

Access Models for Public Sector Information

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In the following we would like to analyse the role of UNESCO as the leading UN organization which deals with central information-society challenges such as free access to public information, in order to find out which models are appropriate and feasible for free access, how they can be derived from universally accepted declarations which are the normative basis of modern societies, and, last but not least, what the chances are that models of a new balance between public and private interests will be realized.

Providing access to information (for all) has been of major concern for many international organizations in the last 50 years, expressed directly or indirectly in numerous declarations, recommendations, resolutions, statements, and national and international programmes. This is true for the Universal Declaration of Human Rights (1948), renewed in the United Nations Millennium Declaration from 2000, for the Okinawa Charter on Global Information Society (2000), the European Union Charter of Fundamental Rights from 2000, the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe (1950), renewed and updated 1998, and many others.

Despite significant differences in the interpretation of these basic texts due to cultural diversity and heterogeneous political interests, they are considered the programmatic ethical foundations of modern societies. Among the commonly agreed-on values, free access to information (which does not necessarily mean free of costs, but free of restrictions), because it is able to profit at least from publicly produced and distributed knowledge, is considered the major means to compensate otherwise existing deficiencies, to further equity on a micro (individual) level and on a macro level (between nations or regions), to promote the establishment and development of democratic societal structures.

Support measures for the production of knowledge and for the distribution of knowledge, respectively for access to knowledge and information, financed by the public, is generally considered society's investment in the future. Therefore, to achieve the central goal of equal chances in democratic societies, public support for the production of knowledge and for the dissemination of information, respectively access to information, has for a long time never been questioned in principle, even in market-dominated societies where privatisation and commercialisation of knowledge and information have led to the current dominance of commercial information markets. There has been no doubt that there is still the need for a second "market", which should perhaps rather be called a "forum" for the public and not a commercial exchange of knowledge.

Financial public support for knowledge production in science and for knowledge-transfer institutions such as schools, universities, libraries, archives or museums has never been disputed. Public investment in knowledge production and in information access seems to be even more important in an electronic environment where, if not the production of genuine knowledge at least the production and dissemination of information products and their usage is becoming the basis not only for commercial success but also for participation in public life.

On the other hand, the derivation of information products from knowledge and sometimes even the production of genuine knowledge is becoming more and more a private commercial activity and concern. Knowledge and information, long considered a basic public good, are changing their status. Because of the massive investment that is needed to create value-adding information products and systems for the distribution of these products they are coming more and more under private control. Information products (and thus knowledge itself) is coming to be considered a private good whose usage can legitimately be controlled in order to achieve at least a return of investment if not a major profit.

Interestingly enough, the claim for control over the usage of information is beginning to change our attitude towards knowledge and information. No longer is knowledge (an individual cognitive property and an internal cognitive structure of human beings) considered the main success factor in public and private life but rather access to information. If knowledge is available in information services such as data bases, web sites or advanced knowledge-based systems, be it directly by end-users or provided by human or machine mediators (information brokers or intelligent agents), there is no need to tediously acquire knowledge (learning) as a potential for further actions but only to secure access to knowledge, that means to be able to use information tools and resources. Information competence, knowing how to access and use information, is more important than being competent and knowledgeable oneself.

It is questionable whether this attitude towards knowledge and information, i.e. the exploitation of knowledge for short-term success, lies in the public interest. Of course, also the public is interested in supporting of knowledge production and information usage because of its potential to secure and develop societal structures but this is seen under a perspective which is not dominated by necessarily short-sighted market forces. Values such as cultural (and linguistic) diversity, informed participation in democracy, autonomy (nowadays mainly based on information autonomy) of each individual are, among others, central for life in information societies.

This is the main challenge of the contemporary state of the information society: to define and agree on a compromise between public and private interests in knowledge and information. Access is not the only challenge where a compromise between divergent interests needs to be agreed on in the information society. The change in values is also obvious with respect to ownership of intellectual property or with respect to privacy or information autonomy (“informationelle Selbstbestimmung”) – only to mention these. No wonder that ownership of intellectual property is shifting from the public perspective (rights to intellectual property were mainly granted because of a

public interest in stimulating the production and publication of knowledge) to the private one. If one talks about the rights of the producer of knowledge (“Urheber”) in legal or commercial environments one means the right of the right-holders – that is the right of the publishers and content providers, not that of the authors themselves. The same is true with privacy. The limits of privacy seem to be there where the market interest in access to private data in order to “market the markets” begins. New definitions of copyright and authorship, of privacy, and many other values which have been considered the heritage of the enlightenment and of the development of modern democratic societies are now needed.

In this situation, UNESCO as the United Nations Educational, Scientific and Cultural Organization may play an important role in helping find new solutions to these problems. UNESCO on one hand is the morally grounded institution which, on the basis of fundamental human rights and with an ethical impetus, fights for the rights of those (people and nations) who have not profited so far from the modernization and commercialization strategies of contemporary societies, but still lag behind the world standards in education, science, and economy. On the other hand, UNESCO is supported financially by the respective member states and is thus, in particular in programmes and general conference decisions, dependent on the public political climate, which, at least in Western countries, is highly influenced by private commercial interests. It is therefore interesting to ask whether and if so, how UNESCO can find a balance between its moral objectives and its political dependencies.

UNESCO has made access its major concern for achieving equity in the globalising information society, although it is well aware that progress in the development of information and communication technologies does not necessarily mean progress in overcoming gaps between those who have free access to information and those whose access is restricted by technical, economic, or political handicaps. This is well documented, among many other documents, in the UNESCO World Communication and Information Report 1999-2000. Nevertheless, UNESCO keeps on fighting for an open global society where access to information is the main principle of a justice society.

In the following we would like to give a comparative overview of the different “battle fields” that UNESCO has entered, in particular a brief analysis of the main documents and programmes of the last 3 years which emphasize the access challenge:

- Statement of the 2nd UNESCO INFOethics Congress '98
- The report on the INFOethics conference 2000, in particular on Theme A, The role of public authorities in access to information
- Information for all Programme (INFA) – a new intergovernmental programme (accepted in 2001; official start in 2002), combining the two older programmes, General Information Programme (PGI), a more documentation and library-oriented programme, and International Informatics Programme (IIP), a more computer-science technically oriented programme.

- Draft recommendation concerning the promotion and use of multilingualism and universal access to cyberspace (as presented to the UNESCO General Conference 2001, but not adopted)
- Universal declaration on cultural diversity (as presented to the UNESCO General Conference 2001, and, in this case, adopted by the conference)

The INFOethics'98 congress considered the “promotion of the role of information in the public domain, of multilingualism, the protection of privacy, confidentiality and security, vital issues”. In particular knowledge is considered a “public good that needs to be made publicly available in accordance with the principles of the free flow of information and of fair use”. In general, INFOethics '98 believed that the most urgent information society problems are those of freedom of access and personal privacy. “Access to the resources of the Internet should reinforce democratic participation and is a contemporary realization of the universal principle of the freedom of expression [and again:] privacy is one of the most threatened values and needs special protection in the electronic world.”

This co-occurrence of access and privacy is rather interesting because it indicates that the two concepts need to give up their passive connotations: Access is no longer the passive right to “read” information, to access it, but also to have access to information and communication services in order to “write” information; that means to be able to contribute actively to public life by “sky-writing” one’s own opinions and knowledge and making it accessible to others.

INFOethics2000 made this general claim for free access even more concrete: “Public authorities (which include central and local governments) are currently the most significant source of public sector information and have a critical role to play in facilitating access to it. Public sector information forms part of our “intellectual commons”. It is critical for research, education, innovation, social and economic inclusion and is an essential foundation for an informed, participatory and global society. Such information is akin to a “global public goods ”and therefore should be presumed to be publicly available (that is, as in the “public domain”. Greater public benefit is to be derived if such information resources and knowledge are shared with the broadest possible audience, rather than allowing exclusivity (in terms of the control of the information) or private interests, to prevail in the management of this resource.”

As a consequence, INFOethics 2000 reminds us that public authorities as the guardians and interpreters of the “public interest ” have a “responsibility to the citizens on whose behalf they act to resist the enclosure of the intellectual commons and preserve existing resources of public domain information; to expand the proportion and improve the quality of knowledge resources that are available to the public; and to facilitate more equitable access to this information.” Therefore “Governments need to demonstrate leadership by making governmental and other official information (subject to exceptions to protect national interests) available electronically to their citizens.” Governments “should, in particular, provide critical public sector information to their citizens, such as information on their rights and entitlements, on laws and regulations, on health and on the government’s obligations to its citizens. They should also promote the development

of services and content which reflect local culture, values, history, language and heritage. Public authorities should inform citizens by making more meaningful and high quality public sector information available online in formats and through communication channels and systems which: 1) are designed to serve the citizen's needs, are familiar and in a form which facilitates understanding and is easy to download, and 2) do not require high specification equipment or technology."

As far as the realization of these objectives is concerned, UNESCO relies on "partnerships between the public and private sectors to find means of funding or providing incentives for knowledge-creation. Where such partnerships include public funding, public authorities should ensure that knowledge components which have the characteristics of a "global public good" are subsequently made publicly available so as to balance the public's interest in access with the private sector interests in commercialising the knowledge".

Whereas statements of and reports on conferences are easier to find a consensus on, it is more difficult to achieve the necessary majority for UNESCO official decisions such as those on new programmes or on official recommendations or even conventions. Therefore it is the more remarkable that UNESCO has agreed, after a long period of intensive discussion, on the new intergovernmental programme INFA (Information for All) which, already in its title, was somehow provocative for some members and in particular for lobbying groups from the information economy. This lobbying was later in the year more successful with respect to the cyberspace recommendation which was *not* adopted at the UNESCO General Conference in fall 2001, first due to backstage intervention from US interest groups, mainly publishers' associations (the USA is not a member of the UNESCO) and then to massive intervention of the Japanese government.

INFA, by its name, is a programme for access to information for all. INFA is based on the UNESCO constitution. Therefore "UNESCO's mandate «to promote the free flow of ideas by word and image» [article 1] clearly indicates the part that the Organization is called upon to play in making information and knowledge freely accessible to all, with the ultimate objective of bridging the gap between the information rich and the information poor" [preamble]. INFA thematizes the challenge of the modern information society where "new methods for accessing, processing and preserving information raise problems of an ethical nature, which in turn create moral responsibilities, to which the international community must respond. Among the issues here are the quality, reliability and diversity of information, the balance between free access to information, fair use and protection of intellectual property rights, the privatization of information, the preservation of the world's information heritage and the privacy and security of personal data."

INFA is well aware that the objectives to "promote and widen access [to knowledge] through the organization, digitization and preservation of information" can only be achieved by new forms of partnership: "Collaboration with stakeholder NGOs and the private sector shall be established in order to create a multiplier effect from improved communication and collaboration to contribute to achieving the objectives of the Programme". As concrete means for supporting free access, INFA recommends

“strengthening institutions as gateways for information access”, in particular establishing a “UNESCO portal to information institutions worldwide” and also “national public gateways to information in several countries of all regions” [from area 3 of the programme]. As strategies INFA recommends the following:

- Move towards a redefinition of the role of information institutions
- Extend the role of established professional and institutional infrastructures such as libraries, archives, community centers etc.
- Promote the creation of new information institutions, particularly local gateways to information
- Create awareness of the importance of the complementarity of institutions providing access to non-digital and digital information
- Promote the creation of digital content by information institutions
- Promote international co-operation through networking among professional communities/associations
- Promote co-operation between public information institutions and the private sector (in particular content providers)
- Greater use of technology by information institutions for information preservation

And as measures of concrete actions:

- Analyse and report on the changing role of information institutions in the information society
- Support the implementation of technology and professional standards for the management and preservation of physical collections of information
- Support the creation of public gateways to information, particularly in developing countries
- Support the networking of institutions to provide access to information resources
- Support the digitization of information, particularly indigenous knowledge useful to local communities
- Foster cooperation with the information industry to develop formulas for providing equitable access for economically disadvantaged users
- Support resource-sharing of digital and non-digital resources
- Encourage and support the use of ICT to manage and preserve information resources

The INFA programme has been officially adopted, but it is not clear which resources will be made available in order to achieve the goals of this intergovernmental programme, which will not be financed by the regular budget (or only marginally) but needs to be given extra financial support by the Member States.

The “Recommendation concerning the promotion and use of multilingualism and universal access to cyberspace” was originally intended to become the conceptual basis for UNESCO participation in the UN World Summit on Information Society which will take place in the year 2003 under the leadership of ITU. “Universal access” in this context is defined “as equitable and affordable access by all citizens to information infrastructure and to information and knowledge essential to collective and individual

human development”. The preamble of this recommendation (which ultimately failed to be adopted by the 2001 UNESCO General Conference) also claims, “that one of the ultimate goals of any society is empowerment of all its citizens through access and use of knowledge”. “Universal access to information and communication technologies and particularly to global information networks is essential for achieving goals of social cohesion and economic inclusion”.

In its first part the Recommendation emphasizes access to telematics services as the basic prerequisite for access to content (knowledge). Therefore “the provision of telecommunications facilities as a public service is subject to well-defined regulatory frameworks at the national level, as well as international standards”. With respect to our aim to identify new models for access to information we refer to some of the concrete measures recommended:

In M2 it is recommended that “the Internet should be considered by governments and international organizations as a public information utility service and not only as a commercial product”. Also “new models for public-private partnerships for financing and providing incentives for this access, including the reduction of financial barriers to the use of ICTs such as taxes and customs duties on informatics equipment, software and services, may also be considered” (M4). “Member States should encourage the development of information strategies and models that facilitate community access and reach out to all levels of society, including setting up community projects and fostering the emergence of local information and communication technology leaders and mentors” (M7).

In a global information society, access is also restricted by language barriers: “Harmonious development of the information society is therefore only possible by encouraging the availability of multilingual and multicultural information”. [part II]. In part III the problem of how to facilitate access through development of public domain content is focused on. The Recommendation is aware that the “rapid advancement of innovations in information and communication technologies has sparked a race to lay claim to knowledge, resulting in the risks of appropriation and privatization of information which should be in the public domain. It is primarily the responsibility of the public institutions such as libraries, archives, and governmental agencies to facilitate access to this type of information, by encouraging private-sector contributions and citizen participation”.

The Recommendation even tries to establish a “right of universal access .. to public domain information”. All member states should establish “repositories of information and knowledge in the public domain which constitute the common heritage of humanity and should be freely accessible by all.” This is not directed against commercial interests. UNESCO promotes “partnering arrangements which balance the interests of the public and private sectors in order to redress the imbalances in access to information in the public domain between the developing and the industrialized countries, and between the disadvantaged and the information-rich communities. Incentives of different types should be worked out to encourage private-sector contributions to generating information on human heritage and facilitating access to it.”

The most critical part of the Recommendation is part IV, which aims at defining exemptions to copyright. The opposition against the principles and proposals formulated there were the major cause for the failure of the Recommendation. The demand for “a new fair balance between the interests of authors and publishers and those of the public concerning free access to information” [M28] was not accepted by the majority of the members. And the request that “Member States and UNESCO should defend the principle of universal access against attempts to strengthen intellectual property rights through technological means such as digital rights management” was obviously against current world-wide trends in legislation as expressed in the WIPO treaties from 1996, the US Digital Millennium Copyright Act, and, in particular, the Directive of the European Commission on the Harmonization of Copyright form 5/2001 (art. 6), where technical means are clearly favored to protect copyrights on intellectual property which is controlled by private interests.

Considering the commercial interests which are at stake in the question of free vs. controlled access to information it is understandable that this Recommendation was considered dangerous for the development of the information economy. It also makes sense that the “Universal declaration on cultural diversity” was adopted by the UNESCO General Conference at the same time as the “Recommendation” failed because this declaration was mainly restricted to basic principles and did not propose concrete models or even concrete measures such as exemptions from copyright.

It is clear that, despite many national and international programmes and declarations, free access, as advocated in the INFOethics statement from 1998, is more threatened than ever. What are the indicators of increased restriction on free access? We mention only 4 and will elaborate on them in more detail in the full text version of this paper:

- Information products are increasingly subject to leasing, not to ownership. Information is the basis for concrete decision-making and no longer primarily the starting point for new permanent knowledge. The owners of knowledge, those who have the copyright on information products, are not longer interested in selling their products (as they did with books and other printed material) but in allowing the usage of these products under well defined and totally controlled conditions by keeping their rights on these products.
- Free access to information is increasingly restricted by what Lawrence Lessig called the zoning of knowledge. Commercialisation of knowledge means necessarily the usage of control mechanisms such as passwords, authentication procedures, licensing contracts, digital rights management, etc. Zoning limits free access and divides the world into those who can afford to pay for particularly interesting zones and those who can access only information of minor quality, if of any interest at all.
- Zoning also means dividing knowledge spaces into those which are the subject of commercialization and which are worthwhile investing in from a commercial point of view and those which are not profitable and which are thus neglected and finally dry out.

- Free access to information is increasingly being threatened by the spread of filter and blocking software. These were originally used in private environments as a means of parental control but are now being used more and more in commercial environments to keep employees under control and in public institutions, out of political security or administration considerations.

New models for organizing knowledge and information in general, in particular organizing access to information and establishing new models for providing the public access to public information and overcoming or, at least, weakening some of the barriers which threaten free access are more urgently needed than ever. These models clearly need to be based on a fair compromise and a new balance between public and private interests. Required are, for example, proposals to achieve and secure free access to information, such as cooperation/partnership between private and public interest groups, infra-/metastructure services such as public portals, genuine public information services, provision of direct access to public information without commercial intermediaries (e.g. direct publication of scientific and curricular material in academic environments) and exemptions from commercial control and private (copyright) rights. These restrictions and proposals are discussed in more detail in the full text version and will be presented at the symposium.