs to be exercised to ensure that very similar work conducted by museums is not subject to different terms and conditions. The necessary sharing of information with partners to complete academic research needs to not be considered re-use.