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Public Sector Information Re-use as Source of Innovation:

Does Hong Kong need a Policy on PSI?

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Abstract:

The paper discusses Public Sector Information re-use (PSI) as potential source for economic value creation and innovation in Hong Kong. Hong Kong is one of the most advanced information societies in the Asia Pacific region, yet the legal basis for free access and flow of information is rather restricted. Access and re-use of information generated by public organizations is today seen as competitive advantage as basis for social and economic innovation; and governments around the world are revising the ways through which individuals, private and public organisations can better access, re-use and re-purpose public information. The US and EU have in recent years revised their legal frameworks for public information access in order to stimulate economic development and innovation, whereas few Asian countries have adopted open access policies to date.

The paper argues that Hong Kong's economy could benefit from opening up public sector information repositories and create new jobs in the information services and creative industry sectors.

Methodology/Approach: Descriptive review and analysis

Keywords: Public information laws, access to information, public sector information re-use, knowledge-based economy, information services, freedom of information laws

1. Introduction
- 1.1. Background

At the OECD (Organisation for Economic Co-operation and Development) Ministerial meeting on the Future of the Internet Economy in June 2008 in Seoul, the member states agreed on the need for governments to work with business, civil society and technical experts to promote competition and innovation through enhanced access and more effective use of Public Sector Information. The OECD recommendation has far-reaching implications not only for member states, but also non-member states with highly developed information and communication

infrastructure, such as Hong Kong, Singapore and Taiwan. In Asia, only Japan and South Korea are OECD members and both are highly developed information societies.

Hong Kong is one of the most advanced internet societies according to the ICT index established by the International Telecommunications Union (ITU 2009). The ICT Index captures the level of advancement of information and communication technologies in more than 150 countries worldwide.¹

While Hong Kong is one of the leading information societies in the world based on ICT availability and usage, the territory does not have a Freedom of Information law (FOI). The existing administrative *Code of Access to Information* from 1995 did not foresee digital re-use possibilities. One of the research questions is whether Hong Kong can create economic value through public sector re-use based on voluntary initiatives and open collaboration between selected public agencies and the business sector only; or in short: can a country exploit PSI without FOI?

1.2. Public Sector Information re-use

Public sector information is broadly defined as “information, including information products and services, generated, created, collected, processed, preserved, maintained, disseminated, or funded by or for the Government or public institution” (OECD recommendation C/2008/36).

Use refers to the usage by the original public sector generator or holder or other public sector bodies and further re-use by business or individuals for commercial or non-commercial purposes. In general, the term “use” implies this broad spectrum of use and re-use.

Until recently, even in countries that have Freedom of Information laws, public sector information was often made available on request only or on a “need-to-know basis”; access to PSI was restricted and the general perception was that the government “owned” the information as well as the copyright. With the advent of the internet, most countries have developed e-government policies and strategies, which largely focus on transactional information exchanges

¹ Other country rankings in Asia, according to the ICT Index in 2007: South Korea 2nd, Hong Kong 11th, Japan 12th, Singapore 15th, Taiwan 25th, Malaysia 52nd, Thailand 63rd, China 73th.

and the idea that government provides *services* to its citizens. Susskind (2009) argues that there has been a “clear shift in government policy in many countries in relation to information generated from within or on behalf of the public sector” since the mid-1990s.

This change in information policy can be seen in many countries, most explicitly perhaps in the US, which says on its data.gov site that “the purpose of *Data.gov* is to increase public access to high value, machine readable datasets generated by the Executive Branch of the Federal Government. Although the initial launch of Data.gov provides a limited portion of the rich variety of Federal datasets presently available, *we invite you to actively participate* in shaping the future of Data.gov by suggesting additional datasets and site enhancements to provide seamless access and use of *your Federal data*” (note: italic by author). From governments providing information on a need-to-know basis or only publishing selected formal publications online to acknowledging that the data is actually owned by its citizens indicates a major change.

Governments produce and distribute a vast amount of documents and datasets - from national statistics to environmental information, from socio-economic data to legal material, educational materials and health information. Recent technologies allow this information to be explored, built upon and made accessible in new ways. Currently, the full value of this information is far from being realized, but under the emerging Public Sector Information re-use legislation advanced knowledge-based economies such as OECD and EU member states are exploring ways to create economic value from these information assets. Examples include digital maps, meteorological, legal, traffic, social and financial data services. Most of this public sector information has commercial potential for re-use as the basis for new added value products and services, such as navigation systems, insurance and credit rating services as well as legal, cultural and heritage data bases.

By opening up access to information assets held in public repositories, economic value can be created through new services by third parties, both individuals and companies. The OECD suggests principles for information re-use which address legal requirements and restrictions, intellectual property rights and trade secrets, effective and secure management of personal information, confidentiality and national security concerns.

In most countries there are different agencies and departments dealing with the many aspects of PSI; e.g. in Hong Kong the IP and Creative Commons are in the realm of the Intellectual Property Department, data security and privacy issues under the umbrella of the Data Privacy Ombudsman, IT and technology related aspects are dealt with by the Government Chief Information Officer, questions around open access to publicly-funded research fall into the responsibility of the Research Grants Commission, PSI in the cultural space could be dealt with by the Culture and Heritage department. Each department has its own views and priorities in the policy-making process, and as of today there is no single government agency in charge of developing a comprehensive PSI policy.

The Hong Kong government has a comprehensive information strategy relating to information infrastructure (Digital21 Strategy), which was first documented in 1998. This blueprint for Hong Kong's ICT development is updated on a regular basis to take into account technological and socio-economic changes, however, innovation through open information access is not part of this strategy and the blueprint does not address open access and economic value creation through public information asset re-use. Recently, the Office of the Government of the Chief Information Officer (OGCIO) has started a couple of public-private projects to explore the creation of new services through PSI; however, these projects are not questioning existing information laws.

The Economist (2010) found that “citizens and non-governmental organisations the world over are pressing to get access to public data at the national, state and municipal level—and sometimes government officials enthusiastically support them. Government information is a form of infrastructure, no less important to our modern life than our roads, electrical grid or water systems”. Following this view, OGCIO as digital infrastructure builder might play a dominant role in developing a PSI policy for Hong Kong.

1.3. Public Sector Information Re-use in the European Union

The EU adopted a PSI Directive in 2003² to overcome barriers that limit the re-use of PSI. The Directive regulates how public sector bodies should make their information available for re-use,

² EU Directive 2003/98/EC

and deals with key issues such as transparency of what is available and under which conditions, fair competition and non-discrimination between all potential re-users. EU member states are obliged to translate EU directives into national law.

The Directive shall ensure fair conditions for the re-use of public sector information and stimulate the growing market of added-value products and service based on PSI re-use. So far, the highest value and re-use exploitation potential is in the field of geospatial information, followed by traffic, meteorological, statistical, environmental and health information.

A recent study on “PSI in the Cultural Sector” (Davies 2009) analyses the economic potential of the cultural sector which includes information assets in museum, libraries, archives etc. The cultural sector has been identified as a catalyst for creativity, growth and jobs, with an annual turnover of EUR654 billion in 2003. Initiatives such as the *Europeana*³ service under i2010 Digital Library Initiative are examples of measures to “unlock” cultural content for re-use (Davis 2009, 3).

At the time of the introduction of the PSI Directive, the EU member states had very different national information policies and laws and the adoption of the Directive into national laws took longer than anticipated. In some countries, the Directive had only minimal impact, e.g. in Finland, where it became national law by 1 July 2005, less than two years after the EU law came into force. A notable late-comer is the U.K, where a Freedom of Information Act was only introduced in 2000, which gives citizens the “right to know” in relation to public bodies. The full provisions of the act came into force only on 1 January 2005.⁴

One reason for the late adoption was the *Crown copyright*, which meant that most government data in Britain and the Commonwealth countries are the state’s property, constraining their use. For example, postcodes and Ordnance Survey map data at present could not be freely used for commercial purposes (The Economist 2010). The influence of British law and government procedures in Hong Kong perhaps explains why Hong Kong still does not have a Freedom of

³ <http://www.europeana.eu/portal/> Europeana gives access to more than 6 million digitized items on European culture

⁴ UK Information Commissioner’s office <http://www.ico.gov.uk/>

Information law and, at least formally, is behind the developments in the Mainland in this regard. Hong Kong inherited the British secrecy tradition and therefore shares similar values on openness of government information. “In the UK, a country known for its strong penchant for privacy, the access right was conferred in the form of an administrative code in April 1994” (Ma 1988, 17)

1.4. Hong Kong’s Code on Access to Information

The Code on Access to Information was introduced on 1 March 1995. The government “recognizes the need for the community to be well informed about the Government, the services it provides and the basis for policies and decisions that affect individuals and the community as a whole”. (Code on Access to Information, 2). The Code defines what information will be provided, and while it authorizes and requires civil servants to provide information “routinely or on request”, citizens do not have a right to information. The Code also defines procedures for review or complaint if a citizen considers the provisions of the Code have not been properly applied. The Code is an example of reactive government information policy; it will respond when there is a request for access to official information. This is an outdated approach for an advanced information society, where open government policies make information created in the process of governing available to citizens as an integral part of the job of government (Susskind 2009).

While the Code includes all ninety-one government agencies and departments, it does not cover information held by courts and tribunals and the more than 500 advisory and statutory boards and committees. (Weisenhaus 2007, 90).

The Journalism and Media Studies Centre at the University of Hong Kong maintains a blog with regular updates on “access to information” success and failure stories which were published in the media. According to Chan (2010) from 1995 until mid 2009 25125 requests were submitted, of which 576 requests were refused and 563 cases were partially met. The departments which received most requests are the Immigration Department, Housing Department, Inland Revenue Department, Student Financial Assistance Agency and Hong Kong Police Force.

These results indicate that most requests were related to individual Freedom of Information type queries.

1.5 Limitations of the Code for Public Sector Information Re-use

The Constitutional and Mainland Affairs Bureau is in charge of overseeing the administration of the Code since 2007.⁵ This bureau is responsible for “overseeing the full and faithful implementation of the Basic Law. We have developed and maintained a constructive working relationship between the HKSAR Government and the Central People's Government and other Mainland authorities in accordance with the principles of "One Country, Two Systems", "a high degree of autonomy" and "Hong Kong people running Hong Kong". (<http://www.cmab.gov.hk/en/about/index.htm>).

Interestingly, while the Mainland has a Freedom of Information Law since May 2008, when the State Council of the People's Republic of China the State Council of the People's Republic of promulgated the "Regulations of the People's Republic of China on Open Government which came into effect on May 1, 2008.⁶, Hong Kong still doesn't such a law. The reasons of the Mainland decision to introduce FOI will not be discussed in this paper, but would provide interesting background for legal comparisons.

When the code was introduced in 1995/96, most critics argued that an administrative code is not equivalent to a law (Loh 2006, 291), as administrative rules and regulations can easily be changed, whereas a legal right would require a public process in the Legislative Council.⁷ Others argued that free access and flow of information is the basis to secure Hong Kong's position as an open market place and world commercial centre, particularly as the city continues to grow into a predominantly service sector economy. As such, “knowledge benefits from unimpeded exchange in the marketplace”, and lengthy request procedures would hinder such information flows. (Ip 1994, 13)

⁵ From 1995-2007, the Home Affairs Bureau was responsible for the administration of the Code

⁶ http://www.gov.cn/zwggk/2007-04/24/content_592937.htm

⁷ The Legislative Council is the legislative power of the HKSAR

The bureau also provides a list of “Information available to the Public Free or a Cost”⁸, which is not very user-friendly, as most of the listed information items can only “be inspected on request” by physically going to the respective government agency and pay photocopying charges “if copies need to be made”. It does not provide URL links to the agencies or to the electronic version of the information. The list was created in 2005, does not seem to be updated frequently, and does not provide any information on content or format of the information. Compared to countries that have developed user-friendly lists of databases and information assets available in the various agencies, which is one of the basis requirement in all PSI legislations, the CMAB service seems to be rooted in the pre-digital age.

While CMAB may be the bureau which could promote the introduction of a proper FOI law in Hong Kong, it is not the right agency to deal with practical access and re-use of public information as basis for economic value creation.

A recent investigation by the Hong Kong Government Office of the Ombudsman on the “Effectiveness of Administration of Code on Access to information” (Office of the Ombudsman 2010) revealed that both awareness of the Code and training of the government officers were inadequate, and promotion of the importance of “open access to public information” is not a priority for CMAB. More importantly, the bureau is in charge of economic development and innovation which is at the centre of PSI re-use policies.

2. Economic value of Public Sector Information Re-use

Governments and public bodies are information creators, controllers, distributors, information archivists and record keepers. Which the internet and the Web, information could be shared widely and virtually at no cost, which changes the business of government dramatically. The information can be seen as an untapped resource and public good with high potential for value creation, and most governments are just at the beginning of understanding the economic dimension of PSI.

⁸ <http://www.cmab.gov.hk/en/access/free.htm>

In a world where access to information and knowledge has become a key driver of social, cultural and economic innovation governments throughout the world have begun to focus on how they might provide better access to the publicly funded information resources. This raises questions of information management, pricing and economic modeling and legal compliance. Open Access and Re-use of Public information also requires an examination of potential Creative Commons or equivalent licenses to clarify and simplify the re-use of digital resources, as most public information is copyrighted.

In the European Union the public sector information is considered an extraordinary resource for the digital content industry. A study on the economic value of PSI commissioned by the EU estimates the value of PSI is EUR68 billion annually, which represents a substantial slice of total economic activity within the European economy.

The study describes value as investment value, which is what governments invest in the acquisition of public sector information and economic value which is that part of national income attributable to industries and activities built on the exploitation of PSI. The economic value of traditional industries is available from national accounts information. In the absence of this data for PSI the study combined information on the investment value of PSI with estimates of the value added by users of PSI to provide figures for the economic value of PSI (European Commission 2000, PIRA study)

In every EU country, the largest single component of the PSI investment total is the geographical sector. This includes such categories as mapping, land registration, meteorological services, environmental data and hydrographical services. This sector takes over 37 % of the total investment in PSI in France, 41 % in Sweden and over 57 % in the United Kingdom. Cultural information, including museums and libraries makes up the next largest sector, while statistical services are around 15 % of investment and services. The next sector includes company information and details of intellectual property rights, which accounts for approximately 10 %. The bulk of the remaining investment is in legal information⁹, tourist information and the production of official publications.

⁹ Legal and court information is not part of the Code on Information Access in Hong Kong

The OECD promotes re-use of public sector information not only to achieve more efficient distribution of information and content, but also to foster the development of new information products and services through market-based competition among re-users of information. A whole range of new content services emerged in Europe, after the EU directive came into force.

To date there are no studies on the economic potential of PSI in Hong Kong, which could give an overview on what kind of information assets exist in the public sector, assess quality and potential use of these assets, as well as identify opportunities for new jobs in the emerging information industry through digital asset exploitation.

Such a study should also address the increase in total returns on public investments and economic and social benefits through more efficient distribution, increased innovation through development of new uses and existing size of information services industry.

In the recent Policy Address, the Chief Executive of the Hong Kong Government pointed out the need to promote the development of innovation and knowledge-based industries throughout the different sectors, especially in the so-called new six pillar industries such as medical services, education services, environmental services, testing and certification, innovation and technology, and cultural and creative industries (Hong Kong Government 2010 Policy address, B, 9.) All these industries could immediately benefit from new public-private services based on PSI, as public access to government figures is likely to release economic value and encourage entrepreneurship. Additionally, new forms of collaboration between the public and the private sector itself can be a source for innovative ideas.

2.1 Potential fields of innovation

Public Information re-use, internet technologies and changes in copyright legislation such as increased Creative Commons usage are all drivers for innovation in the information sector. The digitalization of content creates the basis for new business models such as the participative web and commercialization of user-created content. Public sector information re-use increase aggregate returns on public investments, and maximise use & spill-overs and the internet has greatly expanded our capacity to create, compute, communicate, coordinate and innovate.

Apart from new business opportunities, there is also a growth in user-created content as a new economic phenomenon. Although originally largely non-commercial, user-created content is becoming a disruptive force for how content is created and consumed. This disruption creates both opportunities and challenges for established market participants and their strategies (OECD 2007, 11). The whole economics of information production has been changed through the internet, and the changes effect the ways users produce, distribute, access and re-use information and knowledge.

In countries that have introduced open access to information, there is a growing community of public and private users, where existing and potential applications based on PSI are discussed and prototyped. One of the largest user communities in Europe is the ePSI Platform, which aims to stimulate action, information sharing on new PSI re-use products and services, and monitor progress towards a stronger and more transparent environment for the growth of national and European PSI re-use markets. The platform is funded by the European Commission.

The ePSI platform also raises the awareness of potential users and entrepreneurs who could develop new product and services. Such a public platform does not exist in Hong Kong, but this could be a potential role for the government funded Cyberport¹⁰, which shall provide a platform for the digital community, help to commercialise creative ideas and incubate start-ups in the field of creative digital content, as well as develop a regional center for digital media industry through collaboration and partnership with the industry, academia, and research institutes and professional bodies. Serving as a centre PSI development in Hong Kong could be an interesting option to explore for the Cyberport.

2.2. Developing PSI policies

Both the OECD recommendation and the EU directive are based on general principles which shall support the economic value creation. Such principles are basic components of a national open access policy. In the OECD declaration (2008) these are:

¹⁰ http://www.cyberport.com.hk/cyberport/en/home/about_cyberport/

- Openness (Assume openness as a default rule for all funding models; define limitations (privacy, security, etc.))
- Transparent access and reuse conditions
 - Non-discriminatory competitive access, limited restrictions, eliminating exclusive arrangements
- Asset lists
 - Awareness, easy to find, clear information on conditions
- Quality
 - Methodical collection, reliability, cooperation
- Integrity
 - Best practice management, no unauthorised modification
- New technologies and long-term preservation
 - Interoperability, multiple languages, technological obsolescence
- Copyright
 - Exercise to facilitate re-use including 3rd party holders
- Pricing
 - When not free, pricing must be transparently and ensure competition. Should not exceed marginal costs of maintenance and distribution. Any higher pricing based on clear policy grounds
- Competition
 - Pricing and unfair competition, cross-subsidisation, downstream equality where comparable
- Redress mechanisms
- Public private partnerships (e.g. for digitisation)
- International access / use (harmonisation, interoperability)
- Best practices (share widely, information exchange)

From this extensive list of recommendations that governments need to consider when formulating PSI policies, and given the complexity of the tasks, it is clear that no single government agency in Hong Kong could deal with all the different aspects. Developing a public information re-use law would either require a cross-departmental working group or a new agency dealing with all aspects of the new policy.

In the UK the newly formed Office of Open Public Information serves as regulator for public sector information re-use, provides asset lists, and also advises users on charging, licensing or the data standards that public sector information is provided in. In Finland, the Ministry of Transport and Communications is responsible for PSI re-use policy issues. Each country has its own information policies and laws relating to the public domain. Policies must adapt to the new environment, instead of being caught up in the changes. Which regulatory body should be

responsible for overseeing all aspects of PSI in Hong Kong? This question itself is part of the development of a comprehensive public information policy.

3. Discussion and Conclusion

PSI is currently one of the most promising areas of public-private innovation, and advanced knowledge-based economies in EU and OECD members states have taken the lead in the economic exploitation of public information to increase innovation. While many Asian countries (apart from Japan and Korea) are lagging behind in their public information policies, not only because of generally lower information society rankings, but also because of low adoption of FOI laws, Hong Kong could potentially become one of the strongest economies in creating value from open information access and market given the territory's general belief in the open economy.

InvestHK, the Hong Kong government's agency for foreign investment continuously names "free flow of information " as one of Hong Kong's strength, even though it only refers to freedom of speech, not to freedom of information¹¹. Both are vital for knowledge-based economies, and both are vital for leveraging the economic power of public information. Compared to other information societies in the same league, Hong Kong is an open economy with rather restricted public information laws.

Not only are public information laws restricted, but there is also a low awareness about the potential information disadvantage for future economic development of Hong Kong, as well as a low awareness about PSI across most government agencies, in the business sector and the general public.

The digital age requires new thinking about the value of information is required. The paper argues that FOI and PSI are the building blocks of government information in the digital age. At policy level, these developments towards an open information environment require a complete shift in thinking about the role of government practices, legislation and mindset. While PSI re-

¹¹ http://www.investhk.gov.hk/default_bodies/whyhk/en_freeflow.html

use legislation is necessary to help create value from public information assets, FOI gives citizen the right of access to information.

Given the history of the discourse on Freedom of information in Hong Kong from the mid-nineties until present which has made little progress over the years, it may be worthwhile to explore the economic side of free information access. The initial research question on whether a country can exploit PSI but ignore FOI looks like a pragmatic option for Hong Kong, however, it does not create a legal basis for public information re-use. Without such a basis, creating new business opportunities from public information assets is a risky investment and may limit the capacity to innovate for information and knowledge-based industries and companies in Hong Kong.

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