
Overview of US Federal Government Information Policy

US CODATA – OECD Workshop

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**Nancy E. Weiss,
U.S. Institute of Museum and Library Services
Washington, DC**

**Paul F. Uhlir, U.S. National Academies
Washington, DC**

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“Among the first, perhaps the very first instrument for improvement of the condition of the governed, is knowledge, and to the acquisition of much of the knowledge adapted to the wants, the comforts, and the enjoyments of human life public institutions and seminaries of learning are essential. “

John Quincy Adams

“A popular government without popular information or the means of acquiring it, is but a prologue to a farce, or a tragedy, or perhaps both.”

James Madison

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- Paperwork Reduction Act
 - Clinger-Cohen Act (Information Technology Management Reform Act)
 - Freedom of Information Act
 - Government Performance and Results Act
 - Privacy Act
 - Sunshine in Government Act
 - Federal Advisory Committee Act
 - E-Government Act
 - United States Copyright Act
 - Government Paperwork Elimination Act
 - Federal Procurement Policy Act
 - And so on
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OMB Circular A-130 – Considerations/Assumptions

- Government information is a valuable national resource. It provides the public with knowledge of the government, society, and economy -- past, present, and future. It is a means to ensure the accountability of government, to manage the government's operations, to maintain the healthy performance of the economy, and is itself a commodity in the marketplace.
 - The free flow of information between the government and the public is essential to a democratic society. It is also essential that the government minimize the Federal paperwork burden on the public, minimize the cost of its information activities, and maximize the usefulness of government information.
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A-130 – Considerations/Assumptions (continued)

- In order to minimize the cost and maximize the usefulness of government information, the expected public and private benefits derived from government information should exceed the public and private costs of the information, recognizing that the benefits to be derived from government information may not always be quantifiable.
 - The nation can benefit from government information disseminated both by Federal agencies and by diverse nonfederal parties, including State and local government agencies, educational and other not-for-profit institutions, and for-profit organizations.
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A-130 – Considerations/Assumptions (continued)

- Because the public disclosure of government information is essential to the operation of a democracy, the management of Federal information resources should protect the public's right of access to government information.
 - The open and efficient exchange of scientific and technical government information, subject to applicable national security controls and the proprietary rights of others, fosters excellence in scientific research and effective use of Federal research and development funds.
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OMB Circular A-130 (continued)

- **In determining whether and how to disseminate information to the public, agencies will:**
 - Disseminate information in a manner that achieves the best balance between the goals of maximizing the usefulness of the information and minimizing the cost to the government and the public;
 - Disseminate information dissemination products on equitable and timely terms;
 - Take advantage of all dissemination channels, Federal and nonfederal, including State and local governments, libraries and private sector entities, in discharging agency information dissemination responsibilities;
 - Help the public locate government information maintained by or for the agency.
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OMB Circular A-130 (continued)

- **How must agencies avoid improperly restrictive practices?**

Agencies will:

- Avoid establishing, or permitting others to establish on their behalf, exclusive, restricted, or other distribution arrangements that interfere with the availability of information dissemination products on a timely and equitable basis;
 - Avoid establishing restrictions or regulations, including the charging of fees or royalties, on the reuse, resale, or redissemination of Federal information dissemination products by the public; and,
 - Set user charges for information dissemination products at a level sufficient to recover the cost of dissemination but no higher. They must exclude from calculation of the charges costs associated with original collection and processing of the information.
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- **§ 105. Subject matter of copyright: United States Government works**

Copyright protection under this title is not available for any work of the United States Government, but the United States Government is not precluded from receiving and holding copyrights transferred to it by assignment, bequest, or otherwise.

■ **§ 102. Subject matter of copyright: In general**

(b) In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

	PUBLIC SECTOR INFORMATION	PRIVATE INFORMATION
PUBLIC DOMAIN INFORMATION	<p><u>Governmental public domain information</u> Information produced and voluntarily made available without protection by governments or international organizations. As a general principle, information produced by the public sector may be presumed to be part of the governmental public domain, unless expressly protected.</p>	<p><u>Unprotected information of private origin</u> Public domain information which is not in the governmental public domain. This includes information which is no longer protected, is unprotectable, or is expressly placed in the public domain by private rights holders.</p>
PROTECTED INFORMATION	<p><u>Protected governmental information</u> Public sector information protected by intellectual property or by other measures, such as laws protecting national security or personal privacy.</p>	<p><u>Protected private information</u> Information owned by private parties which is protected by intellectual property, by laws such as those protecting personal property or confidentiality (e.g. trade secret), or by contract.</p>

Compelling reasons for placing government-generated information in the public domain or under open access conditions:

- A government entity needs no legal incentives from exclusive property rights to create information. Both the activities that the government undertakes and the information produced by it in the course of those activities are a public good.
 - The public has already paid for the production of the information. Free and open access is the most appropriate way to disseminate online.
 - Transparency of governance is undermined by restricting citizens from access to and use of public data and information. Rights of freedom of expression are compromised by restrictions on re-dissemination of public information.
 - Numerous economic and non-economic positive externalities—especially through network effects—can be realized on an exponential basis through the open dissemination of public-domain data and information on the internet.
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Countervailing policies and practices that may limit the free and unrestricted access to and use of government information:

- Statutory exemptions to public-domain access and use based on specific national security concerns, the need to protect personal privacy, and to respect confidential information (plus other exemptions to Freedom of Information Acts).
 - Government agencies generally protect the proprietary rights in information originating from the private sector that are made available for government use, unless expressly exempted.
 - Government agencies may not be allowed to compete directly with the private sector in providing information products and services, outside their legislative mandate.
 - Government-generated information is not necessarily provided free, even if there are no restrictions on reuse. Any charges, however, may pose an insurmountable barrier to access by the most disadvantaged potential users.
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- **Division G, Title II, Section 218 of Public Law 110-161 (Consolidated Appropriations Act, 2008):**

The Director of the National Institutes of Health shall require that all investigators funded by the NIH submit or have submitted for them to the National Library of Medicine's PubMed Central an electronic version of their final, peer-reviewed manuscripts upon acceptance for publication, to be made publicly available no later than 12 months after the official date of publication: Provided, That the NIH shall implement the public access policy in a manner consistent with copyright law.

[NIH Guide Notice for Public Access](#) (January 11, 2008)

<http://publicaccess.nih.gov/policy.htm>

■ **Policy Goals**

- **ACCESS:** Provide electronic access to NIH funded research publications for families, health professionals, teachers, and students.
 - **ARCHIVE:** Keep a central archive of NIH funded research publications – preserving the record of medical research and information.
 - **ADVANCE SCIENCE:** Advance science by creating an information resource that will make it easier for scientists to mine medical research publications and for NIH to better manage its research investment.
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Some Thoughts:

- ❑ Data policies are mission driven.
 - ❑ Most federal agencies are grounded in an environment that presumes openness and lacks barriers to access based on federal law and regulation.
 - ❑ Within the federal community there is a strong understanding of the value of the public availability of data and of sharing and building on the work of others.
 - ❑ It is important to understand the motivations/drivers of each agency.
 - ❑ There is a pressing need to develop expertise in informatics.
 - ❑ A key to success will be changing cultural norms.
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Summary:

An optimum public information legal and policy regime should be based on default rules of open availability and re-use of public information that will maximize the value of the investment in that information on digital networks by:

- Expressly prohibiting intellectual property protection of all information produced directly by government;
 - Adopting a positive legal right of access through national legislation (e.g., a FOIA);
 - Actively disseminating the information at no more than marginal cost (free online);
 - Treating the public information resources as a major social and economic infrastructure investment, with adequate accompanying institutional mechanisms/support; and
 - Balancing the social and private interests in the adoption of new laws and maintaining robust immunities and exceptions.
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“Information is the currency of democracy.”

Thomas Jefferson

Nancy E. Weiss
nweiss@imls.gov
