



## State of Israel

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# **THE DISSEMINATION OF GOVERNMENT INFORMATION A COMPARISON BETWEEN ENGLAND AND THE USA**

## **Introduction**

1. Government ministries around the world disseminate a great deal of information to the public. In England and the USA the dissemination of government information is treated differently, each system being based on a different philosophy. I shall below endeavour briefly to present these two systems and the policy underlying them as a source of inspiration for the determination of desirable policy in Israel.
2. In presenting the matter I shall first discuss the situation existing in Israel; then the position in England; and finally the situation in the USA.

## **Israel**

3. To the best of my understanding, there is no stated policy with regard to the public dissemination of government information. Nevertheless, the State holds copyright in its publications by virtue of section 18 of the Copyright Act, 1911 and the Administrative Code ("TAKAM")(section 8.2.5.1.2 of the "Sefer Minhah Mishki") provides that publications are to be sold to external entities "in accordance with a decision of the Ministerial Publications Committee and on the basis of the costs incurred, which shall be revised as necessary".
4. Liability for the enforcement of copyright in government publications, by default, rests with the ministries themselves.

## England

### 5. Copyright

In England, copyright subsists in state publications by virtue of the Copyright, Designs & Patents Act, 1988. The Act essentially distinguishes between parliamentary publications, of which users are given a free hand and publications by various government ministries, in which copyright is more strictly observed.<sup>1</sup>

### 6. Costing And Dissemination Policy

In 1985 the English Board of Trade published guidelines (which are not mandatory) on "Government-Held Tradable Information", instructing government units how to work with the private sector in the dissemination of government information of commercial value.

The guidelines have two underlying principles:

- (a) government information of economic value should be disseminated through the private sector;
- (b) a price should be charged for the information in accordance with its market value, as a source of government revenue.

Nevertheless, with regard to the dissemination of information of commercial value by means of the private sector, the guidelines are hardly implemented, since government units are undergoing a process of privatisation in England, and units which have already undergone the process must support themselves in order to exist. They therefore themselves market information commercially, sometimes in competition with other entities in the private sector.<sup>2</sup>

As regards price setting, there is no uniformity in what actually occurs:<sup>3</sup>

- (a) publications of public significance are sold at a cost recovery

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<sup>1</sup> Crown and Parliamentary Copyright, General Notice Gen 90/23

<sup>2</sup> PUBLAW 3, "The United Kingdom", Prepared by Policy Studies Institute, London and Centre de Recherches Informatique et Droit, Namur for the European Commission

<sup>3</sup> PUBLAW 3, supra

price;<sup>4</sup>

- (b) publications are distributed at commercial prices, at market value, this trend being encouraged by the privatisation process, Board of Trade policy etc.;<sup>5</sup>
- (c) it appears that there is a policy of pricing information which is marketed in digital form on a commercial basis.<sup>6</sup>

#### 7. Internet Dissemination Of Government Information

A great deal of government information is distributed over the Internet, some free of charge and some for payment. For example, I found the English Protection of Privacy Act on one government site and downloaded it free of charge. On the other hand, at the site of the Office of National Statistics, extensive information is available to the public but only on the basis of paying for a subscription, the price not being negligible and apparently reflecting the commercial costing policy of disseminating information in digital form.<sup>7</sup>

#### 8. Copyright Enforcement

In the past, HMSO was responsible for the enforcement of parliamentary and government copyright.<sup>8</sup>

Recently, HMSO has itself undergone the privatisation process and currently operates under the name: "The Stationary Office". The copyright enforcement function has been transferred to another unit of HMSO which has not

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<sup>4</sup> PUBLAW 3, supra

<sup>5</sup> PUBLAW 3, supra; Peter N. Weiss and Peter Backlund, "International Information Policy in Conflict: Open and Unrestricted Access versus Government Commercialisation. Will Inconsistent Government Policies Inhibit Development of a Global Information Infrastructure?", as submitted to Harvard Information Infrastructure Project, June 20, 1996, page 5; Office of National Statistics, Electronic Dataset Catalogue and Price List, 1996 - the prices attest for themselves that they are not based on cost recovery.

<sup>6</sup> PUBLAW 3, supra, in the second paragraph of the chapter on England: "HMSO argues that it has to strike an uneasy compromise between allowing public access (to printed material) for example in libraries, and covering costs. This right of access is not extended to electronic material as the general public gets most of the material in print, it argues."

<sup>7</sup> The various subscription prices are detailed in Office of National Statistics, Electronic Dataset Catalogue and Price List, 1996

<sup>8</sup> Crown and Parliamentary Copyright, supra; PUBLAW 3, supra

undergone privatisation.<sup>9</sup>

9. Freedom Of Information

England has no Freedom of Information Act. The absence of such legislation might all the more encourage the commercialisation of government information.<sup>10</sup>

10. Summary

There is a clear trend in England towards privatisation and the commercial sale of government information which is of economic value. These trends are consistent with the protection granted to government publications by the English Copyright Act and they apparently also stem from the lack of a Freedom of Information Act.

**The USA**

11. Copyright

In the USA, copyright does not subsist in government publications.<sup>11</sup>

12. Pricing And Dissemination Policy

The pricing and dissemination policy derives from the basic philosophy that government information is vital to the democratic process and should therefore be disseminated at a price which simply reflects the cost of its preparation, and its use should not be restricted.<sup>12</sup>

One conspicuous source which gives expression to this philosophy is Circular No. A-130, which regulates the management of Federal agencies' information reserves. The Circular is published by the Office of Management and Budget in accordance with the provisions of the Paper Reduction Act (Title 44 USC Chapter 35).

Paragraph 7 of the Circular lays down the basic principles. Set out below are

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<sup>9</sup> PUBLAW 3, supra

<sup>10</sup> PUBLAW 3, "Introduction and Methodology"

<sup>11</sup> Weiss and Backlund, supra

<sup>12</sup> For details, see Weiss and Buckland, supra

three sub-paragraphs of paragraph 7 which shed light on the basic concept in the USA in this respect:

- (b) 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.
- (c) The free flow of information between the government and the public is essential to a democratic society. It is also essential that the government minimise the Federal paperwork burden on the public, minimise the cost of its information activities, and maximise the usefulness of government information.
- (f) 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 guidelines contained in Circular No. A-130 apply to all the types of information disseminated by Federal agencies:<sup>13</sup>

- (a) information which, by law, is to be delivered to the public about agencies and their activities;
- (b) agency records, which are to be delivered in accordance with the Freedom of Information Act and the Protection of Privacy Act;
- (c) the dissemination of other information which is to be delivered as part of the agency's function ("dissemination").

Paragraph 8(a)1(k)7 of the Circular lays down the following principles with regard to dissemination:

- (a) monopolies are not to be allowed in the area of disseminating Federal information;
- (b) the re-use of disseminated information is not to be restricted by

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<sup>13</sup> Paragraph 8(a)5 of the Circular

the collection of royalties etc.;

- (c) prices are to be fixed which do not exceed the cost of dissemination (without reference to the cost of collecting and processing the information), unless:
  - (1) a provision of law exists which requires otherwise;
  - (2) the information is processed and disseminated for a specifically identified entity;
  - (3) it is decided to disseminate the information at less than dissemination cost;
  - (4) the Director of the OMB has decided otherwise.

### 13. The Dissemination Of Federal Information Over The Internet

The dissemination of government information over the Internet is dealt with by paragraph 8(a)1(k)8 of Circular No. A-130:

*"Electronic Information Dissemination.* Agencies shall use electronic media and formats, including public networks, as appropriate and within budgetary constrain, in order to make government information more easily available and useful to the public ..."

The information is disseminated free of charge, at least at all the government sites that I have visited. The free dissemination of information over the Internet is consistent with the provisions of Circular No. A-130 with regard to pricing at cost. It could be argued that the cost of dissemination in the Internet environment is virtually nil and payment should therefore not be charged for access to information on the Internet. According to Mr Brian Kahin in his comprehensive article "Information Policy and the Internet"<sup>14</sup>, the dissemination of information should be priced at the marginal cost of disseminating each information unit, according to which method the costs of maintaining the dissemination arrangement should be disregarded. It would appear that the Internet dissemination of information free of charge is

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<sup>14</sup> Brian Kahin, "Information Policy and the Internet - Towards a Public Information Infrastructure in the United States", Government Publications Review, Vol. 18 pp. 451-472, 1991  
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consistent with Mr Kahin's philosophy.<sup>15</sup>

14. Government Information Locator Service (GILS)

According to paragraph 8(a)1(k)6 of Circular No. A-130, Federal agencies must "establish and maintain inventories of all agency information dissemination products". Similar provisions exist in other statutes.<sup>16</sup>

The Government Information Working Group<sup>17</sup> therefore recommended the establishment of a computerised system to enable both government agencies and citizens to locate information "stored" by Federal agencies.<sup>18</sup>

The GILS was established in accordance with these recommendations. The service is available over the Internet ([www.access.gpo.gov/su\\_docs/gils/gils.html](http://www.access.gpo.gov/su_docs/gils/gils.html)) and anyone can find Federal information by means of it, through his own computer, with immediate results, free of charge.

15. Summary

The underlying principles with regard to the democratic process and the importance of government information to that process have motivated the US Federal Government to lay down laws and rules which enable easy access to government information. Information is disseminated on the basis of its cost of dissemination (or free of charge on the Internet) and there are no restrictions to the information's use (no copyright, royalties or restrictive terms). As a result, there is flourishing commercial activity in the information industry<sup>19</sup> - of which success Europe is also envious.<sup>20</sup>

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<sup>15</sup> Mr Kahin is the Director of Harvard University's Information Infrastructure Project and exerts influence in the government circles which lay down Internet policy in Washington

<sup>16</sup> The Records Disposal Act; The Freedom of Information Act

<sup>17</sup> Part of the Information Infrastructure Task Force

<sup>18</sup> Government Information Working Group, Information Policy Committee, Information Infrastructure Task Force, "Government Information Locator Service (GILS), Report to the Information Infrastructure Task Force", NTIA, Department of Commerce, Washington DC, May 1994

<sup>19</sup> Weiss and Backlund, *supra*

<sup>20</sup> PUBLAW 3, "Methodology"; "Towards the Idea of a Universal Service"

## **Conclusion**

16. In recent years we have witnessed technological development in the collection, processing and dissemination of information. The availability of information, and in particular the information in the possession of government authorities, contributes to the State and its residents, both in the maintenance of the democratic process and in the encouragement of economic activity in the private sector. The more the State of Israel adopts systems which facilitate the giving of information to the public (whether by virtue of the Protection of Privacy Law, or by virtue of a Freedom of Information Law or further to the routine activity of government agencies), it and its residents will be strengthened. I shall conclude with the words of James Madison in the USA in 1822:

"A people who mean to be their own Governors, must arm themselves with the power that knowledge gives."