Developing a unified rule for openness: Interview with Alek Tarkowski

RICHARD POYNDER

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Twenty years ago the European Organisation for Nuclear Research — better known as [CERN](#) — [published a statement](#) that made the technology that underpins the Web available on a royalty-free basis. By making the software required to run a web server, along with a basic browser and a library of code, free for all CERN paved the way for a revolution in innovation and creativity.

As a result, the Web has impacted the world in many varied ways — not least by generating a stream of new products and services, and by allowing the creation of a multitude of novel new ways for sharing information and knowledge, and on a global basis.

It has also seen the emergence of an accompanying flood of free and open movements committed to promoting greater sharing of ideas and content, and for increased transparency and civic participation in organisations, in communities, and in government. We have seen, for instance, the emergence of the [open access](#), [free and open-source software](#), [open data](#), [open science](#), [open politics](#), and [open government](#) movements.

And to facilitate the free flow of information and creativity enabled by the Web, [Creative Commons](#) was founded, and tasked with developing new-style licences to make sharing as frictionless as possible.

Initially these movements were bottom-up, citizen-led developments. More recently, governments have become interested in greater openness and sharing too, and begun to encourage and even require it, particularly where resources are created from public funds. Thus we have seen the US National Institutes of Health ([NIH](#)) introduce its [Public Access Policy](#), the EU introduce its [OA Policy](#), and we have seen the proposed [FASTR Act](#) and the recently announced US [Open Data Policy](#).

To date, these top-down initiatives have tended to be piecemeal, and invariably focused on one type of public resource — e.g. publicly funded research or government data.

At the end of last year, however, a new bill was proposed in Poland that would aim to adopt a more joined-up approach to the openness of public resources. If enacted, the [Open Public Resources Act](#) would provide "a unified rule for as large a part of Poland's public resources as possible", says [Alek Tarkowski](#) an activist for greater openness in Poland.

Given its radical approach, the proposed bill has attracted a good deal of criticism, and it remains unclear how — or even whether — it will become law. If it does pass, says Tarkowski, it will doubtless be watered down in the process.

Whatever its fate, the proposed bill raises some interesting and complex issues. As such, it is worth reviewing its aspirations and objectives, and the nature of the criticism it attracted. In order to do this I conducted an email interview with Tarkowski recently, which I publish below.

Tarkowski was a member of the [Board of Strategic Advisors to the Prime Minister of Poland](#) that drafted the initial concept of the proposed bill. He is also the director of [Centrum Cyfrowe Projekt: Polska](#) and co-founder and Public Lead of [Creative Commons Poland](#).

Alek Tarkowski

The interview begins …

RP: Can you say who you are and what organisation you represent?

AT: I'm the director of [Centrum Cyfrowe Projekt: Polska](#) and Public Lead of [Creative Commons Poland](#).

Centrum Cyfrowe works for social progress by means of digital technologies. All our projects share a common goal — openness (which means to us accessibility and the freedom to use and re-use resources), the sharing of knowledge and the promotion of cooperation on the basis of shared resources.

Our current work concerns open education, open NGOs, openness of public resources but also copyright reform. We work in the fields of open education, open government, open access, and we manage projects in the spirit of a "think and do tank".

RP: What is implied by "think and do tank"?

AT: Not only do we analyse and diagnose reality, but we also try to influence it. That is why we deal with public policy, educate, conduct research, and build software tools. Our line of work supports other public institutions and NGOs. We're building digital bridges between people and institutions.

A premise for a bill

RP: Last December a [proposed bill on Open Public Resources](#) was proposed in Poland. When was the draft text published, and what process does it have to go through before it can become law?

AT: The proposal was published on the 28th of December 2012, following over a year of preparatory work.

In Poland the legislative process is as follows: an institution first prepares draft "assumptions", a premise for a Bill if you like. This is just a general description of the proposed law, a declaration of intentions together with the rationale for it.

It is then consulted upon internally, and with the public, after which a draft bill itself is prepared. The assumptions don't provide the specific language of the Bill.

RP: So it was these "assumptions" that were published last December. Who wrote the draft and did you and/or your organisation provide any input? If so, what kind of input?

AT: The proposal was the product of quite a long process that included a series of meetings and consultations that were conducted before the official legislative process of a new bill started.

Work on the draft begun within the [Board of Strategic Advisors to the Prime Minister](#) and was led by its head, [Michał Boni](#). I participated in the process as a member of the Board, together with another member, [Igor Ostrowski](#). At that time we came up with the initial concept of a bill that would be similar to regulation of public sector information (PSI), but would apply to other types of public content to which PSI rules do not apply in Poland (PSI regulation was being amended at that time as well).

Work on the Bill had been ongoing since 2011 in the new [Ministry of Administration and Digital Affairs](#), in which Michał Boni was the Minister, and Igor Ostrowski was the Vice-Minister responsible for this Act, until he left office in autumn 2012. At that time I supported the Ministry as an advisor.

RP: I understand that Poland was [referred to the EU's Court of Justice in 2010](#) over the incorrect implementation of an EU Directive on the re-use of public sector information such as digital maps, meteorological, legal, traffic, financial, economic and other data. Is this proposed new legislation partly an attempt to address that referral, or is it a separate initiative?

AT: Poland initially argued that it does not need to implement the re-use directive, as sufficient regulation is provided by the access to public sector information rules. Ultimately, however, the Act that regulates such access — the [Act on Access to Public Information](#) — was amended to include re-use rules and to provide an implementation of the Directive in line with EU requirements.

The Act on Public Resources is a separate initiative, but designed to complement the Act on Access to Public Information — which in Poland excludes content held by educational, scientific or cultural public institutions.

The new bill is meant to provide a similar open framework for making these works accessible and available for re-use.

RP: As I understand it, the draft text of the proposed new Bill distinguishes between public sector information, public resources and public information. As you said, the Bill itself aims only to deal with public resources. But can you clarify what is meant by these different terms?

AT: "Public information" is the term we use in Poland to describe what is in other countries called public sector information, and the two terms more or less overlap.

The major challenge lies in defining the relationship between public information, as defined in the [Act on Access to Public Information](#) (which itself is grounded in the Polish constitution and a constitutional right to information), and public resources, to which the new Bill would apply.

There are some types of content and spheres of public administration which are explicitly not covered by the regulation of public information. These include most of the content funded or produced by public educational, cultural or scientific institutions.

But there are also examples of such content that might as well constitute public information, which raises the risk of creating new access barriers to such information – by establishing two parallel regimes that might apply to a single work. The Bill of course assumes — rightly — that rules for access to public information take precedence over the rules enforced by the new Bill.

However, the current proposal does not solve this issue. Some commentators argue that it would be simplest to consider all this content public sector information, and that the current definition is broad enough to allow such interpretation. This is of course very controversial to those that fear an overly open regime for making public works available.

Scientific, educational and cultural material

RP: Essentially, the Bill would cover publicly funded scientific, educational and cultural material. Presumably that would include research papers and research data, but can you give me some examples of the other types of content that would be impacted, particularly in the field of cultural products (which perhaps are not generally publicly funded?)?

AT: With regard to science, it would mainly cover research publications (articles, possibly books), plus higher education textbooks.

With regard to education, it is important to note that the Ministry of National Education recently started funding public textbooks (previously they were all commercially produced). These books are already made open (in a strong sense, with the use of free licensing), on the basis of a lower level regulation that mandates the openness of content in a single educational program known as the "Digital school" program. This program is actually a big thing for us, as there are very few national level open e-textbooks projects in the world. Last year the Ministry of Education declared a willingness to extend this rule to other types of content – we're hoping that next steps will be made this year.

The Bill for Open Public Resources would also open other types of educational content funded by the Ministry of Education through a number of different projects.

With regard to culture, the Ministry of Culture and National Heritage funds (directly or through its agencies) quite a lot of cultural content. This includes movie production, literature, musical works, and scripts of theatre plays, for example.

RP: You did not mention scientific data. The legislation would cover that presumably?

AT: Since the Act is supposed to regulate content that is already made available in some way, instead of creating new obligations, data would most probably not be covered. Though to be honest, the proposal did not analyse in such detail specific types of content, so there is the possibility that research data would be made open as well.

I think that the Ministry of Science and Higher Education should start with either a voluntary or a pilot program (as part of a limited range of funding sources) that concerns open research data. If successful, this should be followed with appropriate regulation. In general, the legislative process lacks support in the form of an action program that could include pilot initiatives, education and outreach, etc.

RP: The legislation would therefore apply both to resources that have been publicly funded and resources that have been produced by a public institution?

AT: Indeed. In Poland, for example, scientific journals are heavily subsidised by the Ministry of Science and Higher Education — their content would be made open. And as noted, the rules would potentially also apply to things like public television and radio content, movies co-funded with public funds, or the public textbooks that the Ministry of National Education recently began funding.

RP: Some of the content encompassed by the Bill would be hard to define perhaps?

AT: Yes, the diversity of this content poses quite a challenge if one tries to understand how the rules of openness will work. There are also situations where not the work, but its performance, is funded, which sometimes generates its own copyright, further complicating matters.

Taking into account this fact and the criticism expressed during the consultations, I'm expecting the Bill, if it passes, to apply to only a narrow category of cultural works. Hopefully, it will at least clarify the issue of public domain works and make them openly available, which today is not always the case. But I see the chance of it regulating quite successfully the fields of science and education.

So as you say, a real challenge with this regulation is that, apart from obvious information like public scientific journals, there are many types of information where the situation is less obvious. To give one example, it is difficult to enforce openness on a foreign language publication where the translation into Polish was publicly funded.

The solution to this proposed in the draft Bill was to introduce tiered levels of openness, together with the option to fully opt-out. Embargo periods were also proposed — leading to a unified but at the same time varied rule of openness.

There is, however, also a question mark over partially funded works. Some believe these should not fall under the regulation; others have proposed there should be a designated minimal funding level (for example 50%) above which the rule would apply for a given work.

But in general, any work that is produced by a public institution, or funded by a public source, would need to be made open under the proposed Bill — although the decision over to what extent content would be made open would be left to the public institution that created or funded the content. I would add that supporters of the idea of openness of public resources, including me, believe that these mechanisms, while obviously needed as "safety valves", would most probably be abused by institutions unhappy with the idea of opening "their" content. It seems crucial to define minimal standards for these types of works, in the case of which there is no doubt that they should be open.

What's more interesting, critics ignored these proposed mechanisms, portraying the Bill as an attempt at a wholesale taking away of all creators' copyrights by the state, based on a simple yes / no decision. Which of course was not true.

Criticism

RP: Can you say more about the criticisms levelled at the Bill?

AT: The issue of opening up cultural resources was the most controversial aspect of the Bill, since it became framed by artists' representatives as an attempt to rob them of their money, of royalties (which in Poland for older artists often plays the role of a pension — since they did not have stable jobs, they do not receive public pensions the way most Poles do).

Thus much of the discussion focused on the issue of acquisition of rights, instead of the way the works would be made available — which initially seemed to me more controversial. Indeed, the idea of acquiring full rights or a share of rights is controversial, although it does give public institutions security with regard to the rights they own. The alternative, a requirement for open licensing of the works by rights holders, without giving away the rights, is in my opinion a better solution.

It is worth stressing that this criticism relates to only a fragment of the public resources that exist: cultural works funded by public institutions. There is a large body of educational and scientific content, or works created by the institutions themselves, with regard to which the proposed legislation seems non-controversial, judging by the consultations.

RP: Are you personally satisfied with the draft text as it was published?

AT: While I support the general direction proposed by the draft proposal, it needs to be stressed that the assumptions are imprecise with regard to key proposals and not of the highest quality. This only fuelled criticism by opponents of the Bill, and even supporters of the concept were inclined to be mildly critical of the particular proposal.

RP: You said that there would be tiered levels of openness. Can you say how it is envisaged that this would work? Would it simply mean that different types of licences would be used depending on the degree of openness decided upon?

AT: The Ministry proposed a tiered model that includes:

1.   "Full openness" which implies a free license, for example [CC BY](#)
2.   "Partial openness", which implies a license with a [NonCommercial](#) limitation
3.   "Open Access", which implies making the resource available without any licensing

As I said, the bill would also include an embargo mechanism and an opt-out option. So this in practice means choosing between gratis Open Access, libre Open Access, and an in-between solution.

RP: So when you say that open access means "without any licensing" you mean making a resource available for viewing only ("[gratis OA, as opposed to "libre OA](#)"), without any reuse rights? Or could it involve putting content into the public domain (using, say, the [Public Domain Mark](#)?).

AT: In Poland, the law does not allow the owner of rights to place a work into the public domain. This has been an issue raised by advocates for copyright reform and openness for years. So the lowest, "Open Access" tier means simply gratis OA.

In fact, the tiered model is at the heart of the debate on the Bill — everyone has a different opinion about how it should work. Supporters of openness are against the 'partial open' tier, and suggest either opening works fully, or making them gratis OA; they also criticise the opt-out clause.

Opponents by contrast obviously prefer all the partial mechanisms, but somehow decided to disregard the opt-out clause. Certainly the tiered mechanism has been disregarded in the public debate. As I said, opponents manage to frame the Bill as a "zero / one" blunt mechanism.

As a side note, this is the case of a regulation that — in an attempt to provide a rational, tiered approach — becomes in effect very confusing. There is a high risk that public institutions charged with choosing between the tiers would therefore be unable to make the most appropriate decision. And they would most probably default to the least open, and thus least controversial or burdensome, level.

I would prefer a much simpler model, offering choice between gratis OA and libre OA, with embargo periods to enable commercial exploitation of certain works.

RP: Can you say something about how it is envisaged the opt-out would work?

AT: The institution that either created or funded a work can opt out; and it can decide to fully withdraw from the openness mechanisms. An opt-out option does make sense strategically, as this is a new regulation and it needs to have safety valves. But in my opinion this mechanism requires proper oversight against abuses.

The proposal also includes a general rule suggesting that education and science should opt for higher levels of openness, and in the sphere of culture more moderate measures should be applied.

RP: In [the comments on the Bill](#) you sent to me you suggested that the embargo option proposed would make it possible for public institutions to delay openness for up to 7 years, thus creating an opportunity for public institutions "to avoid in practice the goals of this regulation." You added, "This presents a risk that the actual change will be insignificant, because institutions will use available exemptions from the principle of openness and ultimately will not share resources with the public." And you said earlier that as a result of the opt-out an institution "can decide to fully withdraw from the openness mechanisms". Some might therefore conclude that if it became law the Act would be toothless. Would you agree?

AT: Yes, potential problems with the embargo mechanism are similar to those that I mentioned above with regard to the opt-out rule. The issue is that without such mechanisms, a general rule for openness of public resources would probably be too disruptive. But with them the regulation might in practice not work at all. A key issue is that of trying to balance these elements.

I think that one additional element that's needed is some form of oversight. Ideally this would be by means of a governmental agency tasked with supporting the introduction of the rule of openness.

Such an agency could combine the roles of being an independent regulator and a centre of competence — openness needs to be learned by institutions.

There are examples of similar regulatory bodies that oversee access to public sector information. The current proposal unfortunately does not envisage such an element.

Copyright

RP: The agency idea sounds similar to the UK's [Information Commissioner](). But on the issue of copyright: I assume that much, if not all, the target content would automatically be copyrighted the moment it was created. As such, the Bill would seem to imply a need for copyright reform. Yet I am told that the [Copyright Act]() is not mentioned once in the proposal. How would the Bill navigate the IP minefield?

AT: Copyright issues arise mainly with regard to providing the right to re-use content. The draft proposal assumed that free licensing will be used to allow re-use, and thus copyright reform would not be needed.

Similarly, the rights acquisition model was made to fit the current law. This initially seemed an advantage, since the [Ministry of Culture]() —responsible for copyright issues in Poland — seems averse to any significant copyright reform.

However, we currently believe that the correct way to introduce an open model for public resources does necessitate copyright reform. It should be based on the compulsory free licensing by rights owners, and for this to fully work some reforms would be needed.

Additionally, Polish law should finally allow the transfer of works into the public domain, which could also be used in the case of some public resources.

The Ministry of Culture, for obvious reasons, has a bias towards cultural works and the sphere of culture and heritage in general. It also seems not to take into account that copyright is a cross-sector regulation that's crucial also for science, education and other areas. In my opinion such a broader perspective would make the need for copyright reform much more explicit.

RP: In a [blog post]() published in January Tomasz Targosz, an IP specialist at [Jagiellonian University Kraków](), commented that in reading the proposal he several times wondered to himself, "whether any trained lawyer had actually read it before it was posted online." Is this a weakness of the proposal in your view?

AT: The proposal is clearly faulty with regard to specific measures, especially some of the legal solutions. Unfortunately this has made it more difficult for supporters of the policy to defend the Bill and its premises.

However, I think that it's just as important to notice the merits of the proposed regulation — and in particular the willingness of the Polish state to think in terms not just of an obligation to make publicly funded content freely available, but available for re-use too.

RP: I believe there is also provision in the proposed Bill for charging a fee for access to public resources. Can you say something about this, when it would be applicable, and how it might operate?

AT: The provision is vague, and is in any case an option for charging fees solely for commercial uses. In practice this could work in a similar way to the way fees can currently be charged for

access to public information (limited today in Poland to processing fees). But I am hoping that ultimately fees will not be introduced.

A similar debate over fees for access or reuse of public information ended with a system that allows free use. I think that a comparable rule should apply to content that will be regulated by the new bill.

RP: The draft proposal also discussed how open resources could be made available using a system of online repositories. Can you say something about this, and how practical an idea you feel it to be?

AT: The Bill proposes to use, where possible, existing repositories. The Polish repository system is not fully developed — we have a good network of digital libraries, but most of them don't play the role of repositories. Some are currently being developed, like the national scientific repository network Synat for instance. We will have to see how they function and whether scientists will use them first.

Repository systems for cultural works are also being developed. Repository infrastructure is now a well-developed technology and should not pose a challenge. Of course it is hard to predict how the roll out of such a system, and its adoption by users, will work out.

Leader?

RP: The proposed bill is certainly novel. Commentators have said that if it became law it would be unique legislation and Poland would therefore become a leader in the openness movement. Is that view? If so, what would you say it is about the proposed law would make it so different to what is currently being done in other countries?

AT: To my knowledge there aren't too many national-level policies mandating that public resources are made open. (The American NIH Public Access Policy, or the EU FP7 regulation are rare examples).

For this reason, any Bill-level regulation that introduced openness would be quite unique in my opinion. So Poland is at the forefront of such initiatives, alongside such countries as Brazil or Romania, where similar rules for educational or scientific content are currently being discussed. There is of course also the example of the American FASTR proposal.

What is unique about the Polish proposal I would say is that we are trying to introduce a unified rule for as large a part of Poland's public resources as possible. In doing so, we looked to some of the Commonwealth country models — e.g. AusGoal, NZGoal and the British Open Government Licence — for examples of such regulation. These all provide a broad framework for making public content openly available.

But our approach was to create a unified regulation for areas of science, education, and culture (only recently I found out that even in Australia / New Zealand, although the framework in theory applies to all public content, in practice it does not deal with cultural works).

With regard to science I would say that if it passed the Bill would make Poland quite progressive; with regard to education it would place us among several leading countries; and with regard to culture we would probably be entirely unique. Critics actually raise this argument, saying that we are experimenting unnecessarily, and going in directions no one has gone before.

It is also worth mentioning that we view the Bill as a supplement to access to Public Sector Information rules (e.g. the American FOIA). These do not apply to the three areas mentioned above.

In short, the goal was to create a unified system able to provide similar accessibility to public resources as is currently possible with public information — which in Poland, after a recent reform

of the law, can be accessed openly, without fees, and on a reusable basis. That is quite progressive.

RP: How has the Polish government responded to the criticism of the proposed bill?

AT: As a result of the criticism, the Ministry of Administration and Digital Affairs — which proposed the Act — withdrew a little. The work on the Bill is continuing, but it seems likely that the Ministry will rewrite the proposal and rethink the general concepts.

One thing is clear: the Ministry is no longer talking about culture, but cultural heritage — which means a shift towards mainly public domain content. This is not as controversial as, for example, publicly funded contemporary movies.

RP: I assume that some of the criticism the draft proposal has attracted reflects a concern that the Bill may be an attempt to treat incompatible things as if there were compatible. As I believe the draft acknowledges, opening up access to public resources is different to enabling freedom of information. Perhaps one could also argue that opening up a range of different resource types requires a range of different approaches. For instance, making government information open in order to provide the transparency citizens need to ensure their government is accountable is very different to opening up science data to allow other scientists to check research findings and reuse the data.

More specifically, some believe that OA is not (today at least) about re-use and CC licences (as I think the draft proposal assumes). In fact, some OA advocates argue that seeking to provide anything other than "eyeball access" to research papers today will serve only delay the day when OA becomes a reality. (As [Stevan Harnad](#) [puts it](#), "First things first: Don't let the 'best' become the enemy of the 'better'). Do you think it is really possible to provide a unified approach in the way the draft Bill tries to do, particularly given the different types of content it seeks to encompass, and the different aims and objectives for seeking to provide greater openness?

AT: I believe that there is a big difference between access to public information — based on a well understood basic right to information and the need for transparency of public institutions — and access to other types of public resources.

But access to scientific, educational or cultural works in my opinion is based on just as important a right to knowledge, which is more and more often recognised today. So the regulation needed might be slightly different, but the fundamental rule of openness should be the same.

It is also worth mentioning that sometimes this division gets very fuzzy — for example open data, with its large potential for reuse, is a type of public information that often satisfies the right to knowledge.

In Poland, critics of the regulation mainly point to the differences between culture and other fields. But this is rather a difference of funding regimes — or more broadly speaking associated flows of money — and their consequences. For example, artists in Poland count a lot more on royalties than do scientists. But in my opinion, as long as we don't strive for a "one solution serves all content" regulation, one can provide a general rule of openness of resources as well as some variety to account for the differences.

With regard to "eyeball access", I think that after a decade of treating the "libre" part in Open Access as just an option, it Is high time to include re-use rights as a necessary element of Open Access. In this regard, the American FASTR proposal, with its incremental introduction of re-use, is an important step in the right direction.

We need to keep in mind that re-use can be achieved not just through free licensing, but also through appropriate exceptions and limitations. These are harder to introduce than voluntary licensing, but provide a possibly stronger warranty of openness for re-use. A debate on this matter

is currently taking place in Europe alongside the "Licenses for Europe" process,[1] and many involved experts are looking closely at the work already done in the United Kingdom, where such an exception to copyright has been proposed.

RP: In his blog post Targosz, said, "As the Polish attempt seems to be one of the first of its kind, certainly in the EU, insight from other countries could perhaps help to make it better and consequently to have a model law for the rest." Given what both you and Targosz say about the problems in the wording of the draft Bill would you agree that it would be helpful to get input from other countries? If so, what experience/expertise do you think they could be brought to bear on the Bill? And who could provide it?

AT: To reiterate, the Bill as a whole can be seen as the first of its kind in Europe — but some key elements, such as Open Access models, are well developed in other countries. I mention this because the Bill should not be seen as an oddity. Other elements, like the existing open e-textbooks regulation are novel, and I think the Polish government should be proud of leading the way in this.

I think that the Bill should be supplemented with a broader program, one that includes mechanisms other than regulatory ones. We simply need to test how open publishing of open content works in practice — through pilot schemes, experiments, even training and outreach towards key stakeholders. Such a program could follow the example of similar foreign schemes.

I would also very much like to see the European Union investigate the possibility of developing a unified regulation. Elements of such an open rule are already in place — there is the successful Open Access pilot that is now being extended, there is OER [Open Educational Resources] regulation planned in the new educational strategy, and moves are being made to release heritage and cultural works. The time is fast approaching when all these elements are treated just parts of a larger picture.

Larger picture

RP: OK, let's consider the larger picture. In your commentary on the Bill you say that it points to a "changing approach to defining public information. Traditionally defined as 'information about public affairs', today it also includes 'information made with public money or owned by public institutions,' such as public data." You add, "The Bill can be also regarded as an application, on the statutory level, of the open model postulated by proponents of free culture, open education and open access. These models were initially implemented from the bottom up — in the case of science by scientific journals or institutions, in the field of education by teachers and non-governmental organizations, in culture by the creators. In the last several years it became increasingly clear that the idea of openness fits well within the public service mission of ensuring the availability and use of public resources, especially with the help of digital technology. The Polish Bill is an expression of this approach, in which public institutions enforce top-down regulation of openness."

Would you go so far as to say that we are beginning to see a new kind of society and/or economy emerge from the networked world, or at least a new way of managing societies and/or economies? If so, what are the benefits and what are the potential drawbacks you see arising from this development (e.g. in terms of greater accountability versus less privacy or, say, greater innovation coming at the price of significant damage to or destruction of traditional businesses and industries)?

AT: I think that in the longer term we will start to see a unified approach to openness of public resources emerge.

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[1] As evidence of the complexities of the issues we could note that the text and data mining (TDM) component of Licenses for Europe has recently run into difficulties, with Stakeholders representing the research sector, SMEs and open access publishers withdrawing from the initiative over what they describe as an attempt to impose a regime of "double licensing". [RP]

Today there are different regulations for public sector information, different ones for Open Access in science, different ones for public domain heritage, etc. But we see connections being made between them — for example, the European Commission is introducing access to heritage into its Public Sector Information (PSI) regulation, and Commonwealth countries are putting in place unified licensing frameworks (they do not apply yet to all types of content, but potentially could). Arguments are being made that educational or cultural resources have a potential to generate added value just as public data does.

Proponents of full openness point out that such blurring of boundaries sometimes means that the common denominator leads to less optimal rules of openness — but I think that in the long run such optimal rules will be established.

What for me is crucial is firstly to establish solid conceptual underpinnings — such as the right to knowledge that some have postulated.

Secondly, it is crucial to provide evidence that openness indeed pays off — by for instance proving that removing public monopolies on content can provide economic efficiency. In order to achieve this, we need both more experiments and more time.

Thirdly, I think that it would be foolish to assume that traditional content production and distribution models can be immediately replaced by new ones. I don't think that's the case, and while in some fields open, public content can mean the disappearance of certain business models, it's just as important to look for symbiotic models, such as those that function within the free software community or are being developed within the Open Access community.

Finally, I would say that one of the greatest challenges concerns privacy protection. Research shows that even non-personal data can be used today to mine for personal information. While I hope that in the longer time frame openness of content will become the norm, without well designed and strong protections of private and sensitive data open content will not serve our societies well.

RP: You say there is a need for symbiotic models such as those within the free software community and those being developed within the OA community. However, I am conscious that there is some scepticism about such an approach, and I detect a growing concern that the various open movements are in danger of being appropriated by commercial interests. I think that was the thrust of Evgeny Morozov's recent critique of Tim O'Reilly (in which Morozov claimed that O'Reilly has been instrumental in side-lining the free software movement, and that O'Reilly's vision of open government — or government as a platform — "treats citizenship as if it were fully reducible to market relations").

Meanwhile, there are concerns in the OA movement that openness is coming at too high a price. You said that there are not many national-level policies mandating openness of public resources, but on April 1st this year Research Councils UK (RCUK) introduced a new OA policy in which researchers have been told they should "prefer" Gold OA. As a consequence, they are expected to pay publishers to make their papers freely available. This, critics complain, will enable traditional scholarly publishers like Elsevier, Springer and Wiley to continue making the very high profits out of taxpayer's money that led to the serials crisis — by levying exorbitant article-processing charges. There was also outrage when it was announced that Elsevier (which has sought to derail the OA movement by lobbying against it, and which has been boycotted by some researchers for this and for its pricing policies) had acquired OA reference manager Mendeley.[2]

Do you think there a danger that the various open movements could be appropriated by commercial interests, thereby undermining the aspirations that led to their creation? Or is it simply that some advocates for greater openness naively thought that they could ignore

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[2] More recently, Elsevier has been accused of seeking to profit inappropriately from Open Access funds provided to help UK universities make the transition to OA.

economic reality? Is it time for them to accept that it is sufficient that more information is made more openly available, and that political and economic change should be sought by other means?

AT: I believe that public resources, being a common good, should in principle be available under the same, non-discriminatory rules to citizens, non-governmental organizations and commercial entities alike. This is the basic rule introduced in the amended Polish PSI regulation: that both civic, non-commercial and commercial uses are free. I also agree with arguments made about the economic potential of public resources, seen as raw symbolic material upon which added value can be created.

The argument about commercial appropriation of open public resources has been made in Poland as well — though in the radical form of a smear campaign seeking to portray supporters of openness as in fact corporate lobbyists. A prominent commentator suggested that the Bill's main beneficiary will be Google. I think that such an argument, which reduces civic activity to just a hidden form of corporate interests, is very dangerous for democracy.

But I can see how we could ultimately achieve a state of imbalance, if the public resources, envisaged as a common good, become in fact free content for corporate use. Maybe we need to think more in terms of public-private partnerships, and try to define a set of obligations for the users of public content. Free licenses are not good tools for this, with the copyleft rule being the only such obligation available.

This is another reason why supportive programs are necessary if legislative rules for openness are to be introduced. It's quite possible that broad reuse of content will not happen on its own, that it needs to be supported and nurtured.

I ultimately believe that the rule of openness should not be judged by its outcomes related to reuse — I think that it is an obligation of public institutions in a knowledge-based society to make symbolic content available. It should be treated as a new type of public infrastructure, a symbolic one. Reuse rules are a different issue — with regard to them I would prefer some form of reciprocal mechanism introduced for commercial use, rather than limitations.

RP: OK, a final question then, returning to the proposed bill: What is the envisaged timetable for the Bill and, if it were to become law, when would this likely be?

 AT: There is no set timeline for the legislative process once the draft assumptions are published.

The public consultations ended on the 5th of February and were quite intensive, with over 60 organisations providing official comments as part of the consultations, and almost 200 comments published on the public "Mam zdanie" consultation platform.

The consultations were limited to a narrow circle of stakeholders interested in the issues (collecting societies, artists' associations, business chambers of commerce and related bodies, NGOs, plus some individuals). But a broader public debate ensued in the media (newspapers in particular), with at least a dozen articles on the subject being published during the consultation period.

We are now waiting for the Ministry to make the next step, by presenting either a response to the comments or a new version of the assumptions of the bill.

RP: Thank you very much for speaking to me.