

Via post and email: pubinfo@cec.bc

European Commission
Attn. Mr Huber
Head of Unit DGX111/E-1
Batiment EUROFORUM
Office 1174
Rue Alcide de Gasperi
L-2920 Luxembourg

27 May, 1999

Dear Sir,

Public Sector Information: A Key Resource for Europe COM (1998) 585

Please find attached a commentary prepared by ICIA in response to the above Green Paper. The Information and Communication Industries Association (ICIA) is the trade body in the UK representing information services, systems and service developers, and database and internet service vendors. This commentary arises from a UK industry Town Meeting held with MIDASNet support at the offices of Reuters plc, though the views expressed are those of ICIA and not of those organisations.

ICIA regards this as a subject of the greatest importance. Members have been involved in this debate in the UK for 15 years, and in Europe for 10 years. Action in this area will, we are convinced, help materially to release information marketplace energies that are critically necessary to ensure the competitiveness of the European Information industry in global marketplaces.

We believe that the Green Paper asks the right questions in the right way, and we stand ready to take part in further consultation exercises if and when required.

Yours sincerely,

David Worlock
Chairman

Q 1. *Which definition of public sector is the most appropriate in your view?*

What categories of public sector information should be used in the debate?

A 1. The appropriate definition of the public sector is that given in the WTO (World Trade Organisation) regulation. This definition extends coverage to all functions carried out on behalf of the state.

Q 2. *Do different conditions for access to public sector information in the Member States create barriers at European level?*

If so, what elements are concerned: requirement of an interest, exemptions, time, format, quantity?

What solutions can be envisaged?

A 2. There is a widespread recognition that different conditions for access to public sector information do present real barriers to commercial re-use in Europe. These barriers are important at the national level throughout the Union, where information providers and integrators in some states have a clear appreciation that they must work under stringent national conditions which are not applicable in other member states or in regard to information created by the institutions of the European Union itself. These barriers are even more important to the European level, where the mastery of all of the divergent national regulation is a formidable hurdle to the creation of commercial re-use of similar data derived from each member state. Even when the regulatory framework has been overcome, information companies are now acutely aware that the costs and fees of such re-use are widely variable, ranging from free re-use to high level fees and royalties for the same data from different states.

It has long been recognised by the information industry in Europe that these barriers set them apart from their peers in the USA. The industry believes that an inability to effectively re-exploit information initially created for statutory or administrative purposes is a contributory factor in slower growth rates experienced in business-to-business information market growth in Europe. Perhaps worse, the disincentive to creating integrated union-wide databases does not allow trading decisions to be as fully supported by process-relevant information as they should be, and publishers of directories and company information products have been frustrated in their attempts to obtain information in a timely or cost effective way, or, in some states, to obtain information at all where that information is vitally important to the creation of Pan-European information systems needed to make cross-border trade as effective as

possible. If this situation exists at such a basic level, it can readily be imagined that it exists even more powerfully within vertical market sectors, in many of which government in its regulatory or taxation role is a prime collector of non-sensitive commercial data.

ICIA believes strongly that information released for commercial re-use provides positive benefits for citizens in Europe where it increases transparency and better supports trading activities within the Union. Exceptions should be kept to a minimum and need to be harmonised between member states. Information format is less important, but as governments participate in increasingly sophisticated information handling techniques, it is to be hoped that the digital transfer of information in formats compatible with industry standards will become ever more prevalent. Information should always be introduced in a timely manner, and preferably as soon as possible after updating. Where exemptions are contemplated they should normally be limited to state security and personal privacy. Some exemptions where commercially sensitive information is provided to governments on a commercial-in-confidence basis could also be contemplated. Administrative convenience can never be grounds for the non-release of information, and a refusal to trade should never be a response to a request to a government department for commercial re-use.

Despite the 3-5 year time span required for legislation in Europe, ICIA believes that fast-track legislation is needed as the remedy for this problem, in order to create minimum standards for trade in public sector information in Europe. The principle of subsidiarity, in our view, does not apply at this level. Our experience of UK attempts to regulate by guideline (1985-7) and parallel attempts in the European Union in 1989 have demonstrated to us that administrations are impervious to this type of advice and guidance regime. Only standards supported by the force of law will satisfy the requirement at this stage.

***Q 3.** Could the establishment of European meta-data (information on the information that is available) help the European citizens and businesses in finding their way in the public sector information throughout Europe?*

If so, how could this best be realised?

What categories of content should directories of public sector information resources contain?

A 3. ICIA regards the creation of metadata at the base level, and descriptive catalogues at an enhanced level as the best way to ensure that industry enterprises can quickly establish availability and the potential for

creating new pan-Union services or value-added products. Administrative departments of government could be asked to provide an outline of databases held, and common standards for metadata descriptions could be provided. The basic minimum categories are laid down in the UK White Paper “Future Management of Crown Copyright”. Practices in Australia, New Zealand and Canada are also relevant here.

Q 4. What bearing do different pricing policies have on the access to and exploitation of public information?

Does this create differences in opportunities for citizens and businesses at European level?

A 4. As we have indicated under (2) above, ICIA members regard differential pricing as a key barrier. In general, members believe that government should seek to recover the costs of making copies of information for private sector access and re-use. They do not believe that government should seek to create margins or cross-subsidise information collection through the imposition of fees or royalties. In some circumstances joint ventures between public and private sector bodies to exploit re-use of information resources will be appropriate, but these will be aimed at creating higher level value-added information products. The UK Government Treasury advice to departments on the exploitation of intellectual property assets applies here Wider Markets Initiative section 9.4. However, such arrangements should never undermine the non-exclusive availability of primary or basic information, and it should not be forgotten that most re-use of government-sourced information will be to create composite value-added information sources where public and private sector data together creates more complete answers than could have been available otherwise. In other words, the contextual value of government information is likely to be more important than its value in a disaggregated form. This implies that the re-using private sector entity has already invested considerably in database structure and content, and should not be expected to add public sector information to the mix of commercial prices, especially where the wider dissemination of the information concerned supports other policy initiative by government itself.

Critical to the success of regulation in this area is the ability of commercial re-users to find prices fast and with certainty. This is clearly not so at the present time.

The ICIA conclusion is that the cost principles laid down in the LAB (Legal Advisory Board) position paper at paragraph 21 and seriatim

state the position exactly, and the working model enunciated in section B of this paper accords well with industry thinking on the matter. We commend this view to the Commission.

Q 5. To what extent and under what conditions, could activities of public sector bodies on the information market create unfair competition at European level?

A 5. The ICIA are happy to see competition issues regarding public sector activities decided within the framework of rules established by Articles 85 and 86 of the Treaty. We re-iterate the points made above regarding cross-subsidisation and refusals to deal: these activities should be prohibited. Competition law rules should be used to tackle the powers of major information monopolies, including powerful parastatal agencies like the UK's Ordnance Survey or British Standards Institute.

Q 6. Do different copyright regimes within Europe represent barriers for exploitation of public sector information?

A 6. The ICIA are convinced that different copyright regimes do present a barrier to the exploitation of public sector information in Europe. While the argument of quality control is often put forward, not least in the UK White Paper, the evidence available from some 15 years of debate and argument in this area would seem to argue differently. We suggest that good administrative procedures coupled with strong private market demand are most likely to be conclusive to maintenance of quality standards, and that this is a self-regulatory process, with falling demand for inadequate or incomplete data.

Much government information is covered by the sui generis clauses of the Directive on the Legal Protection of Databases, rather than by copyright: Public domain rights are infinitely variable across the Union, and these in effect form a barrier all of their own.

Q 7. Do privacy considerations deserve specific attentions in relation to the exploitation of public sector information?

In what way could commercial interests justify access to publicly held personal data?

A 7. Data protection, privacy and commercial confidentiality are clearly issues of importance, but they should not be separately distinguished in this context from their general application in all walks of life. Exactly

the same provisions, including those currently being enacted in member states regarding privacy and data protection as a result of the directive on this subject, should apply in the field of government information and its release as they do in the private sector.

***Q 8.** To what extent are the policies pursued by the EU institution in the field of access and dissemination of information adequate?*

A 8. ICIA has consistently taken the view that third party integrators and disseminators cannot be held liable for errors and omissions in databases not constructed by themselves. Only data sources can accept such responsibilities, and, in this regard, where public sector institutions are themselves the data source they must be governed in exactly the same way as other (private) bodies. In other words, they must work within an evolving legal framework where warranties, disclaimers and liability insurance all have a place.

***Q 9.** To what extent are the policies pursued by the EU institutions in the field of access and dissemination of information adequate?*

In what way can they further be improved?

A 9. ICIA recognises that EU institutions are more advanced in this respect than many member states and applauds this fact. At the same time there is clearly some way to go, and a directive in this area would clearly redefine the role of the Office of Official Publications (OOP) for a start. The tendency of the EU and of member states to create data monopolies in privatised, semi-privatised, parastatal or other quasi-governmental information should be deplored. All organisations recognised as capable of information trading, in public or private sectors, should be seen as potentially subject to competition law considerations under Arts. 85 and 86.

***Q 10.** Which actions should be given priority attention at European level?*

A 10. ICIA seeks a directive as remedy in this area. In support of this recommendation ICIA points to the 1996 call by EIIA for a draft directive in this area, together with the arguments put forward in support of this. Further, ICIA references paragraph 96 of the LAB response to the Green Paper, and endorses the recommendations made there.

However, a Directive, even on the fast track defined by the LAB, will take time to enact. In the meanwhile ICIA strongly endorses the view

that the EU should produce, in the meanwhile, a manual of good practice for use in trading public sector information, which can be recommended to member states, and that every effort be made to re-enforce the existing guide lines (Guidelines for Public-Private Sector Synergy in the Information Marketplace) by turning them into a Recommendation. A further step forward would be a sectoral review by DGIV to examine the impact of competition law on state information monopolies.

ICIA believes that the debate on a Directive will energise EU member states on this issue, and that if the other actions recommended here are employed, then the current parlous situation would be considerably improved by the time that the Directive is enacted.