

Legal Regulation & Education: Doing the Right Thing?

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Free Database Licensing in Public Sector

This paper aims at the discussion on the free database licensing in public sector. The findings will be based on the Czech law and on the European Union law. The usage of free licences on Public Sector Information in the Czech law (further as "PSI") is available although its practical extent is rather limited. In the existing open data systems, the creators of databases used the Creative Commons for licensing the specific texts and works of art but they have not used the Open Data Commons licences for licensing the database as such. In many cases, providing the open data has been implemented without any open data licence at all. The PSI re-use market in the Czech Republic is rather in its starting zone. There are only a few areas which are established and have real competition among re-users (legislative texts, map data etc.). Other areas do not have any competition at all because the competent ministry or different agency concluded the public procurement contract with a private company on processing the data. The contract has not been created properly so it does not facilitate the competition. It rather limits any competition. The information (such as the data from the National Transportation Information System) is publicly accessible only using one specific website. That website is based on the public procurement instead of free publishing. The regulation on the PSI re-use in the Czech Republic is not separated from the PSI access, it is contained in the Freedom of Information Act No. 106/1999 Sb. as amended. The practice of both access to PSI and PSI re-use does not deal with practical issues of large-scale data providing for business purposes.

The discussion on real reasons and legal context of free licensing of data in the public sector shall be based on the analysis of the Czech and European Union legal acts, the literature and other existing publications. In the Czech Republic, the free licences have been discussed mainly regarding the Creative Commons, the Open Data Commons have not been analyzed into their depth. For example, the text "Creative Commons Corporation: The Power of Open" and its Czech translation work namely with the Creative Commons and omit to mention the Open Data Commons.

We shall discuss whether the main reason for not using the Open Data Commons in the Czech law is the legal reason or the economic one. We will use the example of Open Data Commons licences and outline their possible deployment in the Czech law. There are certain limitations by the Czech Copyright Act which comply with the Database Directive. We believe that these limitations are not the real reason for limited practical usage. The real cause for this fact lies in the process of the administrative practice of public bodies and in the Czech deployment of the Principles of Good Administration. Both systems do not facilitate transparency and re-use market. The financial output created by free licensing of the PSI is not directly visible in the budgets of public agencies. The Czech law does not offer any other direct incentive to use the free licences on databases.

The side goal of the article will be to identify the difference between processing the PSI in public procurement itself and its processing using the own technical sources of the public agency along with providing the PSI for potential re-use by more business subjects. The practical and financial benefits and costs of both options shall be included.

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