Going beyond access: accessibility of government information in the electronic media age.

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Introduction

Government information plays a fundamental role in the well-functioning of 21st century democracies. Easily accessible government information is considered to be an absolute requirement to maintain the competitiveness of industries as well as to secure the future health of democratic societies. Moreover, the new electronic media in general, and the Internet in particular, are seen as the essential means to ensure public access to information and enhance its accessibility.

Most governmental institutions at the national and international level seem to be aware of both the economic potential and the social importance of access to public sector information, and in the past 20 years have been developing different frameworks of access legislation. Since the massive growth of the Internet in the mid-nineties, governments world-wide also have embraced ICT and e-government as the ultimate means to develop more extensive and (inter)active information policies. But despite its many advantages and opportunities, the use of ICT confronts governments with new issues and challenges (for an interesting overview, see e.g. van de Donk et al., 1996).

Clearly, access rights are imperative but not sufficient to obtain an informed society, accessibility is needed as well. One of the fundamental questions that needs to be addressed in this respect is to what extent the ‘digital’ gap dividing citizens, depending on their access to new information technologies, reinforces existing social inequalities. In so far that it prevents all citizens from knowing and exerting their democratic rights on equal terms, it puts considerable pressure on governments to develop new frameworks and strategies of improved accessibility in order to reach citizenry as a whole. Simply sliding enormous amounts of government information through the World Wide Web, in other words, will not suffice. The need to sustain parallel circuits of information by different, new and conventional media outlets, is but one thing that needs to be considered in this respect.

At the same time, the nearly infinite ways of processing and recycling information electronically are causing much legal insecurity as far as the protection, the use and the (commercial) exploitation of public sector information are concerned. Again, the need for new regulative frameworks is pressing.

This paper is based on a research project commissioned by the Flemish government (Belgium) (Dumortier et al., 2002), the aim of which is to develop a policy framework for the (electronic) disclosure and accessibility of its information. Together with an overview of the guiding principles in
current regulation at the national and European level, a short review of literature dealing with
different aspects of access and accessibility is presented, from which a theoretical model is deduced.
Based on this model, some of the main problems and policy issues arising in the (Flemish) context of
electronic government communication are discussed.

1 Benefits of accessible government information: why bother anyway?

In the information society the public sector is the largest source or provider of socially and/or
economically valuable information of all sorts. As a result of technological developments and the
application of ICT in communication by and with the government, the importance of public sector
information even has increased on both planes. Government information is a vital resource for both the
development of the information market and the future of a democratic information society (European
Commission, 1998; see also van der Hof, 1997). Easily accessible government information (in
electronic forms) is considered as a crucial production factor, offering wide opportunities to reinforce
the competitiveness of economic business in general and of the information industries in particular. By
improving the efficient functioning of governmental bodies and administrative departments, as well as
the quality of public services, a transparent information policy may also enable governments to secure
their legitimacy and credibility and to gradually close the gap between citizens and politics. New
electronic media in particular are expected to play a key role in shaping open ways of communication
between governments and citizens, as a prerequisite for democratic participation and control.
According to predominant views then, the transformation towards electronic government offers new
and extensive opportunities to disclose public sector information in the service and interest of all: the
citizens (as voters and political subjects, and as clients or consumers of public services and
information), social organisations and pressure groups, the media, educational and research
institutions, economic business, the private information sector and government and the public sector
itself. As a result, it should simultaneously stimulate democratic participation and economic growth.
2 Government information: defining the subject

The literature concerning public sector information (Baten & van der Starre, 1996; de Terwangne et al., 1994; Frissen & Snellen, 1990) confronts us with many different efforts to define the subject. The definitions and classifications of public sector information vary from one source to another. The European Commission for instance in the Green Paper on public sector information in the information society (1998) uses a distinction between two types of public sector information: information of an administrative nature and of a non-administrative kind. The first category relates to the functions of governing and the administration itself, while the second category refers to information about the outside world that is gathered during the execution of public tasks (Geographic Information, information on businesses, social-demographic data, etc.). As far as administrative information is concerned, a further distinction is made between information that is considered to be essential for the functioning of democracy (like laws and Parliamentary information), and information that does not have such a fundamental character. Another possible distinction draws a line between information that is relevant for the general public (like Parliamentary information) or only for a very limited group of persons who have a direct interest. From a market perspective, information can be divided according to its (potential) economic value. It should be noted, however, that both administrative and non-administrative information can have a considerable market value. Apart from these distinctions brought forward by the European Commission, other criteria can be used as well. For instance, one could distinguish documents for internal use from official ones, although it is quite reasonable to argue that, for reasons of democratic control, the public should not be denied access to preparative material. As far as a possible distinction between media or carriers of information is concerned, one should recognise, as the U.S. has done with its Freedom of Information Act, that all existing and future access legislation should be formulated in technologically neutral terms in order to adapt to the new digital and multimedia environment. More problematic, finally, are distinctions made according to the stage of production, or the extent to which information is processed, from raw material to value added information. While the use of ICT is likely to blur such demarcation lines, the question needs certainly to be addressed whether access to government information only applies to readily available documents, or also involves all kinds of potential documents or virtual information, which can (easily)
be created by processes of matching, coupling and compiling information from different sources and
databanks (Bergfeld et al., 2001; de Terwangne, 2000; Jacobs & Janssen, 2000).
All of the above mentioned distinctions do have (some) relevance, as one could reasonably ask for a
differential treatment in legislation of various types of public sector information. The distinctions
made by the European Commission, for instance, point out that the process of defining government
information itself is not without consequences. Depending on the use of certain definitions, access
rights may or may not be quite limited, while different rules may be applied to different sorts of
information. Clearly, defining the subject of information therefore is very important, but at the same
time a hard-to-do job, especially when one tries to apply normative rather than instrumental criteria.
The content or value of information seems to be one of the most important criteria for classification
and differential regulation, but clearly defining the trade and/or use value of information, as well as
distinguishing the general, public or democratic interest from private interests is extremely difficult.
As a result, it does not provide a very stable basis to ground (differentiated) regulation regarding
access, pricing, copyright, exploitation or other aspects of information policy (Schaffers, 1996).
Even more problematic is the definition of the public sector itself: which institutions are to be included
when speaking of the public sector, and even more important, when delineating the area to which
access legislation should apply. In the laws and discussions on access to public sector information
three possible approaches generally emerge (European Commission, 1998): the functional approach,
according to which the public sector includes those bodies with state authority or public service tasks;
2) the legalist/institutional approach: only bodies that are explicitly listed in the relevant law(s) have a
public sector character; and 3) the financial approach, whereby the public sector includes all bodies
mainly financed by public funds (i.e. not operating according to the normal rules and workings of the
market). Often, and Belgium counts as but one example, access legislation pertains only to
administrative organs, linked with the executive branch of the state. Whether, and to what extent,
information of both the legislative and judiciary arms of the state should comply with access rules
frequently remains in dispute (e.g. in the Netherlands, see Baten & van der Starre, 1996).
In this paper, together with Schaffers (1996:17) among others, we will stick to a potentially broad
interpretation of the concept of public sector information as all information (documents or data files)
controlled, produced and/or collected by or by order of the government, or at government expenses,
including all governmental branches and agencies, the public administration and all sorts of public (service) organisations (cf. the functional approach).

3 Access to government information: the European policy framework

If we take a closer look at the policies with regard to public sector information, it is striking to see that, for reasons rooted in the past, in most parts of the world public sector information has always been the subject of tight control, and that regulations guaranteeing public rights of access are of a remarkably recent date. During what is called the 'Ancien Regime', in Europe, public governance was shrouded in mysteriousness, and secrecy was the general principle guiding day-to-day governmental practices. The rise of modern democracy made this situation become more and more unacceptable. On the one hand citizens, media, social organisations and pressure groups in the 20th century increasingly demanded transparency to enable them to exercise democratic control on government. On the other hand official secrecy came into conflict with new civil rights, and especially with the principle of 'freedom of speech' that was consolidated into various treaties by the middle of the 20th century. In many Western countries this ultimately led to legislation concerning the publicity of government information, but often not earlier than at the eve of the new millennium.

The Council of Europe

One of the first important Conventions in Europe was the Convention for the Protection of Human Rights and Fundamental Freedoms. Although it does not contain specific articles that provide citizens with access to public sector information, the Convention contains elements that were the building blocks for the development of an information policy by the members of the Council of Europe. Several articles were important in this respect. Article 10 is the most important one. This article grants everybody the freedom of expression. To be able to exercise this right, the Convention clearly recognises that this right includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The article also mentions a limited number of exceptions to this right: national security, territorial integrity or public safety, prevention of disorder or crime, protection of health or morals, protection of the reputation or
rights of others, prevention of the disclosure of information received in confidence, maintenance of the authority and impartiality of the judiciary system. These restrictions can be found in the legislation of most countries. The article 8 (Right to respect for private and family life), article 2 (Right to life) and article 6§1 (Right to a fair trial) also have had an important impact in stipulating the role of governments in spreading out their information in public.

Other initiatives of the Council of Europe have played an important role as well. In 1970 the Parliamentary Assembly of the Council of Europe voted Resolution 428 ‘Declaration on mass communication media and human rights’ which confirmed that the freedom of expression includes the freedom to collect, to obtain, to communicate, to publish and to spread information and ideas. The members of the Assembly stated that this right implies that public authorities under certain conditions shall have to inform the general public about matters of public importance. In Recommendation 582 on ‘Mass communication media and human rights’ the Assembly went one step further and suggested that Article 10 of the ECHR should be enlarged with the right to retrieve information. More interesting for this paper is Recommendation 854 (1979) on 'Public access to government records and freedom of information'. In this Recommendation the Parliamentary Assembly of the Council of Europe invited the member states to develop a system of freedom of information. The principles developed in this Recommendation for public access to government information would appear in the legislation of different member states. One of the suggestions is the right to have access to official documents. This right would then imply the right to receive information on demand from government agencies, the right to control files with personal information and the right to correct these data. The Assembly explicitly motivated this Recommendation by stating that without these rights a parliamentary democracy can not function properly.

The Committee of Ministers of the Council of Europe also took major steps to promote access to public sector information. The first step was the acceptance of Recommendation (81) 19 on ‘Access to information held by public authorities’. This Recommendation was very important because of the principles included in the annexes. The right of access to government information includes natural as well as legal persons within the jurisdiction of the state. This right can be executed on demand by a person without a claim of personal interest. Denials of access by authorities have to be motivated and have to be in agreement with the law. The person has the right to appeal. Another important step was
the ‘Declaration on the freedom of expression and information’ (1982). In this Declaration the Committee of Ministers emphasised that to ensure freedom of expression and information, governments should try to create an "open information policy in the public sector, including access to information".

Although these Resolutions and Recommendations did not have the status of law, they did have an important impact on the way European governments (and the European Union) have developed their legal framework concerning the access to public sector information.

*The European Union*

Inspired by the efforts of the Council of Europe, the European Union also developed a framework concerning access to public sector information. In contrast to the work of the Council of Europe, the Agreements developed by the European Union are legally binding the member states. As a consequence, the policy of the European Union has had a more direct influence on the member states than that of the Council of Europe.

Much of the attention the European Union has devoted to public sector information is concentrated on two aspects: access to and exploitation of government information. The first important decision was taken in 1990 with the announcement of Council Directive 90/313/EEC on the freedom of access to environmental information. The impact of this Directive in many members states was important since it granted citizens the right of access to information on the environment held by the public sector. The aim of the Directive was to harmonise the existing legislation in the different member states, as these differences caused unequal access for European citizens as well as unequal opportunities to commercialise the information.

In 1992 a second step was taken in the Treaty of Maastricht. A Declaration (n°17) on the right of access to information was added to the Treaty. This Declaration stated that "transparency of the decision-making process strengthens the democratic nature of the institutions and the public’s confidence in the administration". The Council followed this Declaration by adopting the Council Decision 93/731/EC of 20 December 1993 on public access to Council documents (amended in 1996 and 2000). The Commission followed with the Commission Decision of 8 February 1994 (94/90/ECSC/EC/Euratom, amended in 1996) on public access to Commission documents. The


Closely related to access to public sector information has always been the problem of privacy. In 1995 the European Parliament and the Council adopted a Directive (95/46/EC) on the protection of individuals with regard to the processing of personal data and the free movement of such data. In the following years several initiatives were taken by the Council, the Commission and the European Parliament regarding this matter.

In recent years the debate regarding public sector information on the European forum largely has been dominated by two (at times conflicting) aspects: access as a democratic principle and exploitation as a key for the development of the information market.

Already at the end of the 1980s, the institutions of the European Union did recognise the importance to harmonise the exploitation policies and regulations of the member states for the development of the internal market and the competitiveness of the European information industries. During the 1990s the economic value of public sector information frequently has been stressed, and the issue of commercial exploitation brought to the fore.

Of major importance in this respect was the publication in 1998 of the already mentioned Green Paper (COM (98) 585 final) on public sector information in the information society as a key resource for Europe (European Commission, 1998). The Green Paper is divided into three parts. Part one deals with the importance of public sector information (importance of access for European citizens and the opportunities for economic growth and employment). Part two covers the relationship between the information society and the public sector, and deals with aspects of e-government and electronic access. The third part covers the issues linked to access to and exploitation of public sector information, such as conditions for access to public sector information, practical tools for facilitating access, pricing and competition issues, copyright, privacy and the liability issues of information.
On October 23, 2001 the European Commission then made an important move in this whole debate with the Communication (COM (2001) 607 final) on creating a EU framework for the exploitation of public sector information in the context of eEurope 2002 (European Commission, 2001)\textsuperscript{13}. As far as the Commission is concerned, the basic principle of a common regulative framework for exploitation should be the right to (re-)use generally accessible public sector information for commercial or non-commercial ends.

4 Access to government information: the Belgian policy framework

The policies followed by the Council of Europe and the institutions of the European Union have had a considerable influence on the development of national policy frameworks regarding access to public sector information at the level of the individual member states.

In order to adapt to the Directive 90/313/EEC of the European Union, Belgian governments had to modify their legislation. Legislation on access to certain kinds of public sector information already existed in a fragmented set of specific regulations. However, the general tradition regarding government information in Belgium largely was one of secrecy, unless explicitly stated otherwise. This overall regime of secrecy changed in the nineties, as, for the first time, a general regulation of ‘publicity’ or access to public sector information - although limited to ‘administrative documents’ - was introduced.

In 1993 a new article was added to the Constitution that recognised the fundamental right of access to administrative documents for all persons (natural and legal). This article 32 was translated and worked out, in a quite fragmented manner, into specific laws at the different layers of government (Federal, Regional and Local), specifying the necessary conditions, procedures and limitations to exercise this fundamental right. On October 23, 1991, the government of the Flemish Community was the first to issue such legislation, amended on May 18, 1999; at the Federal level access regulation is contained in a law issued on April 11, 1994 (see Drayé, 2001; Schram, 2001).

These legislative texts overall define the term 'administration' in a positive manner as well as, more importantly, negatively by excluding the legislative and the judiciary powers of the state. The term ‘document’ is described in the most including manner as "any information, in any form, of which the
administration disposes". Excluded from the principle of general public access are documents of a personal nature. In all legislation a clear distinction is made between active and passive publicity (see further); in Flemish law active publicity implies an obligation for administrative institutions “to inform the public systematically, in time and in a comprehensible manner about policies, laws and other regulations, as well as about their public services and available information.”

At this very moment, European pressure increasingly is felt to start and develop at the national level a currently nearly non-existing, general policy concerning the use and re-use of government information. Clearly, the exploitation of public sector information, just like the publicity thereof, frequently conflicts with other kinds of regulation. First of all, access to and exploitation of information with personal data is limited by national law protecting the private life of individuals with regard to the processing of personal data. Secondly, the publicity and exploitation of government information can come into conflict with certain obligations of official or professional secrecy and discretion. Thirdly, with regard to copyright laws, permission is needed in principle to make information publicly available for whatever use, in case third parties have the intellectual property rights. The extent to which rules of fair competition may form a constraint for the distribution and re-use of public sector information is less clear. However, one can for instance claim that granting exclusive exploitation rights to private companies is a form of state support which undermines fair market competition. Apart from all these domains of regulation, it is, finally, important to stress that the Flemish access legislation of May 18, 1999 itself contains direct limitations on commercialisation, since it explicitly stipulates that administrative documents, obtained through the application of this law, may not be further distributed or used for commercial ends.

5 From access to accessibility: a conceptual model

The explosive growth of the Internet in the mid-nineties has accelerated the process of governments starting to disseminate their information more actively and extensively, using ICT as an important tool (before that ICT were applied mainly to internal processes). For the first time in history governments had a tool which enabled them to go much further than regular access legislation was demanding. Massive amounts of public sector information were put on the net. Along with this, the accessibility of government information became much more of a serious problem. As a result, in recent years a shift in
the debate has been noted from the problem of access to information to the problem of accessibility, emphasising the need for new policy frameworks.

Indeed, opening up government information for the general public does not end with legal provision of a right to access. In fact, access to, or publicity of, government information is a first and necessary, but in itself not sufficient condition for an open and transparent information policy, accessibility is needed as well (Beers, 1996; Bouwman et al., 1996a). Figure 1 presents some of the most important concepts and aspects related to access and accessibility, and outlines their overall relationship. This conceptual framework is largely derived from the work of collaborators of the Rathenau Institute in The Hague in their aim to evaluate electronic information policy initiatives of the Dutch government (see Baten & van der Starre, 1996; Bouwman et al., 1996b; de Vries, 2001). According to de Vries (2001:18), the disclosure - or what we henceforth will label as ‘transparency’ - of government information comprises two basic aspects.

Figure 1: Transparent government information

The first one, the ‘availability’ of information, is the direct result of (legally) providing access to public sector information. Before one can answer the question to what extent the information disclosed by the
government is really accessible, one needs to ask first to what extent, in what manner and under what conditions the information is made publicly available in the first place, a matter which is mainly determined by law and regulation. It is essential to distinguish between two forms of access provision to information, depending on whether a government institution provides information on (formal) request (passive publicity), or on its own initiative (active publicity). Baten & van der Starre (1996) note that accessibility of government information is more than ever a prerequisite in the case of actively disseminating information to a wide audience. Apart from the degree and form of publicity, the availability of information also concerns the use one is able or entitled to make of it (de Vries, 2001). This is, for instance, dependent upon the practical form of access (e.g. the right to look into certain documents, to get a copy, or additional explanation by civil servants), but more importantly it also refers to the conditions, possibilities and limitations for private companies to exploit the information or to (re-)use it for commercial ends.

The second aspect of transparency is the ‘accessibility’ of information. To a certain extent accessibility is also subject to regulation, included as specific conditions, procedures and modalities in access legislation, but in general it often relates to more practical aspects of information disclosure.

Accessibility of government information means, in fact, that the available information can be accessed and consulted with a minimum of efforts and constraints (Bouwman et al., 1996a); as such accessibility of information is an absolute requirement to reach all citizens, or at least as much as possible. Baten & van der Starre (1996:21) see five important areas of such potential constraints, which can be grouped under two general headings. The attainability of information is determined by three factors: (1) access to the media or carriers of information; (2) the ‘traceability’ of the information, that is knowing that the information exists, knowing where (place), when (time) and how it can be found, and being able do guide yourself through the information (systems); and (3) the costs or price (for consulting or using) of the information. The comprehensibility of information, finally, relates to both information content and forms of presentation.

It is essential to understand the relationship of all these aspects, which are all of course of a relative nature: without access (availability) there is no accessibility (de Vries, 2001:14), but giving the public access to government information is rather pointless when this information is not (properly) made accessible. This relationship of mutual interdependence is also valid at lower levels. For instance, the free publication of electronic information which supposedly can be traced rather easily, does not
contribute much to its accessibility if large groups of the population do not have access to the
information channels used. Transparency of government information therefore is the product of efforts
to be made (simultaneously) at all levels. Government information can only be transparent when it is
made both available and accessible at the same time, and it can only be made accessible when it is
traceable, payable, comprehensible and publicised through media channels every citizen has access to.
Every aspect is an indispensable element in the process of making government information (more)
transparent.

6 Accessibility of government information: the role and impact of ICT

To make government information available and more accessible to all interested parties and actors, the
use of ICT undeniably offers many advantages and opportunities. These to a large extent derive from
the greatly increased speed and capacity of transmission, the extensive possibilities to process,
combine and distribute data and information, and especially the interactivity characterising the new
electronic media. One of the most important implications of the application of ICT in the ‘government
information chain’ is the integration of different modes of information transfer - not simply allocution,
but consultation, and possibly registration and/or conversation as well (van Dijk, 1997) - and thus of
production, distribution and reception of information (Schaffers, 1996). As a result the transformation
towards an electronic government implies the movement from one-way information services
(allocution) to two-way communication patterns, and in the longer term to real transactions between
information providers (governments) and users (citizens). The two-sided relationship between the
government and the public administration on the one hand, and the citizen as its client and as
participant in the democratic decision-making process on the other hand, the disclosure of an
enormous amount of currently under-used but (commercially) highly valuable information and
databanks for the benefit of business and e.g. academic research, and the conditions for efficient public
services of high quality delivered by public institutions, all seem to come close to attainment as a
result.

Judging by the policy plans, projects and initiatives (being) taken in accordance with the e-European
policy guidelines, the Flemish government as well as the federal government and the other regional
governments in Belgium have given proof of their firm intention to adopt e-government as the basis of interaction with society in the near future. Existing laws will have to be revised, however, to adapt to the new technological environment. Following the example of the Freedom of Information Act in the U.S., legislators will have to rethink access and accessibility in technologically neutral terms. There is more to it than that, however. Together with the new and extensive possibilities of ICT in stimulating government transparency, new policy issues arise and some old problems become more acute. Through the application of ICT, digital multimedia systems, computer networking and the like, an enormous quantity and diversity of public sector information becomes available at high speed for use and re-use, which as a result of all kinds of devices for searching, selecting, combining, creating and re-processing information in various forms is given a wholly new dimension. Multiple products and services, selections and packages of data, potential documents and only temporarily existing formats of information, are redefining the structure of the (government) information market, which as a result will become far more segmented and fragmented, both in terms of differentiated availability and demand, than ever (Schaffers, 1996). For one thing, in this rather chaotic environment, it becomes far more difficult for governments to control their information assets. The relationship between the public sector and the private information sector, and their respective tasks and responsibilities in making the information accessible (e.g. making it traceable in a context of information overload) then needs to be reconsidered, and translated into a new framework for structuring the government information production chain. Other major problems and implications of the use of ICT in government communication processes have to be tackled as well (e.g. the problem of certifying and securing electronic data transfers), some of which are discussed below within the contours of the conceptual model presented earlier. As a whole they demand new policy frameworks to ensure both access and accessibility with regard to government information in the new electronic media age.

7 Accessibility of government information: policy issues and challenges

What kind of government information?

A first issue has already been indicated, and concerns the overall subject and range or scope of access regulation. The preliminary question of which (kinds of) public sector information need(s) to be made
available and accessible should be addressed, the more so because current legislation offers no clear-cut definitions in this respect. Should access for instance, as is stipulated in Belgian law, remain limited to documents available within administrative departments only? And is an administrative department obliged to gather and combine all necessary information elements in case access to a ‘potential’ but not readily available document is formally requested? As new electronic media are extending the frontiers and dimensions of what can be considered as information in such a way, such questions need to be answered.

What kind of publicity or forms of access?
In connection with this, another aspect of the scope and scale of access needs to be filled in. Regulation in general is and has been very much concerned with ensuring forms of passive publicity, and far less with defining positive obligations for government agencies to actively make their information available for the general public. As new interactive media and electronic online information technologies such as the Internet blur the distinctive line between active and passive publicity (Baten & van der Starre, 1996), and install regular patterns of consultation and transaction initialised by end users, the question becomes even more urgent as to how far active publicity must go.

The answer to this question is not so much determined by technology, however, as it is by a clear vision of the core public tasks of government, defining the extent to which government has a responsibility to open up certain kinds of information on its own initiative (Baten & van der Starre, 1996).

Should any legal obligations be formulated in this respect to be obeyed by governmental institutions? For an active information policy to be conducted on a systematic basis perhaps they should; as active publicity sometimes is rather strongly dependent upon a certain willingness or attitude to openness, it otherwise might remain limited to some ad hoc initiatives in only but a few institutions or administrative departments. Certainly, the organisational integration of communication (e.g. in terms of strategic planning) within the processes of policy decision-making and the exercise of public tasks is a basic requirement in order to develop a well co-ordinated and effective information policy.

Are there any suitable and applicable grounds and content-wise criteria to categorise information which should or should not be included in obligations of active publicity? It is reasonable to argue,
like Baten & van der Starre (1996), that information which is essential in order for citizens to know their democratic rights, or information of general public importance, should be given high priority in this respect, but then it still remains to be seen where one draws the line.

Clearly, the new information technologies offer large opportunities to pursue an (inter)active information policy in a quite extensive way, which in turn may stimulate and/or anticipate passive forms of access to government information as well; the Internet in particular provides the means to make available huge amounts of information, of whatever kind, at a relatively low cost. There are however many practical limits to active publicity, such as the mere financial, logistical or technical capacity to handle all this information and to keep it up-to-date. Furthermore, it seems sufficient to simply put the information on the Internet to have fulfilled one’s task of actively making information available, but this does not necessarily mean that such an action or initiative is always a meaningful, efficient or effective thing to do. Since an overload of information often implies that some demands for vital information are not being met, informing citizens about the available information itself and enabling them to easily trace the information they need, therefore is crucial when actively disclosing (electronic) government information. Given the information collected about citizens and the technological means at governments’ disposal, perhaps it is even reasonable to claim a more proactive kind of communication and public service, which departs more directly from and even tries to anticipate the specific information needs of individual citizens, in order for instance to fully inform the less affluent about all particular rights and funds a social security system provides.

Access to information carriers

This presupposes, however, that these people have access to the (electronic) media or carriers of information. One of the first conditions for accessibility of government information is indeed that in order to have access to the information, access is needed to the media carrying the information. On the one hand, in an age where (government) information is increasingly produced and stored electronically, requests for access to information in electronic forms should be met as of right, provided these forms are indeed available (Baten & van der Starre, 1996) (the question remains of course what this means for electronic forms which are only potentially available, since paper documents for instance can be scanned if administrative departments possess the necessary technical
equipment). One could even argue that governments should be obliged to use electronic media anyway, in order for them to play an active, leading role in stimulating the use of new media and the participation of its citizenry in the information society.

On the other hand, all citizens should have equal access to information and public services, but the possession and the skills to make use of new electronic media and technological facilities to connect to the Internet are not equally distributed throughout society. Both the financial and technical accessibility of information are at stake here (Bouwman et al., 1996a), imposing a digital gap between the information haves and the information have-nots, which is likely to reinforce existing social inequalities. What can governments do to try and solve this problem of unequal distribution of media access? How can they lower the barriers of entry in order to ensure equal treatment of all citizens? One important strategy would be to stimulate the use of new media by providing free and widespread access in libraries and other public spaces, or, going much further, to foster access via a ‘universal service obligation’ for electronic media (Internet as a basic necessity for living just as electricity or water?) (see e.g. Arnbak & Ubacht, 1995). The most evident and attainable strategy is to sustain parallel circuits of information provision through a mix of different, new and conventional, media channels and outlets (Bouwman et al., 1996b). The accessibility of information is increased when it is offered in different forms, and when governmental institutions (are obliged to) take into account user preferences.

*Traceable government information*

Of course, users should be aware that the information exists in the first place, and then, secondly, be able to track it down. Traceable information supposes that governments actively notify citizens about the information they possess and on which location it can be found. This implies two core tasks: informing the public about the information available and helping them to seek and find the information needed. Here possible interference between the public and the private sector is possible, since historically ‘helping to find government information’ has often been one of the added values offered by the content industry.

An important instrument for making information known is the creation of an (electronic) public register or inventory of documents and information sources, provided of course that this device itself is
made accessible and user-friendly, and contains unambiguous references to the location of the information.

To improve accessibility it is advisable that the information is made available in different public places, and that local governments are integrated as much as possible in the process of disclosing ‘national’ government information. As far as (online) electronic information which can be accessed from a distant screen is concerned, accessibility is mainly an issue of enabling the end user to find the central location of information storage as quickly and efficiently as possible. Important in this respect is the development of (intelligent) search tools and navigation systems, a task which is being performed by the information industry.

Even more essential is the creation of an effective and user-friendly portal site on the World Wide Web, grouping all governmental institutions and services\textsuperscript{14}. Here one needs easily to find the necessary clues and links for guidance through the electronised public sector information, helped as much as possible by standardisation and uniformity in presentation. Once the information needed has been located, electronic government is optimised when interaction and transaction are made possible: it should not only be possible to download forms and questionnaires, one should also be able to fill in and send back these documents online. Co-ordination of all back-office departments, structures and procedures within one compatible information system or network is essential for such electronic services of high quality accessible by one central front-office. One of the most difficult challenges in installing e-government is this transformation and integration of back-office structures, of which the front-office desk should be a neat extension (Bekkers, 2001). The problems are immense and complex, since they not only involve adjustment of administrative procedures or compatibility of technical equipment, but most often also need an attitude of open-mindedness and flexibility.

\textit{Comprehensible government information}

Having information traced is not enough, though. To be accessible information should also be comprehensive as far as language use, content and presentation are concerned. More than any other aspect of accessibility this is something very subjective and dependent on the personal circumstances and cognitive skills of potential users (Beers, 1996) - Bouwman et al. (1996a) therefore define it as the cognitive accessibility of information.
It is worth mentioning that governments face a dilemma in this context: if they neglect this aspect, they risk exposing themselves to the criticism that their information is inaccessible, if they put (too) much effort to this, they risk of being accused of manipulation of information (Baten & van der Starre, 1996:35). Transparency thus implies the possibility of verification and control, for instance by trying to make explicit or transparent the process of treatment of raw information, and by ensuring that the original content remains available and accessible at any time (as it does not take much of an effort to store and save information electronically, this should not be an insurmountable problem).

Making public sector information comprehensible traditionally is the most important domain of the private information sector. Since governments seem(ed) unable to make their information (e.g. law) comprehensible, the content industry created a market in offering books and other media with this kind of information in comprehensible form and language. The question is: where do the tasks and responsibilities of governments end, and where does the role of the market begin?

The price of government information

These questions are very closely connected to the price issue of public sector information. Belgian legislation in general stipulates that the government is allowed to charge users for consulting public sector information, both in case of active and passive publicity, but that this fee may never exceed the cost price. Many questions arise however: what is the cost price of public sector information, should government information not be freely available at any time, or, on the contrary, could one allow governments to use their information as a source of additional income or even to make a profit? Different views exist regarding this matter, which can impede access to and use of government information (see Schaffers, 1996; van Eechoud & Kabel, 1998).

A first question is whether or why one should pay for government information in the first place. Should government information not be freely available to everybody, especially when it concerns information that is essential for citizens to know their democratic rights and responsibilities? Moreover, one could argue, the government has financed the production or gathering of its information with tax money, so it would be unfair that potential users should pay a second time to consult this information, certainly when considering the fact that they are often obliged to give this
information to the authorities. And the more governments are legally obliged to make certain
information available, the harder it probably gets to claim and justify that it should be paid for.
Nonetheless it seems widely accepted that governments, so long as they do not make a profit out of it,
may obtain at least a partial reimbursement for the costs of delivering information, based on the
principle that the end user pays. In general, however, the question then is how the cost price of
information can be determined: how can costs be assigned to specific information products and
services, and which costs should or should not be included when fixing an allowance based on costs?
The production and distribution costs of information involve such a broad spectrum of direct and
indirect cost-making activities, processes and costly facilities, that the relationship of these costs to the
information products and services themselves is often hardly demonstrable (especially since the data
are often a by-product of some kind of service). The most reasonable distinction to be made, is
between ‘user-independent’ costs (e.g. costs of building up and maintaining information systems and
facilities) and ‘user-dependent’ costs, directly linked to the dissemination of information itself (e.g. the
costs of a paper copy or a facsimile) (Schaffers, 1996:19). Moreover, the discussion then becomes
even more interesting and important when considering e-government. Then even such costs are
reduced to a minimum, since the cost of reproduction (the push of a button) is practically nil. In an
electronic environment once the information is online, the marginal cost of spreading the information
to one more person is almost negligible.
Even when user-dependent costs of delivering information are used as a maximum, the question of
how, according to what mechanisms, and on the basis of which principles or criteria prices and tariffs
then should be fixed, remains to be answered. For government information to be accessible, one can
only suggest that the price for consulting and using the information should be as low as possible. This
would put up a high barrier to commercial, profit-seeking activities by governments themselves, and a
low threshold for citizens as well as for private companies seeking to exploit the information
commercially; the latter would be a stimulus for the development of the information market, as
opportunities arise for product diversification and price differentiation based on the information values
added (Baten & van der Starre, 1996:41).
Or, should governments be able to generate additional income from certain kinds of information and
data that are highly valuable for commercial use? A wholly different view would than be that
governments fix the prices of their information, and finance the costs of its production, through the regular workings of the information market. In view of fair competition such conformity to market prices could even be seen as a necessity, in case a public institution starts to compete with commercial enterprises by exploiting certain kinds of information (Kabel et al., 2001).

8 Exploitation of government information

Clearly, the issue of price-fixing is inextricably linked with the discussion concerning the commercial use and exploitation of public sector information and the global structure of the government information chain (role definitions of the public and private information sector, provisions for universal service and commercial exploitation) which is considered to be appropriate (de Terwangne et al., 1994; Schaffers, 1996). Surely, maximising the exploitation possibilities for the private information industries demands a minimum price for public sector information. And to a certain extent there is a positive relationship between commercial exploitation and the development of the information market on the one hand, and access and accessibility as democratic principles on the other hand, or between the economic and the social importance of government information. The private information sector can use its right of access to public sector information to create new information products and services which, through their values added, may contribute to the accessibility of government information on behalf of citizens (van der Hof, 1997). The European Commission certainly seems convinced of the potential of accessible public sector information as a key to both commercial growth and electronic democracy. The above mentioned Communication of the Commission on the exploitation of public sector information states that “it will facilitate their ‘European citizens’ and businesses’ communication with the public administrations and has the potential to increase their participation in the democratic process” (European Commission, 2001:3) and “bring out the full potential of public sector information as a key resource for Europe and for all Europeans.” (European Commission, 2001:15) Still, one of the central questions in this debate is whether indeed private exploitation of public sector information contributes to the transparency of the public sector and the accessibility of its information for all citizens? In its Communication the European Commission expresses the expectation that both democracy and the economy will benefit
from better provision and improved use of public sector information. The question is to what extent and under what conditions such a policy statement holds true.

On the one hand, it’s not hard to agree with the claim that wider access to public sector information for the information industries opens up important perspectives for the development of value added information products and services and, as a consequence, for the growth of the (European) information market as a whole. As a matter of fact, one can also point at other important economic advantages. Governments possess and control massive amounts of data, such as demographic or geographic data, with a huge economic potential, not only as raw material for the creation of information products, but also as valuable market information for strategic planning or as production factors for the development of other kinds of goods and services.

On the other hand, we can not fully agree with the assumption that private exploitation under all circumstances will provide for more readily accessible government information in the citizens’ interest. Democratic principles and economic benefits go hand in hand only up to a certain degree, making inevitable the search to strike an appropriate balance between public and private interests. Governments can benefit from public-private partnerships and private agencies’ know-how and expertise, but from a democratic point of view the pursuit of transparency essentially is a government duty, which can not be transferred to the market. Otherwise, a situation of double payment is likely to occur where citizens through tax money are financing the collection of raw public sector data, and then once more have to pay for the commercial information products that are based on these data. In addition, a policy of private exploitation may lead to a selective kind of accessibility of public sector information, as only those information products will be produced for which there exists a profitable market. In the context of commercial competition certain kinds of less ‘attractive’ segments of information may be neglected, potentially depriving some important, and probably the most marginal, groups in society of vital information. Exploitation decisions will be based on economic grounds and not on criteria of public service.

Ultimately at stake here is a clear vision of the obligations and responsibilities of the state in making public sector information transparent. We agree with Baten and van der Starre (1996:23) who claim that without a vision of the public tasks of government it is not possible to determine a (healthy) division of roles between the government and other parties to make public sector information
accessible. And indeed, in our opinion, the public sector does have some essential obligations regarding its transparency which cannot be transferred to private initiative. First of all, this concerns the fundamental right of access to public sector information (in most countries regulated in specific access regimes). Based on Baten and van der Starre (1996:43) we can add three other basic demands. Firstly, the obligation to provide information in the (electronic) forms citizens request, as long as these forms are available. Secondly, the obligation to provide information at a low level of processing, maximally at the cost of distribution and on equal terms for all citizens. And thirdly, the obligation to actively make information public, despite possible disturbances of the market, each and every time it is required for good and democratic governance.

Two other obligations, in our opinion, should be added for governments to make their information transparent: the obligation to explain and the obligation of pro-active governance. The obligation to explain arises from the fact that transparency is not realised through the provision of incomprehensible public sector information, however well done. Governments must provide information with a correct and comprehensive explanation. In that sense the public sector has an obligation to process its information into accessible information products.

Moreover, it seems appropriate that governments should deal with public service to their ‘clients’ (citizens, private companies and other organisations) in a pro-active manner, by using the huge amount of customised information in their possession ‘to think and act in advance’ according to some system of client relation management. This pro-active service delivery can take different forms and levels (Steyaert, 2001:30-31). First, governments could use their client-based data and information to fill in documents in advance (e.g. tax forms, application forms,…). This implies that, based on a linking of databases in administrative back-offices, personal information needs to be provided only once and then is continuously verified and up-dated in the wake of every government-client interaction or transaction. But pro-active service delivery can go much further. Second, governments can use this information to inform their clients about rights and services (e.g. education funds) to which they are entitled according their specific personal situation (e.g. levels of income). Not only effective target group communication can benefit from this, but also service delivery on an individual basis is made possible. Third, a step further can be imagined whereby governments would automatically supply these services, without any action needed from the part of the citizen-clients. This last step in
particular may provoke harsh criticism, but, in our opinion, governments should at least aim for pro-active communication and public service delivery in the first two senses in order to be universally accessible. However, for the sake of privacy considerations, each citizen ultimately should have freedom of choice to make use of such pro-active public service systems.

Summarising the discussion, we argue that in the relation between (economic) exploitation rights and (democratic) transparency rights, the latter should have the highest weight. The government is responsible for its own transparency and should meet the minimal requirements described above. These obligations can not be transferred to the market, even though this could have negative influences on the development of the information industries; indeed, we realise that a public sector, in (self) fulfilling its tasks of transparency and accessibility, always is depriving the private information sector of some lucrative opportunities. Nevertheless, these public sector obligations do not exclude far-reaching co-operation agreements with the information industries, nor do they prevent creative use of commercially valuable information by the private sector. But then, of course, the private sector should be granted a fundamental right to commercially use and re-use public sector information, providing that the regulations concerning the protection of privacy, copyright and fair competition are being respected.

**Conclusion**

The step from access to government information to the accessibility thereof is being made in many countries by embracing ICT in general and the Internet in particular as a major tool. E-government has become the magic spell, redefining the concept of citizenship (the resident as a citizen or a ‘citoyen’ in the political meaning of the word, and as a consumer or a client of governmental services (Bekkers & Depla, 1996:11; Bekkers et al., 1998:107)) and the citizen's relationship with government. However, this development has yet to be translated into specific (legal) frameworks. The question remains how this can be done, or what such a framework should look like. Various implications of the use of ICT in government communication processes will have to be taken into consideration, and will often demand some radical political choices to be made.
At the same time it will be advisable to recognise the limits of e-government and of the accessibility of electronic government information (for some critical reflections on the ‘myth’ of electronic government, see e.g. Bekkers, 2001). For one thing, highly accessible government information, whether in electronic forms or not, is no guarantee of a highly informed society, and e-democracy is not the ultimate realisation of mass-democracy. Innumerable political, economic, technological, social and cultural factors and circumstances play a role. The same argument holds with respect to the extent to which making government information accessible is feasible in practice. Apart from financial or budgetary considerations, organisational demands (e.g. the re-organisation of back-office structures and administrative procedures), and technical problems (e.g. the compatibility of hardware and operating systems), the human factor too is always present (the ability to adapt, the resistance to change, flexibility, established relationships of power, etc.). And of course there are legal limitations to accessibility as well, mainly in the form of protective measures vis-à-vis certain kinds of information.

Apart from these constraints, potentially contending views and conflicts between public (democratic) and private (economic) interests force governments to make important policy choices and priorities. Therefore, a clear perspective on the core public tasks and responsibilities of government should guide discussion of the basic issues in dispute: how far do governments want to go, or are able to go, in making their information available and accessible; to what extent should this be organised through electronic communication; under what conditions will government information be disclosed; what kind of role division between the public and the private sector is best suited in this respect; and to what extent should the answers to all these questions be laid down in a legal framework to formulate clear-cut rights and responsibilities?

In order to make government information transparent, in the end, a co-ordinated approach is required of all the interdependent aspects and problems linked with the availability, the accessibility, the exploitation and the protection of public sector information. It requires re-adjustments of current legal frameworks as well as clear strategic guidelines to successfully implement (active) government information and communication policies in practice. Based on the Flemish experience, adequate policy frameworks in our opinion should address at least the following basic issues, principles and options.
First, a clear and broad instrumental definition of public sector information is needed as a starting point for any policy framework. In an electronic media age such a definition should, among others, provide for legal security as far as access is concerned to potential or virtual information which is not readily available or even existing, but can (easily) be generated through the coupling of data (files). If access to government information is actually seen as a fundamental democratic principle, we also believe that access legislation should be made applicable to any organisation performing a task of public service or governance.

Second, access to public sector information should not only be guaranteed as a fundamental right, it should also be granted in technologically neutral terms, independent from any form or information carrier. Government information should be made publicly available at a low level of (electronic) processing, at minimal costs and under equal conditions for all, in order not to impede the use of the information by citizens and companies alike. The use and the distribution of public sector information for commercial ends should be made possible, within the protective contours imposed by privacy regulations, copyright laws and rules of fair competition.

Third, governments should make information publicly available as much as possible on their own initiative, but in a structured manner and led by citizens’ demands. The requirements of accessibility should be taken into consideration, in particular the traceability of information and the obligation to inform society about the available information. At the same time, it is essential that public sector information is made comprehensible and that government provides clear and correct explanations. In an electronic information society, moreover, one may also reasonably expect governments to communicate with their citizen-clients in a more pro-active way.

Finally, as far as the exploitation of government information is concerned, the implementation of a basic right to re-use generally accessible public sector information, as it is currently promoted by the European Commission, may be defended on several grounds. However, this can not expel governments from a package of minimal requirements to make themselves and their information (more) accessible. The first aim of any policy framework to make government (information) transparent should always be the service to democracy.
Notes

1 http://conventions.coe.int
2 http://stars.coe.fr/
3 http://cm.coe.int/
10 http://www.statewatch.org/secret/observatory.htm
12 http://europe.eu.int/comm/off/green/index_en.htm#1998

As of March 24, 1995 onwards, the Federal government maintains an extensive Internet web site in four languages (Dutch, French, English and German) at http://belgium.fgov.be. This 'umbrella web site' contains pointers to all Federal departments. A wide variety of information is available, such as: general information on Belgium, decisions of the Council of Ministers, useful addresses of governmental organisations and initiatives regarding public sector information. The Communities and Regions also maintain their own web sites (for Flanders: http://www.vlaanderen.be). These are accessible through the Federal web site by means of hyperlinks.

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