

When public meets private: conflicts in information policy

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Abstract

Purpose – *The purpose of this paper is to explore some of the policy debates surrounding the commercial reuse of public sector information. It aims to provide an overview of these discussions in the light of the 2003 EU Directive on this matter and the UK's implementation in the form of the 2005 Reuse of Public Sector Information Regulations. It also aims to argue that there is an inherent conflict of interest between the UK policy of making public sector information more freely available and the financial targets imposed by government on some of the key producers of this information.*

Design/methodology/approach – *The discussions presented in this paper draw on secondary academic and commercial research carried out in Europe and the USA. Primary analysis of the financial accounts of public bodies is also utilised to consider the potential conflicts of interest between revenue generation and information dissemination.*

Findings – *The evidence presented suggests that the sale of information collected by a number of key public bodies and the financial targets that are set by HM Treasury for them are a barrier to innovation within the private sector and to the wider development of an information society.*

Practical implications – *This research provides useful evidence for developers of UK information policies within the context of stimulating the development of a more vibrant information economy.*

Originality/value – *This is the first attempt to combine the financial analysis of UK public accounts with discussions about the commercial reuse of public sector information.*

Keywords *Information strategy, Public sector organizations, United Kingdom*

Paper type *Research paper*

Introduction

In a global information market estimated to be worth \$358 billion (Outsell, 2006) in 2005, the public sectors of Europe and North America are the largest generators of commercially valuable information (Hadi and McBride, 2000). This information is derived from a variety of sources including regulatory bodies, statistical offices, mapping agencies and treasury departments. If we accept the notion that most developed countries are, to varying degrees, in transition from industrial to information or knowledge-based economies then providing access to such information may be an important factor in aiding this shift. However, who has access to public sector information, under what terms, by what means and at what prices varies considerably within Europe and particularly between Europe and the USA. Within the UK a number of initiatives have been launched over the last decade to help individuals to access public information relevant to their social needs as well as to encourage businesses to use the internet to buy and sell goods and services. In 2000 the UK Prime Minister stated his aim to have all public services, which can be transacted electronically, available online by 2005. By the end of 2005, this target was nearly met with many public bodies at a local and national level offering access to information and services via the internet. While the core principle driving this policy was one of providing more efficient public services, a number of public bodies have used the internet to deliver information services on a commercial basis. Whether public bodies should seek to profit from the sale of information generated in the

course of their core business is a matter of some debate and the arguments surrounding this issue will be explored here. An analysis of the financial accounts of some of these organisations will be presented to support the contention that a conflict of interest exists within these bodies between their commercial activities and public responsibilities. This conflict is having a broader impact on the UK economy with short-term financial interests of the public sector restricting innovation within the private sector.

Definitions

The following definitions are useful in providing a framework within which to consider the debate on how public sector information can or should be commercially exploited. According to the European Commission (EC) (Directive 93/37/EEC (EC, 1993)), a public sector body is one:

- established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;
- having a legal personality;
- financed, for the most part, by the State, or regional or local authorities, or other bodies governed by public law, or subject to management supervision by those bodies, or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities or by other bodies governed by public law.

Although the above definition of a public sector body is relatively straightforward, defining “information” is a little more complex. Again, the EC (2003) provides a definition within the context of public sector information (PSI):

[...] any representation of acts, facts or information ... whatever its medium (written on paper, stored in electronic form or as a sound, visual or audiovisual recording), held by public sector bodies.

These definitions are useful in that they underpin the European Directive on PSI and the subsequent national legislation enacted by EU members. However, while the definitions may not be contentious, the discussions surrounding the significance of PSI and its social and economic importance are. Branscomb (1994) segments PSI based on its functionality and the extent to which it allows citizens to exercise their democratic rights as well as enabling public sector bodies to perform the actions demanded of them by law. The economic significance of PSI is investigated by Hadi and McBride (2000), who identify PSI as tradable because it commands a market price. This typically includes information in electronic formats that is sold to commercial entities in an unprocessed format for cleaning and re-formatting and then sold on to third parties.

Public sector information as an externality

The failure of traditional neoclassical economists to appreciate the significance of the role of information in the efficient functioning of markets is well documented (Martin, 1995). It is only in the last 40 or so years that sustained research has been carried out into the effect that asymmetrical access to information has for market participants (Machlup and Mansfield, 1983). One of the problems faced by researchers in this area is the unusual nature of information itself. Economists refer to its non-rivalrous nature whereby consumption or use by one person does not necessarily prevent its use by another. This characteristic was recognised almost 200 years ago by Thomas Jefferson (in David, 2003, p. 20) when he wrote:

He who receives an idea from me, receives instruction himself without lessening mine; as he who lights his taper at mine receives light without darkening mine.

In digital environments such as the internet, Jefferson’s point is even more relevant with electronic copies of documents, music and videos being reproduced at near-zero cost. This ease of reproduction and distribution is a problem for the music and film industries where the massive sharing of copyrighted materials amongst internet users has been taking place for several years. However, for the dissemination of public information there are obvious advantages such as the costs savings from not having to print and post materials to people

and organisations. In this respect there are externalities related to the production of public sector information. Externalities are described by economists as costs or benefits emerging from economic activity but which do not directly affect the immediate stakeholders in that activity and which are not reflected in the price of that product or service. An oft-cited example is pollution where the effects are felt by the broader community but its cost to society is not reflected in the price of the product from which the pollution was generated. While pricing information-based products is often difficult due to the low costs of reproduction and distribution mentioned above, in the case of public sector information it is argued that externality benefits need to be taken into account when setting policy in this area (Burkert, 1995; Stiglitz *et al.*, 2000; Weiss, 2002). At the core of their arguments is the belief that societies, as a whole, benefit most from the widest possible dissemination of the information generated by local and national public bodies. The externality benefits are realised at a social level by allowing individuals free access to information they need and at an economic level from private organisations using public information to create information products that can be sold in the marketplace. However, the intricacies of some of these arguments are exposed through an examination of the practices in the UK and USA with respect to the conditions placed on organisations that wish to reuse public sector information for commercial purposes.

Models of public sector information reuse

There is a general consensus in the USA that information generated at a national level by federal government bodies should be made as widely accessible as possible. The rationale behind this policy is that benefits to society and the broader economy can be maximised when publicly generated information is made available to third parties for a wide range of commercial and non-commercial purposes. Federal legislation in the USA exists to promote this policy including the Paperwork Reduction Act of 1995 and the 1996 Office of Management and Budget Circular, *Management of Federal Information Resources* (No. A-130). Behind these relatively recent events there is also a provision in the US Constitution prohibiting government bodies from preventing freedom of expression and copyright law that removes copyright protection from public information generated at a federal level (Pas and De Vuyst, 2004). The primary economic argument for this approach to encouraging the exploitation of public information resources centres on stimulating commercial activity and innovation in the services and products that the private sector is able to create from these resources. The companies that create these new products and services, it is argued, employ people who will increase tax receipts for the government at a personal and corporate level.

In his international study of the dissemination of meteorological data, Weiss (2002) supports the rationale behind the US model and argues that providing greater open access to public sector information is critical to the development of an information society. Weiss provides examples from the US and Europe to support his argument that attempts by public bodies to use their information as a revenue stream hinder broader economic activity.

The US approach contrasts considerably with that taken in much of Europe and, in particular, the UK. Here, there has been a tradition of either not making information easily available to interested third parties for reuse or imposing financial costs on them and/or imposing restrictions as to the extent of reuse for commercial purposes. At the European level, policy makers have been debating this issue since the late 1980s and a growing call for legislation to open up the market for such information resulted in the 2003 European Directive (2003/98/EC) on the reuse of public sector information. This sought to create some degree of uniformity in the ways that public bodies allow the reuse of their information and came into force in July 2005. Pas and De Vuyst (2004) provide a detailed discussion of the events leading up to the passing of the Directive and highlight some of the arguments used by stakeholders in the process. Many of these arguments centre on the changing methodologies that public bodies should use when providing access to their information resources. These range from calls for the provision of free and open access with no financial costs to third parties to claims that public bodies should be allowed to make charges that allow for the collection and dissemination costs to be covered as well as a reasonable profit margin on top. Supporters of this latter position argued that without this financial incentive,

many public bodies would not be able to maintain their current activities. Drafting the Directive took several rounds of consultation with the final round taking place in 2002. Interested parties were invited to submit comments on the European Commission document, *eEurope 2002: Creating a EU Framework for the Exploitation of Public Sector Information* (EC, 2001). In the event, 75 written submissions were made to the Commission comprising a range of public and private bodies. These ranged from a two-line submission from the Czech Office for Surveying and Mapping that approved the document to a ten-page submission from the UK government which offered a detailed critique of aspects of the proposal. The length of the UK submission and the concerns expressed within it illustrate some of the key conflicts that lie at the interface between the public and private sectors in this area. One of the key concerns raised centred on some of the UK public bodies that are major generators of commercially valuable information. These include bodies such as the Met Office, Ordnance Survey, Companies House and the Patent Office. The generation of authoritative, national data sets is at the core of their operations and was the reason for their original creation. Apart from their generation of massive and valuable data sets, these organisations are also linked by their legal status as Trading Funds. There are 20 Trading Funds in the UK that have been created since the 1970s (see the Appendix for a complete list). These organisations operate on a quasi-commercial basis and are set financial targets by HM Treasury on the basis of returns on the capital they employ (ROCE). Analysis of the annual reports of these Trading Funds for the financial year, 2004/2005 reveals that the total income of all 20 organisations was £2.602 billion while total operating profit was £104 million. Depending on the targets set for them, the funds are expected to pay HM Treasury an annual dividend and for 2004/2005 that totalled £55 million. Estimating how much of their revenue is derived from the sale of information is difficult as they are under no obligation to report this, but a conservative estimate for the period is £329 million while the actual figure is likely to be considerably higher. This estimate is based on the revenue breakdowns described in their annual reports. However, some funds do not provide this level of revenue segmentation including major sellers of information such as the Land Registry. However, information provided to the author by the Land Registry under the Freedom of Information Act shows that, in its first 11 months of operation, Land Register Online generated £1.255 million of revenue for the organisation between April 2004 and February 2005 (Lewis, 2005). The figures presented above help to illustrate the financial scale of public sector information generation and while some of the numbers may not seem significant at a national level, it is important to remember that these public organisations are operating as profit centres. This is very different to the financing model that exists in most of the public sector where service delivery not revenue generation is the priority. Total dividends paid to HM Treasury of £55 million by the Trading Funds is dwarfed by total government tax receipts but an important point is that there is a net flow of money into HM Treasury from these funds rather than subsidies going the other way.

Following from the evidence presented above, it could be argued that the UK model of self-financing public bodies is a sensible one to follow. The quality of information generated by organisations such as the Met Office and the Ordnance Survey is generally considered to be of a high quality while, at the same time, they are not a drain on the national finances. Rather, they contribute to the nation's budget which allows tax receipts to be used for other important services, including health and education. However, critics of this model argue that the pursuit of short-term financial gains by UK Trading Funds is to the detriment of the broader economy within which they operate. Weiss (2002) presents a range of examples to illustrate his argument that the more *laissez-faire* US model offers greater benefits to national economies as do Stiglitz *et al.* (2000) and Burkert (1995). Behind these arguments is an underlying philosophy about what the role of government should be in terms of interacting with and sometimes competing with the private sector. European governments are traditionally more interventionist with respect to economic matters while there is a tradition, on the surface at least, of a more hands-off approach from US federal government. In an attempt to move away from ideological discussions about the role of the public sector in the generation and reuse of its information, the European Commission commissioned a survey of the issues in the late 1990s. So far this has been the most authoritative attempt to apply a

rigorous analytical methodology to examining the economic benefits of the differing models described above. The study by PIRA (2000) examined a variety of US and European models and calculated that in 1999 the US and European national governments respectively invested €19 billion and €9.5 billion in the creation of public sector information. However, according to PIRA the net benefits to the US and European economies as whole from this information were €750 billion and €68 billion respectively. Therefore, while the expenditure on producing public sector information in Europe generated a return to the national economies of seven times initial investment, in the USA it was a multiple of 39 times. This, according to the report's authors, illustrates the merits of a more liberal and open approach by governments to this matter.

While the PIRA study provides some compelling evidence in support of the US model, Pas and De Vuyst (2004) point out that there may be a downside to preventing public bodies from selling their information. Without the financial incentives that exist across Europe, they argue, some public sector organisations may not carry on producing some of their data sets which are not always part of their core activities as mandated by the state. This could result in an overall reduction in the quality and breadth of information produced. They also counter the oft-cited argument that we, as tax payers, have already paid for the information once through our taxes and should not have to pay again for this information. This analogy, say Pas and De Vuyst, cannot be applied to all areas of the public sector. Building on an argument put forward by Peterson (1993), they point out that one could not reasonably walk into a government office and expect to use one of their typewriters on the basis that it had been paid for by tax receipts.

Conclusions

A focus of UK information policy over the last decade has been on stimulating the supply and demand sides of the information economy. This has taken the form of stimulating the market for internet access providers to offer affordable services to consumers and of setting targets for public bodies to provide online access, where appropriate, to their services. It could reasonably be argued that these policies have been a success with 11.1 million UK households and small businesses in March 2006 having broadband internet access, a number of ISPs offering discounted or even free broadband services (Ofcom, 2006) and most public services now being available online. However, less attention has been paid to the role of the public sector as a provider of commercially valuable information. As has been discussed above, recent legislation in Europe and the UK has attempted to force some public bodies to allow third parties to reuse this information for commercial purposes. It is too early to say how effective this legislation will be in stimulating the European market for information-based products and services but it looks unlikely to have a significant impact within the UK. Clauses in the UK's enactment of the European Directive allow for major producers of information including the Trading Funds to continue to charge significant sums for their outputs. As long as these bodies are under a statutory obligation to meet financial targets and pay dividends to HM Treasury then the dynamic and open information market envisaged by the original drafters of the EU Directive looks unlikely.

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Appendix. UK Trading Funds

1. ABRO;
2. Central Office of Information;
3. Companies House;
4. Defence Aviation Repair Agency;
5. Defence Science and Technology Laboratory;
6. Driver Vehicle Testing Agency;
7. Driving Standards Agency;
8. Fire Service College;
9. Forensic Science Service;
10. Land Registry;
11. Medicines and Healthcare Products Regulatory Agency;
12. Met Office;
13. NHS Estates;
14. OGC Buying Solutions;
15. Ordnance Survey;
16. Patent Office;
17. QEII Conference Centre;

18. Royal Mint;
19. UK Hydrographic Office; and
20. Vehicle and Operator Services Agency.

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