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ANALYSIS OF PROBLEMS RELATED TO IMPLEMENTING THE PROVISIONS OF THE ACT ON THE REUSE OF PUBLIC--SECTOR INFORMATION AT MUSEUMS

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Purpose of expert opinion

The purpose of this expert opinion is a presentation of potential problems resulting from the implementation in museums of provisions of the Act on the Re-use of Public Sector Information (PSI; further as: Act on the Re-use) of 25 February 2016. The problems in question are the outcome of the imprecision of statutory provisions, which call for an interpretation, or of the collision with other provisions (in particular the Act on Museums). Numerous challenges may also be the result of discrepancies between the provisions of the Act on the Re-use of Public Sector Information and the heretofore practice of accessing collections by museums.

Purpose of the re-use of PSI and the mission of the museum

The obligation imposed on museums, consisting of the necessity of accessing public sector information for the purpose of its re-use, can give rise to a conflict against the backdrop of the mission realised by museums. This involves in particular the absence of opportunities for rendering the decision to share information for the purpose of its re-use (as well as making a negative decision) dependent on the manner of its use, which turns out to be an extremely controversial question from the viewpoint of the activity of a museum. In a situation when a museum shares a digital transfer of a museum exhibit (e.g. a painting), to be re-used in

a ridiculing manner, for the purpose of its re-use as public sector information, such activity could be recognised as at odds with the objectives of the museum.

In accordance with art. 1 of the Act on Museums of 21 November 1996: *A museum is a non-profit organizational entity which collects and preserves natural and cultural heritage of mankind, both tangible and intangible, informs about the values and contents of its collections, diffuses the fundamental values of Polish and world history, science and culture, fosters cognitive and aesthetic sensitivity and provides access to the collected holdings.* Moreover, upon the basis of art. 2 of the Act on Museums, a museum implements the above-defined goals by, i.a. encouraging and conducting artistic and culture-promoting activity (point 7a) and providing access to collections for educational and scientific purposes (point 8). In the light of the Act museum objects constitute national assets (art. 21, par. 1). This fact places special emphasis on the significance of museum objects as an element shaping the identity of a community, its duration, and development. Cultural goods constitute a source of national identity. The Preamble to the Constitution of the Republic of Poland declares: *Beholden to our ancestors for their labours, their struggle for independence achieved at great sacrifice, for our culture rooted in the Christian heritage of the Nation and in universal human values*, we are *obliged to bequeath to future generations all that is valuable from our over one thousand years' heritage*. This is why it is necessary for this heritage to be passed on in the best possible condition to successive generations.

The museum is thus an institution implementing goals essential from the viewpoint of society, serving society and its development, striving towards an awareness and intensification of the identity of a given community, and guarding cultural legacy.

In the light of the above there arises a conflict expressed, i.a. in the fact that according to the Act on Museums a museum is to preserve cultural heritage while ensuring access might take place exclusively for educational and scientific purposes; meanwhile, upon the basis of the Act on the Re-use of Public Sector Information it is impossible for a museum to control the manner of using accessed information.

True, in accordance with art. 21, par. 3, point 4 the Act on the Re-use of PSI a request submitted for re-use is to contain *information about the purpose of re-use (commercial or non-commercial), including the area of activity in which public sector information will be re-used, in particular goods, products or services;* an incorrect – from the perspective of the museum objective – goal of re-use or unsuitable goods, products or services within whose range PSI, comprising an element of museum collections, was to be re-used, do not comprise a basis for refusing to provide access to PSI. Obligatory premises for making a decision refusing to express consent for the re-use of PSI (art. 23, par. 4 of the Act on the Re-use) involve limitations of this right foreseen in art. 6 of the Act on the Re-use (owing to the protection of secret information and other secrets protected in a statutory fashion, restrictions due to the privacy of a physical person or the secret of an entrepreneur, limitation of the re-use of information to which access is restricted upon the basis of other acts, restrictions due to the criterion of the public task or due to the fact that third subjects are entitled to copyright). On the other hand, facultative reasons for refusing to express consent to the re-use of PSI (art. 23, par, 5. Act on the Re-use) include a situation indicated in art. 10, par. 2 of the Act on the Re-use, when the cessation of PSI or their processing in a manner and form specified in requests for re-use necessitates disproportionate effort going beyond simple operations.

Doubts are produced by the question whether upon the basis of art. 6, par. 3 of the Act on the Re-use, which constitutes that: *The right to re-use shall be limited with respect to public sector information,* to which access is restricted upon the basis of other acts, it could be recognised that the provision of art. 2, point 8 of the Act on Museums, foreseeing the possibility of *providing access to collections for educational and scientific purposes* constitutes *lex specialis* by creating a foundation for the refusal of providing access to PSI for the purpose of re-use in a situation when re-use would transcend an educational and scientific goal.

Charges for the re-use of PSI

The possibility of charging for access to PSI for the purposes of re-use and the level of those charges remain for the museum curator a crucial question forejudging the effective implementation of procedures of providing access to PSI for the purposes of re-use. It thus appears indispensable to devise practical guidelines for two situations:

- charges upon the basis of art. 17: *if public sector information is made available or provided for re-use for purposes other than non-commercial research, scientific or educational purposes;*
- charges upon the basis of art, 18 and a regulation of the Minister of Culture and National Heritage of 5 July 2016 on the maximum rates of charges for re-use imposed by state museums and self-governing museums.

First, in the case of charges determined upon the basis of art. 17 there are no guidelines whatsoever, in particular those concerning maximum rates. Guidelines for museums are, therefore, highly required. There also exists the risk that the applicant might appeal against excessively high charges as at odds with the Act.

Secondly, it is necessary to explain the doubts pointed out by museum curators and concerning the above-mentioned regulation:

- Does the maximum charge for access *via* the ICT system mentioned in par. 2, point 1 pertain to a single file or an optionally larger number of files accessed at the same time?
- Are charges from point 1 and 2 connected, i.e. can a maximum charge be established upon the level of a one-time charge from point 1 and additionally a charge for each file from point 2 in the case of accessing digital reproductions *via* the ICT system?
- Do charges from point 2 also pertain to projections of 3D objects or is point 6 applied in their case?

Thirdly, museum curators indicate that in numerous cases charges from par. 2, point 6 concerning situations other than those involving accessing photographs, copies, prints or digital reproductions may be applied. They also mention that in such cases costs of preparing public sector information for being accessed can exceed the rate of 86 zlotys for every hour of required work performed by a member of the

museum staff – for example in those situations when it is necessary to cover the costs of transport and securing the collections or to use equipment unavailable in the institution.

In such situations museum curators should also possess guidelines regarding the application of the provisions of art. 10, par. 2, which frees subjects from the duty of creating or reusing public sector information *if it necessitates disproportionate effort going beyond simple operations*. In the abovementioned cases museums require directives concerning the sort of situations in which they may refuse access by referring to this regulation – by way of example, in a situation when the digitisation of the collection is a complex process and calls for disproportionate costs exceeding maximum rates established in the regulation.

Resolution and formats of files and PSI access

Cultural institutions, including museums, often render access to digitised transfers of collections dependent upon the specificity of accessed files. A particularly essential question is that of transfer resolution – many institutions render accessible only low quality files, while others access such files free-of-charge but levy charges for high quality files.

Act on the Re-use of Public Sector Information does not introduce such a differentiation and, in particular, makes it impossible to issue a decision refusing access to public sector information on request for high-resolution files. At the same time, the process of defining the specific resolution of files remains within the limits of *the form of preparation of public sector information,* whose description, in accordance with art. 21, par. 3, should be an element of a request for re-use.

Representatives of museums stress that in certain instances accessing high-resolution transfers could make possible or facilitate the creation of forged collections. They also imply a possible conflict with the regulations of the Act on Museums. Resolving this question appears to be indispensable – although even then the Act in question does not create an opportunity for limiting access. It is, after all, impossible to apply in this instance the restriction introduced by adding art. 31a to the Act on Museums (in the meantime art. 31a was rescinded but identical content was included in art. 30a).

In addition, it is worth taking into consideration the question of the formats of accessing files for re-use. Although this question appears not to produce controversies or difficulties it is worth promoting the application of definite formats (including open ones). The implementation of the Act can additionally assist in promoting the good practice of accessing digitised collections. The Act on Museums contains only a general commitment to apply given formats, defined in the national range of interoperability and issued upon the basis of the Act of 17 February 2005 on the Informatization of Entities Fulfilling Public Duties.

Restriction of the right to re-use public sector information owing to the state of copyright (the question of the original owner of the author's economic rights)

In accordance with art. 6, par. 4, point 4 of the Act on the Re-use: *The right to re-use shall be limited with respect to public sector information* [...] *held by state museums, self-governing museums, public libraries, scientific libraries or archives if the original owners of commercial copyrights or related rights were entities other than obliged entities and the duration of these rights has not expired.*

Upon the basis of the Act of 4 February 1994 on Copyright and Related Rights there are two situations in which a subject other than the author becomes the original owner of the author's economic rights.

1*) Unless the contract of employment stipulates otherwise, the author's economic rights in a computer program created by an employee while performing of his/her duties under the employment relationship shall be owned by the employer* – art. 74, par. 3).

2) *The producer or publisher shall have the author's economic rights in a collective work and in particular the rights in encyclopaedias or periodical publications, and the authors shall have economic rights in their specific parts, which may exist independently. It shall be presumed that the producer or publisher has the right to the title* – art. 11).

On the other hand, the museum might become the original owner of related rights in reference to:

1) a phonogram and a videogram – as a producer (*Without detriment to the rights of the authors or artistic performers, the producer of a phonogram or videogram shall have the exclusive right to manage of and to use the phonogram or videogram within the scope of:*

1 reproduction by a specific technique;

2 marketing;

3 rental or letting copies for use;

4 making a phonogram or a videogram available to the public in a form permitting anyone to have access thereto at the place and time chosen by them;

2) broadcasting – as a radio or television organisation (*Without detriment to the rights of the authors, artistic performers, producers of phonograms and videograms, radio or television broadcasting organizations shall have the exclusive right to manage and use their broadcast programmes within the scope of:*

1 fixation;

2 reproduction by specific technique;

3 broadcast by another radio or television broadcasting organization;

4 rebroadcast;

5 introduction of their fixations to the market;

6 presentation at locations accessible for an entrance fee;

7 providing access to fixations thereof in a form allowing anyone to access them at a place and time chosen thereby – art. 97);

3) first editions – as a publisher (*The publisher who was the first to publish or otherwise disseminate a piece of work for which the protection period has expired and its copies have not been yet made public, shall only have the right to employ this work and to use it across all the fields of exploitation for a period of twenty five years from the date of the first publication or dissemination* – art. 99. Copyright).

The above-discussed restriction foreseen in art. 6, par. 4, point 4 of the Act on the Re-use comprises, upon the basis of art. 23, par. 4 of the Act on the Re-use, an obligatory premise for refusing access to public sector information for re-use.

A textbook commissioned by the Ministry of Digital Affairs,

written in cooperation with the Institute for Legal Studies at the Polish Academy of Sciences: *Ponowne wykorzystywanie informacji sektora publicznego* (Warszawa 2016) presents a stand according to which *the re-sue of PSI constituting a work in the possession of libraries, archives or museums will not be restricted until the time of copyright protection has passed* (...) *even if the library, archive or museum purchased the author's economic rights by means of an agreement or inheritance, thus becoming the second owner of those rights* (X. Konarski, *Prawa własności intelektualnej w kontekście ponownego wykorzystywania informacji sektora publicznego,* in: E. Badura, M. Błachucki, X. Konarski, M. Maciejewski, H. Niestrój, A. Piskorz-Ryń, M. Sakowska-Baryła, G. Sibiga, K. Śląska, *Ponowne wykorzystywanie informacji sektora publicznego,* Warszawa 2016, p. 197). The textbook in question also indicates the possibility of applying an interpretation different from the above-presented one and permitting the re-use of PSI in the possession of museums in a situation in which the latter are a second hand purchaser of the author's economic rights or related rights or possess an exclusive license. Such an interpretation can be based on a reference to the content and goal of Directive 2013/37/UE, a different comprehension of the concept of the original owner, a different interpretation of art. 6, par. 4, point 4 of the Act on the Re-use as a limitation and not a total exclusion of the possibility of public sector information re-use.

Doubts, therefore, pertain to the question whether a museum is compelled to refuse access to the re-use of PSI if it is not the original owner of author's economic rights or related rights, and the time of the duration of those rights has not expired in a situation when a museum – by means of an agreement or inheritance – purchased all the author's economic rights or related rights, including exploitation encompassing public accessing of works and objects of related rights.

Collision with the Act on Museums

The Act on Access to Public Information introduced changes into, i.a. the Act on Museums by adding, i.a. par. 4 to art. 25, par 4 to art. 25a and art. 31a. The regulation of art. 31 was overruled by art. 34, point 2 of the Act of 10 June 2016 on Delegating Workers in the Framework of Providing Services**,** which changed the Act on Museums as of 18 June 2016. Nonetheless, its content was included into art. 30a on the Act on Museums, which provides that access to information guaranteeing safety to museum exhibits due to their protection against fire hazard, theft and other types of danger, which pose the threat of the destruction or loss of the collection, is subject to limitation.

The question whether a collision between art. 30a of the Act on Museums and the regulation of the Act on the Re-use of Public Sector Information occurs in this case, is controversial. Doubts are produced by uncertainty whether the standardisation of art. 30a of the Act on Museums should be treated as a successive premise – apart from the ones mentioned in art. 6 of the Act on the Re-use – restricting the rights to re-use PSI. Mention must be made of the fact that the content of art. 30a of the Act on Museums refers to limiting access to information without rendering precise whether the heart of the matter concerns information in principle, public information, or public sector information. More, it is not clear whether a restriction upon this basis can pertain to access to the digital transfer of the museum exhibit as such. In accordance with the general principle that exceptions should not be interpreted by means of their extension *(exceptiones non sunt extendendae),* restriction of access should be referred exclusively to information, which serves ensuring the safety of the museum exhibits and thus to information about, e. g. storage, security, transport, insurance, etc.

An explanation is due also to the problem whether the regulation of art. 30a on the Act of Museums will be contained in an obligatory premise of a refusal to express consent to the re-use of public sector information from art. 23, par. 4 of the Act on the Re-use (*An obliged entity shall refuse, by means of a decision, to authorise the re-use of public sector information if the right to re-use is subject to the limitations referred to in Art. 6)* in connection with art. 6, par. 3 of the Act on the Re-use (*The right to re-use shall be limited with respect to information constituting public sector information to which access is limited under other acts)*.

Conditions for accessing public sector information for the purpose of its re-use

Art. 13, par 2 of the Act on the Re-use of Public Sector Information declares: *A museum shall establish conditions for re-use of public sector information which has the properties of a work or is subject to related rights* (...) *or constitutes a database* (...)*, to which that obliged entity has commercial copyrights or related rights. In particular, an obliged entity shall establish a condition that information must be provided about the surname, the first name or the pseudonym of the author or the performer, if known.* The use of the "in particular" formula indicates the exemplary but also obligatory character of the specified trend. This means that a museum defines conditions pertaining to the duty of informing about the author although this is not the only condition that can be imposed. In the case of all sorts of information concerning the public sector (regardless of their copyright status) art. 14, par. 1 states: *Conditions for re-use may concern:*

1) the obligation to provide information about the source and the time of creation, and to obtain information from an obliged entity;

2) the obligation to provide information that re-used information has been processed;

3) the responsibility of an obliged entity for the information made available or provided.

Doubts are also produced by the above-mentioned catalogue: is it a *numerus clausus* or an open catalogue? The interpretation that it is a closed catalogue is supported by the fact that in art. 14, par. 2 the legislator decided to define a situation in which cultural institutions can establish additional conditions for access (other than those in par. 1).

Interpretation doubts are also produced by the relations between art. 13, par. 2. and art. 14, par. 1. Dr Marlena Sakowska-Baryła, author of chapter 6: *Warunki ponownego wykorzystywania ISP* in the textbook: *Ponowne wykorzystywanie informacji sektora publicznego,* commissioned by the Ministry of Digital Affairs, claims that all conditions defined by an institution are restricted to a catalogue contained in

art. 14, par. 1. *The Act on the Re-use renders facultative conditions in art. 14. It follows from art. 13, par. 2 that the obligated entity shall establish them as long as they correspond to the range and contents of requirements listed in art. 14. The obligated entity thus has no legal opportunity for an arbitrary definition of conditions for re-use. His right comes down to deciding about their introduction. On the other hand, the content of the conditions is basically determined by art. 14 of the Act on the Re-use* (p. 130).

On the other hand, Xawery Kowarski, author of chapter 8: *Prawa własności intelektualnej w kontekście ponownego wykorzystywania informacji sektora publicznego* in the textbook: *Ponowne wykorzystywanie informacji sektora publicznego,* commissioned by the Ministry of Digital Affairs, maintains that conditions imposed in a situation regulated by art. 13, par. 2 depend on the contents and range of the rights possessed by the obligated subject: *Always, therefore, in relation to PSI comprising a work, an object of related rights or a* sui generis *database the obligated subject defines the conditions for re-use by defining the principle of re-using such PSI – and in particular the range of the granted authorization as well as the condition pertaining to the duty of informing about the surname, name or pseudonym of the author or artist, if it is known; such conditions will be determined by the contents and scope of the rights possessed by the subject obligated to PSI constituting the work in question* (p. 203).

Naturally, in accordance with art. 15 of the Act the process of defining conditions for re-use cannot limit, in an unjustified manner, the possibilities of re-use – this is the prime interpretation directive regarding the catalogue of conditions from art. 13. On the other hand, art. 15 has been formulated in such a wide and general manner that in practice museums will not impose conditions for access in the case of a work to which they possess the author's economic rights. It is recommended to devise interpretation directives indicating what should be understood as conditions not limiting the possibilities of re-use or a catalogue of good practices for imposing conditions for the re-use of works to which museums possess the author's economic rights.

Publication of public sector information on museum websites and definition of conditions for re-use

The Act on the Re-use of Public Sector Information foresees access to PSI in a non-motion procedure in a tele-information system:

a) in the Public Information Bulletin (BIP),

b) in the Central Repository of Public Information (CRIP),

c) in another way (e.g. *via* a website**,** which is not a subject party of BIP).

The Act clearly regulates that the absence of information about the conditions for the re-use of public sector information available in BIP or the central repository is regarded as accessing public sector information for the purpose of re-use without any conditions attached (art. 11, par. 4: *If information about conditions for re-use of public sector information made available in the Public Information Bulletin or the central repository is not provided, it shall be deemed that public sector information has been made available for re-use without conditions*). Controversies among museum curators are produced, however, by accessing public sector information websites of institutions (e.g. in digital collections). Art. 11, par. 2 provides: *An obliged entity which makes public sector information available for re-use otherwise than in the Public Information Bulletin or the central repository shall provide information about the lack of conditions for re-use or charges for re-use, when making public sector information available, or shall determine these conditions or the amount of charges for re-use*. It does not, however, define what takes place in the case of the absence of providing such information on the website. The logical interpretation seems to be that if the rational employer were to wish to introduce public sector information published on a website without defining the conditions he would include this supposition within the contents of art. 11, par. 4. Such an interpretation (we cannot assume that information on the website is rendered accessible without any conditions) is also supported by the contents of art. 21, par. 2 of the Act on the Re-use, which provides that: *a request for re-use,* (...) *shall be submitted if public sector information has not been made available in the Public Information Bulletin or the central repository and conditions for re-use or charges for re-use have not been determined, or information about the lack of such conditions or charges has not been provided*. This question, however, calls for an explanation and a cohesive interpretation owing to the number of resources published by museums on the Internet, outside BIPs or the CRIP system.

It would be advisable to prepare an instruction concerning public sector information on the websites of the cultural institution (in particular museums) within the context of the way of defining the conditions of re-use.

Act on the Re-use of PSI and Act on Access to Public Information

Doubts connected with the activity of museums are produced by the question concerning the procedure in which requests for access to information should be considered: in the procedure of the Act on Access to Public Information or the Act in the Re-use of Public Sector Information in a situation when the base upon which the request was submitted does not follow from the contents of the request. Can the person who received a negative decision regarding access to PSI for the purpose of re-use apply once again for access to the same information according to the procedure of the Act on Access to Public Information (assuming that the information in question actually is public)? What sort of undertakings should be made in a situation when the person granted access to information according to the procedure of the Act on Access to Public Information begins to utilise it again without requesting that the conditions of re-use be defined?

Re-use of martyrological works

In accordance with art. 14, par. 2, point 1 of the Act on the Re-use of Public Sector Information: *State museums, self-governing museums, public libraries, scientific libraries and archives may establish conditions for re-use other than those listed in paragraph 1, limiting the use of public sector information:*

1) in commercial activities or in specific fields of use if this information concerns collections addressing martyrdom and

contains the national emblem, colours and anthem of the Republic of Poland as well as coats of arms and reproductions of orders, decorations or badges of honour, military badges or other decorations.

Numerous cultural institutions possess in their resources martyrorlogical collections and those containing national symbols, reproductions of medals, coats of arms, and military badges. There exists a justified fear that such resources may be used unsuitably in commercial activity. This is why the legislator decided to make it possible, in relation to those resources, to define additional conditions for re-use so as to protect the dignity of the used symbols. The introduced restriction is facultative – a cultural institution may make use of this opportunity.

Certain doubts, however, arise in connection with the range of public sector information protected by the above regulation. The use of the conjunction *as well as* produced a state of legal uncertainty regarding the possibility of imposing additional conditions on public sector information both of a martyrological nature and containing the mentioned symbols, or whether such conditions have to be met jointly (martyrological resources containing symbols). The second interpretation significantly limits the possibility of applying regulations and does not correspond to the needs and fears of cultural institutions (the number of such resources is simply small and often martyrological resources do not contain symbols).

The conjunction *as well as* is absent in legal logic and there exists a discourse asking whether it denotes a connective or an alternative – different interpretations will influence the range of the regulation from the Act. In the case of the former both conditions have to be met jointly, while in the second instance (an alternative) it suffices for a single condition to be met.

The Ministry should issue a binding interpretation concerning resources, in whose case cultural institutions may impose additional conditions (the recommended range – exclusively martyrological public sector information containing only symbols mentioned in the regulation).

Museum deposits

Fundamental doubts concerning the practice of the functioning of museums appear in connection with museum deposits. At the onset it must be noted that in accordance with a legal definition contained in art. 2, par. 1 of the Act on the Re-use: *Public sector information shall be understood as any content or any part thereof, regardless of the method of recording, in particular written on paper, or stored in electronic form or as a sound, visual or audio-visual recording, held by the entities referred to in Art. 3.* The Act on the Re-use of Public Sector Information thus renders the possibility of accessing PSI for the purpose of re-use independent of the ownership status of the museum object, indicating that it is sufficient for the museum object to be in the possession of the museum in order for accessing its digital transfer as PSI for the purpose of re-use to take place. On the other hand, the Act introduces limitations, which refer to museum deposits and are the outcome of the fact that the museum is the possessor but not the proprietor of a given object or that the object is covered by the claims of third parties.

Restrictions referring to museum deposits pertain to two questions.

First, the limitation of the right to re-use PSI. In accordance with art. 6, par. 4, point 2: *The right to re-use shall be limited with respect to public information sector* (...) *related to deposits held by an obliged entity if their owners excluded under an agreement the possibility of this information being made available or provided in full or to a specific extent*.

The above case allows making an obligatory decision refusing to express consent for the re-use of PSI (art. 23, par. 4 of the Act on the Re-use). The way in which the regulation from art. 6, par. 4 is formulated gives rise to doubts concerning the already made and still binding deposit agreements in which owners of the objects did not exclude outright the possibility of accessing or transferring a given object as a whole or in a defined range. Most often deposit agreements do not contain such formulations. It is thus necessary to render precise whether, and what sort of activities should the museum undertake in such a case - whether in the case of the absence of a stipulated exclusion to recognise accessing PSI for the purpose of re-use as admissible, or whether to regulate this question anew in the course of signing appendices to already signed agreements.

Secondly, restrictions pertain to the question of the conditions of re-use and the possibility of introducing restrictions in this domain upon the basis of art. 24, par. 2, point 2 of the Act on the Re-use: *State museums, self-governing museums, public libraries, scientific libraries and archives may establish conditions for re-use other than those listed in paragraph 1, limiting the use of public sector information* (...) *to non-commercial activities if this information is related to items which are covered by third-party claims or are not owned by an obliged entity.* Doubts concern the following question: what does the possibility of introducing restrictions into the conditions of re-use depend on and does it depend on the discretionary decision made by the museum or should it be grounded in the provisions of the deposit agreement?

Re-use of public sector information and image protection

Much controversy among museum curators is produced by the range of art. 6, par. 2 of the Act on the Re-use of Public Sector Information. One of the obligatory premises of issuing a decision refusing consent for the re-use of PSI is the privacy of the physical person: *The right to re-use shall be limited on the grounds of the privacy of individuals or business secrets.*

First, there arises the question whether the protection of personal data is a sufficient premise for refusing access to public sector information or is the museum, owing to the objective of the Act, obligated to anonymize (as much as possible) given public sector information and to transfer it in such an anonymized version for reuse. Dr Marlena Sakowska-Baryła, author of chapter 4: *Ograniczenia prawa do ponownego wykorzystywania ISP* in the textbook: *Ponowne wykorzystywanie informacji sektora publicznego,* commissioned by the Ministry of Digital Affairs, states: *Also in the case of the Act on the Re-use it should be accepted that anonymization is the first measure for the protection of privacy in the realisation of the right to re-use PSI in the case of all ways of applying it defined in art. 5 of the Act on*

the Re-use. Anonymization, therefore, is taken into account both in the case of proceeding by motion and without motion in the case of the user obtaining PSI for the purpose of its re-use (p. 74).

This interpretation is supported also by the long-term practice of accessing public information. Universal practice consists of the anonymization of documents, e.g. in the publication of rulings of courts of general jurisdiction, administrative courts, and the Supreme Court, rulings of the Constitutional Tribunal, decisions of public authority organs, resolutions of the organs of self-government units in so-called individual cases (e.g. looking into complaints and motions) and in accessing assorted types of documents containing personal data of persons who do not fulfil public functions. The question of anonymization within the system of the re-use of public sector information still remains to be resolved.

Secondly, doubts concern image protection regulated in copyright. We deal with the exploitation of the image of third parties in public sector information in the case of, for example, related rights to videograms. In practice, the question of obtaining the right to utilise an image was neglected from the viewpoint of legal issues, and this is the reason why cultural institutions often do not possess suitable consent. There thus arises the question whether the absence of such permission is sufficient for the refusal of consent to the re-use of given information. Owing to the wide and insufficiently defined range of the conceit of the privacy of the physical person in art. 6, par. 2 as well as expanded judicature concerning privacy guaranteed to everyone by the Constitution of the Republic of Poland, we should accept the answer: yes.

Both above-mentioned questions should be interpreted by the Ministry of Digital Affairs in cooperation with the Ministry of Culture and National Heritage in order to avoid further controversies in the praxis of a cultural institution but also for the sake of extensively restricting the right to the re-use of public sector information.

Accessing PSI for re-use and granting license agreements

Up to now, in numerous instances museum signed agreements (including those concerning copyright) upon whose basis they rendered their collections available to subjects wishing to use them. It is, therefore, indispensable to forejudge whether such agreements can be still made, or whether only procedures of accessing collections defined by the Act on the Re-use of Public Sector Information are permissible.

Owing to restrictions resulting from art. 6, par. 4, point 4 the only accessed collections will be those to which copyrights have already expired – it appears, therefore, that accessing them upon the basis of a license agreement is unfounded. It is also necessary to determine whether museums can render available, upon the basis of agreements, collections to which, in accordance with the Act, access is restricted according to art. 6, par. 4, point 4, and to which museums possess author's economic rights enabling re-use.

Museum as a scientific unit

Apparently, there may exist a conflict regarding the subjective range of the Act on the Re-use of Public Sector Information. The heart of the matter concerns regulations, which assume that: *This Act shall not apply to public sector information held by* (...) *state cultural institutions* (...)*, except for state museums and self-governing museums within the meaning of the Museum Act of 21 November 1996* (...) (art. 4, par. 1, point 2 of the Act in the Re-use) and: *This Act shall not apply to public sector information held by higher education institutions, the Polish Academy of Sciences (Polska Akademia Nauk) and scientific units within the meaning of the Act of 30 April 2010 on science financing rules* (...) (art. 4, par. 1, point 3 of the Act on the Re-use).

In certain cases museums are scientific units. A list of scientific units and categories (http://www.nauka.gov.pl/g2/oryginal/2013_09/ 485ab765cfll89945f7b95572d728cb0.pdf) mentions the Upper Silesian Museum in Bytom, the Museum and Institute of Zoology of the Polish Academy of Sciences, the National Museum in Cracow, and the Museum of Art in Łódź**.** In other words, this is a situation in which, on the one hand, the Act is applied in relation to museums with the exception of art. 4, par. 1, point 2 of the Act on the Re-use, while on the other hand, upon the basis of art. 4, par. 1, point 3 of the Act on the Re-use the Act is not applied because a museum is a scientific unit.

As organisational units museums constitute organisational forms of cultural activity as understood by regulations of the Act on Organizing and Conducting Cultural Activities (art. 2 of the Act on Organizing and Conducting Cultural Activities in connection with the Act on Museums, art. 4). Art. 4 of the Act on Museums provides: *In matters not provided for in this Act, provisions of the Act on Organizing and Conducting Cultural Activities shall apply* (Journal of Laws, No. 114, Item 493; 1994, No. 121, Item 591; 1996, No. 90, Item 407), *provisions of the Act of 25 October 1991 on organizing and conducting cultural activities ((Journal of Laws 2012, item. 406* and thus comprises *lex specialis* in relation to the Act on Organizing and Conducting Cultural Activities

At the same time, the Act of 30 April 2010 on the Principles of Financing Science (art. 2, point 9) introduces a legal definition of the concept of the scientific unit, which does not outright indicate museums by name, although they can be included into the category of *other organisational units* (...) *and have registered offices in the Republic of Poland* (...) *with a status of a research and development centre within the meaning of art. 2 point 83 of the Commission Regulation (EU) No. 651/2014 of 17 June 2014 recognizing some types of aid that are compatible with the internal market in use*

Art. 107 and 108 of the Treaty (Official Journal of the EU L 187 of 26 June 2014, p. 1), as long as they conduct lead in a way continuous scientific research or development works granted pursuant to the Act of 30 May 2008 on Certain Forms of Support for Innovative Activities (Journal of Laws [Dz. U.] No. 116/2008, Item 730 and No. 75/2010, Item 473) (art. 2, point 9, and letter f of the Act on the Principles of Financing Science).

More, the Act of 30 April 2010 on the Polish Academy of Sciences declares that the Academy's auxiliary units include in particular archives, libraries, museums, botanical gardens, and scientific stations abroad (art. 68, par. 1). Auxiliary scientific units of the Polish Academy of Sciences include, e.g. the Earth Museum in Warsaw.

The above reflections lead to a conclusion that in accordance with Polish law museums conducting scientific research as part of their daily activity are scientific units. It should be explained, therefore, which basis should be applied in this situation and whether regulations of the Act on the Re-use of Public Sector Information can be applied in the case of museums or not.

Re-use of PSI between cultural institutions

Doubts concerning the re-use of public sector information between cultural institutions pertain to an interpretation of the contents of art. 2, par. 3: *If public sector information is made available or provided by an entity performing public tasks to another entity performing public tasks purely in pursuit of such tasks, this shall not constitute re-use.*

While conducting a pro-European interpretation one should indicate that the purpose of the realisation of a public task should be understood widely, not merely as a goal for whose purpose information was produced, but also as another target within the range of the public tasks for which PSI was produced.

Controversies concerning the range of the application of the Act are the outcome of the present-day formulation of the regulation. In the first place, one should indicate that *de lege lata* re-use is not tantamount to accessing or transmitting PSI exclusively between subjects carrying out public tasks. Decisive significance is, therefore, ascribed to an appropriate interpretation of the criterion of performing a public task, which, owing to its general character, can result in numerous abuses in relations between institutions.

Abstract: The article discusses both the legal and factual problems related to the necessity of implementing the provisions of the Act on the reuse of public sector information (PSI) of 25 February 2016. The authors highlight the inaccuracies in the way the statutory provisions have been formulated, and which require urgent intervention by legislators due to their doubtful interpretation and the conflict of the Act's provisions on reuse with those of other acts, in particular the Act on museums. They also identify the discrepancies between how museums currently share their collections and the requirements set by the Act on the reuse of PSI. Individual practical problems are discussed in separate parts of the text. The aim of the article is not to settle the doubts concerning the Act on reuse of PSI, nor to decide what museums should do in that matter, but rather to draw attention to possible ways of interpreting the provisions and the related problems.

Keywords: public sector information, heritage resources, reuse, statutory provisions, sharing museum collections

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Table of contents 2017: http://muzealnictworocznik.com/resources/html/articlesList?issueId=9587