

LICENSING OF CROWN COPYRIGHT HMSO REGULATORY FRAMEWORK CONSULTATION

OUTCOME

Background

1. The Cross-Cutting Review of the Knowledge Economy set out practical steps for the Government to promote the reuse of Government information in innovative products and services. The Controller of Her Majesty's Stationery Office (HMSO) is responsible for implementing three critical decisions on the management of Crown copyright:

- 1.1 core Government information from central Government Departments, but not Trading Funds, is to be made available for reuse at no more than the marginal costs of supplying it. Launched in April 2001, this has been a success. There are now over 1800 users of the nil-charge, Government online Click-Use Licence.
- 1.2 information from central Government Departments where they have added value should be licensed at market prices. There has been good progress. HM Treasury have issued instructions¹ defining the cost recovery rules, and HMSO are building on the success of the Click-Use Licence to create an online licensing facility for value added material.
- 1.3 a repositioned HMSO should regulate the licensing decisions of Trading Funds, whose pricing and dissemination policies should be improved.

HMSO consulted the public on how to implement the objectives described in paragraph 1.3. In the light of the responses to the consultation, this paper sets out how we plan to achieve them.

Improving Dissemination and Pricing

2. From the consultation and from informal briefings we in HMSO believe that the information industry thinks that key general issues for better dissemination, set out in alphabetical order, are:

- 2.1. consistent geographical information on a national basis;
- 2.2. increased pool of information available for licensing;
- 2.3. licences available for all distribution media;
- 2.4. quick decisions without administrative effort for applicants;

¹ Charges for Information – When and How (July 2002)

- 2.5. simplicity, consistency and transparency in licence terms across Government;
- 2.6. strict adherence to published licence terms.

There was a call for standardising arrangements for reusing information from public sector bodies other than the Crown. The Cross-Cutting Review of the Knowledge Economy recommended that public sector copyright holders other than the Crown should be encouraged to adopt the more liberal regime (see paragraphs 1.1 and 1.2 above). How to implement this recommendation is currently being studied.

3. The information potentially available for licensing is contained within the administrative and legislative access provisions for freedom of information: how can HMSO achieve these ambitions? They affect the principles and processes of deciding on licence applications, which means influencing the administration of information providers and the range of decisions available to them. It means generating consistency across different information providers, which do not have business reasons to be consistent with one another, to meet the needs of the private sector. It might mean persuading some information providers to reconsider the risks they currently accept to their forecast revenues. Some information used by some UK public sector providers is available through international agreements which do not transfer intellectual property rights to the UK participant, and these agreements could become more difficult for the UK to manage under a more liberal regime.

4. The consultation showed that the highest priorities for better pricing are:

- 4.1 building confidence in fair licence pricing;
- 4.2 clarifying in each business the role of prices charged for licences;
- 4.3 open access to price lists and pricing principles;
- 4.4 strict adherence to published price lists and pricing principles.

5. These priorities all point to a need for transparent pricing policies. Some feel that a transparent pricing policy might give so much information away to private sector competitors that the public sector would be at risk from predatory price competition. Transparent pricing policies might also mean pressure to change pricing structures.

HMSO Information Fair Trader Scheme

6. Unless we, in HMSO, can win the consent of the information providers themselves, we do not believe that we will be able to achieve better dissemination and pricing. To get their consent we will launch a scheme to codify and project the standards needed to deliver the improvements. The scheme will be the main formal vehicle for HMSO to deliver the improvements in dissemination and pricing.

7. The scheme will apply to the organisations which the Controller of HMSO permits to license Crown copyright information for reuse. These bodies are subject to the Code of Practice on Access to Government Information, and the scheme applies to any information that they release proactively to the public or that they release in accordance with requests under the Code. When the relevant provisions of the Freedom of Information Act 2000 come into force, the scheme will apply to all information those bodies release proactively to the public or release under the Act. The purpose of the scheme is to facilitate reuse of information. Other Crown copyright material, for example software, images or papers published in scientific journals, does not fall within the scheme's scope. All the organisations covered have obligations to comply with the Treasury guidance "Charges for Information – When and How." www.hm-treasury.gov.uk/about/open_government/opengov_charging.cfm

How the Scheme will run

8. HMSO will offer to issue a Fair Trader certificate and in the course of 2002/2003 will encourage Chief Executives of Trading Funds to apply. The certificate will say that the Chief Executive is personally committed to fair information trading principles and practices. The statement of commitment should be placed on the organisation's website, or equivalent, as soon as the Chief Executive makes it, and should be reproduced in the organisation's annual report. The text of the declaration is set out in the appendix.

9. Within three months of the declaration being published, HMSO will audit the underpinning decision-making and administrative structures to test whether the commitment can reasonably be delivered in practice. HMSO will select, commission and finance the audit teams under the financial provisions agreed for implementing the policy set out in the Cross-cutting Review. Taking account of the significance of licensing to the organisation and of the value of the information to licence applicants, the teams will test for evidence of:

9.1 Publications on the organisation's website:

- declaration;
- statement of the role of licensing in the organisation's business plan;
- how to apply;
- grounds for refusing a licence;
- licence price list and pricing policy;
- exceptional concessions and how to apply;
- how to complain.

9.2 Support for the published statements in the organisation's management practice and structure. This will be demonstrated in:

- consistency between internal business plan and published statement of role of licensing;
- staff responsibilities;
- delegations;
- instructions for and evidence of treatment of exceptions;
- measurement of service standards for licence applications;

9.3 management supervision of adherence;

9.4 Competition Act 1998 compliance testing.

10. If the audit shows that there are no serious disparities between the commitment and the ability to deliver, HMSO and the organisation will agree a timed plan to remedy any minor discrepancies. HMSO will issue a certificate immediately, timed to expire three months after the planned completion of the remedies if any or after three years if none. HMSO will issue a full certificate after successful completion of the planned remedies.

11. If the audit shows that there are serious disparities between the commitment and the ability to deliver, the audit team will give the Chief Executive a full report of the discrepancies and suggest that the declaration should be withdrawn. The application will be rejected.

Role of Controller of HMSO

12. By 1 September 2002, the Controller of HMSO will make the same declaration about HMSO's own licensing systems and practices. She will commission an audit, and implement any changes found to be necessary to support the declaration. She will not, however, award HMSO a certificate.

13. The Controller of HMSO was required to delegate the power to license Crown copyright material to Trading Funds. She has also decided to delegate licensing responsibilities for specific specialised functions to some Government Departments. Some Trading Funds which do not see trading in information as their key role have agreed instead that HMSO's Licensing Division will manage any licensing applications for their material. Some Trading Funds, and specialised Departmental areas who have also received delegations, rely on Crown copyright protection not primarily for information but for other copyright protected material. They will not be required to join the scheme. For those primarily trading in information, however, the Controller of HMSO will expect Chief Executives to join the scheme by the end of December 2002.

14. Stage 2 of the Quinquennial Review of Ordnance Survey is currently examining the costs and benefits of the proposal that Ordnance Survey should change status. The Controller of HMSO will expect Ordnance Survey to join the Fair Trader scheme like other Trading Funds trading in information. This allows for:

14.1 outcome of the review into Ordnance Survey's status;

14.2 the Controller of HMSO to retain a role in managing copyright from Ordnance Survey's works if that is required, and

14.3 the undoubted demand there will be for Ordnance Survey to continue its operations on fair trading principles.

Role of HMSO as Regulatory Body

15. HMSO will manage the audit of the declaration by the Chief Executive, calling on professionally qualified staff especially accountants as appropriate.

16. If a potential licensee complains to the organisation that staff have not complied with the declaration, the Chief Executive should first inform HMSO. He or she might then:

16.1 adopt any mediation techniques agreed by both sides to the dispute. They might agree to ask HMSO to mediate;

16.2 investigate the complaint, probably using the organisation's complaints procedure.

A report of the response and outcome should be sent to HMSO as soon as it is concluded.

17. Complainants who are not satisfied can raise their concerns with the Controller of HMSO. HMSO's Regulation Division will decide whether the complaint raises concerns about compliance with the Chief Executive's commitment, and might decide to audit relevant areas of the organisation. If the report bears out the concerns about compliance, the Controller of HMSO and the Chief Executive will agree what needs to be done to restore the accuracy of the declaration.

18. If the Controller of HMSO has reason to doubt the continued accuracy of the declaration three months after receiving the report from HMSO's Regulation Division, she will inform the Chief Executive. If the Chief Executive has not agreed an adequate remedy and begun its implementation in a further month, she will withdraw the Fair Trader certificate. That will mean that she also withdraws any permission she has granted to the body concerned to license Crown copyright material.

19. The Controller of HMSO will report through Ministers to the Prime Minister each April on certificates applied for, issued and refused, on those who are preparing to make the commitment, and on the numbers and owners of current certificates. She will report similarly on complaints and their outcomes. The reports will be published on the HMSO website. The Controller of HMSO will report through Ministers to the Prime Minister whenever she decides to withdraw a Fair Trader certificate.

Role of HMSO as a Licensing Body

20. Improvements to dissemination and pricing are means to reach a goal of greatly increased activity in the Knowledge Economy. The information industry is not interested in distinctions between Crown and non-Crown copyright or between the various financial or policy objectives of different public sector organisations. HMSO together with HM Treasury and DTI are in discussion with relevant government departments and other parties to explore the scope for more convergence in access and licensing processes across the public sector to better meet the needs of industry and the Knowledge Economy.

21. HMSO as a licensing body will take the lead in encouraging Fair Traders to standardise administrative procedures and practices taking account of information industry representations. HMSO will develop channels of communication with relevant regulators.

Understanding the Knowledge Economy

22. The consultation confirmed that the information industry felt a real need for its vision of future opportunities to be better understood by Government information providers. We will establish a group to advise the Controller of HMSO how the developing commercial needs and opportunities, constraints and customer aspirations of users relate to the information providers in the public sector.

23. There will be members with experience drawn from:

- 23.1 publishing
- 23.2 the library and academic community
- 23.3 the geographic community
- 23.4 the statistics community
- 23.5 the voluntary sector
- 23.6 the devolved administrations
- 23.7 intellectual property law
- 23.8 supply of information for people with special needs
- 23.9 public sector information supply

The Chairman will report to Ministers and the Prime Minister annually on HMSO's success in opening up public sector information for reuse, and on developments in the Knowledge Economy. He or she will recommend long term planning for the required skills mix in the future Advisory Panel and in HMSO. He or she will comment on the strategic implications of complaints investigated by certified Fair Traders and by HMSO, on trends in complaints and on methods of resolution.

24. The Government will review the regulatory regime to check on its effectiveness, to ensure that the balance between costs and benefits is appropriate, and to determine longer-term arrangements, after two years.

FAIR INFORMATION TRADER PRINCIPLES AND PRACTICES

I am personally committed to ensuring that [my organisation] trades fairly in information. To demonstrate the strength of my commitment both within [organisation] and to my customers, I have [applied for] [received] a Fair Trader Certificate from the Controller of Her Majesty's Stationery Office. To [obtain] [retain] the certificate, I [am making] [have made] all the administrative changes necessary to ensure that I can confidently make the statement below [which takes the form suggested by HMSO].

"I will insist on strict adherence to an open and transparent trading regime consistent with the Competition Act 1998. My aim is that in principle all applicants for licences to reuse information [link to description of scheme] for any purpose should be accommodated. Any exceptions will be published on the website and strictly followed.

I publish a description of the role of information [provision for footnote/explanation/expansion specific to trading body] trading within my current business model. Prices, and where appropriate methods such as royalty regimes for determining prices, are set in accordance with the role of information trading within my business model. They are published on the website and strictly followed [potential for link to qualifier]. Any exceptional concessions are described in full on the website, and are available to all those who meet the qualifying criteria.

I am committed to minimising the administrative burden on reusers of public sector information. I will do my best to ensure that processes for trading information converge across the public sector.

I will tell the Controller of HMSO of any complaints that I receive that my organisation is in breach of this commitment, and I will investigate them vigorously. If HMSO decide to investigate such a complaint, I will facilitate access to staff and records required by the HMSO investigation team.