

Ladies and Gentleman, I will talk today about the PSI directive and ask the question why public broadcasters are not within the scope of that guideline. Within article 1 of the directive you'll find the enumeration which bodies fall not into the scope. There's been a revision since the initial introduction of the guideline in 2003: And from now on libraries and museum also count to those entities that are within the scope of PSI. Still out of scope are public broadcasters.

Ladies and Gentleman, I'd like to add from the beginning on that I'm no attorney or a specialist within the PSI directive. My name is Philipp Etzlinger and together with my partners we're working on a service where we reuse content of broadcasters. We have a high interest that broadcasters will be in scope of the PSI directive in future and approach this topic, maybe in a naive way. I would like to have the opportunity to get in discussions afterwards to get your point of view and collect your ideas about these tasks. The main idea of this talk is to examine this topic from another position. **CHANGE**

## Structure

### **PSI in General (wealth, who's affected)**

The introduction of PSI directive offers a great variety of opportunities. Due to the PSI directive Public bodies are instructed to open their archives and make them publicly available. An enormous value can be created through that and EU legislation therefore enabled that new opportunities and businesses can be developed. This is a certain goal the EU commission highlights within their revision statement.

“The rules adopted in 2003 no longer keep pace with these rapid changes (the amount of data has increased exponentially and new types of data have been generated and collected since the introduction of the PSI directive) and as a result the economic and social opportunities offered by re use of public data risk being missed.” – states the European Parliament.

What are the goals of the PSI directive and who is affected by those rules? I think most of you know what the EU wants to purpose with this step nevertheless I would like to give a short overview.

The following can be found in the Article 3 of the PSI directive: **CHANGE**

*“Member states shall ensure that, where the re-use of documents held by public sector bodies is allowed, these documents shall be re-usable for commercial and non-commercial purposes in accordance with the conditions set out in Chapter III and IV (which are the Chapter for Conditions of Reuse and Non-Discrimination, and about Fair Trading). Where possible, documents shall be made available through electronic means.”*

The PSI directive mentions public sector bodies. **CHANGE**

What are public sector bodies? The PSI directive defines a public sector body in Article 2 in the following way that: Among other characteristics a public sector body is financed for the most part by the State OR “state or regional authorities” supervise the entity.

According to that definition the PSI directive brings museums, libraries and archives within its scope. Not within the scope are public broadcasters. Initially the EU commission put them into the scope of the revision of the PSI directive and the majority of respondents stated that they think, as public broadcasters are financed by public money they should fall into the directive. A general statement was that public broadcasters hold many research datasets funded through public money and there is a strong case for these datasets to be covered by the Directive.

Why should other rules apply to public broadcasters? Well mainly, due to a joint-statement of the German public broadcasters ARD/ZDF they fell out again. Why is that so?

### **Why are public broadcasters excluded?**

When the PSI directive had been revised statements of possible stakeholders had been collected and a survey had been made.

– **Statement from ARD/ZDF,**

- Broadcasters argue: They're no public sector according to Treaty of Amsterdam. The PSI directive does not apply to Public Broadcasters as they're not a public sector body which are financed by the most part by the State (Art. 2).
- Another argument is that national copyright law may conflict the guidelines of the PSI directive.

These are two main points I'd like to dig deeper into.

The way public broadcasters finance themselves – mainly via the television and radio license fee –and the second part “the copyright law”.

The television and radio license fee was brought up by the different countries in order to finance the operations of the broadcasters. Lets take a look back in history to the year 1923 when the authorities of Weimar Republic first introduced broadcasting fees. **CHANGE**

In October 1923 and the annual fee has been set to 25 Mark. Due to times with high inflation rates the fee rose to 60 Mark on January 1st 1924, which was a third of the average salary at that time. (- so within a few months – the 25 Mark have been set in October 1923 – has more than doubled)-

It's interesting to see how the number of radio-listeners changed due to the reduction of the fees to 2 Mark in May 24, 1924 – so just 5 months later. Retroactive to April 1st 1924 the fees have been reduced to 2 Mark and a Tax amnesty has been introduced. For those who made a voluntary declaration until April 16 no imprisonment has been made. Due to that action 54.000 listeners converted from license-dodgers to paying customers.

By the end of 1924 nearly 550.000 people registered their radio at the public authorities, and by the end of 1926 already 1.3 Mio listeners registered their radio. It's estimated that the dark number was higher of those who didn't register their radio but I wanted to point out that ridiculous high fees and barriers don't help bringing a service to the masses in order that authorities can really benefit from them.

Let's now take a closer look at how member states deal with broadcasting license fees. According to the Amsterdam treaty the funding of broadcasters falls into the competences of each member state (as long as they fulfil the public service remit). There are numerous countries which have never had any Television license fees or abolished them. Among them you'll find Bulgaria, Finland or Latvia. Even Spain as a big national economy never had license fees.

But how do those countries, that collect TV license fees, do that, what's the process –What are the criteria to charge the inhabitants? Basically there are two main approaches:

One is: You own a TV/Radio, or you have a household in that country. **CHANGE**  
In Austria for example TV and Radio in use must be registered. The Austrian court decided that computers with internet access do not count as devices which fall into the charge-ability as streaming is not seen as broadcasting.  
**CHANGE**

In Germany, on the other side, TV license fees are set per flat, no matter if you have broadcasting equipment or not or if 5 ppl live in that flat with 5 different devices each. **CHANGE** For each secondary residence you pay extra, even if there isn't any broadcasting equipment. **CHANGE**

This regulation also applies to companies (with other rates of course). But it is especially a hard hit for those companies that have a lot of shops. An example: In the case of a company with 180 employees who work at one place the company will be charged 89.90 EUR **CHANGE** whereas a firm which has 20 branches with 9 employees each (so this makes again 180 employees in total) needs to pay 20x17.99 EUR which makes 359,8 EUR for the license fees – Per Month. **CHANGE**

Per year you'll have a gap of more than 3.000 EUR between these two companies. And that even if the company does not has any broadcast equipment in their branches.

Another point of criticism is that employees and customers automatically already have been charged due to their residencies. And in case if there would be a TV there's no usage for the company.

TV license fees are a popular topic to talk about and to get excited about in many countries.

If you take a look at this regulation...a person who has nothing to do with law might interpret that as a tax. If we take a look at Wikipedia for the definition of Tax, what does it tell us? How's the term "Tax" described: **CHANGE**

*"A tax is a financial charge or other levy imposed upon a taxpayer (and individual or legal entity) by a state or the functional equivalent of a state to fund various public expenditures."*

Ok a public broadcaster is not a state or the functional equivalent of a state, we agree in that. Is it a vehicle of the state?

Let's take Portugal as an example: In Portugal TV license fees are charged via the electricity bill, and it's called Multi Media Tax. One might classify license fees more as taxes or levies especially as an individual cannot decide whether to opt in or out. I would say that the state plays an important role to finance not directly but indirectly public broadcasters as the state gives the broadcasters the right to collect levies.

As I've said at the beginning, I'm no attorney but in case there is an interpretation that leads to the fact that radio and TV license fees could be interpreted as taxes or levies, that are partly driven by the state, there's a chance to put public broadcasters within the scope of PSI directive as then they fulfil the criteria of state-financed entities and might be classified as public bodies.

But there are a few more obstacles: Copyright law. ARD and ZDF stated that national copyright regulations may stand in direct collision with European and international copyright regulations. Copyrights are important, but they hinder the development of new services – especially in case if regulations are different in each member state.

I agree here that public broadcasters have to guard that copyright law is not infringed. Within the revision of the PSI directive you can find that the EU commission articulates that due to different rules within the member states a minimum harmonisation is required.

In that field news can be announced: The cabinet Junker I agreed on creating a modern, more European copyright law. Legislative proposals shall be followed by the end of this year. This is part of the digital agenda, and the EU does good in harmonizing different legislations and minimizing barriers.

Why is it important to bring public broadcasters into the scope of the PSI directive? **CHANGE**

In contrast to the statement of the two public broadcasters much value can be added to the general public...the economy, and to the broadcasters as well. New services will be created, the cultural mission and public service remit can be improved and multiplied...in case of open access or the reuse of the current broadcasting signal can be granted. Achieves of broadcasters, sources for identifications and cultural heritage, can be reused for educational purposes. ...and schools as well as other educational facilities will then not limited to pools that have been bought by ministries. **CHANGE**

**Kofi Annan**

**CHANGE**

uugot.it, for example, the initiative I work for, sets up a solution enabling to learn and improve languages while watching TV. We help language learners, migrants to help understand certain phrases they don't get. We help migrants to deal with and understand the culture of their host country, even if they only have a slight knowledge of the language of their host country. This helps building bridges and minimizing prejudices. Experts from different fields, from different universities have stated that our approach is a rewarding task and different studies back our approach.

What we need to do is: Having access to the broadcasting signal and the possibility to reuse it for our purposes.

Besides there are many other areas of application which can do good and that help that broadcasters create an even greater public value together with initiatives out there. This brings me to the beginning of my talk: High license fees, as we had at the beginning of the last century, didn't help creating a large income base, but minimizing the barriers did. Putting away obstacles will create a bright range of valuable services.

Lithuania and Latvia declared that they want public broadcasters to be within the scope of the PSI directive and even UK stated "They (the broadcasters) hold many research datasets, funded through public money and there is strong case for these datasets to be covered by the Directive."

For the sake of getting new and exciting services that will improve current standards of use we're looking forward that more countries will change their minds and demand that public broadcasters will be put in scope of PSI directive.

Thank you for your attention.