



June 19, 2009

The Honorable John P. Holdren  
Director  
Office of Science and Technology Policy  
725 17<sup>th</sup> Street, NW  
Washington, DC 20502

Dear Mr. Holdren,

On behalf of the Software & Information Industry Association (SIIA), I am writing in response to your request for feedback to the President's memorandum entitled *Transparency and Open Government*.

SIIA is the principal trade association of the software and digital information industries, representing nearly 500 leading technology companies that provide the backbone of the Internet through the development of cutting edge software applications and digital information services. SIIA members include many companies that have long played a critical role in promoting and enhancing public access to government information, providing many information products and services based in whole or in part on government information.

From the affirmation that the Government's information is a national asset, to the commitment to harnessing new technologies to rapidly disclose information and engage citizens, SIIA strongly supports the President's commitment to openness and transparency outlined in his memorandum. SIIA has a long history of supporting effective e-government, dating back to the turn of the century when we worked closely with Congress and the Administration in support of the E-Government Act of 2001.

SIIA members look forward to continuing to partner with the Government to provide the cutting-edge technologies to assist you and the President to create an Open Government Directive to implement this vision of enhanced collaboration, transparency and open government. To that end, please find the following recommendations and comments on the memorandum.

**(1) Expand ongoing efforts to increase public access to Government information in raw, machine-readable data in a variety of open standard formats.**

SIIA strongly agrees that the Government must take steps to increase public access to high value, machine readable datasets generated by the Executive Branch. SIIA is very supportive of the recent launch of Data.gov and its mission to proactively publish raw, machine-readable data in a variety of open standard formats. This initiative promises to encourage a diversity

of sources of government information while spurring innovation in the private sector. In turn, the initiative will surely save taxpayer dollars at a time of severe budget constraints.

Where practical, the Government should utilize open standards and avoid making information available in formats that add unnecessary restrictions over who can use the data, how it can be used and shared, and whether the data will be usable in the future. In cases where such formats are necessary to ensure compatibility with certain audiences, the Government should be sure to also provide access to information in open formats.

Consistent with the objective of the Open Government Initiative to cultivate a culture of collaboration and innovation across all levels of government, SIIA recommends that the Open Government Directive identify best practices for Government agencies regarding process, procedures and data standardization, including the establishment of agency liaisons for taking feedback from users and helping to ensure data quality.

**(2) In addition to real-time raw data feeds, it is critical to provide appropriate information via specialized high-reliability and high-bandwidth services on a limited cost-recovery basis.**

In addition to the ongoing efforts to provide access to real time data feeds, it is critical that the Government also provide, on an ongoing basis, critical information via specialized high-reliability and high-bandwidth services on a limited cost-recovery basis. The Paperwork Reduction Act of 1995 (PRA) established requirements for timely and equitable access to the underlying data for public information maintained in electronic format.<sup>1</sup> This is a critical element that enables parties that wish to further empower access by working alongside the government to develop new applications and further add value to this information.

Environmental data has been one of the leading areas of open public data in the United States. For example, the U.S. National Weather Service (NWS) is among the largest federal agencies on the web in terms of data flow in most months. The NWS makes an enormous amount of data available on a real time immediate basis that flows out into the U.S. economy, including both no-cost distribution systems as well as specialized high-reliability and high-bandwidth services set up on a limited cost-recovery basis that serve as a crucial foundation for daily weather programming and weather warnings in newspapers and on television. The wider community involved in weather information, including commercial providers, the media, and the academic community, is critical to the NWS fulfilling its mission, enabling the media, private sector and public to become partners in disseminating weather information in an open way.<sup>2</sup>

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<sup>1</sup> 44 USC § 3506(d)(1)(B)

<sup>2</sup> Tauberer, Joshua. *Open Data is Civic Capital: Best Practices for "open Government Data."* 2009. <http://razor.occams.info/pubdocs/opendataciviccapital.html>

**(3) Government information should be made available at no more than the marginal cost.**

Government information is clearly a national asset, and its greatest benefit is serving as a driver of knowledge, innovation and further economic development. To achieve this benefit, Government information should always be made available at no more than the marginal cost. The marginal cost of distribution is the cost of making one more copy. In the physical world, the marginal cost is the cost of paper and postage. In the online world, the marginal cost is the cost of transferring bytes through the Internet, which is so low as to make the marginal cost of distributing most government records essentially zero.

The belief that Government information is an asset that spurs innovation and the national economy is supported by a 2002 report by the National Weather Service (NWS). The Report compared the relative openness of data in the United States to the alternative cost-recovery and licensing model in Europe, in which the public must generally purchase government data at a price much greater than the marginal cost to distribute the information and then may not legally redistribute the data.<sup>3</sup>

The report notes that the weather risk management industry is 50 times larger in the United States than in Europe, attributed in part to the higher commercial value of weather data made available at marginal cost and without licensing restrictions in the United States compared to the weather data in European nations which is costly to buy and more tightly controlled. The report concludes that “charging marginal cost of dissemination for public sector information will lead to optimal economic growth in society and will far outweigh the immediate perceived benefits of aggressive cost recovery.”<sup>4</sup>

**(4) Rely on existing technologies, products and services where possible, rather than duplicating and competing with existing products and services.**

It is critical that the Government utilize existing technologies, products and services that could efficiently and effectively help provide the products and services that citizens need. Unfortunately, this has been a significant challenge over the years, as agencies have all too often overlooked or ignored existing technologies and solutions. The result of this oversight is unnecessary spending and a misallocation of taxpayer dollars—particularly when the Government duplicates and competes with products and services provided by the private sector.

As Federal CIO Vivek Kundra recently stated in testimony before the Senate Homeland Security and Government Affairs Committee, it is critical that the Government seek to partner and leverage a solution already put in place by the private sector, rather than to “re-

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<sup>3</sup> Weiss, Peter. *Borders in Cyberspace: Conflicting Public Sector Information Policies and their Economic Impacts*. 2002. [http://www.weather.gov/sp/Borders\\_report.pdf](http://www.weather.gov/sp/Borders_report.pdf)

<sup>4</sup> Ibid.

invent the wheel” by unnecessarily spending more taxpayer dollars.<sup>5</sup> SIIA strongly supports this commitment, and e-government policies that rely on commercial off-the-shelf technologies and services where possible, recognizing that the government should not compete with the private sector in the development of technology or the implementation of electronic commerce.

Government efforts to utilize new technologies to enhance openness and transparency should complement, encourage and support private sector efforts rather than duplicating them. Initiatives to develop e-government should be focused on improving service to citizens for inherently governmental functions, rather than expanding the role of government. Additionally, Government initiatives to disseminate government information electronically should not result in expanding the role of government in providing commercial information technology services that compete with the private sector. Rather, government efforts to disseminate information should take full advantage of public-private partnerships or independent private services and products to efficiently and effectively provide the desired added-value for the public.

OMB Circular A-76, regarding *Performance of Commercial Activities*, was written to provide fundamental policy direction to agencies that the government should not be in the business of providing commercial goods and services in competition with private markets. Two key statements highlighting this included: (1) “in the process of governing, the government should not compete with its citizens” and (2) “a commercial activity is not a governmental function.” In providing this guidance, A-76 required that government should rely on the private sector to perform such functions under the American economic model, including the provision of the goods and services the Government needs for fulfillment of its essential operating missions and requirements.

Unfortunately, Circular A-76 was amended in 2002, effectively removing these explicit guidelines for agencies. While the rationale for revisions to the Circular was to maximize government reliance on the private sector for needed commercial products and services, the end result was a deletion of the strongest explicit guidelines for federal agencies to avoid competing with the private sector.

SIIA urges you to ensure that the Open Government Directive explicitly restates these critical guidelines, and more broadly, to consider revising Circular A-76 to reestablish the original intent of the guidance.

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<sup>5</sup> [http://hsgac.senate.gov/public\\_files/TESTIMONYKUNDRA42809.pdf](http://hsgac.senate.gov/public_files/TESTIMONYKUNDRA42809.pdf)

**(5) Utilize open standards as a means to maximize interoperability.**

Government technology policies and procurement guidelines should recognize the value of open standards to enhance interoperability and citizen access to information, particularly within a service-oriented architecture to construct and deliver online government services and information. Software procurement regulations should recognize open standards, where they exist, as a critical step to creating a level playing field for government contracting while saving taxpayer dollars and enabling a smarter, more efficient and transparent Government. However, the government should refrain from adopting standards, unique requirements or protocols that limit choice and interoperability.

As part of the Open Government Directive, policies should be enacted that form the basis of an interoperability framework that details how interoperability will be achieved among government agencies and with citizens, particularly with the goal of maximizing the efficiency in the exchange, management, and reuse of data. Recognizing that it could be too costly or impractical to at once replace a wide range of technologies and standards, the Government should deploy open standards solutions, including open standards for document formats, when existing systems are to be retired or need major enhancements.

The commitment to open standards is equally important as the Government begins to embrace “Web 2.0” technologies. In partnering with technology and service providers for web-based or “Web 2.0 technologies,” the Government must continue to utilize open standards to maximize interoperability and citizen access to government information and services. As growing models such as “cloud computing” continue to evolve, the Government can play a critical role to helping drive interoperability in this area.

**(6) Government funding agencies should not diminish the copyright protection of scientific research articles.**

It is critical that Government funding agencies not diminish the copyright protection of scientific research articles. While SIIA supports the Government’s goal to broaden the accessibility of publicly-funded research, Government mandates for peer reviewed journal articles to be freely disseminated worldwide will undermine and jeopardize the sustainability of the American research infrastructure necessary for our continued leadership in science and technology.

While the government may fund the research, these articles are published by private sector journals which make significant investments to peer review, edit, disseminate and archive them. The agencies have consistently supported and respected academic independence and have allowed researchers to express their ideas in the American tradition of individual freedom of expression and independence of mind. This respect for independence has extended to the way in which our research is disseminated to the scientific community and the public. Academic journals are used as a means to disseminate research, to certify the

work of others, as channels to post brief reports of significant developments, and as forums to share perspectives about entire bodies of research. In fact, the scientific publishers of these journals, in collaboration with academic institutions, have been at the forefront of innovations that have improved the peer review process and access to research information. As a result, peer review is more efficient, and more research is currently available to more people than at any time in history.

On the contrary, so-called “open access” policies that would require free public access to copyrighted works—information published separate from the Federal Government—are shortsighted attempts to increase knowledge that will have the opposite effect. In creating an Open Government Directive, SIIA urges you to resist the temptation to support a policy that so greatly threatens the future of the American research infrastructure and our global scientific leadership.

Alternatively, SIIA supports the approach provided by the America Competes Act, establishing policy for the open exchange of data and results of research undertaken by, or through funding of, the National Science Foundation.<sup>6</sup> Such a model should be applied more broadly to all agencies that provide funds, in whole or in part, for research activities, requiring access to the following information on activities funded by the agency be made available to the public, in a timely manner and in electronic form through an agency Web site:

- (A) final project reports;
- (B) citations of published research documents resulting from research funded by the agency;
- (C) readily accessible summaries of the outcomes of agency-funded research projects.

**(7) Promote transparency and open government policies and practices to state governments.**

While some state and local governments have made similar commitments to openness and transparency, many continue to cling to outdated policies and practices, refusing to provide sufficient access to a wide range of information or data of value to citizens. All too often, many state agencies are in the practice of denying requests for information to be used for “commercial purposes” when resellers seek to add value and disseminate. In other cases, state agencies will make access to key information available for exorbitant fees or contingent on a demonstrated proven to citizens. Of course, such policies are in stark contrast to priorities for open government and transparency, and in many cases, they are even directly in conflict with state Freedom of Information Act laws.

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<sup>6</sup> PL 110-69, Title I, Sec. 1009. [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110\\_cong\\_public\\_laws&docid=f:publ069.110.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_public_laws&docid=f:publ069.110.pdf)

In addition to leading by example, it is critical that the Federal Government engage state CIOs and key e-government leaders to encourage their support and compliance with open government policies that arise from the Federal Open Government Directive.

### **Conclusion**

Again, thank you for this opportunity to comment on the Open Government Initiative and the development of an Open Government Directive for agencies. I hope that these comments and recommendations are helpful as you proceed in with these efforts. If you have further questions or would like to discuss any of the issues in further detail, please do not hesitate to contact David LeDuc, SIIA Senior Director, Public Policy, at [dleduc@siia.net](mailto:dleduc@siia.net) or 202-789-4443.

Sincerely yours,

A handwritten signature in black ink that reads "Ken Wasch". The signature is written in a cursive, slightly slanted style.

Ken Wasch  
President