

# WIPO International Conference on Copyright and Public Sector Information Management for LDCs and Developing Countries



## OVERVIEW BASIC CONCEPTS, SOCIAL AND ECONOMIC RELEVANCE

PROF. JOSEPH FOMETEU

UNIVERSITY OF NGAOUNDERE  
(CAMEROON)

# Introduction



## **What is public sector information (PSI)?**

**It can encompass documents and data produced, commissioned or stored for official purposes by the State or any arm of the State or public bodies.**

The institutions involved are as follows:

- the State itself and all its bodies, which frequently generate significant volumes of documents and data (the courts, parliaments, etc.);
- local councils;
- legal persons under public law;
- legal entities under private law entrusted with a public service mission; and
- some international or multinational organizations.

# Introduction



## Type of information involved

A wide variety, including:

- **statistics;**
- **metadata;**
- **administrative documents;**
- **recordings;**
- **compilations;**
- **databases; and**
- **texts of all kinds.**

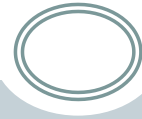
Such information can be any field: agriculture, services, health, hydraulics, weather, transport schedules, statistics on births, marriages or deaths, road maps and city maps, election results, GDP, GNP and other economic indicators, etc.

# Introduction



- **The origin of the information (document or data) is important.**
  - The information results from the professional activity of a civil servant and attracts no specific intellectual property rights.
  - The information results from the professional activity of a civil servant and the rights to that information may have ensued directly from legal provisions and may be held by the State or the public body employing the person who created the information.
  - The information is created by a third party on behalf of the State or a public body through a publicly funded contract and the rights have been transferred by virtue of the contract or by law to the State or public body.

# Introduction



- **PSI does not include the following:**
  - documents and data over which third parties hold intellectual property rights;
  - documents and data that are not yet freely available under any other legislative or regulatory provisions;
  - documents of private origin held by the State or its branches, whose access or use is subject to restrictions;
  - documents and data generated by public companies performing an industrial or commercial public service mission; and
  - documents produced or received by educational and research institutions and institutions, as well as libraries, archives and museums.

# Issues arising:



- **policy considerations related to the debate around public sector information in Africa**
- **copyright issues related to public sector information**



# **I. Policy considerations related to the debate around public sector information in Africa**

# Policy considerations: Overview



## Overall PSI goals:

- Inspire innovation and creativity (data, produced in large quantities by the public sector, is an essential asset of the digital economy).
- Encourage entrepreneurship, economic intelligence and business development.
- Improve citizens' living conditions (access to information and the right to use it should allow for a multiplication of development initiatives).
- Foster participatory democracy through transparency.

## Difficulties:

- establishing mechanisms to ensure privacy, confidentiality and national security;
- existence of a political will for openness and transparency (it should be borne in mind that access to psi is essentially underpinned by democracy considerations); and
- managing the question of free data to be made available to users (the internet has created and accelerated free movement of data).



# Policy considerations: Awareness in Africa of the open data movement

- The 19th African Union Summit in 2012 set out the ambition for all member countries to increase statistical stability and the reliability of data produced to increase and measure the effectiveness of development objectives.
- The African Development Bank, with the support of the African Union Commission and the United Nations Economic Commission for Africa, created an Open Data for Africa platform that includes public archives from 54 African countries and 16 African regional organizations. The standard catalogue of each country consists of information relating to areas such as *agriculture, business, demography, education, environment, exchange rates, foreign trade, health, living conditions, mortality rates, etc.*
- Some countries have begun to build a portal to their administrations' archives (Morocco, Kenya, Sierra Leone, Burkina Faso and, to a lesser extent, Ghana, Rwanda, Uganda and Tanzania).

# Recognition of a right of access to data through legislation separate from copyright



- **Several countries recognize a right of access to information (in general) in their constitutions.**
- **Some countries have specific legislation to facilitate this right of access.**
- **Benin:** Law No. 2015-07 instituting the Information and Communication Code (art. 71): “Every citizen has the right of access to documents or information held by a public body or its agents in the performance of their duties”.
- **Niger:** Ordinance No. 2012-22 of 23 February 2012 instituting a Charter on Access to Public Information (art. 4): “Access to public information is free, subject to the exceptions and time limits provided by law”.
- **Chad** (*Draft law was under consideration in 2016*): the right of access to information is guaranteed to all, an obligation to publish a wide range of information of public interest is imposed on a large number of bodies and the procedure for accessing this information is simplified.



## **II. Copyright and public sector information**

# Copyright



## Issues:

- How to grant public sector data or data acquired with public funds without copyright being an obstacle.
- How to remove copyright barriers that prevent companies from innovating or developing by **reusing** public data to create wealth (*e.g., companies that incorporate open data into their information systems, media companies, companies that develop applications based on such data, etc.*).

**N.B. Reuse** means use for purposes other than the public service mission for which the documents were produced or received (e.g., reissue by a third party of posters or postcards). The goal is to create a sort of public domain of information.

# Copyright



## Prerequisites:

**Data freely reusable by virtue of its exclusion from the scope of copyright protection** (e.g., article 6, Bangui Agreement, Bamako Act, article 10 Ivorian law, article 8 Burkinabe law, article 3 Cameroonian law, etc.):

- works in the public domain (subject to respect for moral rights);
- official texts of a legislative, administrative or judicial nature and their official translations;
- news of the day;
- coats of arms, decorations, monetary signs and other official signs (provided that other legislation does not prohibit reuse); and
- basic facts and data, etc.

# Copyright



- **Prerequisites:**

Types of copyright systems for controlling public sector information by the State or by legal person governed by public law on whose behalf the creation is carried out.

# Copyright



- **System 1.**
- **Stripping the author of his or her rights as a natural person.**
- **Direct vesting of copyright in the public employer** (art. 44, Ivorian law of 2016; art. 31.1, Burkinabe law in force: “Where a work is created by a public servant of the State or its branches in the course of his or her duties, the moral and economic rights over the work shall belong to the State”).
- Since the State or its branches are the original owners of the rights, the creations made belong to them and can be directly categorized as PSI.
- The State therefore retains the power to authorize their inclusion in databases and their reuse, unless it intends to actively exercise its copyright.

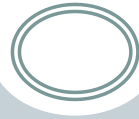
# Copyright



- **System 2.**
- **Ownership originating from the author as a natural person.**
- **Presumption of transfer of property rights to the State or to the legal person governed by public law to the extent justified by its activities (Art. 5 Benin, Art. 37 Niger, Bangui Agreement).**
- Since the State or its branches are derivative holders of economic rights, creations can be integrated into PSI.
- Inclusion into databases is therefore possible and reuse is possible, unless the State intends to exercise its copyright.
- Difficulties may arise when reuse falls foul of moral rights.



# Copyright



- **System 3.**
  - **Ownership originating from the author as a natural person.**
  - **Unenforceability of rights against the State or the public legal person, to the extent strictly necessary for public service** (art. 41.1, Law of 2012, Republic of Guinea; art. 40, Law of 2008, Mali).
- The State has no real right over the work (it actually only has the right of use).
- It is therefore impossible to include works created among PSIs, unless the economic rights are transferred to the public entity.

# Copyright



- **System 4.**
  - **Ownership originating from the author.**
  - **Absence of legal assignment or express provision transferring property rights to the public employer** (art. 11.2 Chad; art. 12 Cameroon (?))
- Including works in PSI is even more difficult.

# Copyright



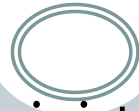
- **Specific cases:** direct devolution of rights to the State or public entity.
- **Databases:** the public entity retains the right to waive its prerogatives by allowing reuse.
- **Traditional cultural expressions (national heritage):** the regime is complex under national laws in Africa. The State may not waive its right to manage them under the conditions of copyright law.

# Copyright



- **Role of exceptions and limitations.**
  - Their scope is necessarily limited in that they do not generally allow for-profit uses and do not authorize infringements of moral rights.
  - Their use as PSI is not therefore fully justifiable.

# Conclusion



- Patchy provisions allow a right of access to administrative documents, restrictively construed.
- Some provisions recognize the right of access to information in general.
- Currently, there is no legislative provision governing free or even paid licensing that would comfortably allow sufficient access to encompass the reuse of PSI.
- Currently, the reuse of copyrighted PSI must be upon the authorization of the public entity.
- Accordingly, as concerns the open data movement, legal mechanisms should be established to allow the reuse of public data where it is still protected by copyright held by a public entity.

# THANK YOU FOR YOUR KIND ATTENTION

