



**Verslag van een studiereis
naar de National Weather Service
van de USA, juni 2000**

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De reeks Intern rapport is in juli 2000 gestart en geeft bij afsluiting de vorderingen rond een project of instrument weer.

De inhoud is primair bestemd voor KNMI-ers, maar de publicaties zijn verder openbaar. Lezers van buiten het instituut dienen er echter wel rekening mee te houden dat het gebruikte jargon niet in alle gevallen voor buitenstaanders duidelijk zal zijn.

KNMI Intern Rapport

Verslag van een studiereis naar de National Weather Service (NWS) van de USA, Silver Spring, Maryland op 26 - 30 juni 2000

- Verkenning van de USA “data policy” voor beschikbaarstelling van meteorologische basisgegevens aan de private sector
- Evolutie en kenmerken van de “public - private - partnership” in de USA
- Informatie voor toetsing en ontwikkeling van data beleid in Nederland

De National Weather Service (NWS) is een onderdeel van de National Oceanic and Atmospheric Administration (NOAA), dat ressorteert onder het U.S. Department of Commerce.

KNMI Licentie Bureau
A.W. Donker
Augustus 2000

De auteur is verantwoordelijk voor de inhoud van dit verslag

(Om het Amerikaans-Engels taaleigen te behouden zijn sommige uitdrukkingen en zinsneden niet vertaald)

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1. Aanleiding en doel van de studiereis

Er is thans een Wet op het KNMI in voorbereiding. Dit vloeit voort uit de recente ontvlechting van private en publieke taken voor weerdienstverlening in de Nederlandse samenleving.

Hoofdstuk 4 "Beschikbaarheid van KNMI gegevens" van het wetsvoorstel en de Memorie van Toelichting beschrijven een toekomstig wettelijk kader voor de levering, middels overeenkomsten, van nationale basisgegevens en –informatie aan afnemers, niet behorende tot de Staat.

Nader omschreven betreft dat alle data, die het KNMI operationeel inzamelt en deels bewerkt voor de:

- zelfvoorziening van de Rijksoverheid en
- uitvoering van de wettelijk opgedragen publieke taken (algemeen weerbericht, onderzoek, e.d.)

Levering van toegevoegde marktwaarde wordt expliciet aan de private sector overgelaten.

De ontwerpwet stelt voorts dat, bij ministeriële regelgeving, de gevallen worden gedefinieerd waarvoor kosten voor het gebruik dan wel de verwerving van de gegevens ("licentiekosten") worden vastgesteld. De regelgeving zal eveneens betrekking hebben op de kosten, verbonden aan extractie, distributie, e.d. van de gevraagde gegevens ("leveringskosten").

Alle betreffende basisgegevens zijn inmiddels gedefinieerd en, krachtens een interim gedragslijn voor het KNMI, in een Catalogus openbaar gemaakt via Internet (www.knmi.nl/product/).

Deze bevat een overzicht van het thans beschikbare en uitgebreide assortiment ("operationele bulk") van (near) real time data, zoals waarnemingen, model-, satelliet en radargegevens alsmede geverifieerd klimatologische data en informatie. Alle gegevens zijn (vol)continu beschikbaar; de noodzakelijke meta data en software voor nabewerkingen kunnen worden bijgeleverd.

De inhoud van de Catalogus is afgestemd op behoeften van gebruikers, die de data op professionele wijze kunnen bewerken en "veredelen" voor diverse toepassingen op de weermarkt.

Naast inhoudelijke beschrijvingen van de items bevat de Catalogus ook informatie over de leveringsvoorwaarden voor verschillend datagebruik, licentietarieven en leveringskosten.

De inhoud van de Catalogus en procedures voor wijziging treedt formeel in werking nadat de Wet op het KNMI is aangenomen.

(Kandidaat)licentiehouders zijn actief in de publieke en private sector, zowel in Nederland als daarbuiten. Naar gelang dienen zij zich aan in de hoedanigheid van Commercieel Weerbureau, Eindgebruiker, Broadcaster/Publisher, Internet Provider of Onderzoeksinstituut (zowel commercieel als niet-commercieel).

Naast leverancier van nationale data treedt het KNMI in ons land ook op als "Exclusive Licensing Agent" of "Permanent Representative" namens externe organisaties, die direct of indirect betrokken zijn bij de levering van meteorologische data.

- ECOMET (een "Economic Interesting Grouping" van Nationale Weerdiensten in Europa)
Additionele waarnemingen, model-, radar data en overige producten van de Lidstaten inclusief Nederland, gepubliceerd in de ECOMET Catalogus (www.meteo.be/ECOMET)
Er gelden leveringsvoorwaarden
- ECMWF (European Centre for Medium Range Weather Forecasts)
Data van het Global Atmospheric Model, Ensemble Prediction System, Global en Regional Wave Models, gepubliceerd in de ECMWF Catalogus (www.ecmwf.int)
Er gelden leveringsvoorwaarden
- EUMETSAT (European Organization for the Exploitation of Meteorological Satellites)
HRI Image Data van de geostationaire Meteosat. Het KNMI administreert en beheert licenties voor lokale ontvangst en onderscheiden gebruik van de data. Informatie op www.eumetsat.de
Er gelden leveringsvoorwaarden

- WMO (World Meteorological Organization), Verenigde Naties
Coördinatie, standaardisatie en regelgeving voor de mondiale en vrije uitwisseling van meteorologische data (Global Basic Data and Product Set, ook wel "essential data" genoemd)
Er gelden geen voorwaarden.
- ICAO (International Civil Aviation Organization), Verenigde Naties
Idem WMO voor luchtvaart-meteorologische data en producten. De leveringsvoorwaarden zijn niet duidelijk

In de praktijk geeft het KNMI dus, naast het nationale beleid, uitvoering aan meerdere "datapolicies".

Deze "policies" conflicteren op essentiële punten. Het geheel aan regelgeving is niet transparant, buitengewoon moeilijk te hanteren en biedt daardoor ruimte aan uiteenlopende exegeese. Vaststelling van licentiekosten, volume discounts, onderlinge afdrachten, leveringskosten, toepassing van uitzonderingsregels, enz. is uitermate ingewikkeld. Dit vormt een zware administratieve belasting vooral bij dynamische gegevensbehoeften en het uitbrengen van offertes.

In de beschikbaarstelling van nationale basisgegevens conformeert het KNMI zich thans, zoveel als mogelijk is, aan de ECOMET regelgeving. Echter, dit regime is gecreëerd voor en door "hybride" nationale weerdiensten, die zowel publieke als private taken uitvoeren ("Government Commercialization"). Aangezien deze taken in Nederland, als eerste in Europa, zijn ontvlochten is het onvermijdelijk dat in de voorgestelde Wet op het KNMI op diverse punten moest worden afgeweken van de ECOMET regelgeving. Dit werkt extra complicerend.

Met uitzondering van de WMO hebben de "data policies" een gemeenschappelijk kenmerk: ze zijn restrictief van aard en met name voor commerciële gebruikers.

De ontstane (en unieke) Nederlandse situatie is er op gericht concurrentie op de private weermarkt mogelijk te maken en monopolie posities te vermijden. In deze context is het geven van uitvoering aan de "datapolicy" van vooral ECOMET ambivalent geworden. Ook de handhaving van een restrictief data- en informatiebeleid vormt door technologische ontwikkelingen ("digital revolution", Internet) een acuut probleem. Reeds nu dienen zich beleidsdilemma's aan; zowel in ons land als in de ECOMET lidsaten.

De boven beschreven situatie heeft aanleiding gegeven de "datapolicy" van de National Weather Service in de USA te verkennen op inhoud en uitvoeringsaspecten.

In de USA is op federaal niveau het beleid voor verstrekking van "government information" en "government funded databases" op enkele uitzonderingen na volledig geliberaliseerd. Het beleid is ook van toepassing voor "environmental data", zoals meteorologische en daaraan gerelateerde basisgegevens. Voorts heeft de USA een relatief lange traditie in de privaat/publieke verhoudingen op de weermarkt.

Het doel van reis is dan ook om te onderzoeken welke elementen uit de "USA datapolicy" en de "public/private partnership" kunnen worden ontleend voor ontwikkeling van beleid in de Nederlandse situatie.

In de WgDB van het KNMI is daarop geanticipeerd (zie bijlage 1: vragenlijst en gesprekspunten).

Ontvangst en begeleiding door de NWS waren voortreffelijk. Het programma dreigde overbeladen en gehaast te worden met kans op informatieverlies. Echter, de kwaliteit van de belangrijkste discussies compenseerde dat ruimschoots. Er werden verscheidene documenten en publicaties ontvangen, die allen waardevolle informatie bevatten.

Het meest bruikbare daarvan is in de tekst van dit verslag en de bijlagen weergegeven.

2. Lijst van gesprekspartners

Fred R. Branski

NWS, Office of System Operations
Team Leader Data Management

Joe Friday, Ph. D. (Ret. B-Gen. USAF, Director NWS Emeritus):

National Research Council
Director Board on Atmospheric Sciences and Climate

Ed Gumkowski

NWS, Office of System Operations
Team Leader Family of Services (FOS)
Data Provision Private Sector

Edward Gross, Cons. Met. (Ret. NWS)

Liason Public Private Sector (USA & Int.)

Richard E. Hallgren, Ph. D. (Director NWS Emeritus)

Former President of the American Meteorological Society (AMS)
Acting Executive Director AMS

Mrs. July L. Hayes

NWS, Office of System Operations
Family of Services, Commercial Subscribers Administration

Ed Johnson, Ph. D.

NWS, Strategic Planning and Policy Office
Acting Director

Jack Kelly, Ph. D. (Ret. B-Gen. USAF),

NWS, Board
Executive Director

Maria Pirone, M. Sc.

Director Weather Services International LLC (WSI)
Chair of the Commercial Weather Services Association USA (CWSA)

Paul F. Uhlir, Ph. D.

National Research Council
Office of International Affairs
Director International STI Programs

Peter Weiss, Dr. Jur.

Federal Office of Management and Budget, attached to NWS
Strategic Planner/Senior Policy Analyst

Martin Yerg, Ph D

NWS
Chief International Affairs

Opmerking:

Tijdens de jaarvergadering van de CWSA op 27 juni 2000 zijn meerdere gesprekken gevoerd met vertegenwoordigers uit de private sector.

3. Literatuur verwijzingen

- 1) Ministerie van Verkeer en Waterstaat, Centrale Directie Juridische Zaken, Concept voorstel "Wet op het Koninklijk Nederlands Meteorologisch Instituut" en Memorie van Toelichting, 19 april 2000.
- 2) Minister voor Grote Steden- en Integratiebeleid, Brief aan de Tweede Kamer, "Toegankelijkheid en prijs van overheidsinformatie" (versie 19 januari 2000)
- 3) Peter N. Weiss en Peter Backlund (1997), "International Information Policy in Conflict: Open and Unrestricted Access versus Government Commercialization", in *Borders in Cyberspace: Information Policy and the Global Information Infrastructure*, Brian Kahin and Charles Nesson, eds., MIT Press, Cambridge, MA
- 4) National Academy of Sciences, "A Question of Balance: Private Rights and the Public Interest in Scientific and Technical Databases", National Academy Press (1999), Washington, D.C. (ISBN 0-309-06825-8)
- 5) National Research Council, Committee on Issues in the Transborder Flow of Scientific Data, Commission on Physical Sciences, Mathematics, and Applications, U.S. National Committee for CODATA, "Bits of Power: Issues in Global Access to Scientific Data", National Academy Press (1997), Washington, D.C.
- 6) European Commission, COM(1998)585, "Public Sector Information: A Key Resource for Europe; Green Paper on Public Sector Information in the Information Society", Issued 15 January 1999
- 7) Pirkko Saarikivi, Daniel Sodermann, Harry Newman, "Free Information Exchange and the Future of European Meteorology: a Private Sector Perspective" (2000), Bull. Amer. Met. Soc. 81, 831-836

4. Bijlagen (deze zijn bijgevoegd in één Annex)

- 1) Werkgroep Data Beleid KNMI, lijst met vragen en gesprekspunten
- 2) AMS Policy Statement, "The Public-Private Partnership in the Provision of Weather and Climate Services" (Adopted by the AMS Executive Committee 23 July 1999), Bulletin of the American Meteorological Society, Vol. 80 No. 10, October 1999
- 3) WMO Resolution 40 (Cg-XII), "WMO Policy and Practice for the Exchange of Meteorological and Related Data and Products including Guidelines on Relationship in Commercial Meteorological Activities", Annex 1- 4, World Meteorological Organization, Geneva, 1995
- 4) European Union Directive on the Legal Protection of Databases, Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996, ontleend aan Lit. 4
- 5) Voorbeeld van een overeenkomst van de NWS voor levering van meteorologische gegevens
- 6) Krantenknipsels Europese WOB
- 7) Peter N. Weiss, National Weather Service, "Issues in International Information Policy: Challenges and Opportunities", (2000) persoonlijke presentatie.

5. Evolutie van de US "Public Private Partnership"

De aanleiding tot commerciële weerdienstverlening ("industrial meteorology") in de USA vormde de demobilisatie van militair personeel direct na de afloop van Tweede Wereldoorlog.

Er werd door de toenmalige Federale Regering uitvoering gegeven aan diverse stimuleringsprogramma's, die waren gericht op een spoedige (her)intrede in de burgersamenleving.

Een aantal voormalige militair-meteorologen richtten in 1946 - 1950 een zelfstandig weerbureau op ("industrial meteorology").

De bedrijfsvoering werd mede mogelijk gemaakt door distributie van meteorologische data en informatie van het voormalige U.S. Weather Bureau. Deze werden tegen de geldende leveringskosten verstrekt. Aan het gebruik dan wel de verwerving van de data waren geen kosten verbonden.

In tegenstelling tot Europa kent de privaat - publieke verhouding in de USA inmiddels een traditie van ruim 50 jaar. Deze verhouding is niet expliciet bij wet geregeld. Het reglement van het voormalige Weather Bureau dateert van 1899 en is formeel nog steeds van kracht.

Er is geen behoefte aan gedetailleerde regelgeving, waarin de taken van de NWS bij wet zijn geregeld. Wel zijn er voor de relatie tussen de NWS en de "private weather industry" richtlijnen opgesteld (Federal Policy Statement, 18 januari 1991), die de gegroeide praktijk bevestigen.

De aanleidingen zijn:

- Het reeds geruime tijd functioneren van een privaat/publiek bestel, waarop de gehele samenleving zich heeft ingesteld
- De (traditioneel) liberale wetgeving op het gebied van verstrekking van "government information"
- Politiek/economische opportuniteit ("digital revolution", "leading role in information industry")
- Sociaal/culturele factoren, bijvoorbeeld de Anglo-Amerikaanse affectie voor zelfregulerende en zelfselecterende mechanismen in de maatschappij.

De commerciële weerdienstverlening heeft een aanzienlijke groei doorgemaakt.

In 1947 waren er circa 10 particuliere bureaus, thans zijn dat er ruim 300. Een groot deel daarvan bestaat uit één- of twee-mansbedrijven maar er zijn ook diverse grote providers zoals AccuWeather met ruim ca. 350 personeelsleden. Er is een verdringingsmarkt ontstaan maar, begunstigd door de voortschrijdende ICT, zijn een aantal particuliere bureaus inmiddels wereldwijd actief.

De jaarlijkse omzet van de commerciële meteorologie bedraagt in US ongeveer 430 miljoen US \$. In West Europa (ECOMET Area) is dat 170 miljoen US \$. Gecorrigeerd voor het BNP zou het Europese niveau ongeveer een factor drie hoger kunnen liggen.

Men schrijft dit verschil voor een groot deel toe aan het verschil in "datapolicy".

In Japan, waar beperkende regelgeving eveneens afwezig is, bedraagt de omzet van de commerciële sector 300 miljoen US \$. Dit niveau is vergelijkbaar met dat in de USA.

In de relatie tussen de NWS en de private sector is in de afgelopen decennia een roverdeling ontstaan die min of meer "self evident" is geworden. De private sector richt zich op levering de toegevoegde (markt)waarde van meteorologische producten en informatie aan vele typen afnemers (Zie bijlage 2, blz. 34), specifieke data services, marketing en op de klant toegesneden research.

Het (uitgebreide) takenpakket van de NWS is daarentegen volledig gericht op de nationaal meteorologische basisvoorziening (inclusief diensten voor delucht- en scheepvaart), technisch en wetenschappelijk onderzoek, zorg voor de technische infrastructuur, meetnetten, telecommunicatie, beschikbaarstelling van basis-gegevens, e.d.

In het bijzonder moet hier de nationale veiligheidsfunctie worden genoemd, namelijk de "watches" en "warnings" voor de talrijke bedreigende weersverschijnselen, die in de USA voorkomen.

Deze taak is expliciet aan de NWS opgedragen en vormt een "key element" in de "Federal Policy Statement". De NWS is "the single official voice" en beschikt daartoe over communicatie faciliteiten ("Weather Radio", internet: weather.noaa.gov, e.d.) die voortdurend worden verbeterd.

Om de samenleving optimaal te informeren wordt, in de verstrekking van basis gegevens aan de private sector, steevast alle veiligheidsberichten bijgeleverd. Er is geen verplichting tot (her)distributie of "broadcasting" maar het nationaal belang weegt zo zwaar dat deze informatie niet aan het publiek wordt onthouden. Het is daarbij regel dat de uitstaande waarschuwingen tijdig en ongewijzigd worden gedistribueerd met bronvermelding en ook tijdig worden ingetrokken.

Inhoudelijke wijziging van de waarschuwingen van de NWS of verspreiding van waarschuwingen op eigen initiatief door een privaats weerbureau of broadcaster heeft risico's. In tegenstelling tot de NWS is de private sector wél aansprakelijk voor eventuele schadeclaims.

De NWS legt publiek verantwoording af van de taakuitvoering en voorgenomen verbetering op het gebied van de weerberichtgeving en waarschuwingen. Zie bijvoorbeeld het NWS Strategic Plan "Vision 2005 - America's No Surprice Weather Service" op de WEB site van de NWS www.nws.noaa.gov, waarin concrete beleidsdoelen worden aangegeven.

Er wordt thans een kader voorbereid, waarin de private sector een zekere mate van inspraak wordt gegeven in de planning en de investeringen van de NWS voor het "fiscal year + 1 and + 2". De grote mate van onderlinge betrokkenheid wordt bijvoorbeeld ook geïllustreerd door verwijzing naar de commerciële dienstverleners in de USA op de WEB site van de NWS.

Zoals verwacht kan worden is en blijft sprake van dualiteit tussen de NWS en de private sector.

Een oorzaak van oplopende spanning is momenteel de landbouwmeteorologie. Er wordt gemeend dat de NWS daarin een te overheersende positie heeft. Verkaveling van de taken stuit echter op regionale politieke belangen en een behoudende attitude van de Regional Weather Services. Dit bemoeilijkt het lopende proces van reorganisatie binnen de NWS

Maar op uitzonderingen en incidenten na blijft de verhouding opmerkelijk zakelijk. Er zijn in de afgelopen decennia wederzijdse belangen ontstaan; de onderlinge relatie is hierdoor volwassen geworden.

Op wederzijds initiatief voeren de NWS en Service Providers/"Data Vendors" regelmatig op landelijke niveau overleg. Dat gebeurt gemiddeld 3 keer per jaar. Contacten met broadcasters worden frekwenter en op regionaal niveau onderhouden. Dit heeft te maken met hun belangrijke rol in de verspreiding van de officiële "warnings" aan het publiek.

Tenslotte dient de positie en de rol van de American Meteorological Society niet onvermeld te blijven (www.ametsoc.org/AMS). De AMS is opgericht in 1919 en heeft thans ruim 11.000 leden. De Society geniet vanouds gezag, zowel in wetenschappelijk opzicht als op andere terreinen in de meteorologie, o.m. opleiding en certificering van meteorologen. In de "public - private -partnership" is de AMS geworden tot wat men het "nationaal meteorologisch geweten" kan noemen. Er wordt voortdurend een matigende invloed uitgeoefend op de latente verschijnselen van rivaliteit, die de "public - private partnership" schade kunnen berokkenen. De intenties van de AMS zijn onlangs vastgelegd in een "policy statement" (zie bijlage 3).

6. Het Amerikaanse model voor gegevensbeleid en -distributie

Behoudens enkele uitzonderingen geeft de Federale Regering van USA traditioneel uitvoering aan een actieve "public sector information and data policy". Dit beleid wordt concreet inhoud gegeven door bijvoorbeeld de "Government Information Locator Service" (GILS), die de samenleving up to date inlichtingen verschaft over de beschikbare federale informatiebronnen (www.gils.net/).

Het beleid heeft een wettelijke basis.

Overzicht van de belangrijkste wetgeving:

1966: "Freedom of Information Act" (FOIA) vergelijkbaar met onze Wet Openbaarheid Bestuur.

De FOIA werd geamendeerd en is vervangen door:

1996: "Electronic Freedom of Information Act" (EFOIA), die een basis legt voor:

1995: "Paperwork Reduction Act" en

1996: "Government Paperwork Elimination Act"

Op basis van de wetten zijn directieven opgesteld door het "Federal Office of Management and Budget (OMB)". Deze bevatten specifieke uitvoeringsregels voor "Federal Agencies" zoals de NWS, die actief zijn betrokken bij de publieke voorziening van "government information".

Een belangrijk document is de "OMB Circular No. A-130 - Management of Federal Information Resources", waaruit het volgende citaat uit Ch. 7 "Avoiding Improperly Restrictive Practices"

"Agencies shall:.... c) Set user charges for information dissemination products at a level sufficient to recover the costs of dissemination but not higher. They shall exclude from calculation of the charges costs associated with original collection and processing of the information".

Circular No. A-130 voorziet voorts ook in gedragsregels voor de "National Agencies", onder meer gericht op gelijke behandeling, standaardisatie van procedures, etc.

Een essentieel punt in de regelgeving dat tot "*information*" expliciet ook "*data*" wordt verstaan. Dit betekent dat het gebruik van "government funded databases" eveneens geen restricties kent. Het toeligen van copyright dan wel "intellectual property rights" is niet toegestaan.

De achtergrond van deze filosofie is dat de verwerving van deze gegevens door de Overheid reeds door de belastingbetaler is bekostigd en voorts "that the public sector should see the adding of value only as a tool for its *own* purposes, and not as an incentive for profit making".

Hierdoor staat het de private sector vrij waarde toe te voegen, die uitstijgt boven "publieke waarde" en deze, in vrije concurrentie, tegen winst aan te bieden. Het beleid is er nu op gericht dit niet alleen mogelijk te maken maar ook te stimuleren.

De NWS brengt alle afnemers van data, informatie en producten geen kosten in rekening voor de verwerving en/of het gebruik ("licence fees"). Louter de kosten voor verstrekking worden doorberekend ("user fees").

Voor disseminatie van informatie door "Federal Agencies" vermeldt Circular A-130 vervolgens:

"Federal Agencies should disseminate information in a manner that achieves the best balance between the goals of maximizing the usefulness of the information and minimizing the cost to government and the public. This recognizes that the government cannot itself feasibly satisfy all of the public's legitimate information needs".

Deze richtlijn voorkomt dat de "Federal Agencies" door het liberale beleid onder zware externe "informatiedruk" zouden komen te staan en die zou kunnen leiden tot verhoging van budgetten voor extra dienstverlenend personeel en technische voorzieningen.

In de Amerikaanse situatie opereren dan ook diverse commerciële "vendors" die informatie en data klant- of branchespecifiek (na)bewerken en toeleveren aan hun opdrachtgevers.

Voor de data voorziening aan de commerciële meteorologie in de USA betekent dit nu het volgende:

- a) De NWS levert uitsluitend "bulk", d.w.z. ruwe data en gestandaardiseerde producten in de vorm en het formaat waarover de NWS beschikt. De geleverde gegevens zijn ongecodeerd en ongetransformeerd. De benodigde meta data en soft ware worden bijgeleverd.
- b) Nabewerking voor specifieke toepassingen en levering aan kleingebruikers wordt geheel aan de private sector overgelaten. "Vendors" en "Commercial Carriers" worden aangetroffen bij gespecialiseerde ICT bedrijven en enkele grote commerciële weerbureaus.

Het aantal "commercial subscribers" op de (bulk)datavoorziening van de NWS is daardoor verrassend klein. In totaal zijn dat er 15, namelijk zes grote commerciële weerbureaus (die tevens als "vendor" optreden), drie broadcaster/publishers en zes "vendors".

Echter, naar Nederlandse begrippen, is de omvang van de totale datastroom naar de private sector kolossaal.

De NWS is wel "originating source" van basisgegevens, niet "only source".

Er gelden geen restricties voor het gebruik van gegevens afkomstig uit private meetnetten. Op dit gebied voorziet men een toekomstige groei. Ook de NWS zal daarvan, als aanvulling op de eigen gegevens, gebruik kunnen maken.

In feite geldt dit al volledig voor de landelijke bliksemgegevens, waarvan het meetnet in particuliere handen is. De gegevens hieruit worden door zowel de publieke (ook de NWS) als de private sector gebruikt.

Een klein aantal broadcasters beschikt over eigen radarstations. De gegevens hiervan worden vooralsnog regionaal gebruikt maar het is denkbaar dat deze ook door de NWS voor "officialduty use" zullen worden toegepast.

De "public sector information policy" in de USA heeft tot op heden éénmaal onder politieke druk gestaan. Halverwege de tachtiger jaren in de vorige eeuw werd de "Reagan Administration" voornemens om het federale budget te verruimen door onder meer privatisering van sommige overheidstaken en verhoging van tarieven, die door de "National Agencies" in rekening werden gebracht.

Voor de NWS betekende dat consigne om meer inkomsten te genereren uit de beschikbaarstelling van meteorologische basisgegevens. Invoering van "licence fees" kon niet worden overwogen. Wel zouden de "leveringskosten" kunnen worden verhoogd om aan de opdracht te voldoen. De verhoging zou dan 300 % hebben bedragen.

In zijn algemeenheid heeft dit beleid geen vervolg gekregen mede door verzet en "lobbying" van National Agencies (incl. de NWS), de "private information industry" en de wetenschappelijke sector.

In theorie is een dergelijke ontwikkeling opnieuw mogelijk.

Echter, het liberale beleid is dermate diep verankerd in de maatschappij dat de kans op een nieuwe "major turn in federal politics" zeer gering wordt geacht.

7. De "Family of Services" voor data voorziening aan de private sector

Levering van basisgegevens en producten aan de private sector wordt sedert 1983 uitgevoerd door middel van een zgh. "Family of Services" Meer informatie op www.nws.noaa.gov/oso/fospage. De FOS bestaat uit een suite van operationele processen, die allen continu informatie genereren. Deze processen zijn het volledig eigendom van de NWS worden voor geen ander doel beheerd en onderhouden.

De technische inrichting van de "Family" (FOS Connections) wordt gekenmerkt door de beschikbare typen meteorologisch gegevens, de bijbehorende "verversingscycli", beschikbaarheidsvormen, wijze van distributie en transmissiesnelheid. De FOS bestaat thans uit zeven specifieke Data Services. Voor elke Service geldt dat de "subscriber" niet kan selecteren op afzonderlijke "items". De gehele Service dient te worden afgenomen.

Beschikbare FOS Connections:

- Public Product Service (PPS)

Alle beschikbare standaard verwachtingsbulletins NWS en andere Meteorologische Centra in de USA, "watches" en "warnings". Circa 90 items. PPS is "character oriented" (ASCII).

- Domestic Data Service (DDS)

Gecodeerde waarnemingen, "reports", forecasts en analyses, betrekking hebbend op het grondgebied van de USA. Ruim 50 "data assortments"; het aantal items bedraagt vele duizenden. DDS is "character oriented" (ASCII).

- International Data Service (IDS)

Gecodeerde waarnemingen, "reports" en forecasts wereldwijd. Ongeveer 40 "data assortments"; het aantal "items" bedraagt vele tienduizenden. IDS is "character oriented" (ASCII)

- High Resolution Data Service (HRS)

Model velden (analyses, prognoses) in gridded binary format (GRIB) afkomstig van de NWS en het ECMWF (WMO Essential Data). Vele honderden items inclusief aviation charts ICAO.

- Digital Facsimile Service (DIFAX)

Geplotte en geanalyseerde kaarten, surface, upper air, analyses, forecasts. Ruim 300 typen kaarten inclusief voor de mondiale luchtvaart (ICAO T4)

- AFOS Graphics Service (AGS)

Modem to modem service voor specifiek kaartmateriaal (o.a. radar overzichten, klimatologische informatie, e.d.). Bijna 370 items per dag.

- Server Access Service (SAS)

SAS levert via het NWS netwerk gecontroleerde toegang tot sommige fileservers, bijvoorbeeld de wereldwijde luchtvaart waarnemingen in METAR code (zgh. ICAO OPMET bulletins), GTS FAX data, nationale hydrologische data, tsunami data, GRIB data WAFC London (ICAO), enz. In totaal 30 "data assortments". Vele duizenden items per dag.

De huidige distributie via FOS zal over enkele jaren worden opgevolgd door NOAAPORT, een systeem voor lokale ontvangst van gegevens per satelliet.

De berekeningsgrondslag voor "user fees" is niet door de NWS vastgesteld doch door het federale "Office of Management and Budget (OMB)".

De "fees" worden jaarlijks op 1 oktober herzien en elk kwartaal in rekening gebracht.

Per FOS Connection worden de volgende componenten bepaald:

- Directe personeelskosten van het full time administratief beheer FOS (1 FTE), inclusief toeslagen
- Directe kosten van het data management/beheer en technisch management/beheer op basis van kenmerkende processtappen voor elke FOS Connection
- Reis- en verblijfkosten voor elk overleg met "subscribers"
- Materiaal kosten
- Infrastructurele kosten, o.m. afschrijving hardware (vast percentage)

De aldus vastgestelde kosten, verbonden aan het onderhoud van een FOS Connection, worden verdeeld over het aantal "subscribers". Meldt zich een nieuwe gebruiker aan dan daalt de fee per "subscriber" en omgekeerd wanneer een subscriber opzegt.

Dit systeem lijkt rigide maar het aantal "subscribers" per FOS Connection is zo stabiel dat grote fluctuaties in de verschuldigde vergoedingen slechts incidenteel voorkomen.

Er geldt geen maximum en geen minimum fee. De werkelijke kosten van de FOS Connection dient volledig door de private sector te worden gedragen.

Elke nieuwe en bindende kostenberekening wordt door de NWS en door het OMB ondertekend.

In het "Fiscal Year 2000" gelden *per "subscriber"* de onderstaande bedragen (in US \$ en excl. VAT). Daarmee worden de jaarlijkse kosten van de FOS afgedekt.

FOS Connection	Annual Maintenance Fee	One-time Connection Fee
Public Product Service	4000	Nil
Domestic Data Service	6000	2500
International Data Service	7000	2500
High Resolution Service	11000	5000
Digital Facsimile Service	8000	2500
AFOS Graphics Service	54000	Nil
Server Access Service	9000	Nil

Een voorbeeld van een leveringsovereenkomst is gegeven in bijlage 5.

Opvallend hierin is de afwijzing van elke aansprakelijkheid van de NWS voor kwaliteit en betrouwbaarheid van de FOS. Er geldt geen reductie van "user fees" voor ontbrekende gegevens.

Voorts worden bindende voorwaarden gesteld aan de (her)distributie van de zo belangrijk geachte "severe weather information". Dat geldt ook voor de "re-export for commercial use" van "additional data and products" afkomstig van buitenlandse Nationaal Meteorologische Diensten, waarop restricties van toepassing zijn.

In de FOS is niet opgenomen:

- Radar gegevens

De NWS heeft de levering van radar gegevens (ruim 140 sites) en producten aan de private sector (thans nog) uitbesteed aan drie gespecialiseerde "vendors". Echter, de betreffende data zijn door de NWS op een dusdanig niveau voorbereid dat daarmee, door de marktpartijen, weinig

diversiteit in productie overblijft. De private sector heeft tegen deze marktverstoring geprotesteerd. Dit heeft tot gevolg gehad dat de NWS door het OMB min of meer gedwongen is deze situatie contractueel en technisch te herzien. Met ingang van 1 januari 2001 zal een non-discriminatoire leveringswijze van de juiste basisgegevens aan gegadigden zijn gerealiseerd. Deze gang van zaken is door de NWS ervaren als een "lesson learned".

- Satelliet image data

De NWS levert geen gegevens van meteorologische satellieten vanuit de eigen infrastructuur aan de "private sector". De sector wordt geacht deze zelfstandig te ontvangen met eigen apparatuur of in te gaan op de diensten van een "vendor".

- Bliksem detectie-gegevens

Zoals eerder gememoreerd is het nationale bliksemmeetnet in de USA in private handen.

Evenals alle andere basisgegevens worden noch voor radar noch voor satelliet data kosten voor de verwerving ("licentiekosten") in rekening gebracht.

De analyse van de FOS heeft tevens antwoord gegeven op de vraag of deluchtvaart-meteorologische waarnemingen (OPMET's) en producten, die de Nationale Weer Dienst in ICAO-kader voor de luchtvaart verspreiden, al dan niet tot het publieke domein behoren.

In vrijwel alle "ICAO Contracting States", waaronder ook Nederland, wordt de productie van de deze data gefinancierd door de luchtvaartmaatschappijen (IATA: International Air Transport Association) en wel uit de landingsrechten.

De ICAO voert geen formele "data policy" doch hanteert wel richtlijnen die geen duidelijk antwoord op de vraag geven. In ieder geval kunnen de data door de "Contributing States" zonder restricties worden verstrekt aan rechthebbenden in de civiele luchtvaart.

Tot voor 1989 gold in de USA een identiek financieringswijze.

Daarna werd de productie van de nationale luchtvaartgegevens volledig bekostigd uit de algemene middelen en deze worden dan ook zonder restricties doorgeleverd aan de private sector.

Ook geldt dat voor de internationale waarnemingen (OPMET's) van "Contracting States", waar de productie wel wordt bekostigd uit de landingsrechten.

Met betrekking tot dat laatste beroept de NWS zich op een passage in de ICAO "Guidelines for Authorized Access to the World Area Forecast System (WAFS)" die het volgende stelt:

"It is the prerogative of each Contracting State to determine the distribution of the OPMET information to users, in the State concerned, as well as means, links and *information flow to be used for this purpose*. In view of this, it is for each Contracting State to determine the users in the State concerned to be provided with the authorized access to the satellite broadcast".

De NWS stelt dat de zinsnede "*... information flow to be used for this purpose...*" een brede interpretatie verdient. Immers, ook de burger en het aan de luchtvaart gelieerde bedrijfsleven zijn gebaat in het gebruik van de gegevens.

Door deze opstelling wordt aan de private sector in de USA, in tegenstelling tot die in West-Europa, toegang gegeven tot een belangrijke alternatieve bron van wereldwijde meteorologische informatie.

8 Kritiek op "Government Commercialization"

Gezien de achtergronden van "public - private - arrangement" staan de USA uitgesproken kritisch tegenover "Government Commercialisation", een ontwikkeling die zich sedert met midden van de tachtiger jaren van de vorige eeuw vooral in West Europa heeft ingezet.

Onder "Government Commercialisation" wordt beleid verstaan waarmee Overheidsdiensten de maatschappij vergoedingen in rekening mag brengen of dient te brengen voor bepaalde verstrekkingen en diensten, die voorheen tot het publieke domein behoorden.

Sprekend voorbeeld is de "verkoop" van basisgegevens, die uit hoofde van de opgedragen taak, zijn verzameld. Juist door de trend van "Government Commercialization" wordt daaraan "marktwaarde" wordt toegekend, zoals topografische informatie (data al dan niet in kaartvorm) en "environmental data", waaronder bij uitstek meteorologische en hydrologische data.

Tot op zekere hoogte zou het nog verdedigbaar zijn indien overheidsdiensten aan de daaruit verkregen informatie en kennis intellectuele eigendomsrechten zou toekennen en kosten (naast die van de verstrekking) in rekening zou brengen in concurrentie met private aanbieders.

Maar in de "concurrentie" met de private sector wordt nu de hand gelegd op een "grondstof", namelijk basisgegevens. Dit "public good" werd en wordt traditioneel ingezameld voor geheel andere doeleinden. In verhouding tot aanbidding van echte marktconforme "Value Added Services" wordt met de "handel in data" het overgrote deel van de "omzet" gerealiseerd.

Aan de basisgegevens kunnen geen copyrights of "intellectual property rights" worden toegekend aangezien de verwerving is gefinancierd uit de algemene belastingopbrengsten. De basisgegevens dienen te worden beschouwd als "national property", dat desgevraagd en zonder restricties ter beschikking moet worden gesteld.

Derhalve zijn aan de gegevens geen kosten voor verwerving dan wel gebruik verbonden ("licentiekosten"); de belastingbetaler dient niet tweemaal te betalen voor dezelfde gegevens.

"Government Commercialisation" moet niet worden verward met privatisering. Dat is de trend voor afstoting of overdracht aan de private sector van taken, die niet inherent (meer) behoren tot de directe zorg van de overheid, zoals telecommunicatie, productie en distributie van energie, openbaar vervoer.

In tegenstelling tot privatisering heeft politieke besluitvorming over "Government Commercialization" geen open en democratisch gehalte. "Government Commercialization" wordt daarom gewantrouwd. Overheidsdiensten kunnen niet zuiver en controleerbaar functioneren indien deze zowel onder de "tucht van het budget" als de "tucht van de markt" staan.

In bijlage 7 wordt op blz. 21 en 22 een aantal voorbeelden gegeven van mislukte experimenten in het Verenigd Koninkrijk en de Verenigde Staten.

Het besluit van de Nederlandse Regering om de private taken van het KNMI te ontvlechten van publieke en deze, door privatisering, volledig te ontkoppelen wordt dan ook volledig onderschreven.

Maar om gezonde verhoudingen te bereiken, zowel in nationaal als internationaal opzicht, zouden "The Enlightened Netherlands" nog een tweede stap moeten zetten, namelijk afzien van een restrictief of protectionistisch beleid voor verstrekking van meteorologische basisgegevens, die het eigendom zijn van de Staat der Nederlanden.

Daartegen kan het argument worden gebruikt dat er slechts weinig kandidaten op de weermarkt zijn die de data commercieel kunnen toepassen. Zij zouden dan door de niet-gebruikers worden "gesubsidieerd".

Dit argument gaat in tegen het beginsel van rechtsgelijkheid een kan ook niet worden aangevoerd aangezien de verwerving van de data reeds is betaald door de belastingbetaler. Restrictief beleid is juist de oorzaak van beperkt data gebruik.

9 Visie op WMO Resolutie 40 (Cg XII)

Meteorologie en daaraan gelieerd onderzoek is niet voorstelbaar zonder snelle internationale (mondiale) uitwisseling van waarnemingen volgens een vast omschreven programma. Vrijwel elk land ter wereld, waaronder Nederland) is dan ook lid van Wereld Meteorologische Organisatie (WMO) en neemt actief deel aan de World Weather Watch (WWW). De vrije uitwisseling van gegevens, waaraan principieel wetenschappelijke waarde wordt toegekend, is vele decennia lang zonder grote haperingen verlopen, uitzonderingen als oorlog of staat van oorlog daargelaten.

Door de opkomst van de commerciële meteorologie in West Europa in de tachtiger jaren van de vorige eeuw zijn echter tussen Nationaal Meteorologische Diensten onderlinge spanningen ontstaan en ook met de private sector, die door de Nationale Diensten van gegevens wordt voorzien. "Government Commercialization" heeft daarin een zeer groot aandeel gehad.

Om enerzijds de traditionele en internationaal vrije uitwisseling van data en producten te waarborgen en anderzijds data disseminatie naar de private sector te reguleren is op het twaalfde congres (juni 1995) een compromis bereikt in WMO Resolutie 40 (voor de tekst zie bijlage 3).

In de jaren voorafgaand aan dit congres werd, in het toenmalig politieke klimaat, door sommige lidstaten een zeer restrictief en protectionistisch data beleid voorgestaan en uitgevoerd. Daar aan sommige data commerciële waarde werd toegekend werden deze deels of dreigden deze aan de vrije internationale uitwisseling te worden onttrokken.

Uit vrees voor "lekken" naar de private sector werden zelfs voor niet-commercieel onderzoek, bilaterale overeenkomsten noodzakelijk geacht met de nodige restricties voor wetenschappelijke uitwisseling.

Voornamelijk door oppositie van de USA is deze tendens afgezwakt.

De USA erkennen het recht van lidstaten om al dan niet voorwaarden te stellen voor commercieel gebruik van nationale data maar waren vooral gekant tegen de afname van het *volume* van de "unrestricted data" en de *uitvoerbaarheid* van "across-the-board restrictions on the use of environmental data".

In WMO Resolutie 40 wordt het volgende onderscheid gemaakt ten aanzien van de gegevens en de uitwisseling daarvan:

- Tier 1: WMO "Essential Data"

Dit betreft een "minimum" bijdrage van alle lidstaten nodig voor internationale WMO programma's en "global forecasting", met name de veiligheidsberichtgeving. Daartoe bedraagt de resolutie van de waarnemingen minimaal 200 km in de ruimte en zes tot 12 uur in de tijd. De "Essential Set" wordt zonder condities voor het gebruik ingevoerd in het GTS (Global Telecommunication System).

- Tier 2: WMO "Additional Data"

"Additional Data" hebben een veel grotere resolutie in ruimte en zijn drie-uurlijks en in veel landen ook uurlijks beschikbaar. Deze gegevens worden door de lidstaten eveneens internationaal uitgewisseld, zonder restricties voor "official duty use" door de lidstaten en voor "non commercial research purposes".

Echter, de WMO resolutie voegt hieraan toe:

"While increasing the volume of data and products available to all Members by providing these additional data and products, it is understood that WMO Members *may* be justified in placing

conditions on their re-export for commercial purposes outside of the receiving country or group of countries forming a single economic group, for reasons such as national laws or costs of production".

Het standpunt van de USA met betrekking tot WMO Resolutie 40 blijft onverminderd kritisch:

- Door sommige nationale weerdiensten wordt de resolutie als vrijbrief gebruikt voor het heffen van gebruikstarieven ("licentiekosten") op data, die primair voor wetenschappelijke doeleinden worden gegenereerd en verspreid.
- Dit heeft een negatieve invloed op de samenwerking op het gebied van meteorologie en klimaatonderzoek en is in strijd met de internationale beginselen.
- WMO resolutie 40 heeft een negatieve uitstraling op met name ontwikkelingslanden. Sommigen vragen hoge licentiekosten voor het gebruik van hun nationale data.
- Enkele WMO lidstaten onthouden hun nationale data (nog steeds) aan Data Centers in de USA en daarbuiten, die de beschikbare gegevens zonder restricties verstrekken voor "non commercial research". In sommige gevallen is, in strijd met WMO Resolutie 40, op de gevraagde data toch een licentietarief van kracht.

10 Visie op het Directief 96/9/EC voor de wettelijke bescherming van data bases

Op gebied van "copyrights" en intellectueel eigendomsrechten op gegevens en informatie is door de ICT revolutie (Internet !) een accuut "Digital Dilemma" ontstaan.

In vergelijking tot het "papieren tijdperk" dreigt in de huidige "information age" het traditionele evenwicht tussen private en publieke rechten grondig te worden verstoord.

Zowel in de USA als in West Europa wordt daarom voorzien in nieuwe wetgeving op dit gebied.

Dienaangaande heeft het Europese Parlement in maart 1996 ingestemd met het Directief 96/9/EC.

De tekst daarvan is gegeven in bijlage 4. De lidstaten hebben tot uiterlijk 1 januari 1998 gelegenheid gehad dit Directief in hun wettelijke en regelgevende kaders van kracht te laten worden.

In de slotbepalingen is voorzien in herziening van het Directief niet later dan in het derde jaar na de "ingangdatum" (2001) en vervolgens elk daaropvolgend derde jaar.

In het algemeen is men in de USA van mening dat de eigen wetgeving thans eveneens leemten vertoont en dat bepaalde juridische elementen uit het Europese Directief daarin zouden kunnen voorzien.

Toch wordt het Directief vanuit diverse maatschappelijke geledingen bekritiseerd. Met het jaar 2001 voor ogen worden door de USA in toenemende mate initiatieven ontplooid om het Europese beleid op regeringsniveau te beïnvloeden.

Aan de NOAA en de NWS is daarin een actieve rol toebedeeld.

Voor wat betreft de meteorologie worden als voornaamste punten van kritiek genoemd:

- Meteorologische basis gegevens dienen essentieel te worden beschouwd als "environmental data". In dit opzicht ademt het Directief een zeer protectionistische geest in tegenstelling tot het latere Europese "Green Paper on Public Sector Information" van 1999 (Lit. 6).
- Het Directief kan door "hybride" Nationale Weerdiensten in Europa worden gebruikt als middel tot instandhouding van restrictieve "data policies". Overigens verwacht men op dit gebied politieke en juridische complicaties, die zullen worden gefinitieerd vanuit de private sector.
- Het strekking van het Directief moet gericht zijn op de wettelijke bescherming "commercial data bases" en zou expliciet niet van toepassing dienen te worden verklaard voor "government funded information and data bases".

Noten van de auteur:

- Het bovenstaand onderwerp staat in ons land op dit moment in de politieke belangstelling. Zie Lit.2 en bijlage 6.
- Voorts heeft de EC in juni 2000 een nieuw en belangwekkend voorstel ingediend voor een Directief "on public access to environmental information", die door of onder verantwoordelijkheid van Overheden wordt vergaard (<http://europa.eu.int/comm/environment/docum/00402en.htm>)
Daarin wordt in Artikel 2 "Definitions" het begrip "environmental information" verklaard en worden "air and atmosphere" bij name genoemd.

11 Visie op ECOMET

Gezien het voorgaande is het standpunt van de USA inzake ECOMET voor de hand liggend..

ECOMET wordt gezien als een kartel dat primair de belangen dient van "hybride" nationale weerdiensten en de ontwikkeling van een gezonde publiek - private verhouding verhindert.

In meer of mindere mate wordt de eigen nationale markt worden afgeschermd voor zelfstandig opererende private weerbureaus.

Dit verklaart onder andere de hoge licentietarieven voor nationale waarnemingen en radar gegevens die sommige lidstaten in de ECOMET Catalogus opgeven.

De ironie wil dat, in overeenstemming met de ECOMET "rules of operations", de eigen "Commercial Arm" dient te worden behandeld als een private "Service Provider".

Men is dus verplicht "zichzelf" een hoog tarief in rekening te brengen, dat als beschermende maatregel was bedoeld. Deze bescherming werkt averechts.

Om valse concurrentie te voorkomen is de ECOMET regelgeving ten ene male ontoereikend, niet doorzichtig en oncontroleerbaar. "Government Commercialization" kan om velerlei redenen geen substituuat zijn voor privatisering, bijvoorbeeld door het fundamentele verschillen in rechtspositionele en fiscale regimes voor de publieke en private sector.

Men beschikt in de USA over informatie dat thans enkele overheden van ECOMET lidstaten zich hierop ernstig bezinnen. De reden is niet alleen dat "Government Commercialization" niet "winstgevend" is of zou zijn; veeleer wordt dit ingegeven door gewijzigde politieke en juridische inzichten.

Noot van de auteur:

- De politieke discussie over publiek - private scheiding is onlangs volop in gang gekomen in Groot-Brittannië, Zweden en Oostenrijk.
- Recentelijk hebben commerciële weerbureaus in enkele de ECOMET lidstaten zich verenigd in de "Association of Environmental Data Users in Europe (AEDUE)". Met gebruikmaking van een eigen WEB site www.aedue.org wordt oppositie tegen "Government Commercialization" en protectionistische "data policies".

12 Overwegingen voor beleidsontwikkeling in Nederland

Dit reisverslag kan de indruk wekken dat de "public private partnership" in de USA een hoge mate van ordening heeft bereikt en dat de liberale "information and data policy" de ultieme oplossing zou zijn voor problemen in West Europa.

Het Amerikaanse model heeft ook nadelen en daarover bestaat in de USA bezorgdheid.

- **Privatisering van meetnetten**
De NWS is bevreesd dat het particulier initiatief op dit gebied (waarnemingen, radar, bliksemdetectie, mogelijk zelfs meteorologische satellieten) gaat domineren en politiek kan worden uitgebuit. Dit zou de autonomie van National Agencies zoals de NWS en ook de liberale "data policy" kunnen aantasten.
- **Kartelvorming in de private sector**
De mogelijkheid van de vorming van "trusts" is een delicate kwestie. De NWS acht dit ongewenst maar rekent het niet tot haar bevoegdheid hierover informatie te verzamelen en acties te ondernemen.

Niettemin levert het "Amerikaanse model" concrete aanknopingspunten voor ontwikkeling van beleid in Nederland die een serieuze afweging verdienen.

In deze afweging zouden twee belangrijke premissen kunnen gelden, een bestuurlijke en een economische:

- Indien de Nederlandse overheid zich dient te onthouden van exploitatie van commerciële "Value Added Services" behoort dat ook te gelden voor exploitatie van gegevens en informatie, die aan deze diensten ten grondslag liggen,
- Het nationaal economisch belang wordt gediend wanneer concurrentie op de weermarkt niet slechts is toegestaan maar ook wordt bevorderd. In deze context scheidt een liberaal beleid voor de verstrekking van publieke gegevens belangrijke mogelijkheden voor de private sector.

De Werkgroep Data Beleid geeft het volgende in overweging:

1) Geen licentievoorwaarden en -kosten voor sommige nationale basisgegevens

1-a) Real time waarnemingen

Het nationaal meteorologisch meetnet bestaat uit (thans) 56 stations doch een beperkt deel daarvan valt onder de directe beheerslast van het KNMI. Het Ministerie van Defensie participeert met waarnemingen van 9 vliegbases. Het DG Rijkswaterstaat draagt in grote mate bij in de exploitatie van 7 platforms op de Noordzee en 11 wind meetpalen in het kustgebied. Voorts wordt door RWS personeel waarneemdiensten verleend op 4 bemande stations in het kustgebied en de Waddeneilanden.

Voor het gebruik van een beperkte set waarnemingen wordt thans geen licentiekosten in rekening gebracht. Dat betreft alle uurlijkse waarneemgegevens (SYNOP's) van in totaal 12 bemande land stations en twee toegevoegde automatische stations, die het KNMI gebruikt voor de berichtgeving aan het publiek via Internet.

Voor de data disseminatie, nationaal en internationaal via het GTS, zijn de betreffende stations ondergebracht in aparte SYNOP-bulletins die WMO "Essential Data" zijn verklaard.

Alle overige stations behoren nog tot de WMO "Additional Data", waarvoor wél restricties gelden.

Voorstel 1: Verklaring van alle beschikbare Nederlandse SYNOP-bulletins tot WMO "Essential Data"

Dit voorstel is volledig in lijn met het voorgesteld beoordelingskader in Lit. 2

1-b) Geverifieerd klimatologische basisgegevens en -informatie

Alle bovengenoemde real time waarnemingen worden dagelijks op kwaliteit en volledigheid gecontroleerd. Uit deze gevalideerde data wordt informatie in de vorm van klimatologische basisgegevens per uur, per etmaal, week, decade, maand en het jaar afgeleid en gearhiveerd. Een deel daarvan is reeds WMO "Essential".

Indien alle real time waarnemingen "WMO Essential" worden verklaard en bovendien wordt vastgehouden aan de publieke taak voor borging van de kwaliteit, kan voor het gebruik van klimatologische basisgegevens geen licentietarief worden geheven.

Overigens blijkt dat historische gegevens van drie jaar of ouder vrijwel geen "commerciële" doch louter onderzoekswaarde bezitten.

Voorstel 2: Geen licentiekosten voor incidenteel en periodieke gebruik van alle klimatologische basisgegevens

1-c) Real time radargegevens

Presentatie van informatie van weerradars in de vorm van "loops" is een krachtig middel bij algemene weerpresentaties aan de samenleving. Het gebruik van radargegevens is daarom commercieel zeer aantrekkelijk maar het vereist de nodige deskundig om uit de basisgegevens kwalitatief goed beelden te vervaardigen.

Voor de veiligheidsberichtgeving is de kwaliteit van de informatie en vooral ook de tijdige beschikbaarheid voor het publiek van doorslaggevend belang.

Het is het KNMI thans toegestaan deze informatie slechts te verstrekken in dien sprake is "maatschappij ontwrichtende" weersomstandigheden op grote schaal ("weer-alarm").

Continue presentatie is vooralsnog aan de private sector overgelaten.

Deze situatie is niet wenselijk te noemen.

Er is thans een wildgroei ontstaan van presentaties op het Internet van beelden, die niet actueel en soms ook van inferieure kwaliteit zijn. In veel gevallen worden buienformaties getoond, die reeds zijn gepasseerd. Gebrekkige nabewerking van de basisgegevens leidt soms tot verkeerde positionering van de radarreflecties. *Voor het publiek scheidt dit grote onduidelijkheid. In bedreigende weersituaties wordt misleidende informatie verstrekt.*

Gezien de nationale en regionale belangen dient de Overheid het tot zijn verantwoordelijkheid te rekenen om tijdig en voortdurend radarinformatie van de juiste kwaliteit ter beschikking te stellen aan de gehele samenleving en wel uit één gecontroleerde bron, t.w. het KNMI.

Voorstel 3: Geen licentiekosten voor het gebruik van radar-basisgegevens. Het KNMI wordt verantwoordelijk gesteld voor continue en tijdige publiekspresentatie van de juiste informatie.

1-d) Real time bliksemgegevens

De inrichting van het nationaal bliksemmeetnet is een gezamenlijke onderneming van de Kon. Luchtmacht, Kon. Marine en het KNMI. Tijdens onweer zijn gegevens per 5 minuten beschikbaar. Voor een betere positiebepaling van ontladingen worden de gegevens van een aantal sensoren in België, in eigendom van het KMI, medegebruikt. In real time toepassingen is décompositie van de data van beide landen technisch niet mogelijk. KMI heeft zich nog steeds niet uitgelaten over ECOMET licentievoorwaarden bij verstrekking van de data aan derden.

Niettemin wordt voor veiligheidsberichtgeving tijdige informatie over bliksemontladingen van toenemend belang geacht. Indien informatie beschikbaar is, zijn er feitelijk geen redenen aan te voeren deze aan de samenleving te onthouden.

Voorstel 4: Geen licentievoorwaarden voor het gebruik van bliksemgegevens. Vrije uitwisseling van nationale data met het KMI indien daarom wordt verzocht.

KNMI
Werkgroep Data Beleid (WgDB)

ANNEX

behorende bij het reisverslag
National Weather Service (NWS) van de USA,
Silver Spring, Maryland op 26 - 30 juni 2000

Deze annex bevat de volgende bijlagen:

- 1) Lijst met vragen en gesprekspunten
- 2) AMS Policy Statement, "The Public-Private Partnership in the Provision of Weather and Climate Services" (Adopted by the AMS Executive Committee 23 July 1999), Bulletin of the American Meteorological Society, Vol. 80 No. 10, October 1999
- 3) WMO Resolution 40 (Cg-XII), "WMO Policy and Practice for the Exchange of Meteorological and Related Data and Products including Guidelines on Relationship in Commercial Meteorological Activities", Annex 1- 4, World Meteorological Organization, Geneva, 1995
- 4) European Union Directive on the Legal Protection of Databases, Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996
- 5) Voorbeeld van een overeenkomst van de NWS voor levering van meteorologische basisgegevens
- 6) Krantenknipsels Europese WOB
- 7) Peter N. Weiss, National Weather Service/Federal Office of Management and Budget, "Issues in International Information Policy: Challenges and Opportunities", persoonlijke presentatie 28 juni 2000.

Reisverslag National Weather Service USA

Bijlage 1: Lijst met vragen en gesprekspunten

Inquiry to the provision of Basic Meteorological Data and Products by the US National Weather Service to the Private Sector

- commercial weather bureaus
- broadcasters
- internet providers
- various end users

May 22, 2000

Ton W. Donker, Licensing Office, KNMI Netherlands

Handled definitions of *basic* meteorological data and products:

- *Raw* data to be processed by the private sector (i.e. past weather data, real time observations, model data, radar data, lightning detection data, satellite image data)
- *Existing* products generated by the NWS, regularly used for official duty and to be used by the private sector without meteorological processing

Areas of interest:

- Current provision of US National Data
- Current provision of WMO Additional (restricted) Data

Items for inquiry and discussion:

1. US data policy (broad brush)

- Historical review
- The Proces of Legislation
- Key documents (Laws, Statutes, Charters) ?
- Present rules of operation
- Future policy developments (national and international)
- Lessons learned, pitfalls and successes

2. National basic data USA

- Are *all* national basic data "WMO-Essential" casu quo free of information charges ? There are no exeptions (e.g. defence or special projects)?
- Does the NWS apply national quality standards in deciding to provide data to the private sector ?
- Does the NWS allow use by the private sector of observations/data obtained from commercially operated networks/models ?
- Are any other legal or technical restrictions imposed ?

3. General aspects and daily practice of the data provision

- User administration by the NWS. How organized ? Centralized or decentralized ?
- Delivery by the NWS . Centralized or decentralized ?
- Growth and present volume of data dissemination (broad brush)
- The proces of entry of subscribers
- The formal delivery conditions Agreement forms ?
- Are minimum delivery periods in force ?
- NWS liability (false alerts, wrong forecasts) ?
- Claims caused by interruptions data provision?

1 of 2

- Does the NWS refuse candidate subscribers ? Ballot of existing users ?
- Reselling data by third parties ? Special conditions and rules of operations ?
- Individual data formats on request or all standardized ("bulk as available") ?
- Future developments in data provision
- Lessons learned, pitfalls and successes

4. User fees

- Points of departure for charging user fees
- Which fee components (e.g. extraction, transformation, data routing to servers) ?
- Which basic assumptions does the NWS applicate in fixing the tariffs.
- Do fee level(s) depend on the number of subscribers and/or the volume of data requested individually ?
- Recurrent review of NWS tariffs. Time schedules ?
- Fee differentiations and/or discounts (vis à vis category users, data volumes) ?
- Are maximum/minimum user fees in force ?
- Exceptions in charging fees (e.g. no fees for non commercial research and education) ?
- Future developments
- Lessons learned, pitfalls and successes

5. ICAO data (OPMET, GRIB, T4 Weather Chart fax code)

- Position of NWS concerning the application of the ICAO data by other users than entitled parties in civil aviation.. All dated have been payed by IATA. In Neth. costs of Air Met. And Traffic Control to RLD, thans to Eurocontrol which receives payments from Airlines and finally payment to Ministry that's pays Air. Met and Traffic Control.

6. NWS Family of Services (FOS)

- General information about the Services (broad brush)
- Technical description and data logistics (broad brush)
- Guide for subscribers ?
- Catalogue of national data NWS (i.e. data/product entries and maintenance) ?
- Major technical requirements to grant access
- Routine delivery of soft ware by the NWS, e.g. decoders ?

7. Duality in private/public meteorology

- In spite of a liberalized data policy one may expect ongoing tensions between the public and the private sector. We believe grey areas can remain (and even grow) in provision of certain services (excluded the official NWS warnings and alerts) to the public and intentional users which cannot not easily be allocated to the public or the private sector. Experiences in de US ?
- If so in the US situation (?) how does the NWS goes about with this ? Do you have a concensus model with private sector organizations in preserving agreements, an arbitrating forum or perhaps an arbitrating authority ?

8. Relationship NWS with AMS and organizations representing the private sector

- General out lines (broad brush). Evolution and future developments/tendencies.
- Mutual influencing of policy. Unsolved questions and faits accompli ?
- Code of Conduct ? Legal aspects of the public/private partnership ? "Unwritten rules" ?

Reisverslag National Weather Service USA

Bijlage 2 : Policy Statement van de American Meteorological Society

policy statement

The Public-Private Partnership in the Provision of Weather and Climate Services (Adopted by the AMS Executive Committee 23 July 1999)



The American Meteorological Society believes that a strong partnership between the public and private sectors in the provision of weather, climate, hydrologic, and environmental services is a critical element in the application of our science. A coordinated and cooperative sharing of responsibilities will

- enhance public safety and the protection of property,
- benefit industry and commerce,
- speed the transfer of new technologies and scientific knowledge to benefit society,
- enhance growth in the private sector and stable support for the public sector, and
- best serve the interests of users of weather and climate information.

Unprecedented progress in meteorological science and service has been achieved during the twentieth century, in part as a result of extensive public investments in research and technology. Weather forecasting has matured such that many thousands, perhaps countless, decisions are made on the basis of weather forecasts each day. Science-based predictions of climate variations up to several seasons in advance can now be made with useful accuracy, as was demonstrated during the 1997-98 El Niño episode. In parallel, a flourishing private sector has developed, providing tailored weather and climate information to individuals and organizations. The American Meteorological Society anticipates and encourages growth in this sector, as businesses and other organizations increasingly recognize the potential of such information to not only help avoid economic losses from disruptive weather, but also to exploit reliable information on nondisruptive weather to enhance economic performance.

Since the 1930s the private sector has invested extensively in the science, technology, delivery, and

marketing of value-added weather products in the United States and abroad. As a result of this investment, the private sector delivers made-to-order weather information that strengthens a business's performance in many ways. The private sector is at the forefront of developing creative products for the media that substantially improve the display and communication of weather information to the general public. Industries subject to environmental regulation by the government depend on the private sector for instruments and real-time input to critical decisions. The transportation industry improves the safety of travelers and their own on-time performance by weaving specialized information from the private sector into the fabric of their operations. These are but a few of today's market-driven innovations from the private sector that have led to the widespread application of weather information by the business community. Tomorrow's innovations will continue to expand the acceptance of the value of weather information into more and more sectors of the global economy.

In addition to the vigorous private sector, The Society also recognizes the importance of the public sector in the provision of weather and climate services for the common good. Benefits from these services to the people of the United States include the protection of life and property, an ability to cope with environmental problems, and help in making a wide range of weather- and climate-based decisions. The public sector also plays an important role in international activities involving the atmosphere, including treaty obligations such as the Safety of Life at Sea agreement, aviation protocols and procedures under the auspices of the International Civil Aviation Organization, and the World Meteorological Organization of the United Nations.

The observation and monitoring systems, which include constellations of satellites and networks of radars, buoys, aircraft, and land-based observatories, are by far the most expensive component of the infrastructure. These systems have multiple uses by sev-

eral public agencies in carrying out their missions associated with weather, climate, water resource management, environmental monitoring, and a host of other governmental responsibilities. Over the last decade, a significant public investment in this infrastructure through the modernization of the National Oceanic and Atmospheric Administration's (NOAA) National Weather Service has proven invaluable to both public agencies and the private sector. It has resulted in dramatic gains in observing capabilities, advances in atmospheric understanding, and economically beneficial increases in forecast skill.

The public sector infrastructure—observation system, communication, data processing and computing systems, and a system for forecasts and warnings—while designed and maintained by the public sector in order to discharge its own responsibilities, is also essential to the private sector in the generation of its products and services. A vigorous and healthy partnership between the private sector and the public sector is therefore of great importance to the expanding use of weather and climate information in the United States. In the spirit of maintaining and enhancing this partnership, the AMS offers the following view of the role for each partner such that the whole is greater than the sum of its parts.

Government

It is the responsibility of NOAA to provide for use by the public of the United States, weather, climate and hydrologic information and forecasts for the entire country, including the coastal and adjacent ocean areas. The government gives priority to the provision of forecasts and warnings of severe weather, floods, and maritime conditions, and for aviation and wildfire control, which involve the protection of life and property and contribute to the safety and well being of all people.

To carry out its mission, NOAA, in cooperation with other appropriate federal and state agencies,

- maintains and continually improves a weather, climate, and hydrologic observation, communication, data processing, archive, access, and forecasting system that is required to fulfill NOAA's responsibilities;
- cooperates with the private sector to facilitate the further dissemination and interpretation of weather, climate, and hydrologic information as a

means of increasing the value of such information to society; and

- conducts, in cooperation with universities, the private sector, and other institutions, a program of research and development that continually improves the quality of products and services from both the public and private sectors.

The private sector

The private sector provides a variety of value-added meteorological products and custom-tailored weather and climate information services, which enhance the basic infrastructure, products, and services provided by the public sector. The private sector provides services to the public, and responds to meteorological needs within various economic sectors of society that are sensitive to meteorological, oceanographic, hydrologic, and environmental variations. The private sector leads in the provision of advanced technology for the improvement of the infrastructure.

The private sector performs the following functions within the public-private partnership:

- disseminates public domain weather and climate information to the public and other users, in cooperation with NOAA and emergency management organizations. In the case of situations where life and property are threatened, the private sector relays public sector warnings and advisories to the public, ensuring that a consistent, unified voice is heard by those affected citizens;
- produces and delivers value-added weather, climate, hydrologic, and environmental products and services, and promotes their widest and most productive commercial application, to enhance the efficiency of economic sectors that are sensitive to weather and climate variations; and
- creates technological advances in observations, computing, communications, and any other areas necessary for progress in the science and application of meteorology and related aspects of oceanography and hydrology.

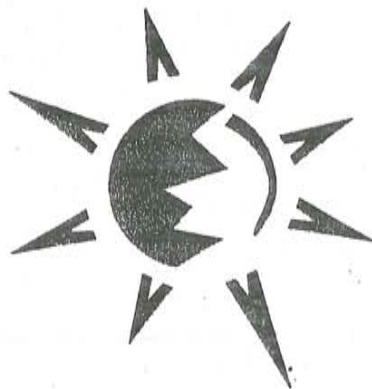
Partnership

Frequent and effective communication between partners is vital to a successful partnership. Both public and private sectors should strive for a teamwork

approach on such topics as public safety during hazardous weather events, where the public sector has the lead responsibility, and in the enhancing of efficiency in economic sectors sensitive to weather and climate, where the private sector has the lead. Teamwork requires good communication. The public sector should seek out feedback from universities, research institutions, and the private sector regarding their performance, including suggestions for service improvements, and the private sector, universities, and other research institutions should provide that feedback.

Summary

The American Meteorological Society strongly believes that the economic position of U.S. industries impacted by weather and climate will be well served, the private weather/climate sector will experience unprecedented growth, and the general public will continue to benefit as a result of this public-private partnership.



Reisverslag National Weather Service USA

Bijlage 3: WMO Resolution 40 (Cg-XII)

RESOLUTION 40 (Cg-XII)

WMO POLICY AND PRACTICE FOR THE EXCHANGE OF METEOROLOGICAL AND RELATED DATA AND PRODUCTS INCLUDING GUIDELINES ON RELATIONSHIPS IN COMMERCIAL METEOROLOGICAL ACTIVITIES

THE CONGRESS,

NOTING:

- (1) Resolution 23 (EC-XLII) - Guidelines on international aspects of provision of basic and special meteorological services,
- (2) Resolution 20 (EC-XLVI) - WMO policy on the exchange of meteorological and related data and products,
- (3) Resolution 21 (EC-XLVI) - Proposed new practice for the exchange of meteorological and related data and products,
- (4) Resolution 22 (EC-XLVI) - WMO guidelines on commercial activities,
- (5) The report to Twelfth Congress of the chairman of the Executive Council Working Group on the Commercialization of Meteorological and Hydrological Services, established at the request of Eleventh Congress by the Executive Council in Resolution 2 (EC-XLIII).

RECALLING:

- (1) The general policies of the Organization, as set down in the Third WMO Long-term Plan (1992-2001) adopted by Eleventh Congress, which include, *inter alia*, that Members should reaffirm their commitment to the free and unrestricted international exchange of basic meteorological data and products, as defined in WMO Programmes (*Third WMO Long-term Plan*, Part I, Chapter 4, paragraph 127),
- (2) The concern expressed by Eleventh Congress that commercial meteorological activities had the potential to undermine the free exchange of meteorological data and products between national Meteorological Services,

CONSIDERING:

- (1) The continuing fundamental importance, for the provision of meteorological services in all countries, of the exchange of meteorological data and products between WMO Members' national Meteorological or Hydrometeorological Services (NMSs), WMCs, and RSMCs of the WWW Programme,
- (2) Other programmes of world importance such as GCOS, GOOS, WCRP, and IGOSS, which are sponsored and implemented in cooperation with other international organizations,
- (3) The basic role of WMO Members' NMSs in furthering applications of meteorology to all human activities,
- (4) The call by the world leaders at UNCED (Brazil, 1992) for increasing global commitment to exchange scientific data and analysis and for promoting access to strengthened systematic observations,
- (5) The provision in the UN/FCCC committing all Parties to the Convention to promote and cooperate in the full, open, and prompt exchange of information related to the climate system and climate change,

RECOGNIZING:

- (1) The increasing requirement for the global exchange of all types of environmental data in addition to the established ongoing exchange of meteorological data and products under the auspices of the WWW,

- (2) The basic responsibility of Members and their NMSs to provide universal services in support of safety, security and economic benefits for the peoples of their countries,
- (3) The dependence of Members and their NMSs on the stable, cooperative international exchange of meteorological and related data and products for discharging their responsibilities,
- (4) The continuing requirement for Governments to provide for the meteorological infrastructure of their countries,
- (5) The continuing need for, and benefits from, strengthening the capabilities of NMSs, in particular in developing countries, to improve the provision of services,
- (6) The dependence of the research and education communities on access to meteorological and related data and products,
- (7) The right of Governments to choose the manner by, and the extent to, which they make data and products available domestically or for international exchange,

RECOGNIZING FURTHER:

- (1) The existence of a trend towards the commercialization of many meteorological and hydrological activities,
- (2) The requirement by some Members that their NMSs initiate or increase their commercial activities,
- (3) The risk arising from commercialization to the established system of free and unrestricted exchange of data and products, which forms the basis for the WWW, and to global cooperation in meteorology,
- (4) Both positive and negative impacts on the capacities, expertise and development of NMSs, and particularly those of developing countries, from commercial operations within their territories by the commercial sector including the commercial activities of other NMSs,

REMINDS Members of their obligations under Article 2 of the WMO Convention to facilitate worldwide cooperation in the establishment of observing networks and to promote the exchange of meteorological and related information; and of the need to ensure stable ongoing commitment of resources to meet this obligation in the common interest of all nations;

ADOPTS the following policy on the international exchange of meteorological and related data and products:

As a fundamental principle of the World Meteorological Organization (WMO), and in consonance with the expanding requirements for its scientific and technical expertise, WMO commits itself to broadening and enhancing the free and unrestricted¹ international exchange of meteorological and related data and products;

ADOPTS the following practice on the international exchange of meteorological and related data and products²:

- (1) Members shall provide on a free and unrestricted basis essential data and products which are necessary for the provision of services in support of the protection of life and property and the well-being of all nations, particularly those basic data and products, as, at a minimum, described in Annex

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- 1 to this resolution, required to describe and forecast accurately weather and climate, and support WMO Programmes;
- (2) Members should also provide the additional data and products which are required to sustain WMO Programmes at the global, regional, and national levels and, further, as agreed, to assist other Members in the provision of meteorological services in their countries. While increasing the volume of data and products available to all Members by providing these additional data and products, it is understood that WMO Members may be justified in placing conditions on their re-export for commercial purposes outside of the receiving country or group of countries forming a single economic group, for reasons such as national laws or costs of production;
- (3) Members should provide to the research and education communities, for their non-commercial activities, free and unrestricted access to all data and products exchanged under the auspices of WMO with the understanding that their commercial activities are subject to the same conditions identified in ADOPTS (2) above;
- (2) Invite the president of CHy to continue his work on the issue of commercialization and the international exchange of hydrological data and products;
- (3) Keep the implementation of this resolution under review and report to Thirteenth Congress;

REQUESTS the Secretary-General to:

- (1) Keep Members informed on the impacts of commercialization on WMO Programmes and to facilitate the exchange of relevant information on commercialization among NMSs;
- (2) Report on a timely basis to all Members on those meteorological and related data and products on which Members have placed conditions related to their re-export for commercial purposes;
- (3) Maintain effective coordination with IOC and other involved international organizations in respect of joint programmes during WMO's implementation of the practice;

STRESSES that all meteorological and related data and products required to fulfil Members' obligations under WMO Programmes will be encompassed by the combination of essential and additional data and products exchanged by Members;

DECIDES to review the implementation of this resolution at Thirteenth Congress.

URGES Members to:

- (1) Strengthen their commitment to the free and unrestricted exchange of meteorological and related data and products;
- (2) Increase the volume of data and products exchanged to meet the needs of WMO Programmes;
- (3) Assist other Members, to the extent possible, and as agreed, by providing additional data and products in support of time-sensitive operations regarding severe weather warnings;
- (4) Strengthen their commitments to the WMO and ICSU WDCs in their collection and supply of meteorological and related data and products on a free and unrestricted basis;
- (5) Implement the practice on the international exchange of meteorological and related data and products, as described in ADOPTS (1) to (3) above;
- (6) Make known to all Members, through the WMO Secretariat, those meteorological and related data and products which have conditions related to their re-export for commercial purposes outside of the receiving country or group of countries forming a single economic group;
- (7) Make their best efforts to ensure that the conditions which have been applied by the originator of additional data and products are made known to initial and subsequent recipients;

FURTHER URGES Members to comply with:

- (1) The Guidelines for Relations among National Meteorological or Hydrometeorological Services Regarding Commercial Activities as given in Annex 2 to this resolution;
- (2) The Guidelines for Relations between National Meteorological or Hydrometeorological Services and the Commercial Sector as given in Annex 3 to this resolution;

INVITES Members to provide explanation of the WMO policy, practice, and guidelines to the commercial sector and other appropriate agencies and organizations;

REQUESTS the Executive Council to:

- (1) Invite the president of CBS, in collaboration with the other technical commissions as appropriate, to provide advice and assistance on the technical aspects of implementation of the practice;

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RESOLUTION 40 (Cg-XII)

WMO POLICY AND PRACTICE FOR THE EXCHANGE OF METEOROLOGICAL AND RELATED DATA AND PRODUCTS INCLUDING GUIDELINES ON RELATIONSHIPS IN COMMERCIAL METEOROLOGICAL ACTIVITIES

ANNEX 1 TO RESOLUTION 40 (Cg-XII)

DATA AND PRODUCTS TO BE EXCHANGED WITHOUT CHARGE AND WITH NO CONDITIONS ON USE

Purpose

The purpose of this listing of meteorological and related data and products is to identify a minimum set of data and products which are essential to support WMO Programmes and which Members shall exchange without charge and with no conditions on use. The meteorological and related data and products which are essential to support WMO Programmes include, in general, the data from the RBSNs and as many data as possible that will assist in defining the state of the atmosphere at least on a scale of the order of 200 km in the horizontal and six to 12 hours in time.

Contents

- (1) Six-hourly surface synoptic data from RBSNs, e.g. data in SYNOP, BUFR or other general purpose WMO code;
- (2) All available *in situ* observations from the marine environment, e.g. data in SHIP, BUOY, BATHY, TESAC codes, etc.;

- (3) All available aircraft reports, e.g. data in AMDAR, AIREP codes, etc.;
- (4) All available data from upper air sounding networks, e.g. data in TEMP, PILOT, TEMP SHIP, PILOT SHIP codes etc.;
- (5) All reports from the network of stations recommended by the regional associations as necessary to provide a good representation of climate, e.g. data in CLIMAT/CLIMAT TEMP and CLIMAT SHIP/CLIMAT TEMP SHIP codes, etc.;
- (6) Products distributed by WMCs and RSMCs to meet their WMO obligations;
- (7) Severe weather warnings and advisories for the protection of life and property targeted upon end-users;
- (8) Those data and products from operational meteorological satellites that are agreed between WMO and satellite operators. (These should include data and products necessary for operations regarding severe weather warnings and tropical cyclone warnings).

ANNEX 2 TO RESOLUTION 40 (Cg-XII)

GUIDELINES FOR RELATIONS AMONG NATIONAL METEOROLOGICAL OR HYDROMETEOROLOGICAL SERVICES (NMS) REGARDING COMMERCIAL ACTIVITIES

Purpose

The purpose of these guidelines is to maintain and strengthen in the public interest the cooperative and supportive relations among NMSs in the face of differing national approaches to the growth of commercial meteorological activities.

Guidelines

In order to ensure the maintenance of the international exchange of data and products among WMO Members, and to develop the applications of meteorology, while adapting to the new challenge from the growth of commercial meteorological activities:

1. NMSs should provide the first point of receipt within a country for WWW data and products, in order to have complete and timely access to all the information necessary for the production of weather forecasts and warnings and other meteorological/climatological services necessary for the protection of life and property and other public interest responsibilities entrusted to the NMSs and without prejudice to the national laws of their territory of location;
2. NMSs should make their best efforts to ensure that the conditions which have been applied by the originator of additional data and products³ are made known to initial and subsequent recipients;
3. In the case where conditions accompanying the exchange of additional data and products are not honoured, the originating

4. NMSs may take appropriate actions including denial of access of these additional data and products to the receiving Member, NMSs may export NWP regional model products employing additional data and products for commercial purposes outside the country of the Member running the model, unless objected to by an affected Member. Every effort should be made to coordinate the provision of such services prior to implementation to avoid possible harm to other Members;
5. NMSs may distribute and export products from global NWP models without regard to conditions which were attached to the original data used in the models;
6. Services or products whose construction would suffer significant degradation by removal of the additional data or products and from which the additional data and/or products can be retrieved easily, or their use can be identified unambiguously, should carry the same conditions on their re-export for commercial purposes as those additional data or products;
7. An NMS receiving a request from a local client for service that it cannot fulfil may seek assistance from another NMS with the capacity to provide it. Where appropriate to enhance the free and unrestricted exchange of data and products among WMO Members, the service should as far as possible be made available through the offices of the NMS of the country within which the client is located;
8. Similarly, unless other arrangements have been agreed to, an NMS receiving a request to provide service in another country

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- should refer the request back to the NMS in that country, i.e. to the local NMS. In the event that the local NMS is unable to provide the service for lack of facilities or other legitimate reasons, the external NMS may seek to establish a collaborative arrangement with the local NMS to provide the service;
9. Where the service originated by one NMS is likely to affect other Members (e.g. in the provision of regional broadcasts of meteorological information or the wide distribution of seasonal or climate forecasts), the NMS originating the service should seek, well in advance, and take into account the response of the NMSs of the affected Members, to the extent possible;
 10. NMSs should, to the extent possible, refrain from using basic WWW data and products received from other countries in ways which jeopardize the performance of the public interest responsibilities of the originating NMSs within their own countries. If an NMS finds that, in the undertaking of its public interest responsibilities it is affected adversely by a public or private organization in another country, it may warn the NMS in the country from which the organization is deriving the data and products. The latter NMS should consider measures to mitigate these adverse effects and take those actions appropriate under its national laws;
 11. NMSs with experience in commercial activities should make their expertise available, on request, to other NMSs, especially NMSs of developing countries, through the WMO Secretariat and bilaterally, and provide relevant documentation, seminars and training programmes to developing countries, on request, on the same financial basis as other WMO education and training courses are provided.

In implementing these guidelines, NMSs should take into account and, as far as possible, respect the different legal, administrative, and funding frameworks which govern the practices of NMSs in other countries or group of countries forming a single economic group. NMSs should, in particular, note that other NMSs will be bound by their own national laws and regulations regarding any trade restrictive practices. Furthermore, where a group of countries form a single economic group, the internal laws and regulations appropriate to that group shall, for all internal group activities, take precedence over any conflicting guidelines.

ANNEX 3 TO RESOLUTION 40 (Cg-XII) GUIDELINES FOR RELATIONS BETWEEN NATIONAL METEOROLOGICAL OR HYDROMETEOROLOGICAL SERVICES (NMSs) AND THE COMMERCIAL SECTOR

Purpose

The purpose of these guidelines is to further improve the relationship between NMSs and the commercial sector. The development of the exchange of meteorological and related information depends greatly upon sound, fair, transparent, and stable relations between these two sectors.

Guidelines

These guidelines apply to the commercial sector engaged in meteorological activities, which includes government organizations engaged in commercial meteorological activities.

In order to enhance the relationship between the two sectors:

1. In the common interest, the commercial sector is urged to respect the international data exchange principles of the WWW and other WMO Programmes;
2. The commercial sector is urged to recognize and acknowledge the essential contribution of NMSs and of WMO to the activities of the commercial sector. NMSs and the commercial sector are urged to recognize the interdependence and mutual benefit possible from cooperative interaction;
3. In the case where the NMS of a country, particularly of a developing country, were to consider itself affected by the commercial sector's commercial use of data originated in its own country, all parties involved shall undertake negotiations to achieve appropriate and satisfactory agreements;
4. Unless authorized to do so by the relevant Member, commercial sector providers of meteorological services should not publicly issue warnings and forecasts relevant to the safety of life and

property in the country or maritime area where they operate. Warnings and forecasts relevant to the safety of life and property publicly issued by the commercial sector should be consistent with those originated by NMSs or by other official originators in the course of the performance of their public service responsibilities;

5. In providing services, the commercial sector should be encouraged to employ meteorological terminology consistent with established national and international practice;

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| <p>6. Commercial sector providers of meteorological services should respect the sovereignty and rules and regulations of the countries in which they deliver services;</p> <p>7. NMSs are encouraged to discuss with their countries' meteorological community and professional societies the issues associated with the international activities of the commercial sector;</p> | <p>8. NMSs are encouraged to collaborate with their countries' commercial sector and their professional societies to maximize the use of meteorological information within their country.</p> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

ANNEX 4 TO RESOLUTION 40 (CG-XII) DEFINITIONS OF TERMS IN THE PRACTICE AND GUIDELINES

<i>Term</i>	<i>Definition</i>
Practice	Specifications for the classification of, and the conditions attached to, the use of data and products exchanged among WMO Members.
Re-export	Redistribute, physically or electronically, outside the receiving country or group of countries forming a single economic group, directly or through a third party.
For commercial purposes	For recompense beyond the incremental cost of reproduction and delivery.
Commercial sector	Governmental or non-governmental organizations or individuals operating for commercial purposes.
Meteorological and related data and products	Geophysical (meteorological, oceanographic, etc.) observational data and products developed from these data acquired and/or produced by Members to support WMO Programme requirements. NOTES: <ol style="list-style-type: none"> 1. Meteorological and related data and products are considered to include climatological data and products. 2. Hydrological data and products, at this stage, are not included in the application of the practice. 3. Aeronautical information generated specifically to serve the needs of aviation and controlled under the Convention on International Civil Aviation (Chicago, 1944) is not included in the application of the practice.
Free and unrestricted	Non-discriminatory and without charge (Resolution 23 (EC-XLII)) - Guidelines on international aspects of provision of basic and special meteorological services. "Without charge", in the context of this resolution means at no more than the cost of reproduction and delivery, without charge for the data and products themselves.
Research and education communities	Researchers, teachers and students in academic and research institutions, in other research institutions within governmental and non-governmental organizations, and these institutions themselves, as provided for in national laws and regulations.

¹ "Free and unrestricted" means non-discriminatory and without charge (Resolution 23 (EC-XLII)) - Guidelines on international aspects of provision of basic and special meteorological services). "Without charge", in the context of this resolution means at no more than the cost of reproduction and delivery, without charge for the data and products themselves.

² See Annex 4 to this resolution for definitions.

³ "Additional data and products" means data and products additional to those with no conditions on their use.

Reisverslag National Weather Service USA

Bijlage 4: European Union Directive on the Legal Protection of Databases
Directive 96/9/EC

European Union Directive on the Legal Protection of Databases

DIRECTIVE 96/9/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 11 March 1996 on the legal protection of databases

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 57 (2), 66 and 100a thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the Economic and Social Committee (2),

Acting in accordance with the procedure laid down in Article 189b of the Treaty (3),

(1) Whereas databases are at present not sufficiently protected in all Member States by existing legislation; whereas such protection, where it exists, has different attributes;

(2) Whereas such differences in the legal protection of databases offered by the legislation of the Member States have direct negative effects on the functioning of the internal market as regards databases and in particular on the freedom of natural and legal persons to provide on-line database goods and services on the basis of harmonized legal arrangements throughout the Community; whereas such differences

could well become more pronounced as Member States introduce new legislation in this field, which is now taking on an increasingly international dimension;

(3) Whereas existing differences distorting the functioning of the internal market need to be removed and new ones prevented from arising, while differences not adversely affecting the functioning of the internal market or the development of an information market within the Community need not be removed or prevented from arising;

(4) Whereas copyright protection for databases exists in varying forms in the Member States according to legislation or case-law, and whereas, if differences in legislation in the scope and conditions of protection remain between the Member States, such unharmonized intellectual property rights can have the effect of preventing the free movement of goods or services within the Community;

(5) Whereas copyright remains an appropriate form of exclusive right for authors who have created databases;

(6) Whereas, nevertheless, in the absence of a harmonized system of unfair-competition legislation or of case-law, other measures are required in addition to prevent the unauthorized extraction and/or re-utilization of the contents of a database;

(7) Whereas the making of databases requires the investment of considerable human, technical and financial resources while such databases can be copied or accessed at a fraction of the cost needed to design them independently;

(8) Whereas the unauthorized extraction and/or re-utilization of the contents of a database constitute acts which can have serious economic and technical consequences;

(9) Whereas databases are a vital tool in the development of an information market within the Community; whereas this tool will also be of use in many other fields;

(10) Whereas the exponential growth, in the Community and worldwide, in the amount of information generated and processed annually in all sectors of commerce and industry calls for investment in all the Member States in advanced information processing systems;

(11) Whereas there is at present a very great imbalance in the level of investment in the database sector both as between the Member States and between the Community and the world's largest database-producing third countries;

(12) Whereas such an investment in modern information storage and processing systems will not take place within the Community unless a stable and uniform legal protection regime is introduced for the protection of the rights of makers of databases;

(13) Whereas this Directive protects collections, sometimes called 'compilations', of works, data or other materials which are arranged, stored and accessed by means which include electronic, electromagnetic or electro-optical processes or analogous processes;

(14) Whereas protection under this Directive should be extended to cover non-electronic databases;

(15) Whereas the criteria used to determine whether a database should be protected by copyright should be defined to the fact that the selection or the arrangement of the contents of the database is the author's own intellectual creation; whereas such protection should cover the structure of the database;

NOTE: An official version of this document can be found online at the EUR-LEX Web site at <http://europa.eu.int/eur-lex/en/lif/lif/dat/1996/en_3961.0009.html>.

The material presented in this appendix has been reprinted from electronic files available on the Internet and is intended for use as a general reference, and not for legal research or other work requiring authenticated primary sources.

- (16) Whereas no criterion other than originality in the sense of the author's intellectual creation should be applied to determine the eligibility of the database for copyright protection, and in particular no aesthetic or qualitative criteria should be applied;
- (17) Whereas the term 'database' should be understood to include literary, artistic, musical or other collections of works or collections of other material such as texts, sound, images, numbers, facts, and data; whereas it should cover collections of independent works, data or other materials which are systematically or methodically arranged and can be individually accessed; whereas this means that a recording or an audiovisual, cinematographic, literary or musical work as such does not fall within the scope of this Directive;
- (18) Whereas this Directive is without prejudice to the freedom of authors to decide whether, or in what manner, they will allow their works to be included in a database, in particular whether or not the authorization given is exclusive; whereas the protection of databases by the sui generis right is without prejudice to existing rights over their contents, and whereas in particular where an author or the holder of a related right permits some of his works or subject matter to be included in a database pursuant to a non-exclusive agreement, a third party may make use of those works or subject matter subject to the required consent of the author or of the holder of the related right without the sui generis right of the maker of the database being invoked to prevent him doing so, on condition that those works or subject matter are neither extracted from the database nor re-utilized on the basis thereof;
- (19) Whereas, as a rule, the compilation of several recordings of musical performances on a CD does not come within the scope of this Directive, both because, as a compilation, it does not meet the conditions for copyright protection and because it does not represent a substantial enough investment to be eligible under the sui generis right;
- (20) Whereas protection under this Directive may also apply to the materials necessary for the operation or consultation of certain databases such as thesaurus and indexation systems;
- (21) Whereas the protection provided for in this Directive relates to databases in which works, data or other materials have been arranged systematically or methodically; whereas it is not necessary for those materials to have been physically stored in an organized manner;
- (22) Whereas electronic databases within the meaning of this Directive may also include devices such as CD-ROM and CD-i;
- (23) Whereas the term 'database' should not be taken to extend to computer programs used in the making or operation of a database, which are protected by Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs (4);
- (24) Whereas the rental and lending of databases in the field of copyright and related rights are governed exclusively by Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (5);
- (25) Whereas the term of copyright is already governed by Council Directive 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights (6);

- (26) Whereas works protected by copyright and subject matter protected by related rights, which are incorporated into a database, remain nevertheless protected by the respective exclusive rights and may not be incorporated into, or extracted from, the database without the permission of the rightholder or his successors in title;
- (27) Whereas copyright in such works and related rights in subject matter thus incorporated into a database are in no way affected by the existence of a separate right in the selection or arrangement of these works and subject matter in a database;
- (28) Whereas the moral rights of the natural person who created the database belong to the author and should be exercised according to the legislation of the Member States and the provisions of the Berne Convention for the Protection of Literary and Artistic Works; whereas such moral rights remain outside the scope of this Directive;
- (29) Whereas the arrangements applicable to databases created by employees are left to the discretion of the Member States; whereas, therefore nothing in this Directive prevents Member States from stipulating in their legislation that where a database is created by an employee in the execution of his duties or following the instructions given by his employer, the employer exclusively shall be entitled to exercise all economic rights in the database so created, unless otherwise provided by contract;
- (30) Whereas the author's exclusive rights should include the right to determine the way in which his work is exploited and by whom, and in particular to control the distribution of his work to unauthorized persons;
- (31) Whereas the copyright protection of databases includes making databases available by means other than the distribution of copies;
- (32) Whereas Member States are required to ensure that their national provisions are at least materially equivalent in the case of such acts subject to restrictions as are provided for by this Directive;
- (33) Whereas the question of exhaustion of the right of distribution does not arise in the case of on-line databases, which come within the field of provision of services; whereas this also applies with regard to a material copy of such a database made by the user of such a service with the consent of the rightholder; whereas, unlike CD-ROM or CD-i, where the intellectual property is incorporated in a material medium, namely an item of goods, every on-line service is in fact an act which will have to be subject to authorization where the copyright so provides;
- (34) Whereas, nevertheless, once the rightholder has chosen to make available a copy of the database to a user, whether by an on-line service or by other means of distribution, that lawful user must be able to access and use the database for the purposes and in the way set out in the agreement with the rightholder, even if such access and use necessitate performance of otherwise restricted acts;
- (35) Whereas a list should be drawn up of exceptions to restricted acts, taking into account the fact that copyright as covered by this Directive applies only to the selection or arrangements of the contents of a database; whereas Member States should be given the option of providing for such exceptions in certain cases; whereas, however, this option should be exercised in accordance with the Berne Convention and to the extent that the exceptions relate to the structure of the database; whereas a distinction should be drawn between exceptions for private use and exceptions for reproduction for private purposes, which concerns provisions under national legislation of some Member States on levies on blank media or recording equipment;

- (36) Whereas the term 'scientific research' within the meaning of this Directive covers both the natural sciences and the human sciences;
- (37) Whereas Article 10 (1) of the Berne Convention is not affected by this Directive;
- (38) Whereas the increasing use of digital recording technology exposes the database maker to the risk that the contents of his database may be copied and rearranged electronically, without his authorization, to produce a database of identical content which, however, does not infringe any copyright in the arrangement of his database;
- (39) Whereas, in addition to aiming to protect the copyright in the original selection or arrangement of the contents of a database, this Directive seeks to safeguard the position of makers of databases against misappropriation of the results of the financial and professional investment made in obtaining and collection [sic] the contents by protecting the whole or substantial parts of a database against certain acts by a user or competitor;
- (40) Whereas the object of this sui generis right is to ensure protection of any investment in obtaining, verifying or presenting the contents of a database for the limited duration of the right; whereas such investment may consist in the deployment of financial resources and/or the expending of time, effort and energy;
- (41) Whereas the objective of the sui generis right is to give the maker of a database the option of preventing the unauthorized extraction and/or re-utilization of all or a substantial part of the contents of that database; whereas the maker of a database is the person who takes the initiative and the risk of investing; whereas this excludes subcontractors in particular from the definition of maker;
- (42) Whereas the special right to prevent unauthorized extraction and/or re-utilization relates to acts by the user which go beyond his legitimate rights and thereby harm the investment; whereas the right to prohibit extraction and/or re-utilization of all or a substantial part of the contents relates not only to the manufacture of a parasitical competing product but also to any user who, through his acts, causes significant detriment, evaluated qualitatively or quantitatively, to the investment;
- (43) Whereas, in the case of on-line transmission, the right to prohibit re-utilization is not exhausted either as regards the database or as regards a material copy of the database or of part thereof made by the addressee of the transmission with the consent of the rightholder;
- (44) Whereas, when on-screen display of the contents of a database necessitates the permanent or temporary transfer of all or a substantial part of such contents to another medium, that act should be subject to authorization by the rightholder;
- (45) Whereas the right to prevent unauthorized extraction and/or re-utilization does not in any way constitute an extension of copyright protection to mere facts or data;
- (46) Whereas the existence of a right to prevent the unauthorized extraction and/or re-utilization of the whole or a substantial part of works, data or materials from a database should not give rise to the creation of a new right in the works, data or materials themselves;
- (47) Whereas, in the interests of competition between suppliers of information products and services, protection by the sui generis right must not be afforded in such a way as to facilitate abuses of a dominant position, in particular as regards the creation and distribution of new products and services which have an intellectual,

- documentary, technical, economic or commercial added value; whereas, therefore, the provisions of this Directive are without prejudice to the application of Community or national competition rules;
- (48) Whereas the objective of this Directive, which is to afford an appropriate and uniform level of protection of databases as a means to secure the remuneration of the maker of the database, is different from the aim of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (7), which is to guarantee free circulation of personal data on the basis of harmonized rules designed to protect fundamental rights, notably the right to privacy which is recognized in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; whereas the provisions of this Directive are without prejudice to data protection legislation;
- (49) Whereas, notwithstanding the right to prevent extraction and/or re-utilization of all or a substantial part of a database, it should be laid down that the maker of a database or rightholder may not prevent a lawful user of the database from extracting and re-utilizing insubstantial parts; whereas, however, that user may not unreasonably prejudice either the legitimate interests of the holder of the sui generis right or the holder of copyright or a related right in respect of the works or subject matter contained in the database;
- (50) Whereas the Member States should be given the option of providing for exceptions to the right to prevent the unauthorized extraction and/or re-utilization of a substantial part of the contents of a database in the case of extraction for private purposes, for the purposes of illustration for teaching or scientific research, or where extraction and/or re-utilization are/is carried out in the interests of public security or for the purposes of an administrative or judicial procedure; whereas such operations must not prejudice the exclusive rights of the maker to exploit the database and their purpose must not be commercial;
- (51) Whereas the Member States, where they avail themselves of the option to permit a lawful user of a database to extract a substantial part of the contents for the purposes of illustration for teaching or scientific research, may limit that permission to certain categories of teaching or scientific research institution;
- (52) Whereas those Member States which have specific rules providing for a right comparable to the sui generis right provided for in this Directive should be permitted to retain, as far as the new right is concerned, the exceptions traditionally specified by such rules;
- (53) Whereas the burden of proof regarding the date of completion of the making of a database lies with the maker of the database;
- (54) Whereas the burden of proof that the criteria exist for concluding that a substantial modification of the contents of a database is to be regarded as a substantial new investment lies with the maker of the database resulting from such investment;
- (55) Whereas a substantial new investment involving a new term of protection may include a substantial verification of the contents of the database;
- (56) Whereas the right to prevent unauthorized extraction and/or re-utilization in respect of a database should apply to databases whose makers are nationals or habitual residents of third countries or to those produced by legal persons not

established in a Member State, within the meaning of the Treaty, only if such third countries offer comparable protection to databases produced by nationals of a Member State or persons who have their habitual residence in the territory of the Community;

(57) Whereas, in addition to remedies provided under the legislation of the Member States for infringements of copyright or other rights, Member States should provide for appropriate remedies against unauthorized extraction and/or re-utilization of the contents of a database;

(58) Whereas, in addition to the protection given under this Directive to the structure of the database by copyright, and to its contents against unauthorized extraction and/or re-utilization under the sui generis right, other legal provisions in the Member States relevant to the supply of database goods and services continue to apply;

(59) Whereas this Directive is without prejudice to the application to databases composed of audiovisual works of any rules recognized by a Member State's legislation concerning the broadcasting of audiovisual programmes;

(60) Whereas some Member States currently protect under copyright arrangements databases which do not meet the criteria for eligibility for copyright protection laid down in this Directive; whereas, even if the databases concerned are eligible for protection under the right laid down in this Directive to prevent unauthorized extraction and/or re-utilization of their contents, the term of protection under that right is considerably shorter than that which they enjoy under the national arrangements currently in force; whereas harmonization of the criteria for determining whether a database is to be protected by copyright may not have the effect of reducing the term of protection currently enjoyed by the rightholders concerned; whereas a derogation should be laid down to that effect; whereas the effects of such derogation must be confined to the territories of the Member States concerned,
HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

SCOPE

Article 1

Scope

1. This Directive concerns the legal protection of databases in any form.
2. For the purposes of this Directive, 'database' shall mean a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means.
3. Protection under this Directive shall not apply to computer programs used in the making or operation of databases accessible by electronic means.

Article 2

Limitations on the scope

This Directive shall apply without prejudice to Community provisions relating to:

- (a) the legal protection of computer programs;
- (b) rental right, lending right and certain rights related to copyright in the field of intellectual property;
- (c) the term of protection of copyright and certain related rights.

CHAPTER II

COPYRIGHT

Article 3

Object of protection

1. In accordance with this Directive, databases which, by reason of the selection or arrangement of their contents, constitute the author's own intellectual creation shall be protected as such by copyright. No other criteria shall be applied to determine their eligibility for that protection.

2. The copyright protection of databases provided for by this Directive shall not extend to their contents and shall be without prejudice to any rights subsisting in those contents themselves.

Article 4

Database authorship

1. The author of a database shall be the natural person or group of natural persons who created the base or, where the legislation of the Member States so permits, the legal person designated as the rightholder by that legislation.

2. Where collective works are recognized by the legislation of a Member State, the economic rights shall be owned by the person holding the copyright.

3. In respect of a database created by a group of natural persons jointly, the exclusive rights shall be owned jointly.

Article 5

Restricted acts

In respect of the expression of the database which is protectable by copyright, the author of a database shall have the exclusive right to carry out or to authorize:

- (a) temporary or permanent reproduction by any means and in any form, in whole or in part;
- (b) translation, adaptation, arrangement and any other alteration;
- (c) any form of distribution to the public of the database or of copies thereof. The first sale in the Community of a copy of the database by the rightholder or with his consent shall exhaust the right to control resale of that copy within the Community;
- (d) any communication, display or performance to the public;
- (e) any reproduction, distribution, communication, display or performance to the public of the results of the acts referred to in (b).

Article 6

Exceptions to restricted acts

1. The performance by the lawful user of a database or of a copy thereof of any of the acts listed in Article 5 which is necessary for the purposes of access to the contents of the databases and normal use of the contents by the lawful user shall not require the authorization of the author of the database. Where the lawful user is authorized to use only part of the database, this provision shall apply only to that part.
2. Member States shall have the option of providing for limitations on the rights set out in Article 5 in the following cases:
 - (a) in the case of reproduction for private purposes of a non-electronic database;
 - (b) where there is use for the sole purpose of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved;
 - (c) where there is use for the purposes of public security of [sic] for the purposes of an administrative or judicial procedure;
 - (d) where other exceptions to copyright which are traditionally authorized under national law are involved, without prejudice to points (a), (b) and (c).
3. In accordance with the Berne Convention for the protection of Literary and Artistic Works, this Article may not be interpreted in such a way as to allow its application to be used in a manner which unreasonably prejudices the rightholder's legitimate interests or conflicts with normal exploitation of the database.

CHAPTER III

SUI GENERIS RIGHT

Article 7

Object of protection

1. Member States shall provide for a right for the maker of a database which shows that there has been qualitatively and/or quantitatively a substantial investment in either the obtaining, verification or presentation of the contents to prevent extraction and/or re-utilization of the whole or of a substantial part, evaluated qualitatively and/or quantitatively, of the contents of that database.
2. For the purposes of this Chapter:
 - (a) 'extraction' shall mean the permanent or temporary transfer of all or a substantial part of the contents of a database to another medium by any means or in any form;
 - (b) 're-utilization' shall mean any form of making available to the public all or a substantial part of the contents of a database by the distribution of copies, by renting, by on-line or other forms of transmission. The first sale of a copy of a database within the Community by the rightholder or with his consent shall exhaust the right to control resale of that copy within the Community;
3. The right referred to in paragraph 1 may be transferred, assigned or granted under contractual licence.

4. The right provided for in paragraph 1 shall apply irrespective of the eligibility of that database for protection by copyright or by other rights. Moreover, it shall apply irrespective of eligibility of the contents of that database for protection by copyright or by other rights. Protection of databases under the right provided for in paragraph 1 shall be without prejudice to rights existing in respect of their contents.
5. The repeated and systematic extraction and/or re-utilization of insubstantial parts of the contents of the database implying acts which conflict with a normal exploitation of that database or which unreasonably prejudice the legitimate interests of the maker of the database shall not be permitted.

Article 8

Rights and obligations of lawful users

1. The maker of a database which is made available to the public in whatever manner may not prevent a lawful user of the database from extracting and/or re-utilizing insubstantial parts of its contents, evaluated qualitatively and/or quantitatively, for any purposes whatsoever. Where the lawful user is authorized to extract and/or re-utilize only part of the database, this paragraph shall apply only to that part.
2. A lawful user of a database which is made available to the public in whatever manner may not perform acts which conflict with normal exploitation of the database or unreasonably prejudice the legitimate interests of the maker of the database.
3. A lawful user of a database which is made available to the public in any manner may not cause prejudice to the holder of a copyright or related right in respect of the works or subject matter contained in the database.

Article 9

Exceptions to the sui generis right

Member States may stipulate that lawful users of a database which is made available to the public in whatever manner may, without the authorization of its maker, extract or re-utilize a substantial part of its contents:

- (a) in the case of extraction for private purposes of the contents of a non-electronic database;
- (b) in the case of extraction for the purposes of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved;
- (c) in the case of extraction and/or re-utilization for the purposes of public security or an administrative or judicial procedure.

Article 10

Term of protection

1. The right provided for in Article 7 shall run from the date of completion of the making of the database. It shall expire fifteen years from the first of January of the year following the date of completion.
2. In the case of a database which is made available to the public in whatever manner before expiry of the period provided for in paragraph 1, the term of protection by

Article 14

Application over time

1. Protection pursuant to this Directive as regards copyright shall also be available in respect of databases created prior to the date referred to in Article 16 (1) which on that date fulfil the requirements laid down in this Directive as regards copyright protection of databases.
2. Notwithstanding paragraph 1, where a database protected under copyright arrangements in a Member State on the date of publication of this Directive does not fulfil the eligibility criteria for copyright protection laid down in Article 3 (1), this Directive shall not result in any curtailment in that Member State of the remaining term of protection afforded under those arrangements.
3. Protection pursuant to the provisions of this Directive as regards the right provided for in Article 7 shall also be available in respect of databases the making of which was completed not more than fifteen years prior to the date referred to in Article 16 (1) and which on that date fulfil the requirements laid down in Article 7.
4. The protection provided for in paragraphs 1 and 3 shall be without prejudice to any acts concluded and rights acquired before the date referred to in those paragraphs.
5. In the case of a database the making of which was completed not more than fifteen years prior to the date referred to in Article 16 (1), the term of protection by the right provided for in Article 7 shall expire fifteen years from the first of January following that date.

Article 15

Binding nature of certain provisions

Any contractual provision contrary to Articles 6 (1) and 8 shall be null and void.

Article 16

Final provisions

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 1998. When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.
2. Member States shall communicate to the Commission the text of the provisions of domestic law which they adopt in the field governed by this Directive.
3. Not later than at the end of the third year after the date referred to in paragraph 1, and every three years thereafter, the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Directive, in which, *inter alia*, on the basis of specific information supplied by the Member States, it shall examine in particular the application of the *sui generis* right, including Articles 8 and 9, and shall verify especially whether the

that right shall expire fifteen years from the first of January of the year following the date when the database was first made available to the public.

3. Any substantial change, evaluated qualitatively or quantitatively, to the contents of a database, including any substantial change resulting from the accumulation of successive additions, deletions or alterations, which would result in the database being considered to be a substantial new investment, evaluated qualitatively or quantitatively, shall qualify the database resulting from that investment for its own term of protection.

Article 11

Beneficiaries of protection under the *sui generis* right

1. The right provided for in Article 7 shall apply to database [*sic*] whose makers or rightholders are nationals of a Member State or who have their habitual residence in the territory of the Community.
2. Paragraph 1 shall also apply to companies and firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Community; however, where such a company or firm has only its registered office in the territory of the Community, its operations must be genuinely linked on an ongoing basis with the economy of a Member State.
3. Agreements extending the right provided for in Article 7 to databases made in third countries and falling outside the provisions of paragraphs 1 and 2 shall be concluded by the Council acting on a proposal from the Commission. The term of any protection extended to databases by virtue of that procedure shall not exceed that available pursuant to Article 10.

CHAPTER IV

COMMON PROVISIONS

Article 12

Remedies

Member States shall provide appropriate remedies in respect of infringements of the rights provided for in this Directive.

Article 13

Continued application of other legal provisions

This Directive shall be without prejudice to provisions concerning in particular copyright, rights related to copyright or any other rights or obligations subsisting in the data, works or other materials incorporated into a database, patent rights, trade marks, design rights, the protection of national treasures, laws on restrictive practices and unfair competition, trade secrets, security, confidentiality, data protection and privacy, access to public documents, and the law of contract.

application of this right has led to abuse of a dominant position or other interference with free competition which would justify appropriate measures being taken, including the establishment of non-voluntary licensing arrangements. Where necessary, it shall submit proposals for adjustment of this Directive in line with developments in the area of databases.

Article 17

This Directive is addressed to the Member States.

Done at Strasbourg, 11 March 1996.

For the European Parliament

The President

K. HÄNSCH

For the Council

The President

L. DINI

- (1) OJ No C 156, 23. 6. 1992, p. 4 and OJ No C 308, 15. 11. 1993, p. 1.
- (2) OJ No C 19, 25. 1. 1993, p. 3.
- (3) Opinion of the European Parliament of 23 June 1993 (OJ No C 194, 19. 7. 1993, p. 144), Common Position of the Council of 10 July 1995 (OJ No C 288, 30. 10. 1995, p. 14), Decision of the European Parliament of 14 December 1995 (OJ No C 17, 22. 1. 1996) and Council Decision of 26 February 1996.
- (4) OJ No L 122, 17. 5. 1991, p. 42. Directive as last amended by Directive 93/98/EEC (OJ No L 290, 24. 11. 1993, p. 9.)
- (5) OJ No L 346, 27. 11. 1992, p. 61.
- (6) OJ No L 290, 24. 11. 1993, p. 9.
- (7) OJ No L 281, 23. 11. 1995, p. 31.

Reisverslag National Weather Service USA

Bijlage 5: Overeenkomst van de NWS voor de levering van meteorologische gegevens

FY 00 Agreement/Annual Payment Plan

Agreement No. _____

UNITED STATES DEPARTMENT OF COMMERCE

WASHINGTON, D.C.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

NATIONAL WEATHER SERVICE

AGREEMENT FOR ACCESS TO HIGH-SPEED DATA, MEDIUM-SPEED DATA, FACSIMILE SERVICE AND GRAPHIC SERVICE

This Agreement, between the United States of America, Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), National Weather Service (NWS), hereinafter referred to as the Government, and

_____ hereinafter referred to as the Applicant, sets forth the purpose and conditions and responsibilities for access to the operational meteorological and hydrological data and information on the Government's family of high-speed data, medium-speed data, facsimile service and graphic service, hereinafter referred to as Service. Access to Service is available at the commercial carrier's office in Washington, D.C., except in the case of the High Resolution Data Service and the Server Access Service, which is accessible in Silver Spring, Maryland. Any individual or organization provided data and information by the Applicant is hereinafter called a Subscriber.

Purpose

The purpose of this Agreement is to make available meteorological and hydrological data and information collected or produced by the Government to Applicant and to possible Subscribers through services provided by the Applicant at the Applicant's facility.

In order to achieve this purpose, the Government and the Applicant hereby mutually agree:

Responsibilities

A. Government Agrees:

1. To permit the Applicant access to Service as agreed herein and as agreed between the Applicant and the commercial carrier.
2. To authorize requested connections to Service upon payment by Applicant of appropriate fees to cover the expenses thereof, as specified in Section B.1.a. and B.1.b. of this Agreement.
3. That the operation of the Service (except the High Resolution Data Service and the Server Access Service) to the commercial carrier will be maintained. The Government, however, cannot guarantee the overall quality and reliability of the Service from original source to Applicant because of the Government/Commercial Carrier/Applicant interface mixture.
4. To provide the Applicant with the appropriate technical documentation concerning the Service and data and product formats.

5. To provide a notification to changes in the AFOS Graphics Service (AGS), at least 30 days in advance of the change.

B. Applicant Agrees:

1. To pay all costs and expenses resulting from this Agreement:

- a. A one-time connection fee, subject to annual review and adjustment, to cover the expense of establishing Service. The connection fee is due prior to agreement validation. The Fiscal Year 2000 connection fees are:

Public Product Service:	-0-
Domestic Data Service:	\$2,500
International Data Service:	\$2,500
High Resolution Data Service:	\$5,000
Digital Facsimile Service:	\$2,500
AFOS Graphics Service:	-0-
Server Access Service:	-0-

- b. An annual maintenance fee, subject to annual review and adjustment, to cover the government's expense in maintaining the Service provided. The annual maintenance fee covers one U.S. Government fiscal year, the period October 1, 1999, through September 30, 2000. Maintenance fees are due by October 15, 1999.

The Fiscal Year 2000 fees are:

Public Product Service	\$ 4,000
Domestic Data Service	\$ 6,000
International Data Service	\$ 7,000
High Resolution Data Service	\$11,000
Digital Facsimile Service	\$ 8,000
AFOS Graphics Service	\$54,000
Server Access Service	\$ 9,000

- c. Any costs resulting from extension of Service from commercial carrier's office to Applicant's premises.
- d. High Resolution Data Service and Server Access Service subscribers are responsible for all costs involved in implementing the end-to-end service directly to the NWS Telecommunication Gateway computer facility in Silver Spring, Maryland.
- e. AFOS Graphics Service subscribers are responsible for the software to transform the AFOS Vector Graphics to images.
2. To hold and save the Government, its officers, agents, and employees harmless from liability of any nature or kind, including costs and expenses, for or on account of any or all suits or damages of any character whatsoever resulting from injuries or damages sustained by any person or persons or property by virtue of negligence on the part of Applicant, its officers, agents, and employees in the performance of this Agreement.

3. That if the Applicant furnishes severe weather information and/or forecasts, the Applicant shall ensure that:
 - a. Severe Weather or Flood bulletins, statements, advisories, watches, and/or warnings that originate with the Government:
 - (1) Are attributed to the Government.
 - (2) Are not modified except for physical format.
 - (3) When issued directly to the general public are issued verbatim and always as soon as possible after receipt.
 - (4) Are not disseminated after expiration time.
 - b. If the Applicant also originates severe weather information and/or forecasts, the Applicant shall ensure that:
 - (1) The information is clearly differentiated from Government-originated watches and warnings and is attributed to the Applicant, avoiding use of the terms "Watch" and "Warning" in presenting such information.
4. That if the Applicant furnishes weather or river reports, analyses and/or forecasts other than, or in addition to, the Government's severe weather or river information and/or forecasts, the Applicant shall ensure that:
 - a. Government-originated information:
 - (1) Is attributed to the Government.
 - (2) Is not modified except for physical format.
 - b. Applicant-originated information:
 - (1) Is attributed to the Applicant.
5. For media or other release of the Government-originated reports, warnings, analyses and forecasts, or information derived from them, to the general public:
 - a. That there shall be nothing in announcements associated with these releases to indicate or imply that the Government endorses any commercial product advertised.
 - b. To give full credit for the source of information received, and to take care to avoid any implication that interpretations by others are those of the Government.
6. To obtain any necessary permits and to abide by all applicable rules, regulations, or laws, pertaining to agreements with the Government, and to notify subscribers of the same rules, regulations, or laws, including particularly sections B3 through B5 of this agreement.

7. To report to the Assistant Administrator for Weather Services, NOAA, any known violation of this Agreement.

C. International Access and Distribution of the Family of Services (FOS) Data:

Access

1. Direct access to the FOS is only by U.S.-based companies.

Distribution

2. In order to assure the continued exchange of weather information between nations, please be cognizant of the following and make sure that your customers are aware of these conditions:
 - o The NWS adheres to the World Meteorological Organization Resolution 40 on the policy and practice for the exchange of meteorological and related data and products in all matters related to foreign meteorological information. As party to Resolution 40, countries are allowed to identify certain "additional data and products" that may not be re-exported for commercial use.

A list of all products identified as "additional data and products", by the country of origin, is available on the NWS Internet homepage @ <http://www.nws.noaa.gov/oso/addata.shtml>.

- o The issuance of operational weather information in other countries is the responsibility of the National Meteorological Service of the individual country and should be respected.
- o In doing business in other countries, it is important to avoid conflicts with foreign laws and regulations and to give due consideration to reasonable commercial practices in deciding upon the reintroduction of weather related information to the originating country.
- o Good relations with other countries will be fostered and enhanced by providing attribution to the National Meteorological Service of the country of origin as the source of the weather data and products used.

D. Additional Conditions:

1. The Government will not be responsible for maintenance of the Applicant's equipment or for coordination with commercial carriers concerning communications arrangements and/or problems associated with Service.
2. The applicant further agrees and understands:
 - a. That the Government will make every effort to keep the schedule and content of the data services consistent with the needs of the user community, but that the schedule and content of these services may be changed without consultation with the Applicant. The schedule and content of the facsimile service is controlled by NWS needs and may be changed without consultation with the Applicant. Such changes will be announced to the Applicant at least 10 days in advance whenever practicable.

AFOS graphics are produced principally for the use of the NWS AFOS field sites. Availability and timing of transmissions are variable and depend on conditions only partially under the control of the NWS. The AFOS Graphic products will be produced by the NWS only as long as received by NWS stations on the AFOS system. When the AFOS system is replaced by the Advanced Weather Interactive Processing System (AWIPS), the AGS will be terminated.

- b. To include in any agreement with its customers a provision 1) notifying such customers of any conditions applied by the originator of any "additional data or products" identified in accordance with section C.2. above on their re-export for commercial use and 2) requiring that this notification be provided to all downstream customers.
- c. That the execution of this Agreement does not vest in the Applicant any permanent or exclusive right to receive the Service, and that the Service may be modified or suspended at any time at the discretion of the Assistant Administrator for Weather Services, NOAA without recourse.

Specific Services Required:

Services desired by Applicant and authorized by this Agreement are:

Public Product Service (PPS) _____
 Domestic Data Service (DDS) _____
 International Data Service (IDS) _____
 High Resolution Data Service (HRS) _____
 Digital Facsimile Service (DIFAX) _____
 AFOS Graphics Service (AGS) _____
 Server Access Service (SAS) _____

Termination:

Applicant may terminate this Agreement with or without cause upon providing 90 days' written notice to the Government. The Government may terminate this Agreement after 90 days' written notice to Applicant, whenever:

- (1) The Assistant Administrator for Weather Services, NOAA, shall determine that such termination is in the best interest of the Government; or
- (2) The Assistant Administrator for Weather Services, NOAA, shall determine that technological difficulties result from the connection provided for in this Agreement.

In the event of termination by either party, Applicant will not be refunded any of the payments provided for under this Agreement.

Effective Date:

This Agreement shall become effective on the last date shown below, when executed by the parties hereto.

APPLICANT

UNITED STATES OF AMERICA
Department of Commerce
National Oceanic and Atmospheric
Administration
National Weather Service

By _____
(Signature)

By _____
(Signature)

Name _____

Name Michael T. Sikorski

Title _____

Title Chief, Telecommunications and
Dissemination Branch

Date _____

Date _____

Agreement No. _____

Resiverslag National Weather Service USA

Bijlage 6: Enkele persberichten Europese WOB

Meer openheid bepleit Kamer wil verzet tegen EuroWOB

Door een onzer redacteuren

ROTTERDAM, 1 JULI. De Tweede Kamer maakt zich grote zorgen over een voorstel van de Europese Commissie waarin een zeer beperkte openbaarheid van documenten van de Europese Unie wordt bepleit.

Dat bleek ergsteren tijdens een algemeen overleg over de 'Euro-WOB' waarin minister De Vries (Binnenlandse Zaken) en staatssecretaris Benschop (Europese Zaken) over het voorstel onder vuur werden genomen. Van een verschil van mening tussen Kamer en bewindslieden was geen sprake. De Vries noemde het voorstel rondt schadelijk.

De Europese Commissie heeft een voorstel voor een Europese Wet openbaarheid van bestuur (EuroWOB) uitgewerkt dat de toegang tot documenten verregaand beperkt. Informele boodschappen tussen EU-ambtenaren, werkdocumenten en discussiestukken worden buiten de openbaarheid gehouden. In feite is elk intern stuk geheim, tenzij de Europese bureaucratie vindt dat openbaarmaking is toegestaan. De reden dat de commissie restricties aanbrengt, is dat EU-ambtenaren „vrijheid van denken” moeten hebben en dat moet worden voorkomen dat „het besluitvormingsproces wordt verstoord, doordat er vanwege vroegtijdige publicatie van documenten misverstanden ontstaan”, aldus het commissievoorstel.

Het voorstel wordt met name bekritiseerd wegens de ruime uit-

In Nederland zijn documenten van bestuursorganen in principe openbaar, tenzij er zwaarwegende argumenten zijn om openbaarmaking te verhinderen. Het commissievoorstel beoogt het tegendeel. Daarin moet de aanvrager aantonen wat het belang van openbaarheid is. De Nederlandse WOB kent overigens wel weigeringsgronden. Naast drie 'absolute' zijn dit vooral 'relatieve' weigeringsgronden. Die laatste wegen niet per definitie zwaarder dan het belang van openbaarheid, maar moeten per geval worden afgewogen. Voorbeelden daarvan zijn betrekkingen van Nederland met andere landen en financiële belangen van de overheid. Beide worden door de Europese Commissie als 'absolute' weigeringsgronden gezien.

zonderingsgronden. Toegang kan worden geweigerd als dat „het doeltreffend functioneren van de instellingen” of „de stabiliteit van de communautaire rechtsorde” verstoort. Europees ombudsman Jacob Söderman wees het voorstel hard af: „Als het Europees Parlement en de Raad van Ministers dit voorstel accepteren, is er waarschijnlijk geen enkel document van de EU dat niet legitiem kan worden achtergehouden.” Hij merkt op dat uitgerekend het gewezen Franse commissielid Edith Cresson, die vorig jaar wegens nepotisme een belangrijke oorzaak was van de val van de vorige Commissie, voorstander was van een dergelijke beperkte openheid van documenten. De toegang tot overheidsinformatie verwordt volgens Söderman van een recht tot een gunst.

De Tweede Kamer deed donderdag een dringend beroep op de regering om het Commissievoorstel te torpederen en met een alternatief te komen dat beter aansluit bij de Nederlandse regeling.

Uit ontevredenheid met het gebrek aan openheid binnen de EU hebben vijf Europarlementariërs, onder wie Louisewies van der Laan (D66) en de Italiaanse anticorruptierechter Antonio di Pietro, de website www.openurope.com opgezet, waar iedereen interne EU-documenten over aanstaande beslissingen kan inzien. Op 16 mei werd de site geopend.

Een definitieve beslissing over het voorstel moet vóór 1 mei 2001 zijn genomen, binnen twee jaar na het in werking treden van het Verdrag van Amsterdam. Het Europees Parlement vergadert na de zomer over deze kwestie. Op dit moment is er alleen openlijk verzet van de Scandinavische landen en België en Luxemburg. Dat geeft echter geen meerderheid in de Raad van Ministers die uiteindelijk over het voorstel beslist. Alleen als het Verenigd Koninkrijk volhardt in zijn recent in gang gezette streven naar meer openbaarheid, staan de tegenstanders sterk genoeg voor een veto.

AD

vrijdag 30 juni 2000 5

Europese WOB wekt onvrede

Uitholling van Nederlandse openbaarmakingswet dreigt

Van onze politieke redactie

DEN HAAG - De Europese Wet openbaarheid van bestuur die in Brussel wordt voorbereid, dreigt de veel verder gaande Nederlandse WOB uit te hollen. Het Europese voorstel is eerder een geheimhoudingswet dan een openbaarmakingswet, vinden de Tweede Kamer en minister De Vries (Binnenlandse Zaken).

De Vries noemde de 'Euro-WOB' gisteren 'zeer schadelijk': „Dit raakt het hart van de Europese Unie. Als dit wordt aangenomen, zadelt Europa ons op met een fundamenteel probleem.” Het kabinet zal zich met hand en tand verzetten tegen de komst van de Euro-WOB. Volgens De Vries is de Europese Commissie bij het ontwerpen van het voorstel 'niet uitgegaan van het recht van burgers om geïnformeerd te worden, maar van het recht van de Europese instellingen om zelf te bepalen wanneer burgers al dan niet geïnformeerd worden'.

D66-Kamerlid Scheltema waarschuwde dat de Nederlandse WOB vleugellam dreigt te raken omdat 70 procent van de Nederlandse wetgeving tegenwoordig gebaseerd is op Brusselse richtlijnen. Nederlandse documenten die daarop betrekking hebben, kunnen straks geheim worden verklaard. Nu zijn die stukken met behulp van de WOB gewoon op te vragen. Documenten die de relatie tussen een lidstaat en de EU schaden en stukken die de besluitvorming kunnen ondermijnen, mogen niet meer worden ingezien.

Het komt zelden voor dat regering en parlement het volledig

eens zijn over de onwenselijkheid van nieuwe regels. Slechts een klein aantal noordelijke EU-landen deelt de Nederlandse wens de lijst uitzonderingsgronden op het principe van openbaarheid te schrappen. Staatssecretaris Benschop (Buitenlandse Zaken) probeert landen tegen het plan te mobiliseren om 'een blokkerende minderheid' te vormen. Hij beloofde de Kamer dit probleem 'met een uitroep' onder de aandacht te brengen in zijn gesprekken met het Franse EU-voorzitterschap, dat zaterdag begint. De kwestie wordt afgerond in het voorjaar van 2001, onder Zweeds voorzitterschap. Zweden is ook tegen. Na de zomer praat het Europees Parlement erover.

Plan voor meer openbaarheid in EU schiet tekort

Morgen spreekt de Tweede Kamer over een voorstel van de Europese Commissie voor openbaarmaking van Europese documenten. Het 'dagelijks bestuur' van de EU pakt de zaak echter te krampachtig aan, vinden Max van den Berg en Marja Wagenaar.

Openbaarheid gaat van au. Dat blijkt wel uit het recente voorstel van de Europese Commissie om Europese documenten beter toegankelijk te maken voor het publiek. Het stuk vloeit voort uit de afspraken gemaakt in het Verdrag van Amsterdam, dat een grotere transparantie van Europese instellingen wilde bereiken.

Het Commissie-voorstel legt de algemene beginselen en beperkingen vast van de rechten van Europese burgers om inzage te krijgen in documenten afkomstig van de Europese Commissie, de Raad van Ministers en het Europese Parlement. Uitgangspunt is dat burgers kennis moeten kunnen nemen van alle documenten die slaan op de Europese besluitvorming. Het cruciale onderdeel van het voorstel vormen echter de uitzonderingsbepalingen op grond waarvan een verzoek om inzage kan worden geweigerd.

'Democratie is niet uitgevonden voor tijdsbesparing'

deze materie. In de verkiezingsstrijd beloofde Labour dat er eindelijk een Britse 'wob' zou komen. Toen deze verscheen waren de reacties teleurstellend. Ook hier had ambtelijke weerstand de oorspronkelijke ideeën uitgehold.

De totstandkoming van openbaarheidswetgeving heeft plaats in dezelfde kringen als waarop die openbaarheid van toepassing moet worden. Dat leidt vaak tot een zucht naar zelfbehoud in plaats van een drang naar versterking van het democratisch gehalte van het openbaar bestuur. Oogmerk van het laatste is niet effectiviteit maar de mogelijkheid tot controle en het organiseren van tegenkrachten ten opzichte van het openbaar bestuur. In een volwassen democratie houden verschillende krachten elkaar in evenwicht. Openbaarheid als rechtsbeginsel geeft burgers en journalisten een effectief middel in de hand om machthebbers te controleren. Bovendien worden burgers en belangengroeperingen beter in staat gesteld hun opvattingen in de fase van beleidsvorming reeds uitvoerig naar voren te brengen. In Europa is dat hard nodig. De betrokkenheid van de Europese burger bij de Europese zaak varieert immers helaas nog veel te veel tussen de begrippen gering en afwezig.

De Nederlandse regering heeft zich in Europa samen met de Scandinavische landen hard gemaakt voor meer openbaarheid van Europese instellingen. Het internet-tijdperk biedt daar in praktische zin meer mogelijkheden toe dan ooit. Alle Europese documenten kunnen gemakkelijk via digitale weg toegankelijk worden gemaakt. Kopietjes opvragen is tegenwoordig niet meer nodig. Digitalisering kan zo haar eigen nieuwe dimensie geven aan de vorming van een meer democratisch Europa. Ook

Het voorstel in zijn huidige vorm zal dan ook weinig bijdragen aan de inzichtelijkheid van Europese besluitvorming. De uitzonderingen die worden genoemd zijn er niet alleen te veel, ze zijn vooral te vaag geformuleerd. Zo vormt het doeltreffend functioneren van de Europese instellingen een belangrijke uitzondering. Maar ook documenten van inspectie- en auditactiviteiten en de openbare veiligheid komen niet voor het publiek beschikbaar. Daarmee is een groot en belangrijk gedeelte van het Europese bestuurlijk functioneren van de openbaarheid afgeschermd. Corruptie binnen de instellingen bijvoorbeeld kan zo nooit aan de kaak worden gesteld. Daarvoor blijft de Europese burger afhankelijk van het geweten van een willekeurige ambtenaar, tenminste als het aan de Europese Commissie ligt.

Toch is het te makkelijk om het voorstel van de Europese Commissie dan maar naar de prullenbak te verwijzen. De geschiedenis leert dat openbaarheidswetgeving moeizaam tot stand komt. Het eerste voorontwerp van de Nederlandse Wet Openbaarheid van bestuur (wob) verscheen in 1970. Er moesten echter drie kabinetten overheen gaan voordat de wet uiteindelijk in 1980 in het Staatsblad kon worden afgekondigd. De totstandkoming van de wet stuitte op veel ambtelijke weerstand. De verzamelde secretarissen-generaal volhardden een aantal jaren in hun verzet. Zij voelden zich daarbij van harte gesteund door de toenmalige Minister van Justitie en latere premier Van Agt, die de wob als een vervelend progressief gedrocht beschouwde dat de ambtelijke organisatie volslagen lam zou kunnen leggen.

Naast Nederland kennen in Europa alleen de Scandinavische landen een verregaand openbaarheidsregime. In Groot-Brittannië tobt de regering-Blair al jaren met

vergaderingen in Brussel en Straatsburg zouden via het Internet kunnen worden uitgezonden.

De voorstellen van de Europese Commissie zullen morgen in de Tweede Kamer en na de zomer in het Europees parlement worden behandeld. Dit zal tot een zodanige aanpassing moeten leiden dat het krampachtige karakter van het huidige document verdwijnt. De vele uitzonderingsgronden zullen uit het voorstel moeten verdwijnen. Bijvoorbeeld de bepaling dat als 'het openbaar belang in het geding is' inzage kan worden geweigerd. Zo'n omschrijving bevat het levensgrote risico dat deze bepaling als vuilnisvat voor alle mogelijke weigeringen zal worden gebruikt. Ook moeten de publieke registers van alle documenten worden opengesteld, zodat burgers weten naar welke informatie ze kunnen vragen. De openbaarheid moet worden uitgebreid naar andere Europese instellingen zoals de Europese Rekenkamer. Nu gebeurt het nog regelmatig dat rapporten van de Europese Rekenkamer geheim blijven.

Meer openbaarheid in Europa vergt de inzet van alle progressieve krachten in het parlement en in de lidstaten. Anno 2000 kan een beetje meer democratie immers geen kwaad. Alle ambtelijke angsten voor controle op hun functioneren dan wel een mogelijke overbelasting van het apparaat met vragen van zogenaamd lastige burgers ten spijt. Minister-president Den Uyl beslechtte de discussie daarover in de ministerraad met zijn vice-premier Van Agt indertijd door hem met een citaat van Wibaut de mond te snoeren: 'de democratie is niet voor tijdsbesparing uitgevonden'.

Max van den Berg en Marja Wagenaar zijn respectievelijk lid van de socialistische fractie in het Europees Parlement en lid van de Tweede Kamer voor de PvdA.

Resiverslag National Weather Service USA

Bijlage 7: Presentatie "Issues in International Information Policy:
Challenges and Opportunities"
Peter N. Weiss
National Weather Service/Federal Office of Management and Budget

Issues in International Information Policy: Challenges and Opportunities

- Origins and development of US information policy.
- “Borders in Cyberspace.” Problems caused by differing national policy implementations:
 - US and European Community policy comparison
 - WMO Resolution 40 and ECOMET as case study
 - Has “government commercialization” worked?
- Information policy and economics:
 - Why “government commercialization” can’t work
 - Benefits of “liberal” information policies
- A way towards harmony?

Democracy and US Information Policy

“Information is the currency of democracy”

- Thomas Jefferson

“The only free press is the one you own yourself.”

- Ben Franklin

“Congress shall make no law...abridging the freedom of speech or the press; or the right...to petition the government for redress of grievances.”

U.S. Constitution., Amendment I

Sources of U.S. information policy

- Copyright Act (17 USC. 105)
- Freedom of Information Act (5 USC 552)
- Paperwork Reduction Act (44 USC Ch.35)
- OMB Circular No. A-130 (61 FR 6428, February 20, 1996)
- Electronic FOIA Amendments Act of 1996
- Government Paperwork Elimination Act (PL 105-277, Div. C, Title XVII)

Information Dissemination Principles
(from OMB Circular No. A-130)

Federal agencies should:

Disseminate information in a manner that achieves the best balance between the goals of maximizing the usefulness of the information and minimizing the cost to the government and the public. This recognizes that the government cannot itself feasibly satisfy all of the public's legitimate information needs.

Dissemination Principles (con't): Equity

Disseminate information products equitably and on timely and equal terms to all requesting parties. This includes avoiding unduly restrictive practices, including inappropriate or discriminatory pricing, or by setting favorable terms for preferred entities.

Principles (con't): Practices and Pricing

- o Take care not to constrain public access to government information from all sources:
 - o Avoid monopolistic practices.
 - o Avoid restrictions on use, resale or redissemination.
 - o Do not charge users higher than needed to recover the cost of dissemination. Don't include costs of original collection or processing (which presumably was done for the "public good" using taxpayer dollars).

Principles (con't): Partnerships

Take advantage of all dissemination channels, Federal and nonfederal, including State and local governments, private sector and libraries. This includes encouraging public/private partnerships and a strong private sector information industry.

Note: this principle is NOT based on economics but on the fundamental political imperatives discussed above.

Principles (con't.): Internet and Web

- o Electronic dissemination of information can maximize the usefulness of government information because:
 - o More timely and accurate;
 - o Can contain more complete and current information;
 - o More easily manipulated and tailored to wide variety of user needs.

**“Borders in Cyberspace”
Will Conflicting Data Policies Inhibit the GII?**

- Weiss and Backlund “*International Information Policy in Conflict: Open and Unrestricted Access versus Government Commercialization,*” in “*Borders in Cyberspace,*” Kahin and Nesson, eds., (MIT Press 1997).

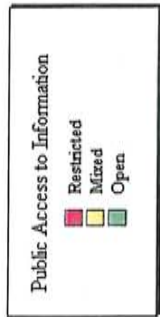
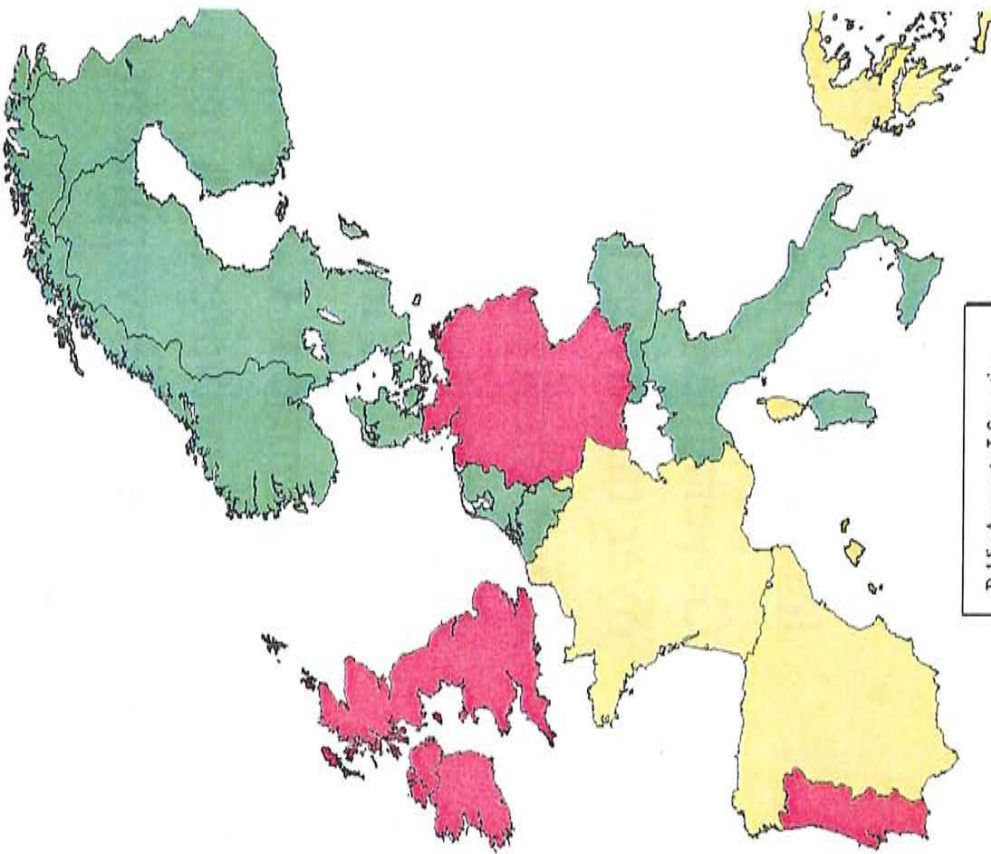
A data source for comparative analysis:

- “Publaw III,” Final Report, EC DGXIII (November 1995).

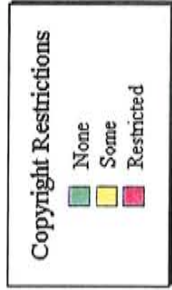
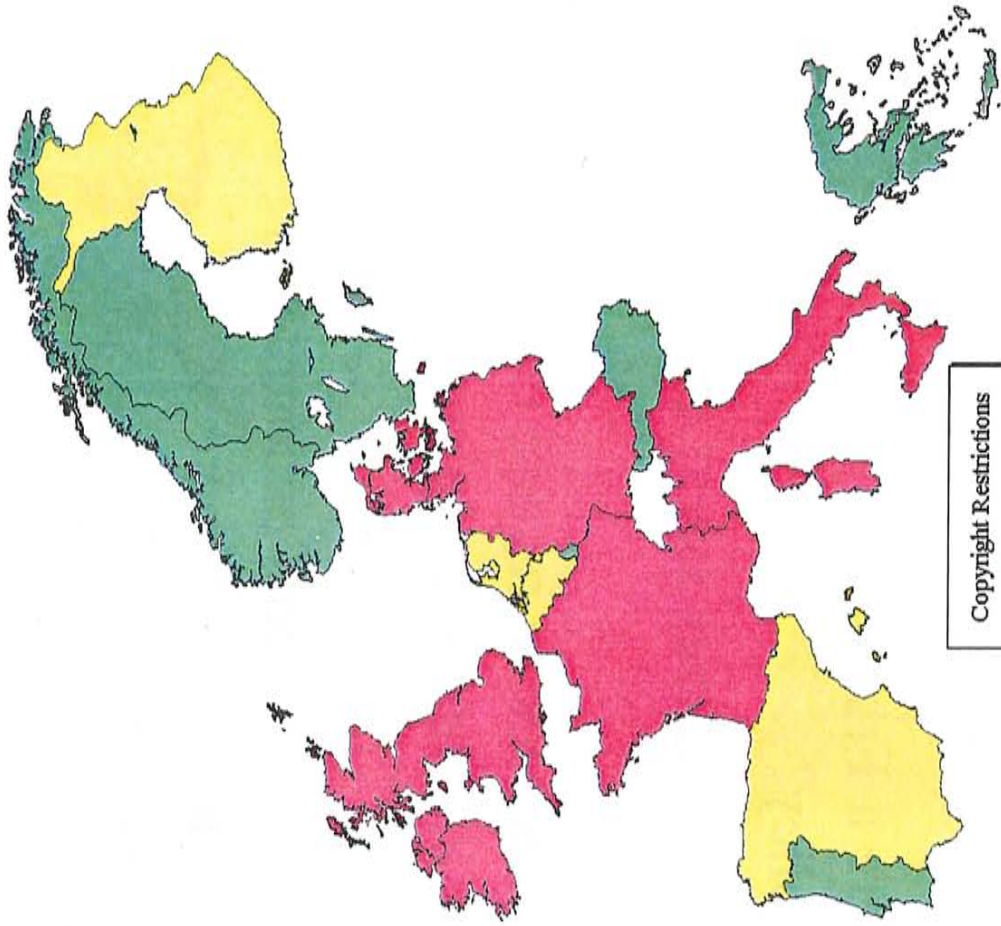
Parameters of Comparison: US and EC

- Right of Public Access: Is there a Freedom of Information Law or similar policy?
- Government Copyright: Do governments assert copyright over taxpayer-funded data?
- Price Structure: Do governments seek to recoup costs of dissemination only, or do they attempt to raise significant revenues as in “full cost recovery”?
- Government Competition: Do governments encourage a robust private data industry, or do they compete as through “Government Commercialization”?

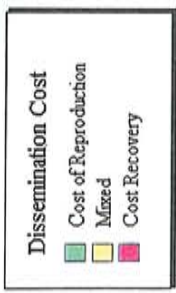
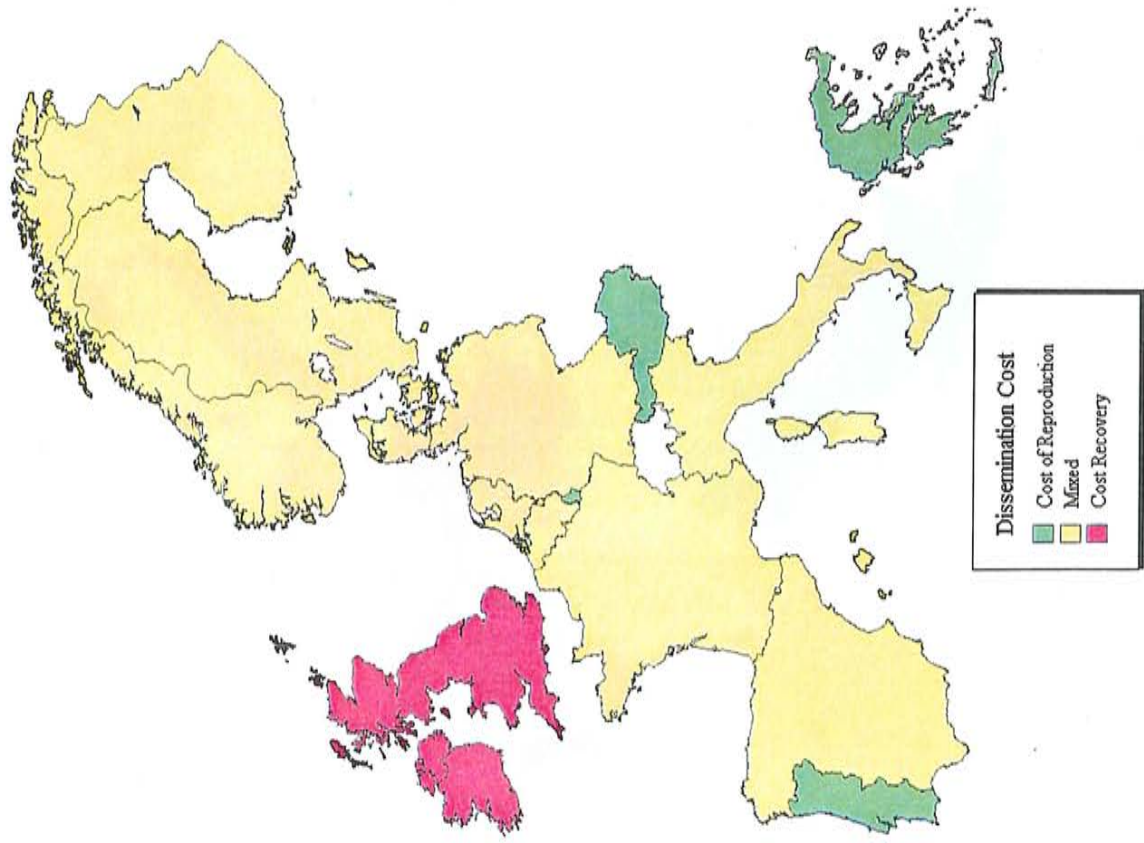
Public Access to Information



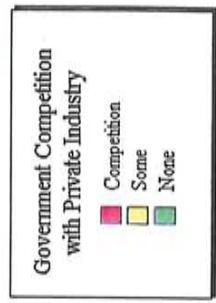
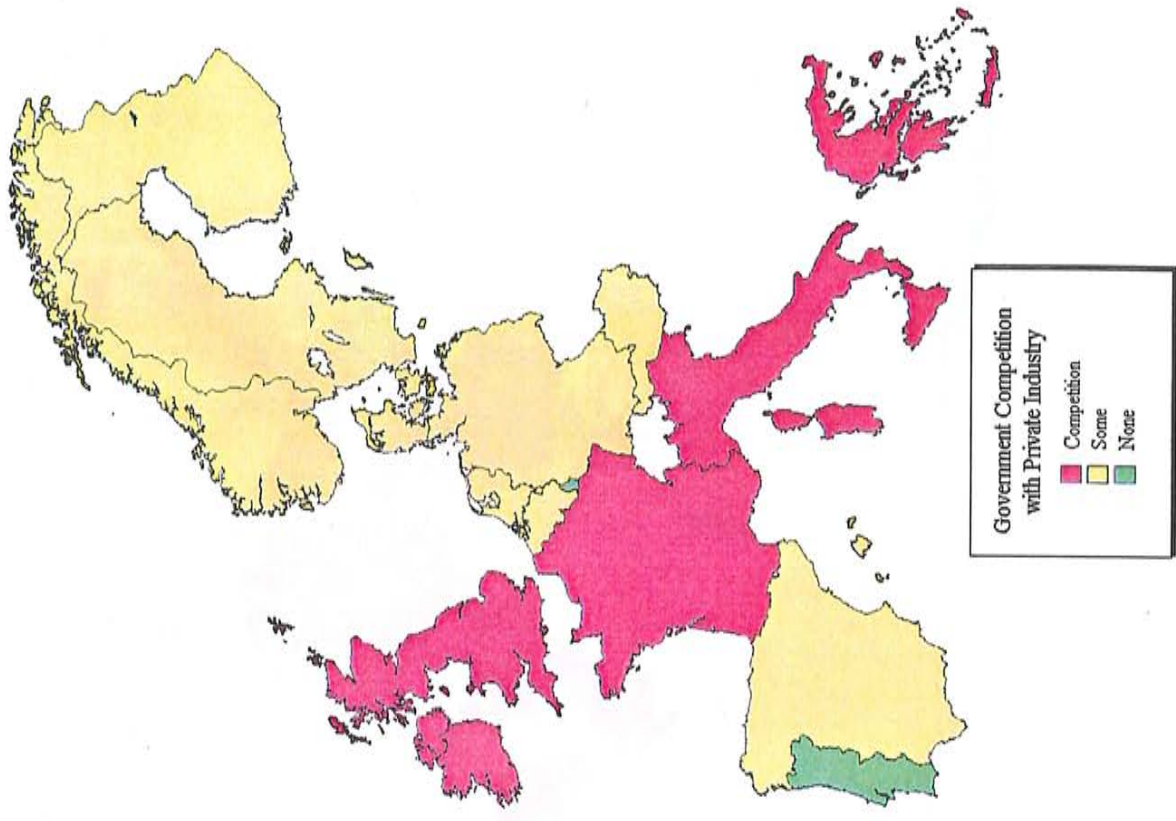
Copyright Restrictions on Public Information



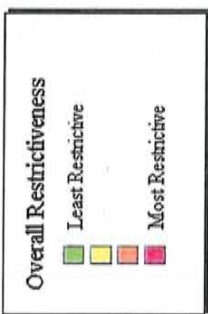
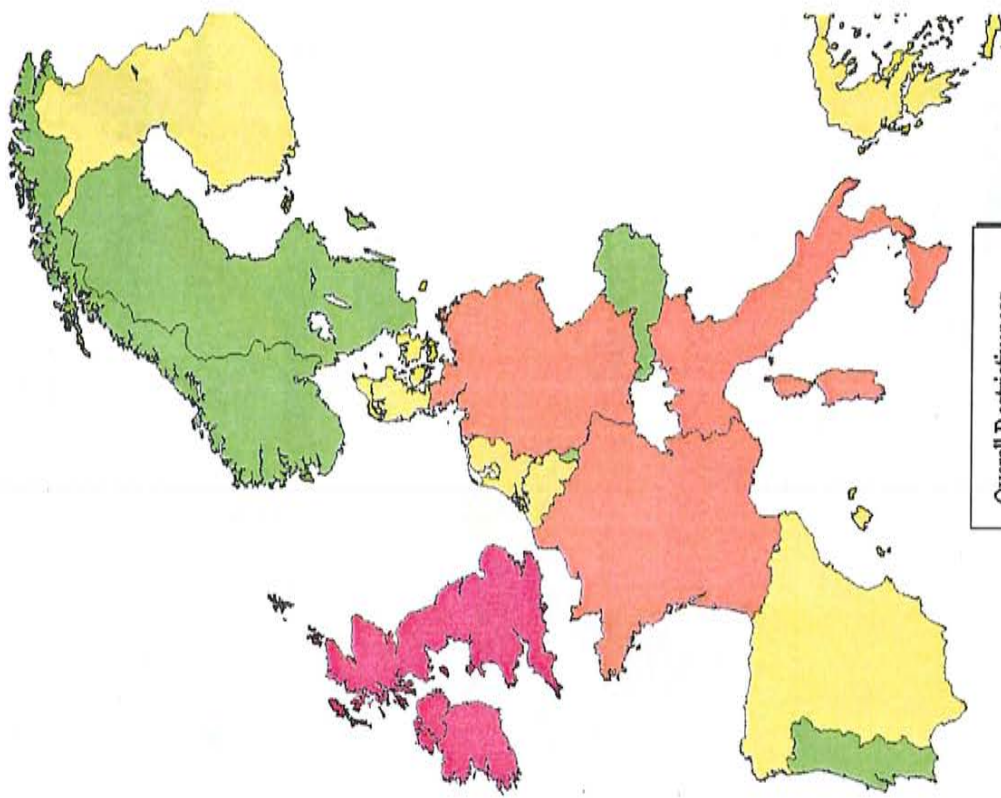
Dissemination Cost



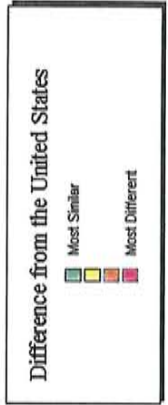
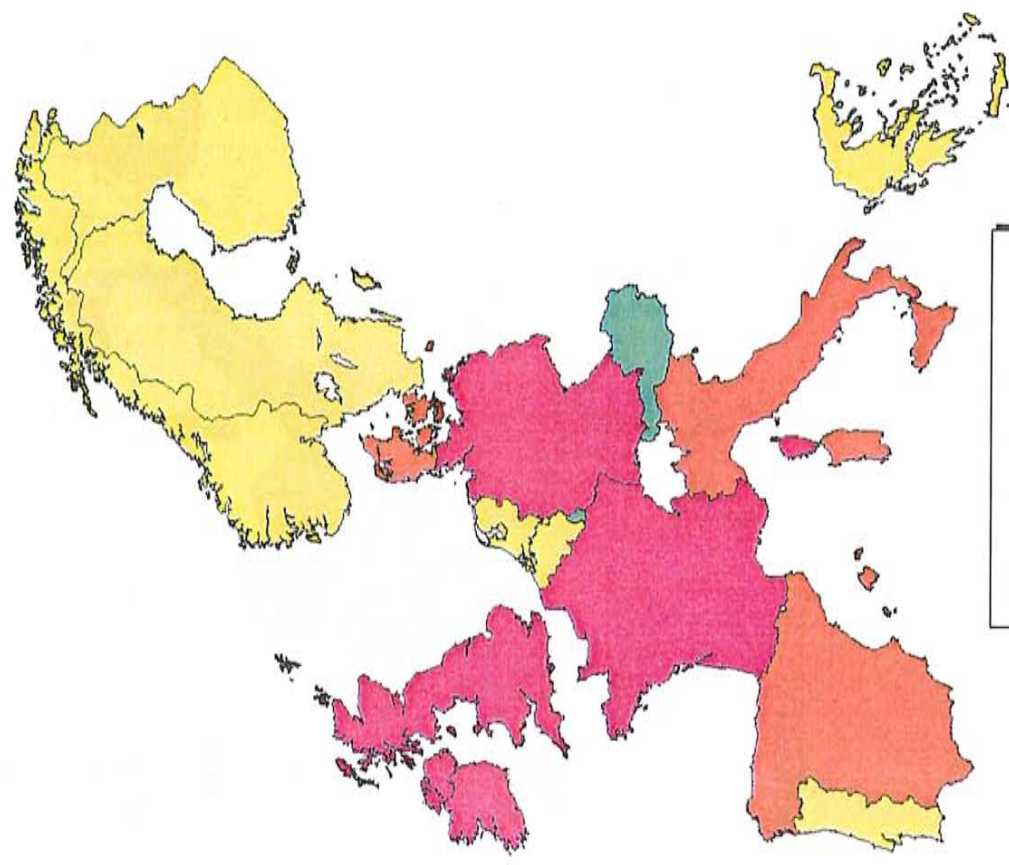
Government Competition with Private Industry



Overall Restrictiveness



Difference From the United States



“Government Commercialization”

What is “government commercialization”?

- The trend towards government agencies charging the public for information services which previously were considered “public good” and financed by general tax revenue, e.g. geographic information (maps and data), meteorological information.

Not to be confused with “privatization”!

- The trend towards transferring functions which are NOT “inherently governmental” to the private sector, e.g. telecommunications, electricity and petroleum production/distribution, air traffic control, prisons, etc.

WMO Resolution 40

- States the fundamental principle of “free and unrestricted international exchange of meteorological and related data and products” between WMO Members.
- Adopts the practice of exchanging meteorological and related data and products in two ways:
 - “Essential” data and products - necessary for global forecasting, e.g., data every six hours. They carry no restrictions.
 - “Additional” data and products- supplemental data needed for local and regional forecasting, e.g., hourly data. They may carry restrictions on their re-export for commercial purposes.
 - In addition, the research and education communities should receive both types of data and products without restrictions.
- All EU countries have identified “additional” data, with restrictions as to their availability inside the EU.

WMO Resolution 40, in Practice

- Some European Meteorological Services are not meeting their international commitments:
 - There has been a reduced amount of “essential” data exchanged through the WMO.
 - Data is being withheld from international data archives.
 - The research and education communities are either not getting data or being charged.

WMO Resolution 40 in practice, cont.

- The concept of restricting access to meteorological data is spreading worldwide, partially due to unsubstantiated reports of successes amongst European meteorological services.
- Many meteorological services are beginning to charge researchers exorbitant fees for use of historical data and subjecting them to signing restrictive agreements for access to meteorological and related data and products.
- Unilateral interpretations of WMO Resolution 40 are being made, going beyond what was agreed.

Access to Meteorological and Related Data and Products in Europe

- Meteorological data for aviation have been widely available from meteorological services without restriction under ICAO agreements. This is now being challenged by European meteorological services.
- Some European meteorological data and products are available on Websites which originate in Europe.
- Official meteorological data and products are often not available to the general public through the media due to their high pricing.
- The European private weather sector has started to establish their own observing networks due to high pricing of data.
- Researchers are unable to obtain meteorological data and products at Universities.
- Weather risk investors have to pay high prices to obtain meteorological data.

ECOMET's Role in Commercialization of Meteorological Data and Products

- ECOMET, established in Brussels, December 1995, fixes prices on meteorological data and products sold by European meteorological services. Most recent prices agreed July 1999. 20 European countries.
- Acts as clearinghouse. Whichever meteorological service sells European data to a customer, revenues are distributed yearly by ECOMET, based on amount sold from each country and its price.
- ECOMET has not substantially increased the amount of revenues during its first three years of operations.
- ECOMET received a "comfort letter" from the Directorate-General for Competition on 21 October 1999 based on the following factors: equal treatment for all customers, individual freedom of members, no cross-subsidization, existence of an arbitration procedure.
- Individual services providers in Europe have concerns about discriminatory practices, ease of access, and reasonable pricing of data.

Scientific Considerations with respect to Commercialized Data and Products

- Past - Identifying the Ozone Hole
Increasing levels of CO2
- Present - Natural disaster forecasting
Severe weather forecasting
River flow forecasting
Forecasting and detecting climate
variability and change
- Future - Weather derivatives
Super ensemble forecasting

Has “government commercialization” worked?

Some British examples

Great Britain’s Ordnance Survey

- Taken “off budget” in 1990.
- By 1994, approximately 70% of operating costs recovered.
- No ability to recover enough revenue to fund ongoing capital investment needs. Will need continuing infusions.

Britain’s Meteorological Office

- Largest “customer,” the Ministry of Defence, accounts for approximately 70% of “sales”.
- Not “off budget” at all, but merely a transfer of taxpayer money from one appropriation account to another.

Result both cases: high prices to private sector customers.

Has “government commercialization” worked? Some United States examples.

Federal Maritime Commission’s “Automated Tariff Filing and Information System” (ATFI)

- Congress required charge of \$.46 per minute of direct and indirect remote computer access. Expected to raise \$810 million during FY’93-95, based on usage experience.
- Actually raised \$440,000 (0.05%) due to impossibility to police downstream use, and development of private sector.

U.S. Geological Survey (USGS) map data

- Move to “full cost recovery” resulted in demand falling by over 60%, about the previous amount of “dissemination cost” recovery, but users fell dramatically.

Result in both cases: practice abandoned

Why have “government commercialization” experiments not succeeded to date?

....even with strong government copyright, database protection legislation, and restrictive licensing?

Could it have something to do with the economics of information?

Such as:

- Elasticity of Demand
- “Leakage”
- Barriers to entry and “cream skimming”

Economics of information: Elasticity of demand

- Unlike food, clothing and shelter; when information users subjectively perceive that the cost is too high they tend to do without.
- Few (if any) types of information have been demonstrated in the marketplace as having low elasticity.

Examples: FMC “ATFI”, USGS map data

- What is the experience with British OS and EC Met Offices?

Economics of information: ‘Leakage’

Information is a unique commodity:

- If I share my food, clothing or shelter with you, I have less. But, if I share my information with you, I still have the same amount I started with.
- Legal regimes for information protection are notoriously ineffective, e.g. copyright enforcement in China, and even in the US! Database protection legislation will likely share the same fate. Compare with effective patent protection.

Examples: FMC ‘ATFI’, USGS map data. What is the experience with British OS and EC Met Offices?

Economics of Information: Barriers to Entry

- When the price charged by an information monopolist approaches the cost to independently replicate the information (or to “steal” it) others will do so.
- And, they will do so first in the most lucrative markets!

Examples:

- FMC “ATFI” failed because private data brokers went directly to the shippers for tariff information and published it privately, thereby breaking the FMC’s legal monopoly.
- Private map firms publishing British city maps, “skimming the cream,” while ROS must map the entire country.
- Non-government weather observer networks are emerging.

Will private industry launch weather satellites: we hope so! ²⁶

Do “liberal” national information policies confer economic benefit?

- **No good “before and after” comparison is possible** because US policy was nearly settled in the late-’80s, before the “information revolution” and before easy access to previously inaccessible data became widespread.
- **Limited anecdotal data** is available suggesting economic benefit.
- **Some empirical data** is available from which economic benefit might be inferred.
- Would a US/EC economic comparison be feasible or helpful?

Benefits: anecdotal

- US industrial productivity is enhanced by companies customizing and packaging **US Patent Office** information to manufacturers, investors, and others needing prompt and up to date information in specific fields.
- Patent Office places general data bases on the Web, but but does not have resources or mandate to provide specialized services to individual firms, creating a private sector niche market.

Benefits: anecdotal (cont.)

- **US Geological Survey and National Ocean Service** provide map data openly.
- Most commercial US maps (e.g. Rand McNally) are derived from government data.
- Emerging commercial industry of CD-ROM and Web-based products for both land and water navigation, including interactive: e.g. radar, speed and depth data superimposed on electronic nautical charts. Cooperative R&D.

Benefits: anecdotal (cont.)

- US commercial weather industry (\$430,000,000 annually, more data below) was possible due to unrestricted **National Weather Service** data.
- Includes a commercially successful 24 hour/day nationwide weather TV channel. (\$100,000,000 annually).
- Weather Service fosters a “strategic partnership” with industry and academia to maximize availability of information to all sectors.

US Industry data - Information Retrieval Services (SIC 7375)

Companies that provide databases on-line, via CD-ROM, and magnetic media, including census data, geographic information, news and media information, and other business information. Includes significant amounts of government information, precise proportion unknown.

- 1992 \$3,931,000,000
- 1994 \$4,647,000,000
- 1996 \$5,494,000,000
- 1998 \$6,495,000,000
- 2002 (est.) \$9,078,000,000

Source: U.S. Industry and Trade Outlook, 1998.

US Industry data - Online database industry

Year	# Vendors	#Databases
1989	770	5578
1991	933	7637
1993	1629	8201
1995	1810	9207
1997	2115	10338
1999	2454	11681

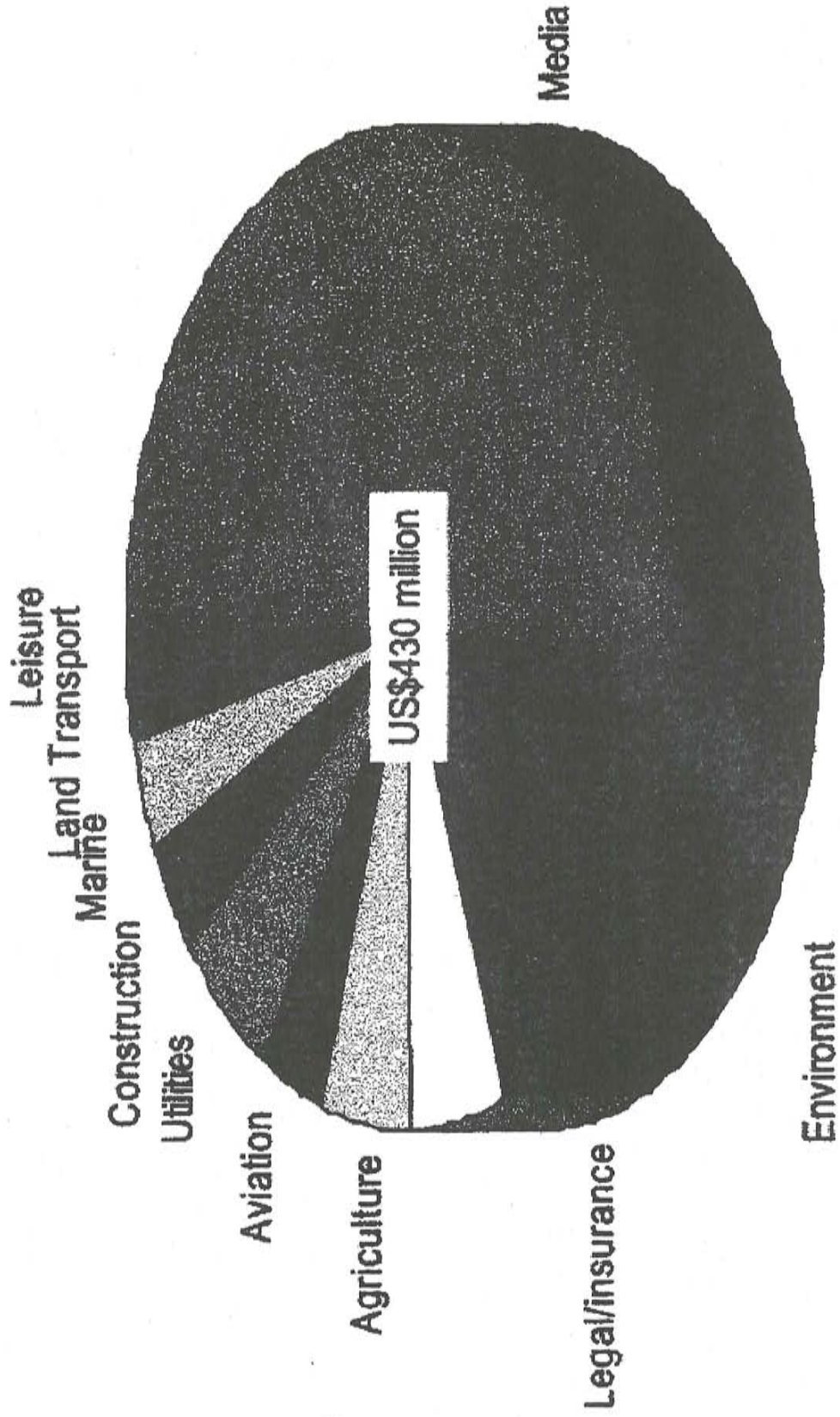
Source: Gale Directory of Databases (September 1999)

US Industry data - Commercial weather services

- Commercial market of up to \$430,000,000 in 1999.
- Approximately 400 private companies employing around 4000 meteorologists.
- 10 “major” companies with remainder being very small and specialized.
- Support many sectors of the economy.

Source: Private Sector Survey (September, 1999)

Market for Private Weather Services



A way towards harmony?

- Differing national information policies have caused frictions between governments, and between governments and their respective private sectors.
- Growing recognition that national information policies are critical to environmental concerns.
- Growing recognition that national information policies are critical to trade and competitiveness concerns in the “information society.”

Information Policy and the Environment

- Council Directive of 7 June 1990 on the “Freedom of Access to Information on the Environment” (90/313/EEC)
- Protocol on Substances that deplete the Ozone Layer (Montreal Protocol) (entered into force 1 January 1989)
- Convention on Biological Diversity (entered into force 29 December 1993)
- United Nations Framework Convention on Climate Change (entered into force 21 March 1994)
- International Convention to Combat Desertification (adopted 12 September 1994)
- Kyoto Protocol to the United Nations Framework Convention on Climate Change (11 December 1997)



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Information policy and the Environment (cont.)

- The above listed environmental conventions call for the full, open and prompt, exchange of relevant publicly available data and information.
- Their successful implementation is, in large part, dependent upon such exchange.

Information Policy and the Economy

“Public Sector Information: A Key Resource for Europe; Green Paper on Public Sector Information in the Information Society,” DGXIII, COM(1998)585:

- Public sector information is fundamental to the economy.
- Ready availability of public sector information is prerequisite for competitiveness of European industry.
- Public sector information is critical to success of SMEs.
- Information policy harmonization needed among EU member states.

Information Policy and Antitrust Law

“Anyone engaging in the sale of meteorological base data and base products as well as providing sovereign activities, is acting as an independent party in the commercial process and, as a public undertaking, is subject to the provisions of the Antitrust Act... In the Swiss market, [the Swiss Meteorological Institute] has a market-dominating position. *It must make available to interested third parties on a non-discriminatory manner all the data and products which it uses for its own extended services.*”

- Decree of the Swiss Competition Commission (16/11/98).

Summary and Conclusions

- Emerging recognition in Europe that open access to government information is critical to the information society, environmental protection, and economic growth.
- Recent trend to more “liberal” policies faces opposition from “government commercialization” initiatives.
- “Government commercialization” cannot succeed in the face of economic realities and evenhanded application of competition policies.
- Open government information policies foster significant but not easily quantifiable economic benefits to society.

