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DRAFT POLICY GUIDELINES
FOR THE DEVELOPMENT AND PROMOTION OF
PUBLIC DOMAIN INFORMATION

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Draft Policy Guidelines for the Development and Promotion of Public domain Information

by

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The views expressed are those of the author and not necessarily those of UNESCO.

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PREFACE

In keeping with 29 C/Resolution 28 of the UNESCO General Conference in 1997, which invited the Director-General to undertake action "to facilitate access to information in the public domain with the ultimate aim of building up a general electronic repository of all information of a public nature relevant to UNESCO's fields of competence", the UNESCO Secretariat initiated the present draft guidelines intended to define, and promote understanding and debates on, the meaning of the public domain of information, and to assist Member States to develop policies and strategies in this area, which respond both to national needs and international practices.

The author of this draft is Mr Paul Uhlir (the National Academies, USA) working in a personal capacity. The views expressed in these Guidelines are those of Mr Uhlir and not necessarily those of the National Academies.

These draft guidelines are intended to be disseminated as widely as possible, so that both official organs of Member States and individual experts can comment on them. Based on such feedback, the UNESCO Secretariat plans to produce the improved version of guidelines, taking into account, in particular, the public domain traditions and usages in the different regions and countries of the world. It is hoped that this version be available by the end of 2003.

Comments and suggestions for improvements are welcome and should be sent to :

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1. INTRODUCTION

1.1 Purpose

One of the ultimate goals of any society is the empowerment of all its citizens through access and use of information and knowledge. Every person and every nation must have equal opportunity to benefit from cultural diversity and scientific progress as a basic human right in the current information revolution and the emerging knowledge society. “Universal access” to information and communication technologies (ICTs) and particularly to global digital information networks (also referred to as telematics networks, or the Internet) is essential for achieving the goals of social cohesion and economic development. Moreover, multilingualism in cyberspace is of vital and strategic importance to ensure the right to information and cultural diversity. The promotion and the use of multilingualism and universal access to cyberspace and the process of economic globalisation are interlinked.

A significantly under-appreciated, but essential, element of the emerging Information Society is the vast amount of information already in the public domain, or that can potentially be placed in the public domain. Whereas the focus of most policy analyses and law-making is almost exclusively on the enhanced protection of private, proprietary information, the role of public domain information, especially of information produced by the public sector, is not commonly addressed and is generally poorly understood.

There are numerous official resolutions, declarations, and reports issued by the United Nations and by individual Member States, that support and justify the formulation of Policy Guidelines on the Development and Promotion of Public Domain Information. Several of the most directly relevant sources are listed in the Selected Bibliography at the end.

The purpose of these Policy Guidelines, therefore, is to help develop and promote information in the public domain at the national level, with particular attention to information in digital form. The Guidelines are intended to better define public domain information and to describe its role and importance, specifically in the context of developing countries; to suggest principles that can help guide the development of policy, infrastructure and services for provision of information produced by governments to the public; to assist in fostering the production, archiving and dissemination of electronic public domain information for development, with emphasis on ensuring multicultural, multilingual content; and to help promote access of all citizens, especially including disadvantaged communities, to information required for individual and social development.

1.2 Scope

The scope of these Policy Guidelines is limited to the discussion of key issues, principles, and policies that can help to develop and promote the production, dissemination, preservation, and use of public domain information within developing and least developed countries at the national level.

1.3 Structure

The remainder of these Policy Guidelines is divided into four sections. Sections 2-4 define the subject matter being addressed, its importance, and the related challenges and opportunities. Section 5 provides specific policies, principles, and procedures for producing, disseminating, and preserving government information in the public domain.

2. DEFINITIONS

2.1 Proprietary Information

Proprietary information may be defined as information that is subject to some form of legal protection, which confers certain rights on the author or rights holder, and which places certain limits on what others may do with that information. Proprietary information is protected on economic and moral grounds by copyright and other neighboring rights. Information also may be protected by statutes and regulations on the basis of national security, confidentiality, or personal privacy considerations.

2.1.1 Copyright

Throughout the world, literary and artistic works are protected by copyright. Copyright protection applies to the expression of ideas, but not to the ideas themselves. Such protection is now broadly recognized as important to promoting human creativity and the production of such works—and all types of original and creative information, particularly in the private sector. It provides creators with incentives in the form of recognition and the possibility to derive fair economic rewards for their works. It also encourages broad dissemination by helping to assure that creative works can be made available to the public with legal protection against unauthorized copying or redistribution.

At the same time, it is important to emphasize that copyright confers a legal monopoly in the form of an exclusive property right that is granted only for a limited time. The Berne Convention for the Protection of Literary and Artistic Works[1] requires the minimum term of protection to be the life of the author, plus 50 years. Many countries, notably in the European Union and the United States, have substantially extended these terms of protection. In the case of individual authors, it is the life of the author, plus 70 years. In the United States, the statutory period of protection for corporate works (works made for hire) is either 95 years from the first publication, or 120 years from creation, whichever is shorter. Most developing countries have enacted only the minimum terms of protection.

In addition to the limited time of protection, copyright law is subject to a variety of exceptions and limitations. The right granted to the creator or the subsequent rights holder is not absolute, for it is not intended solely as a means of protecting the personal recognition and economic rewards of the creator, but also as a means to enrich the cultural, intellectual, and social development of each nation, and the broader economy. Thus, as copyright law has evolved, a proper balance between the rights of the individual creator or rights holder, and the broader interests of society, has been of paramount concern. Much of the information and other creative works that are not subject to

[1] Berne Convention on the Protection of Literary and Artistic Works, Paris Act of 24 July 1971, as amended on 28 September 1979.

copyright protection are in the public domain, as discussed in section 2.2, although this is now changing.

With the advent of digital ICTs and global information networks in recent years, however, there have been additional forms of legal and technological protection of proprietary information that have been either newly developed, or extended from existing law, including an updated form of copyright protection for digital information.[2]

2.1.2 Licensing Contracts

Another important legal mechanism that has come to be used pervasively to disseminate proprietary data and information in digital formats is a private contract, or "license," between the rights holder of proprietary information and its customers. Typically, a contract is used to restrict access, specify permissible conditions of use, and establish the terms for enforcement or remedies. Because the information in such transactions is licensed, not sold, the rights holder may seek to retain greater control over the customer's subsequent uses of the information, in effect overriding the various limitations and exceptions that the user might otherwise enjoy under traditional copyright law. However, the terms of the license are only effective between the actual parties to the contract. Thus third parties that might obtain access to the information are not bound by the terms of the license, unlike under copyright, which attaches automatically and is valid for the entire public.

2.1.3 Statutory Protection of Noncopyrightable Databases

The final significant development in the economic protection of proprietary information has been the adoption, in 1996, in the European Union of the Directive on the Legal Protection of Databases,[3] which has established unprecedented strong exclusive property rights in non-copyrightable databases. Under copyright law, only works that have sufficient originality and creativity are conferred a limited exclusive property right. The stated rationale for extending an exclusive property right to otherwise non-copyrightable compilations is to promote and protect investments in such compilations, in light of the high economic value of many databases and of the overall database industry, and the ease of copying and redisseminating digital databases. This law, which has been implemented in the national legislation of all European Union Member States and most Affiliated States, greatly diminishes the body of information available in the public domain, however. It has been criticized by legal scholars and by the scientific and library communities for imposing broad restrictions on previously allowed public-interest uses of noncopyrightable data and factual information.[4]

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[2] *See* the WIPO Copyright Treaty, adopted in Geneva on December 20, 1996.

[3] Directive 96/9/EC of the European Parliament and of the Council on 11 March 1996 on the Legal Protection of Databases, 1996 O.J. (L77) 20.

[4] See generally, J.H. Reichman, Database Protection in a Global Economy (2002) Revue Internationale de Droit Economique, 455-504.

2.1.4 Other Forms of Statutory Protection of Proprietary Information

Other laws based on national security, confidentiality and privacy concerns are also used pervasively to protect information, in both the public and private sectors. The scope of these laws varies significantly from country to country, but such laws are frequently enforced by the use of very severe criminal penalties. Many developing countries still protect the vast majority of their government information under national security and administrative confidentiality statutes, thereby all but eliminating information from public domain status or open availability.

2.1.5 Digital Rights Management Technologies

Finally, there are many different technological safeguards now being used or developed to protect proprietary digital information. Collectively referred to as "digital rights management" technologies, they supplement and enforce the various legal rights outlined above. Such technologies include both simple and sophisticated cryptography-based encryption systems, hardware and software based "trusted systems," and online database access controls and download limitations. Such technologies, if broadly applied in conjunction with increasingly restrictive intellectual property and other laws protecting proprietary information, can impose the greatest diminution of information available in the public domain, particularly for unprotected elements of otherwise protectible information, as discussed in the next section.

2.2 Public domain Information

A review of the history of the term "*public domain*" shows that it has traditionally been a term associated with public land and has never had a particularly clear meaning in the context of information. Indeed, there is little in official public documents or even in the scholarly literature that deals definitively with this subject. Most legal scholars would define public domain information by what it is not; that is, any information that is not proprietary, the *yin* to the proprietary *yang*. But such a definition is insufficient, for it does not adequately characterize or describe what public domain information in fact is, and provides no basis on which to evaluate its positive role and value to the information society, especially in the context of economic and social development.

An expert group convened by UNESCO in 2001 proposed the following definition in section I. (g): "Public domain information, also known as the 'information commons' refers to freely accessible information intellectual works, or the media on which these are stored, the use of which does not infringe on any intellectual property right, or breach any other communal right (such as indigenous rights) or any obligation of confidentiality…. By way of example, public domain information may embody: certain anonymous works (provided there is no infringement of any stakeholder's interest in that information); facts; public library catalogues; deposits, collections and catalogues in public archives

and museums; information in which there are no intellectual property rights or on which these have expired; official information produced by government or international organizations; information disclosure which is in the public interest and for the public good, information intended to be made publicly available by its author, owner, or custodian; and metadata (data on data) within the previous categories. For the avoidance of doubt, even though information may be in the public domain, it cannot be assumed to be free of all other interests or control."

A somewhat more succinct definition that is adopted for use in these Policy Guidelines, and that is also consistent with the UNESCO definition given above, defines public domain information as "sources and types of data and information whose uses are not restricted by intellectual property (IP) and other statutory regimes and that are accordingly available to the public for use without authorization or restriction."[5] For analytical purposes, information in the public domain may be divided into two major categories:

1. Information that is not subject to protection under exclusive IP rights; and
2. Information that qualifies as protectible subject matter under some IP regime, but that is contractually or statutorily designated as unprotected.

A third, related, category is information that becomes available under statutorily created limitations and exceptions from proprietary rights in otherwise protected material. Instead of being in the public domain because it is unprotectible subject matter, it is otherwise protected content that is allowed to be subject to certain unprotected uses under limited circumstances, subject to case-by-case interpretation. Such limitations and exceptions allow for the use of proprietary information for purposes such as scholarship, research, critical works, commentaries and news reporting, but their specific nature and extent varies greatly among different jurisdictions. Known as "fair uses" in the United States, and as "fair dealing" in some other countries, they also tend to be quite controversial and are frequently in dispute by rights holders. They do not constitute "public domain information" as such because they are limited to particular categories of users (e.g., scholars, journalists, libraries, blind people, etc.) In light of their diffuse, highly varied and disputed nature, and the fact that they are not, strictly speaking, public domain information, they are not treated further in these Policy Guidelines.

2.2.1 Information Not Subject to Protection Under Exclusive Property Rights

The first major category of public domain information may be further divided into three sub-categories: (i) information that IP rights cannot protect because of the nature of the source that produced it; (ii) otherwise protectible information that has lapsed into the public domain because its statutory term of protection has expired; and (iii) ineligible or unprotectible components of otherwise protectible subject matter.

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5 Definition adapted from J.H. Reichman and Paul F. Uhlir (2003) "A Contractually Reconstructed Research Commons for Scientific Data in a Highly Protectionist Intellectual Property Environment," 66 Law and Contemporary Problems. .

(i) In many jurisdictions, information produced by the government or by certain government entities falls under the first subcategory of the public domain in which the source itself is not protectible. For example, in the United States, government information is not subject to intellectual property protection and is in the public domain, although certain types of information are protected on national security, confidentiality, or privacy grounds. In other counties, the information from certain types of government institutions (e.g., the national legislature) or from certain sectors (e.g., basic research data) are designated to be in the public domain by statute, or are to be made available under a "Freedom of Information Law." Government-produced information is one of the principal types of public domain information, which is the principal focus of these Policy Guidelines.

(ii) The second subcategory of information that is not subject to protection under exclusive property rights is information that has lapsed into the public domain because it has exceeded the statutory term of protection. This too is an enormous body of literature and information with great cultural and historical significance.

(iii) The final subcategory of information that is not subject to protection under exclusive IP rights consists of ineligible or unprotectible components of otherwise protectible subject matter, such as an idea, fact, procedure, system, method of operation, concept, principle, or discovery, all of which are expressly excluded from statutory protection in most jurisdictions. Thus, an idea or fact contained in an otherwise copyrighted work is unprotected and may be used freely. Although this public domain material is highly distributed among all types of works, it is of particular concern to research and education. Access to and use of especially this kind of material is now being severely circumscribed by the increasingly protectionist laws and technologies described in the preceding section.

2.2.2 Information Contractually Designated as Unprotected

The second major category of public domain information is information that otherwise qualifies as protectible under some IP regime, but that is contractually designated as unprotected. Such information, typically consisting of individual data collections, are made freely available for others to use, frequently through an unconditional deposit in designated public domain government or university data centres, libraries, archives, or museums. Another mechanism now increasingly used to place information in the public domain is with public-use licenses through which the rights holder may limit or renounce all statutorily conferred proprietary rights (primarily copyright) in that information.

Information produced outside a source that is exempt from proprietary protection will be presumptively protectible, however, unless such material is placed in the public domain with an express waiver of all proprietary interests. The public domain status of this information in this case must be actively created by the rights holder.

2.3 Open Access

Although these Policy Guidelines focus expressly on information produced by governments and in the public domain, as defined above, a large amount of otherwise proprietary information is made available on an "open access" basis. Open access may be defined as proprietary information that is made openly and freely available online or on other media by the rights holder, but that retains some or all of the exclusive property rights that are granted under statutory IP laws.[6] All types of public and private sector sources may provide open access to their information products.

Of course, public domain information also may be provided free of charge in the same way, although this is not necessarily always the case. The difference is that once accessed, public domain information may be used without authorization or restriction, whereas proprietary information that is made available through open-access provisions remains subject to whatever statutory or contractual restrictions on its use that may apply. Open access to proprietary information may serve an analogous purpose to information in the public domain, particularly when made broadly available on the Internet, and in its great potential to support development.[7]

[6] Ibid.

[7] See National Research Council (forthcoming 2003), Proceedings of the International Symposium on Open Access and the Public Domain in Digital Data and Information for Science, National Academies Press, Washington, DC.

3. THE IMPORTANCE OF INFORMATION IN THE PUBLIC DOMAIN

Taken together, the body of information in the public domain described above is massive and may be credited with contributing broadly to the economic and social development of the entire world. In the context of the global information society and the objective of universal access, "public domain information" embodies all of the above categories. If the objective is to close the gap between the information-rich and information-poor, one important element of such a strategy is to expand the amount and quality of the information in the public domain, particularly of such information that is created in the public sector or by public-interest institutions, and then facilitating open and equitable access for all citizens to the knowledge and benefits to be derived from that information commons. But before we address how this might be done, it is important to understand more fully why it should be done.

3.1 The Economic Role and Value of Public domain Information

Neither the economic role nor value of public domain information is easy to quantify. There are several reasons for this. One is that much of the information that is originally created in the public domain—either by government entities or through government funding—is created outside the market forces that govern the creation and dissemination of proprietary information in the private sector. The value of information created at taxpayer expense for public-interest purposes is not always readily calculable. Indeed, as is the case with both proprietary and public domain information, some information products have no apparent redeeming economic or social value, or may even have highly negative externalities (e.g., erroneous, fraudulent, or malicious intent and results). But even information that may be considered to have positive effects can be difficult to evaluate.

An indicative approach is just to add up the costs of producing the public domain information as a baseline value. For example, the United States federal government's fiscal year budget for 2003 is over $2 *trillion*, of which a substantial fraction, totalling many tens of *billions* of dollars, is spent on producing information that is in the public domain. If one then adds the money invested by all the world's governments at all levels (intergovernmental, national, state, and local) in creating public domain information every year, on a continuing basis, one can obtain a simple comprehension of the vast scale of production of non-proprietary information.

But the analysis does not end here, for just as surely as there may be negative externalities associated with some information, there are many more positive externalities intrinsic to most other information. Take, for example, meteorological data and information, which are collected and disseminated by government agencies in all countries as a public service. In the United States, the agencies that collect and disseminate weather information, the National Weather Service and the National Oceanic and Atmospheric Administration, provide the data openly, without any legal protection.

This has resulted in a huge public user base in many sectors of application, including education and research, and has supported the development of a robust private-sector, value-adding weather information sector, which generates over $500 million annually in economic activity.[8] However, in many other countries, the public-sector meteorological offices and weather satellite organizations sell or license their data at commercial rates and protect their data products with intellectual property laws, contracts, and digital rights management technologies. In those countries, the private weather information businesses are significantly underdeveloped because they are unable to compete using the government's high-priced, proprietary data, and have therefore generated little economic activity.[9] A similar comparison and result can be made with regard to publicly generated geospatial data and other categories of information.[10]

The positive externalities of public domain information can be increased by enormous proportions when such information is placed on global telematics networks. Indeed, much of the value of information derives from its public-good characteristics. In addition to measuring the "value" of information based on the costs of producing it and the sales generated by it, its value to the larger economy and society is magnified greatly by the economically productive and socially beneficial uses to which the information is put. Information with the lowest barriers to access and use will thus potentially have the widest audience. The potential actual user base for any public domain information product on global telematics networks (e.g., the Internet) is now estimated to be over one billion, and rapidly growing. In economic terms, this is known as a network effect. Like telephones and fax machines, telematics networks have a high positive feedback and exponentially greater value with increased numbers of users. This factor, alone, provides a compelling argument in favor of increasing network connectivity in the developing world and increasing the amount of information available at no cost or restrictions on reuse.

Another, separate category of public domain information described in the previous Section is information that was originally created as proprietary, but that has lapsed statutory protection. The direct economic value of such information can frequently be quantified by a review of the sales history while under copyright, as well as the sales of any derivative products it may have generated. Once statutory protection is no longer available, this vast and ever-increasing body of literature, art, music, and other forms of expression becomes a part of the world's common cultural and intellectual heritage and is able to be freely disseminated and exploited for all types of subsequent uses. Much of this information, of course, passes into perpetual obscurity, even before it enters the public domain, while other works may enjoy much greater popularity or use than when they were originally created. The plays of William Shakespeare or old children's stories that are in the public domain are some obvious examples. Just as in the case of public domain information produced by governments, however, there is now a qualitative and

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[8] Weiss, Peter (2003), Borders in Cyberspace: Conflicting Government Information Policies and Their Economic Impact,, in Proceedings of the Symposium on the Role of Scientific and Technical Data and Information in the Public Domain, National Academies Press, Washington, DC.

[9] Ibid.

[10] PIRA International (2000), "Commercial Exploitation of Europe's Public Sector Information," Final Report for the European Commission, Directorate General for the Information Society.

quantitative difference in the economic (and other) potential that may be derived from previously proprietary information when placed on global digital networks. The opportunities that may be afforded to every individual who has access to the global network and to this accumulated human intellectual and cultural heritage are incalculable and profound. A key issue in the context of these Policy Guidelines, then, is how to expand the user base in the developing world, with the lowest possible barriers to access and use of the information on those networks, so that the information-poor can enjoy some of the same opportunities for personal and societal growth and development as the information-rich.

3.2 Benefits to Society[11]

The benefits of public domain information are perhaps easier to describe in non-economic terms. For information produced by governments, perhaps the greatest non-economic value associated with placing public information in the public domain is *transparency* of governance and the promotion of democratic ideals. The more information that is openly available from the government and about the government, the less likely will that government be able to hide illegal acts, corruption and misrule. Conversely, excessive secrecy breeds tyranny.

Open and unrestricted dissemination of public information also enhances public health and safety, and the general social welfare, as citizens become better able to make informed decisions about their daily life, their environment, and their future. Indeed, there is a wide range of social objectives underlying the provision of public content. At one end of the spectrum are the "*public good*" or "*public interest*" policy objectives. These involve circumstances where the public's welfare will be better served through access to or disclosure of information, rather than a paternalistic approach, in which decisions are made by the government on behalf of the people without informing or consulting them. This might include, for example, making information available concerning health services in cases where the health service provider, such as a laboratory or a hospital, has failed to provide diagnostic services or treatment at an adequate standard. Irrespective of the public or private ownership or status of that service provider, citizens are entitled to access this information for a number of reasons, such as to enable them to avoid risks to their health, or to choose another provider or to apply pressure to rectify the failure. The same reasoning applies to environmental concerns, or to the misuse of public funds, and so on.

The amount of public information is also growing in response to what is known as consumer protection demands. The growth of consumer protection laws has had the effect of increasing the volume and categories of information in the public domain. There are now numerous reporting requirements in many countries on both private and public organizations that are designed to regulate certain behavior or activities for the public good. This includes laws to ensure that consumers and shareholders have access to financial and market information to enable them to improve the quality of their economic

[11] This section is largely based on a study by Ms Elisabeth Longworth (UNESCO (2000))

decision-making. Another objective is to make it harder for agencies to monopolize information and in that way to disadvantage individuals or consumers.

The recognition of the importance of each nation's social capital is another objective inherent in expanding the information commons through public domain information. There are many social benefits to be derived from a more knowledgeable population. Public funding of libraries, archives, museums, educational institutions and research institutes are all manifestations of this recognition, although of course much of the information held by these institutions is proprietary, even if openly accessible. Public authorities have a critical role to play in each of these capacity-building areas, not least making available as much government-produced information in the public domain as possible.

Finally, all public domain information—whether it is generated by a public source, has lapsed protection, or consists of unprotectible subject matter in otherwise protected information—can serve essential educational and cultural functions in every society.

4. GRAND CHALLENGES AND OPPORTUNITIES

4.1 Bridging the Digital Divide

A great deal has been written about the broad and, in many cases, widening gap between the information-rich and information-poor, both at the national and international levels. Despite the great advances that have been made in ICTs and information management technologies, well-documented and serious global imbalances exist.[12]

The development and promotion of public domain information in the public sector can help bridge that gap in two significant ways. At the national and sub-national level, every country has a great deal of information that is either in the public domain, or could be so designated. Most of this type of information is produced by the public sector, either by government agencies themselves or with government funding. In many developing countries, where the production of information in the private sector is not as vigorous in relation to the government, the information in the public sector constitutes a very large portion of the information produced within and about the country. The broad and open availability of such public information is an important part of building participatory democracy, fostering open debate, and promoting good government processes. It also will provide all citizens with a means to learn about their country, their fellow citizens, and their government—information that in many cases will not be available from any other source.

Because the Internet is an international network of networks, however, all public domain information that is placed online immediately becomes a part of the global public domain. This, too, has important implications for development and for bridging the digital divide. In particular, it means that all of the world's public domain materials become a shared or common resource and constitute a global heritage for the benefit of all people. To the extent that the more economically developed, "knowledge-based" societies produce and make available a much larger amount of information in the public domain, they contribute a larger proportion of the openly pooled information that can also be exploited by all developing countries and their citizens to their benefit. Although a lot of information may be location-specific and not of broad interest or potential application, much of it is nonetheless relevant beyond the immediate institutional or community borders where it was produced. In these cases, the greatest barrier to the use of that information in other countries or cultures is likely to be linguistic.

[12] See, e.g., The World Bank (1999), World Development Report, Knowledge for Development, Oxford University Press, New York; and United Nations Development Programme (2001), *Human* Development Report, Making New Technologies Work for Human Development, Oxford University Press, New York.

4.2 Promoting the Production, Dissemination, and Preservation of Digital Information in the Public Domain

Governments have a critical leadership role in expanding access to and use of public domain information. The first challenge is attitudinal. Policy makers must have a willingness to consider the benefits of making public information available. This requires an appreciation of the implications of access to information for good governance, for the development of social capital, and for economic welfare. To serve these goals, governments need to develop an integrated and comprehensive national information policy that commits to a coordinated plan of action in each of the key areas of legislation and regulation; technical, human, and institutional infrastructure development; information management; and research. While some governments already have a comprehensive national information policy in place, many still do not or are only now beginning to develop one[13].

Although improving access to ICTs and all types of information—whether proprietary or in the public domain—is a crucial goal in the quest for economic and social development, it is also important not to oversell the concept. Universal access to such information resources is a necessary, but insufficient condition for development. ICTs and the information they deliver will not bring instantaneous literacy, cure diseases, feed the hungry, or alleviate poverty. They will, however, provide a key element of the infrastructure needed to effectively and sustainably address these problems, and can eventually lead to the creation of a knowledge-based society based on good governance values. They also will promote the economic and social benefits described in Section 3. Attention given to these issues now will be rewarded many times over in the future.

The remainder of these Policy Guidelines focuses on a subset of important issues identified as priority areas by UNESCO as part of any comprehensive information policy framework at the national level. Specifically, it identifies principles and policies that can: help guide the development of infrastructure and services for provision of government information to the public; assist in fostering the production, archiving and dissemination of an electronic public domain of information for development, with emphasis on ensuring multicultural, multilingual content; and help promote access of all citizens, especially including disadvantaged communities, to information required for individual and social development. Because each country has its own specific development situation and requirements, these principles and policies provide only general guidance and must be adapted and implemented in the context of each national system of governance and culture.

[13] Op. cit., note 11

5. KEY POLICY ELEMENTS FOR PUBLIC DOMAIN INFORMATION PRODUCED BY GOVERNMENTS

5.1 Introduction

As discussed in the preceding sections, a major category of information either in the public domain or potentially so designated comprises information generated or made available by government. Public authorities (including national and local government, regional and intergovernmental bodies and community agencies) hold vast amounts of information paid for by taxpayers that is public, if not legally in the public domain. For example, there are policy documents written by government departments, national archives and records, national registers (e.g., electoral roles, land transfer records, housing and land valuations, automobile registrations, company registrations, share registers of publicly listed companies and the like). There are the minutes and records of meetings, ordinances and laws, judicial decisions, myriad scientific databases, statistical compilations, cultural surveys, results of many kinds of research projects, official reports, and innumerable other data and information products produced by government entities for public purposes. Access to this information is very much dependent on each country's approach to governance and information policies, its information dissemination capacity and practices (particularly on telematics networks, as discussed here), and the degree of citizen literacy[14].

A comprehensive legislative and administrative policy approach is needed to successfully promote the production, dissemination, and use of such government information in the public domain. There are three main elements of this. First, it is necessary to identify the scope of information that should be accorded public domain status and to legally designate it as being in the public domain. Second, a comprehensive government information policy framework for the management and open dissemination of public information resources must be developed. And third, countries that do not yet have a Freedom of Information Act should enact one.

5.2 Expanding the Scope of Public domain Information Produced by Governments

There are many reasons, discussed in Section 3, that argue in favor of placing as much of this public information produced by government entities in the public domain and to make that information as openly available at the lowest possible cost to the public. It is worthwhile to summarize them again here:

- ⇒ A government entity needs no legal incentives from exclusive property rights that are conferred by intellectual property laws to create information, unlike individual authors or private-sector investors and publishers. Both the activities that the

[14] Ibid.

government undertakes and the information produced by the government in the course of those activities are a public good.

- ⇒ The taxpayer has already paid for the production of the information. One can legitimately assert that the moral rights in that information reside with the citizens that paid for it, and not with the state entity that produced it on behalf of the citizens.
- ⇒ Transparency of governance and democratic values are undermined by restricting citizens from access to and use of public data and information. As a corollary, citizens' rights of freedom of expression are compromised by restrictions on redissemination of public information, and particularly of factual data. It is no coincidence that the most repressive political regimes have the lowest levels of available information and the greatest restrictions on expression.
- ⇒ There are numerous positive externalities—particularly through network effects—that can be realized on an exponential basis through the open dissemination of public domain data and information on the Internet. Many such benefits are not quantifiable and extend well beyond the economic sphere to include social welfare, educational, cultural, and good governance values—all supportive of national development objectives.[15]

These benefits of openness in the management of public information and the legal designation of that information as being in the public domain are not absolute, however. They must be balanced against legitimate, countervailing and superseding interests arising from the protection of national security, personal privacy and confidentiality, and private intellectual property rights. Nevertheless, as a guiding principle, information produced by government entities in all branches and at all levels should be presumed to be in the public domain.

The legal designation that establishes a default rule that government information is in the public domain and not subject to intellectual property protection is a relatively simple matter. All that is needed is a clause in the national copyright statute that government information is not subject to protection under that statute. The same rule may be established in any other intellectual property statute, as well. For example, Section 105 of the U.S. Copyright Act of 1976 simply states that "Copyright protection under this title is not available for any work of the United States Government."[16] This exemption does not automatically apply to information produced in the United States at the state and local level, however, although many states do place their information in the public domain as well.

If the public domain status of government information is easy to establish in the law, it is far from being simple as a political matter for those countries that have a tradition of protecting such information with their IP laws. While the legal status may be changed by the stroke of a pen, there are many entrenched bureaucratic interests in the executive branch of government and in governmental institutions that have come to rely on such protection to make the rescission of IP protection of government information very

[15] J.H. Reichman and Paul F. Uhlir, ,op. cit., note 5.
[16] Copyright Act of 1976, 17 United States Code 105.

difficult. Moreover, as budget pressures on public spending continue to mount for every government, there are additional pressures on individual government entities to try to recoup more of their information dissemination costs by charging higher fees for access, or even to commercialize or privatize those activities. Because IP laws provide a legal monopoly in the information that is distributed at high prices, government bureaucrats become even more resistant to reducing such protection.

While it may be difficult to enact wholesale changes in an IP regime that protects government information, change is possible, especially within certain sectors or for certain types of information, if not across the board. In particular, nations can expand open access to various types of public information resources and minimize related legal restrictions on the reuse of such information without necessarily making broad or fundamental changes to their IP statutes.[17]

Therefore, all countries and government institutions should review their existing information laws and policies with a view to minimizing the scope of proprietary information restrictions and to maximizing the availability of the public information in their possession to the public. They should enact appropriate exemptions from existing intellectual property or administrative secrecy provisions that unnecessarily and counterproductively restrict access and reuse of government information, and place such information in the public domain or make it available under open access provisions. In addition, all publicly funded inter-governmental organizations should provide open access to all their publications, especially to potential users in developing countries, free of charge.

5.3 Developing a Government Information Policy Framework for the Management and Dissemination of Public Information Resources

The second major aspect of government information policy needed to promote public domain status for public information resources is a comprehensive Information Policy Framework that addresses their management and dissemination.[18] This framework should be broad enough to encompass information in both paper and digital formats, and provide special guidance regarding electronic management and dissemination, as appropriate. The policy framework outlined below only identifies the high-level principles, issues, and objectives, and concludes with an outline of the main procedural considerations for implementation. Specific details based on each country's situation and needs must be developed as appropriate. However, the focus should always be on producing and disseminating public information that meets the needs of all citizens as openly and low cost as possible, with special attention to multicultural or disadvantaged communities.

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[17] *See*, for example, Council of the European Union, 29 January 2002, Directive on public access to environmental information, Brussels, 11878/01 REV 1, promoting open or low-cost access to and minimum restrictions on reuse of environmental information by the E.U. Member States.

[18] Based on the U.S. Office of Management and Budget Circular A-130 (1994), Section 8a.

5.3.1 Operating Assumptions and Considerations

1. Government information is a valuable national resource. The open availability of that information in the public domain helps to ensure the accountability of government, to manage the government's operations, to maintain the healthy performance of the economy, and to provide a perspective on society, among many other possible benefits.

2. In every country, the government is the largest single producer, collector, consumer, and disseminator of information. Because of the extent of the government's information activities, and the dependence of those activities upon public cooperation, the management of its information resources is an issue of continuing importance to all government entities and the public.

3. The open and unrestricted flow of information between the government and the public is essential to a democratic society and to the promotion of good governance. It is also essential that the government minimize the burden on the public and the cost of its information activities, and maximize the usefulness of its information.

4. 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, however, that the benefits to be derived from government information may not always be quantifiable.

5. The nation can benefit from information openly disseminated not only by government entities at the national level, but by sub-national governmental entities at different levels. Because the sub-national entities are important producers of government information for many areas such as education, health, agriculture, environmental protection, social welfare, labor, and transportation, among other needs, the national government must cooperate with them in the management of information resources.

6. The strategic and systematic management of government records is an essential component of sound public resources management. Together with records preservation, it protects the government's historical record, helps to ensure public accountability, and guards the legal and financial rights of the government and the public.

7. Since the public disclosure of government information is essential to the operation of a well-run government founded on democratic principles, the management of government information resources should protect the public's right of access to and use of that information. At the same time, every citizen’s right to privacy must be protected in all government information activities that involve personal information.

8. The open and efficient exchange of government-funded scientific and technical government information, subject to applicable national security controls and the proprietary rights of others, fosters excellence in research and effective use of public research and development funds.

9. Information technology is not an end in itself, but just one set of resources that can improve the effectiveness and efficiency of government services. Nevertheless, the application of up-to-date information technology presents opportunities to promote improvements in government structures, work processes, and ways of interacting with the public. The availability of government information in diverse media, especially in digital formats, permits government workers and the public greater flexibility in using the information.

10. Both the producers and users of government information resources must have the requisite skills, knowledge, and training to effectively perform their functions and make optimal use of those resources.

5.3.2 Information Management Policy Requirements

The following functions need to be addressed in the development of a national information management policy. Additional specific details and their implementation will depend on each nation's circumstances and needs.

5.3.2.1 Information management planning

All government entities subject to this policy should:

1. Adopt an integrated life-cycle approach to the management of information resources; that is from the planning stage, to production, organization, dissemination, use, preservation, and, in appropriate circumstances, purging (i.e., removal from official sources of availability) of the information.

2. Consider the effects of the decisions and actions taken under this policy on members of the public and all government entities and ensure consultation with all relevant stakeholders.

3. Fulfil new information needs through intergovernmental partnerships or sharing of information, or through commercial sources, where appropriate, before creating or collecting new information.

4. Provide training to personnel in skills appropriate to the information they manage.

5. Protect government information in proportion to the risk and magnitude of harm that could result from the loss, misuse, or unauthorized access to or modification of such information.

6. Consider the effects of actions taken under the national information policy on the privacy rights of individuals, and ensure that appropriate legal and technical safeguards are implemented.

7. Record, preserve, and make accessible sufficient information to ensure the effective management and accountability of government activities, and to protect the government's legal and financial interests.

8. Incorporate records management and archival functions into the design, development, and implementation of information systems, including the following requirements:
    (a) Provide for public access to records where required or appropriate.
    (b) Collect or create only such information that is necessary for the proper performance of approved government functions and that has practical utility.
    (c) Use electronic information collection and creation techniques where such techniques reduce burdens on the public, increase the efficiency of government programmes, and reduce costs to the government and the public or provide better service to the public. Conditions favorable to electronic collection or creation include:
        i. The information involves the production of a large volume of data or needs to be disseminated to a large portion of the public;
        ii. The information production is performed on a recurring basis;
        iii. There is a need to routinely convert the information that has been produced to electronic format;
        iv. A substantial number of the affected public are known to have ready access to the necessary information technology; and
        v. Conversion to electronic reporting, if mandatory, will not impose substantial costs or other adverse effects on the public, especially for sub-national government and small business entities.

5.3.2.2 Records management

For all official government information products that should be retained permanently (i.e., records), government entities subject to this policy should:

1. Ensure that their records management programmes provide adequate and proper documentation;

2. Ensure the ability to access records, regardless of their form or medium;

3. Establish appropriate selection and retention criteria and accession schedules for permanent archiving of records in consultation with the national archivist and in accordance with legislative requirements; and

4. Provide training and guidance as appropriate to all government officials, employees, and contractors regarding their records management responsibilities.

5.3.2.3 Providing information to the public

All government entities have a responsibility to provide information to the public consistent with their legislative missions. They should fulfil this responsibility by:

1. Providing information that describes their organization, activities, programmes, meetings, systems of records, and other information holdings, and how the public may obtain access to their information resources.

2. Providing access to their records under provisions of the Freedom of Information Act (see Section 5.4, below), subject to the protections and limitations provided for in this Act.

3. Making available such other information as is necessary or appropriate for the proper performance of the organization's functions.

4. In determining whether and how to disseminate information to the public, government entities shall:

    (a) 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;
    (b) Disseminate information on equitable and timely terms;
    (c) Take advantage of all dissemination channels, at all levels of government, libraries, private-sector entities, and media that are appropriate to the dissemination function for each particular type of information; and
    (d) Help the public locate government information maintained by or for the government entity.

5.3.2.4 Management of information dissemination activities

Government entities should maintain and implement a management system for all information dissemination products, which will, at a minimum:

1. Assure that information dissemination products are necessary for the proper performance of the organization's functions.

2. Consider whether an information dissemination product available from other government sources is equivalent and reasonably fulfils the organization's dissemination responsibilities.

3. Establish and maintain inventories of all of the organization's information dissemination products.

4. Develop such other aids to locating the organization's information dissemination products, including catalogs and directories, as may reasonably achieve its dissemination objectives.

5. Identify in information dissemination products the source of the information, if from another organization.

6. Ensure that members of the public with disabilities whom the organization has a responsibility to inform have a reasonable ability to access the information dissemination products.

7. Establish and maintain communications with members of the public and with government entities at the sub-national level so that the organization creates information dissemination products that meet their respective needs.

8. Provide adequate notice when initiating, substantially modifying, or terminating significant information dissemination products.

9. Ensure that a prompt and orderly transition to compliance with the requirements of this policy is made with regard to any existing inconsistencies.

5.3.2.5 Avoiding improperly restrictive practices on dissemination and use of government information

Government entities should:

1. 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.

2. Avoid establishing restrictions or regulations, including the charging of fees or royalties, on the reuse, resale, or re-dissemination of government information dissemination products by the public.

3. Set user charges for information dissemination products at a level sufficient to recover the cost of dissemination (i.e., the marginal cost), but no higher. They should exclude from calculation of the charges the costs associated with the original collection and processing of the information. If the information is disseminated on telematics networks, the marginal cost is zero. Exceptions to this policy are:
   (a) Where other statutory requirements are at variance with the policy;
   (b) Where the organization collects, processes, and disseminates the information for the benefit of a specific identifiable group beyond the benefit to the general public;
   (c) Where the organization plans to establish user charges at less than cost of dissemination because of a determination that higher charges would constitute a significant barrier to properly performing its functions,

including reaching members of the public whom the agency has a responsibility to inform; or

(d) Where the information is digital and disseminated online, in which case it should be provided free of charge, since the marginal cost of providing the information to each additional user in that case is zero; or

(e) Where the official who is designated as having primary authority for the implementation of this policy across the entire government determines that an exception is warranted.

5.3.2.6 Electronic information dissemination

1. Government entities should use electronic media and formats, including both public and private networks, as appropriate and within budgetary constraints, in order to make government information more easily accessible and useful to the public. As a general matter, government dissemination of electronic information on telematics networks, now frequently referred to as "E-Gov" services, have already improved government information services in many countries to individual citizens and businesses, and have improved the efficiency and effectiveness of both single government organizations and intergovernmental activities.[19] The use of electronic media and formats for information dissemination is appropriate, at a minimum, under the following conditions, which are parallel to those provided for the electronic collection or creation of information under Section 5.3.2.1 (8) (c), above:

2. The organization develops and maintains the information electronically.

3. Electronic media or formats are practical and cost-effective ways to provide public access to a large, highly detailed volume of information.

4. The organization disseminates the information product frequently.

5. The organization knows that a substantial portion of users have ready access to the necessary information technology and training to use electronic information dissemination products.

6. A change to electronic dissemination, as the sole means of disseminating the information product, will not impose substantial acquisition or training costs on users, especially sub-national government and small business entities.

5.3.2.7 Safeguards for Public Information

It also is important to implement appropriate safeguards in the management of government information. Government entities should:

[19] For a listing and description of E-Gov initiatives worldwide, see www.egovlinks.com.

1. Ensure that information is protected commensurate with the risk and magnitude of the harm that would result from the loss, misuse, or unauthorized access to, or modification of, such information.

2. Limit the collection of information that identifies individuals to not more than what is legally authorized and necessary for the proper performance of the organization's functions.

3. Limit the sharing of information that identifies individuals or that contains proprietary information to that which is legally authorized, and impose appropriate conditions on use where a continuing obligation to ensure the confidentiality of the information exists.

4. Provide individuals, upon request, with access to records about them maintained in the organization's records, and permit them to amend any records that contain errors.

5.3.3 Information Systems and Information Technology Management

5.3.3.1 Evaluation and performance measurement

Government entities should promote the appropriate management of their public information resources through various review procedures, including the following:

1. Seek opportunities to improve the effectiveness and efficiency of government information activities through periodic reviews of the work process and the judicious application of information technology.

2. Prepare, and update as necessary throughout the information system life cycle, a cost-benefit analysis for each information system:

   (a) at a level of detail appropriate to the size of the investment;
   (b) consistent with a formal, recognized methodology; and
   (c) that relies on systematic measures of mission performance, including the effectiveness of programme delivery, the efficiency of programme administration, and the reduction in burdens, including information-collection burdens, imposed on the public.

3. Conduct cost-benefit analyses to support ongoing management oversight processes that maximize return on investment and minimize financial and operational risk for investments in major information systems on an organization-wide basis.

4. Conduct post-implementation reviews of information systems to validate estimated benefits and document effective management practices for broader use.

5.3.3.2 Strategic information resources management planning

Government entities should establish and maintain strategic information resources management planning processes, which include the following components:

1. Strategic planning that addresses how the management of information resources promotes the fulfillment of the organization's mission. This process should support the development and maintenance of a plan that reflects and anticipates changes in the organization's mission, policy direction, technological capabilities, and resource levels.

2. Information planning that promotes the use of information throughout its life cycle to maximize its usefulness, minimize the burden on the public, and preserve the integrity, availability, and confidentiality of the information.

3. Operational information technology planning that links information technology to anticipated programme and mission needs, reflects budget constraints, and forms the basis for budget requests. This process should result in the preparation and maintenance of an up-to-date plan, consistent with the government's planning cycle for other programmes, which includes:
    (a) a listing of existing and planned major information systems;
    (b) a listing of planned information technology acquisitions;
    (c) an explanation of how the listed major information systems and planned information technology acquisitions relate to each other and support the achievement of the organization's mission; and
    (d) a summary of computer security systems and procedures; and

4. Coordination with other agency planning processes, including human and financial resources.

5.3.3.3 Information systems management oversight

Government entities should establish information system management oversight mechanisms that:

1. Ensure that each information system meets the organization's mission requirements.

2. Provide for periodic review of information systems to determine:

    (a) how mission requirements might have changed;
    (b) whether the information system continues to fulfil ongoing and anticipated mission requirements; and
    (c) what level of maintenance is needed to ensure the information system meets mission requirements cost effectively.

3. Ensure that the official who administers a programme supported by an information system is responsible and accountable for the management of that information system throughout its life cycle.

4. Provide for the appropriate training for users of government information resources.

5. Prescribe national information system requirements that do not unduly restrict the prerogatives of sub-national governments and other groups or institutions within the country that have certain independent or autonomous legal rights and standing.

6. Ensure that major information systems proceed in a timely fashion towards agreed-upon milestones in the information system life cycle, meet user requirements, and deliver intended benefits to the organization and affected users through coordinated decision making about the information, human, financial, and other supporting resources.

5.3.3.4 Use of information resources

Government entities should create and maintain management and technical frameworks for using information resources that document linkages between mission needs, information content, and information technology capabilities. These frameworks should guide both strategic and operational information resources management planning. They should also address steps necessary to create an open systems environment. Government entities should implement the following principles:

1. Develop information systems in a manner that facilitates necessary interoperability, application portability, and scalability of computerized applications across networks of heterogeneous hardware, software, and communications platforms.

2. Ensure that improvements to existing information systems and the development of planned information systems do not unnecessarily duplicate information systems available within the same organization, from other government entities, or from the private sector.

3. Share available information systems and technological capabilities with other government entities to the extent practicable and legally permissible.

4. Establish a level of security for all information systems that is commensurate with the risk and magnitude of the harm resulting from the loss, misuse, or unauthorized access to or modification of the information contained in these information systems.

5.3.4. Efforts to provide access to and use of information by multilingual or disadvantaged communities at the local level

Language constitutes the foundation of communication between people and is also part of their cultural heritage and tradition. For this reason, a users' language should not constitute an obstacle to accessing the multicultural human heritage available on the Internet and through other communication media. Harmonious development of the information society and economy is promoted by the availability of multilingual and multicultural information.

Many countries have two, and in some cases many more, official as well as unofficial languages used within their jurisdiction. The diversity of the population in terms of different languages and traditions raises a host of public information management challenges. The following specific objectives should be implemented to address needs in providing access to and use of information by multilingual or disadvantaged communities at the local level:

1. All national and sub-national entities at all levels should seek to avoid linguistic segregation in providing access to their public information.

2. It is necessary to take advantage of technologies that facilitate access to and use of information in all the national languages in order to ensure maximum self-expression, education, science, culture and communication. Public information must be produced and disseminated in appropriate formats, and involve disadvantaged communities in the production and use of locally relevant information. The most modern information and communication technologies, however, such as telematics networks, must be complemented by the continued use of existing communication networks (such as local community centres and libraries) and the use of small-scale audio-visual equipment (e.g., radio, audiocassettes, and video). The country's significant traditional modes of communication also need to be utilized.

3. The appropriate government entities should adopt a strategy to develop freely accessible language education materials, and disseminate those materials freely online and through other appropriate means. At the same time, the translation of the highest priority public information resources into local languages and dialects needs to be undertaken.

4. Private-sector initiatives that develop multilingual content and its dissemination, particularly to disadvantaged communities at the local level, should be encouraged and supported.

5. The appropriate government entities should work with national and international experts in the development of:
   (a) Internet search engines and Web browsers with extensive multilingual capabilities;
   (b) Online dictionaries and reference materials;

(c) Automated translation software for languages and applications that are not being served by private-sector initiatives; and
(d) Information products and services that can meet the special needs of people with physical disabilities.

5.3.5. Assignment of Responsibilities

5.3.5.1 Establishment of a high-level executive office

The direction of the development, implementation, coordination, and oversight of the Information Policy Framework at the national level requires the designation of an individual and a related office at a high level in the executive branch of government, together with a budget and mandate sufficient to carry out the assigned tasks. This person may be called the Director of National Information Policy and Programmes (referred to as "the Director" below) or some equivalent title, reporting directly to the chief executive of the nation. The Director would also be the chair of a Council of Chief Information Officers, whose individual functions are described in the next Section

5.3.5.2 Designation of a Chief Information Officer in each major government entity

Every major government entity should appoint a Chief Information Officer (CIO) and supporting staff who will:

1. Have primary responsibility for managing the organization's information resources.

2. Ensure that the information policies, principles, standards, guidelines, rules, and regulations prescribed by the overarching national policy are implemented appropriately.

3. Develop internal organizational information policies and procedures and oversee, evaluate, and otherwise periodically review the organization's information resources management activities for conformity with the established national policies.

4. Oversee the acquisition and inventory of the information technology for the entire organization.

5. Implement and enforce applicable records management policies and procedures, including requirements for archiving information maintained in electronic format, particularly in the planning, design and operation of information systems.

6. Identify to the Director any statutory, regulatory, and other impediments to efficient management of the government's information resources and

recommend to the Director legislation, policies, procedures, and other guidance to improve such management.

7. Support the work of the Director by making services, personnel, and facilities available for specific tasks to the extent practicable.

8. Prepare and present to the Director an annual report on the organization's implementation of the national information policy including a description of instances of failure to comply with the policy and their resolution.

5.3.5.3 Establishment of responsible entities for other specific functions

Additional offices or positions may need to be created to fully implement all elements of the national Information Policy Framework and related programmes. These need to be evaluated on a case-by-case basis.

5.3.6. Key Procedural Elements for the Development of a National Information Policy Framework

1. The national Information Policy Framework must reference all supporting reports and laws on which it is based. In those areas in which legislation is either outdated or missing, the framework may need to have enabling legislation enacted first. The public domain information policy is an important part of the broader national Information Policy Framework.

2. In developing a high-level Information Policy Framework and detailed implementation plan at the national level, it is essential to involve representatives of all major stakeholder groups in a consultative process. Such a consultative approach will help ensure that key issues are identified and addressed, and that these same groups are likely to have some ownership in the final results.

3. A number of factors need to be systematically addressed for each individual policy element. Analytical factors that need to be considered are: legal, economic, institutional, social and cultural, research and educational. Specific applications areas or sectors with special information objectives and implementation requirements, such as health, environment, energy, transportation, finance, defense, etc., many of which parallel the nation's major ministries, departments, or agencies also need individual consideration. Policy formation and implementation factors should respond to the following specific questions:

   (a) What is the specific policy being recommended?

   (b) Why is it being proposed? (i.e., what is the current situation and why does it need to be changed?)

(c) Who needs to be involved in the formation, approval and implementation of the policy? (i.e., key individuals, institutions and stakeholder groups)

(d) Where does the policy implementation need to take place? (i.e., the international, regional, national, sub-national levels)

(e) When does the policy need to be implemented and updated?

(f) How, specifically, should the policy be implemented? (i.e., need to provide detailed guidance about the procedures or mechanisms by which the policy will be brought into effect)

4. Following the completion and formal approval of the Information Policy Framework, the CIO's of each major government entity need to develop a detailed plan for implementation of all the guiding policies within the context of its official activities and subject matter purview. The development of specific implementation plans will help ensure that the policies are acted upon, and that they are implemented in an appropriate and efficient manner consistent with the specific conditions and needs of their organization's activities. These separate implementation plans should be completed soon after the formal adoption of the framework (e.g., within one year).

5. Because of the rapid changes continuously taking place in the information and communications sectors, the Information Policy Framework should be reviewed and updated every few years to keep it relevant and useful. Such a review should take place perhaps every 4-5 years, on a schedule fixed by the framework.

6. A useful supplementary activity that should be considered in the development of the Information Policy Framework is a review of the policy approaches to public information management and technology taken by other countries. The lessons learned from the experiences of other governments in this area should help the national government authorities to avoid some of the failures or difficulties experienced elsewhere, and could identify successful legal and policy models that might be adapted to the specific national context.

5.4 Freedom of Information Legislation

The final major part of a comprehensive approach to promoting access to and use of public domain government information is the adoption of a "Freedom of Information" (FOI) law. There has, in fact, been a recent global trend toward greater government openness with public information. Over the past decade, many countries have enacted such legislation, which is an essential aspect of this trend. Over 40 countries now have

legislation that facilitates access to government information and over 30 more are in the process of enacting such a law.[20]

Freedom of Information laws reverse the presumption of government secrecy in favor of a principle of availability. The information held by the government that is not otherwise made routinely available can be accessed by its citizens on request. FOI laws are intended to guarantee the right of citizens to access the information that was created by their government on their behalf.

Therefore, countries that do not yet have a Freedom of Information Law for their government information should adopt one, following a comparative analysis of such similar laws in other countries.[21] The model that has been adopted in many FOI laws has been to introduce the concept of an overriding public interest or public-good test for disclosure of the requested information. An independent office needs to be established to be the arbiter of these decisions. The process by which this is done must be performed on reasonably expeditious basis, and be relatively transparent and subject to some review. In addition, an effective model will avoid charges that are so high as to amount to a barrier to access by preventing ordinary citizens from obtaining the requested information.

These laws nonetheless reflect a balancing exercise, for there are frequently other interests that may justify the withholding of the information, just as there are for not designating certain types of information in the public domain. For this reason, FOI laws contain exemptions to allow a government entity to refuse to release requested information on the specific grounds set out in the law. Common reasons for withholding government information are to protect the privacy of individuals, to safeguard a country's intelligence and national security secrets, to avoid prejudicing a criminal investigation, to enable advisers to give frank advice to their ministers, or to protect a commercial confidence or private proprietary information. The boundaries for determining what information can be released and what should remain confidential to the government can in some cases be quite subtle, however, and difficult to apply.

Although Freedom of Information laws are an essential factor in implementing the presumption that government information is in the public domain, and in promoting an open society and transparency in governance, they are not in and of themselves enough. In practice, such laws typically involve a bureaucratic, cumbersome, and frequently expensive process that the citizen must undertake in order to obtain information that is legally in the public domain and should be made public. Moreover, the citizen also may need to investigate what information the government may have in order to identify what information to request. Government bureaucracies frequently resist the release of their information and the access and enforcement mechanisms may be weak or unenforceable. Finally, political pressures on both the government entity that holds the information or on the citizen requesting its release may make a FOI request ineffective or even unwise.[22]

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[20] *See* David Banisar, "Freedom of Information and Access to Government Records around the World," 2 July 2002, at www.freedominfo.org.

[21] For a comprehensive survey of all FOI laws worldwide see Banisar, ibid.

[22] Ibid.

Taken together, however, the legislative changes in the public domain status and freedom of information, as well as a comprehensive administrative Information Policy Framework, will result in the adoption of policies, procedures and programmes that actively promote the open, easy, and low-cost access to public information for the benefit of the entire nation.

Selected Bibliography

Banisar, David (2 July 2002), "Freedom of Information and Access to Government Records around the World," at www.freedominfo.org

Berne Convention for the protection of Literary and Artistic Works, aris act of 24 July 1971, as amended on 28 Sept. 1979.

Commission of the European Communities (2001), "*e*Europe 2002: Creating a EU Framework for the Exploitation of Public Sector Information," Brussels, Belgium, 23.10.2001 COM (2001) 607 final.

Commission of the European Communities (1999), Public Sector Information: A Key Resource for Europe.

Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the Legal Protection of Databases, 1996 O.J. (L77) 20.

Doczi, Marianne (2000), Information and Communication Technologies and Social and Economic Inclusion: addressing the social and economic implications of limited e-literacy and access to information and communication technologies, Information Technology Policy Group, Ministry of Economic Development, New Zealand.

E-Gov links (2002), at www.egovlinks.com.

G8 (22 July 2000), Okinawa Charter on Global Information Society, Japan.

International Telecommunications Union and UNESCO (May 1995), The Right to Communicate—At What Price? Economic Constraints to the Effective Use of Telecommunications in Education, Science, Culture and in the Circulation of Information, UNESCO, Paris, France (CII-95/WS/2).

National Research Council (1997), *Bits of Power: Issues in Global Access to Scientific Data*, National Academy Press, Washington, D.C., 235 p.

National Research Council (1999), A Question of Balance: Private Rights and the Public Interest in Scientific and Technical Databases, National Academy Press, Washington, D.C., 142 p.

National Research Council (2000), *The Digital Dilemma: Intellectual Property Rights in the Information Age*, National Academy Press, Washington, D.C.

National Research Council (2003), Proceedings of the Symposium on the Role of Scientific and Technical Data and Information in the Public Domain, National Academies Press, Washington, DC.

National Research Council (forthcoming 2003), Proceedings of the International Symposium on Open Access and the Public Domain in Digital Data and Information for Science, National Academies Press, Washington, DC.

Office of Management and Budget (1993), Circular A-130, "Management of Federal Information Resources," U.S. Government Printing Office, Washington, D.C.

PIRA International (2000), *Commercial Exploitation of Europe's Public Sector Information*, Report for the European Commission, Directorate General for the Information Society.

Reichman, J.H., Database Protection in a Global Economy (2002) Revue Internationale de Droit Economique, 455-504.

UNESCO (23 August 2002), Report by the Director-General on the Consultation Process and the Revised Recommendation on the Promotion and Use of Multilingualism and Universal Access to Cyberspace
(165 EX/16, http://server_bps.hq.int.unesco.org/Archive/Transit/English/165-EX/165-EX-16-Eng.pdf)

UNESCO (27 July 2001), *Draft Recommendation on the Promotion and Use of Multilingualism and Universal Access to Cyberspace and Report by the Director-General* (31 C/25)

UNESCO (2000), *Proceedings and Proposals: INFOethics 2000*, CII-2000/CONF.402/CLD), Paris, France.

UNESCO (2000), The Role of Public Authorities in Access to Information: The Broader and More Efficient Provision of Public Content, Elizabeth Longworth, Moderator of Theme A1 Discussion, 18 July 2000, New Zealand.

UNESCO (1999), 30 C/Resolution 41 and 37.

UNESCO (1997), 29 C/Resolution 28 and 36.

United Nations Development Programme (UNDP) (2001), *Human Development Report, Making new technologies work for human development*, Oxford University Press, New York

UNDP (1999), *Human Development Report*, Oxford University Press, New York.

United Nations General Assembly (1948), *Universal Declaration of Human Rights*, Resolution 217A (III), 10 Dec. 1948.

United Nations General Assembly (2000), *United Nations Millennium Declaration*, A/res/55/2 8 Sept. 2000.

The World Bank (1999), *World Development Report: Knowledge for Development*, Oxford University Press, New York.

World Intellectual Property Organization, Digital Copyright Treaty, adopted in Geneva on 20 December 1996.