

THE GOVERNMENT PRINTING OFFICE AND
EXECUTIVE BRANCH INFORMATION
DISSEMINATION

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Mr. DiMARIO. Thank you, Mr. Chairman. May I say one thing?

Mr. HORN. Yes.

Mr. DiMARIO. I would like to invite you, Mr. Chairman, and all members of the committee and staff, any staff that you want, to come down and visit us at the Government Printing Office, and see what we do and how we do it, in terms of electronic products, what we do in-house. I think it might be revealing to you that we operate quite a modern facility, and we do act, in my judgment, for the benefit of the taxpayers.

Mr. HORN. Well, I thank you very much, Mr. DiMario and Superintendent Kelley.

Mr. Holstein, I'm sorry we didn't call on you, but I appreciate the role you are doing there as the Chief Financial Officer/Comptroller. We have high regard for the Chief Financial Officers throughout the Federal Government, and that includes the legislative branch. So thank you for joining all of us.

Mr. HOLSTEIN. Thank you, Mr. Chairman.

Mr. HORN. Thanks very much for coming.

If the next panel will come forward, we will begin the testimony on the panel: Daniel S. Jones, Robert L. Oakley, and Wendy Lechner.

OK. If you would all rise and raise your right hands?

[Witnesses sworn.]

Mr. HORN. The clerk will note that all three witnesses have affirmed.

We will begin with Daniel S. Jones, the president of NewsBank, Inc., appearing on behalf of the Information Industry Association.

I might say to staff, all of the relevant résumés will be included after we introduce each witness. And, of course, your full statement is put in after we introduce you, and we would like you to summarize it for us, so we can get down to questions and have a dialog.

STATEMENTS OF DANIEL S. JONES, PRESIDENT, NEWSBANK, INC., ON BEHALF OF THE INFORMATION INDUSTRY ASSOCIATION; ROBERT L. OAKLEY, WASHINGTON AFFAIRS REPRESENTATIVE, AMERICAN ASSOCIATION OF LAW LIBRARIES; AND WENDY LECHNER, LEGISLATIVE DIRECTOR, PRINTING INDUSTRIES OF AMERICA, INC.

Mr. JONES. Thank you very much, Mr. Chairman, and good morning.

NewsBank is a mid-sized news information publishing company. My objective today is to bring you an example of the type of problem which occurs when an agency of the Government ignores the Paperwork Reduction Act.

I'm not an expert on PRA, but I want to relate an injustice that has injured my company, that has occurred by an agency not adhering to PRA. The bottom line of my presentation is that the Government, in the form of an agency, specifically the NTIS, is competing with my business by republishing material which is not even Government information. It is copyrighted private information that is being sold by the NTIS to my customers, which are university libraries.

Now, as you can imagine, this disturbs me greatly; also, that my taxes and the taxes of my employees are subsidizing my competitor, the Government.

I am very much in favor of the public access to Government information, on the other hand. I have been a trustee of my local public library for 10 years. I have been a member of the American Library Association for 25 years. All of my customers are librarians, and a number of my products actually facilitate the further use of Government information.

Now, since the passage of PRA, my fellow IIA members and I have witnessed a number of agency initiatives that fly in the face of both the language and the intent of PRA. I can best explain these problems by citing the experiences of my company.

I began NewsBank 25 years ago and now employ 400 people in Connecticut, Vermont, and Florida. It may surprise you to learn that my company, whose primary mission is to provide access to news sources, is so concerned about Government competition and Government information policy.

In fact, when I started my company, I certainly didn't think that unfair competition for my business would arise from the Federal Government. Sadly, this is precisely what I have been battling for over a year now, with the World News Connection, a product published by NTIS. It is competitive because it contains much of exactly the same foreign news content that I publish with my business, and other publishers in our industry republish, exactly the same content.

When NTIS created this competitive product about 2 years ago, it appears that they did not demonstrate any significant effort to comply with the PRA. As a result, much of its content, as I mentioned, duplicates the very same information which is found in my products and that of other publishers that are private.

As I understand it, Congress intended NTIS to be subject to the PRA. In fact, the IIA and its members have consistently brought this situation to the attention of the officials at that agency and OIRA. Sometimes I wonder, however, if the agency's only real knowledge of PRA is how to avoid the act, not how to implement it.

Best I can tell, NTIS did not take adequate efforts to give public notice about its plans for its new product, the World News Connection. If they did, it was only to determine whether they could capture a profitable market share.

Now, another significant point that I would like to make is that when I publish a product, I must cover the entire cost of that product to bring it to market. Apparently, this practice is not required of the NTIS. As the director of NTIS has stated, the translation costs for the foreign news content in his product are at least subsidized by the taxpayers. That's a significant savings to NTIS, and one that I can't match.

Now, on top of the ability to avoid covering some of the costs of publishing its competitive product, NTIS doesn't pay any taxes. About half of my profits are paid out to various Government taxing bodies. That means that I have to earn twice as much to improve my products for my customers as the NTIS.

Now, in addition to these points, I don't know how a foreign news information product falls under the purview of the NTIS. It's not scientific; it's not technical; and it's not engineering information.

For over a year I have worked to resolve this issue. I regret to tell you that no progress has been made. The NTIS World News Connection product is on the market. The harm has been incurred by my company, in terms of lost customers and potentially future sales.

If this trend continues, my company may have to stop investing in some of its information products, and a significant number of my employees may lose their jobs. My company's case demonstrates, gentlemen, that unless a strong enforcement of the PRA is forthcoming, NTIS and other Government agencies will continue to compete with the private sector, to the detriment of private sector jobs.

Now, is the loss of private company jobs the objective of an agency of the Department of Commerce? I certainly hope not. NewsBank's experiences with the World News Connection are especially relevant to today's hearings, in that NTIS has demonstrated the dangers that lie in not strictly enforcing PRA principles.

I would also like to comment that, for the most part, the GPO seems to have been a responsible disseminator of Government information, but there is no guarantee that, in a rapidly changing information marketplace, tomorrow's GPO may not be pressured to act more like a competitor, nor that agencies will use the GPO to avoid the mandates of the PRA. As I see it, one certain way to avoid these potential problems is to require enforcement of PRA.

My point, therefore, is that I believe passage of the PRA is not enough, not enough without enforcement. We would recommend that the subcommittee review the efforts that OIRA has taken to ensure that agency officials follow the specific requirements of the law. And gentlemen, we are very much appreciative of your starting that process by holding this hearing here today.

The information industry does not make this request lightly, but only after attempts to deal directly with OIRA and several other agencies that have proven to be unsuccessful. My case, as I have described to you, as well as that of other industry situations, indicate that there appears to be a general lack of enthusiasm for the PRA within the executive branch, and only congressional intervention would seem to be the way to overcome this condition.

In closing, I would like to express my appreciation to you all and the subcommittee, and for the opportunity to appear today. My goal in being here is to find a way to stop the Government from competing with my product, my taxpaying business. I hope you can help achieve that goal.

Thank you.

[The prepared statement of Mr. Jones follows.]

Introduction

Thank you, Mr. Chairman, and good morning. My name is Dan Jones and I am President of NewsBank, inc., a mid-sized information publishing company headquartered in New Canaan, Connecticut. I am appearing today on behalf of the Information Industry Association ("IIA"), where NewsBank is a member. NewsBank and IIA appreciate this opportunity to present the views of the information industry regarding the Government Printing Office ("GPO") and executive branch information dissemination.

These topics are of great interest to America's information industry. IIA, as the leading trade association representing information providers, distributors and managers, has long recognized the importance of government adopting and enforcing sound information policies. Many of IIA's 550 members acquire information from government sources and incorporate it into products that serve a variety of markets both here and abroad. Their interests in the open dissemination of government data is clear. The value-added products these firms design to meet customer needs rely on the ability to obtain government information without restriction, so that they may analyze, organize and present it to meet customer needs.

Information produced and distributed by NewsBank and other members of IIA is used by educators, researchers, the press, attorneys, businessmen and government officials. A vibrant and competitive private sector information industry is key to the efficient functioning of today's service-based economy. The broad range of information available from government sources fuels the engine of the information industry and commerce in general. This fact alone would justify that government adhere to sound information policies.

However, the larger, social importance of the free flow of information by and about government cannot be ignored either. The ability of citizens to obtain and use information about their government, for any lawful purpose, is key to the functioning of a sound democratic system. This has been an accepted part of the American landscape for well over two centuries. Now that we are entering an era where technology is forcing us to rethink how information is gathered and used, it is crucial that the core principle of unfettered access to and use of government information sources be strengthened and enforced. I am pleased to offer some thoughts today on how best to accomplish this task.

Established Principles for Dissemination of Executive Branch Information

The timing of this oversight hearing is very appropriate, Mr. Chairman. The Committee on Government Reform and Oversight paved the way in the 104th Congress for passage of the *Paperwork Reduction Act of 1993* ("PRA"), now codified in Title 44 of the U.S. Code. PRA brought to closure nearly ten years of effort by the information industry, the library community, and consumer groups, together with executive and legislative branch officials, to fashion a set of sound information policies to govern

federal executive agencies. In many respects, PRA is a landmark statute, establishing rules for federal officials to follow as they proceed toward an era where the provision of government information will be greatly affected by the advent of new technologies and new demands by the public.

If I leave you with only one message from the information industry today, it would be this: Despite all the effort and time involved in crafting this statute, its spirit and mandates are being ignored. Without the intervention of Congress, IIA is fearful that PRA will remain little more than words.

From my experience and that of other IIA members, I can report that the Office of Information and Regulatory Affairs ("OIRA") has failed to fulfill its duty to provide clear direction to agencies about their obligations and responsibilities under the law. This has led to numerous major and minor violations of both the intent and the clear language now contained in Title 44 of the U.S. Code. If the trend continues, government activities will threaten a number of private sector information providers and will decrease, rather than increase, the amount of information available to the American public.

Therefore, as the Subcommittee considers executive branch dissemination policies, including the role of the Government Printing Office ("GPO"), IIA would ask that you keep the spirit and letter of PRA in mind. GPO is a vital source of executive branch information to the general public, including private sector redisseminators of this data. As with other agencies who disseminate executive branch agency information directly or on behalf of one another, GPO's information dissemination policies should follow the sound guidelines set forth in PRA. In this manner, GPO could effectively carry out its role as a disseminator of executive branch materials, whose release is always subject initially to the principles of the Act. IIA is concerned, as I explain in more detail below, that passage of PRA has not attained the results anticipated by many supporters, including the information industry. Only clear statements and restatements of its principles in any legislation governing executive branch dissemination activities will assure any hope that the purpose behind PRA is achieved.

PRA mandates several sound practices and policies to govern the dissemination of government information. It establishes a clear allocation of responsibilities among OIRA and agency heads for establishing and enforcing guidelines. It prescribes specific duties in regard to information resource and systems management. In terms of the core principle of open government information, the Act mandates that each agency "ensure that the public has timely and equitable access to the agency's public information" and requires that this important goal be accomplished by "encouraging a diversity of public and *private* sources for information based on government public information." 44 USC 3506(d)(1), *emphasis added*.

Thus, PRA wisely recognizes that society as a whole benefits when agencies are encouraged to release publicly-funded data. However, it also anticipates instances in which agencies -- faced with increased demands and decreased budgets -- would be

tempted, especially in this era of new technologies, to provide government information without proper restraint. Unrestrained marketplace activity by federal agencies in today's state of development for the information industry could easily destroy some businesses and threaten the advantages of our society where citizens have traditionally relied heavily on non-government sources of information about their publicly-funded servants and institutions.

By requiring that agencies consider the private sector as part of its core dissemination responsibility, PRA seeks to achieve a proper balance between public and private roles in providing information to citizens. To strengthen this balance, Secs. 3506(d)(2) and (3) require agencies to "regularly solicit and consider public input on the agency's information dissemination activities; and provide adequate notice when initiating, substantially modifying or terminating significant information dissemination products."

The proscription about marketplace activities by federal agencies is even clearer in Sec. 3506(d)(4) of Title 44. In sum, this portion of U.S. law assures that no agency can restrict the availability of information to the public; cannot regulate the use, resale or redissemination of such information; and cannot establish user fees for public information that exceed the cost of dissemination.

NewsBank and other IIA members strongly supported passage of PRA precisely because of these clear and unequivocal mandates. However, since passage of the Act, IIA has witnessed a number of agency initiatives that fly in the face of both the language and spirit of PRA. I can best explain the problem by citing the experiences of my company.

The NewsBank Experience with Executive Branch Information Policy

NewsBank is a mid-sized information service provider with facilities in Connecticut, Vermont and Florida. I began the company 25 years ago and now employ 400 people. We are large enough to provide microfiche, CD-ROM, and online products incorporating over 1,000 information sources. NewsBank products contain information gathered from newspapers, newswires, business journals, and periodicals, as well as historical and scholarly documents. Although we serve customers worldwide, we are small enough to maintain an entrepreneurial character of the company -- an essential element to succeeding in today's highly competitive, global information marketplace, where customers demand speedy delivery of accurate and reliable information.

It may surprise you to learn that a company providing access to news sources is so concerned about government information policy. When I started NewsBank 25 years ago, I certainly did not suspect that unfair competition for my business would arise from the federal government. Sadly, that is precisely the battle I have been fighting for over a year now.

In today's global marketplace, the exchange of information about other nations is increasingly important, and as is the case here in the United States, often the best sources of information are in newspapers and journals. Among the many products offered to our customers are ones that provide access to foreign news sources. NewsBank is among a number of private sector information providers that compete in providing foreign news information as a part of their products and services, and we have competed well and effectively with others in the private sector partners.

About two years ago, a new type of competitor began to enter the marketplace. Unlike our private sector counterparts, however, this producer of foreign, copyrighted news sources was the National Technical Information Service ("NTIS"). As you know, NTIS is an executive branch agency under the Department of Commerce. It was created strictly to gather and disseminate scientific, technical and engineering information originally collected and generated by various taxpayer funded executive branch entities. Although self-funding, NTIS was clearly intended by Congress to be subject to the PRA.

I cannot testify that the agency is ignorant of the Act and its provisions. In fact, IIA has consistently reminded NTIS officers, as well as officials at OIRA, of the mandates laid out in the law. But I sometimes have wondered if the only real knowledge these government servants have is how to avoid the Act.

The particular information dissemination practice in question is whether -- given the mandates of PRA -- NTIS can legally offer a service known as the *World News Connection* ("WNC"). WNC is an electronic database of foreign news sources provided in English. Some sources originate in English, while others must be translated. How such a product falls under the purview of NTIS has always been a mystery to me, since it is neither scientific, technical, nor engineering information. Yet, this points precisely to one of the problems that has grown as NTIS has developed more and more as a distributor for other agencies' information. The agency interprets broadly its core mission and because it is self-funding, aggressively seeks information from other agencies that can be turned into money-making ventures.

In fairness to NTIS, I would note that the agency supplied foreign press clippings to the public in print form for about 20 years. Originally, the product was funded by the taxpayer-supported intelligence agencies. Objections to federal publication of this information would have been undoubtedly justified on several grounds. The subject matter of the information was not created by government, but rather by private sector entities that copyrighted the data. In terms of NTIS involvement, these foreign press reports only barely related to science, technology or engineering. However, many in the public found this information of value, and at the time there really were no private sector republishers of similar data. Some may have objected to a self-funding agency like NTIS taking over distribution, but neither Executive Order A-130 nor PRA existed at the time to provide guidelines for the agencies or the public to assess the appropriateness of executive branch dissemination activities.

Indeed, Mr. Chairman, I would be less than candid if I did not state for the record that NewsBank and other private sector providers gained some advantage from the government's supply of this data. For example, while NewsBank did not use or redistribute the NTIS data, we did create and provide an index of the printed government publication as one of many products for our customers.

In contrast, the advent of NTIS' new *World News Connection* is a completely different matter. Even under Executive Order A-130, I would argue that this brand new product should never have been developed. But certainly that should have been the case after passage of PRA in the spring of 1995. WNC is precisely the type of significant modification in product that triggers the public notification provisions contained in 44 USC 3506(d).

Unlike its printed predecessor, WNC is a fairly sophisticated, electronic product designed for wide distribution, and it contains the same information as is found in a number of current private sector products, including NewsBank's. The Director of NTIS has stated that translation costs for the foreign news sources are at least partially subsidized by the taxpayer through the intelligence agencies -- a significant capital savings to NTIS which no private sector provider can match. Add to that a marketing campaign with the name of a federal agency behind it, and you can see where NTIS can have a potentially enormous impact on the market.

The agency conducted focus groups to design and test the product and placed statements in the old, printed product to the effect that it intended to discontinue publication. However, NTIS did not take great efforts to give public notice about its plans for the new electronic WNC. IIA has not been able to determine that any comments were solicited, except perhaps as part of the agency's product design discussions. If NTIS followed the important mandate in PRA that government assess private sector dissemination activities, I would say they did so only to determine whether they could capture a profitable market share.

We have tried many avenues, working alone and with our colleagues at IIA, to resolve this issue with NTIS. I regret to report that no progress has been made. *World News Connection* is on the market, and harm has been incurred by NewsBank. Some of our customers have already canceled subscriptions to NewsBank services that WNC duplicates, and others have failed to renew subscriptions to similar NewsBank services while they review the NTIS product. If this trend continues, NewsBank may be forced to stop investing in some of our information products, and as many as five percent of my employees may lose their jobs.

Because most of us in the private sector have built our businesses and our reputations on the entrepreneurial spirit, we will survive this first shock of unfair government competition, but not unscathed. However, that may not always be the case. Unless strong enforcement of PRA is forthcoming, NTIS and other government agencies will continue to test the market with new products or new enhancements to current

products that clearly go beyond the bounds of the balance that the Act seeks to achieve. The first result will be a weakened private sector information industry, but the longer term consequences for commerce and the maintenance of a free society should not, and cannot, be ignored.

Next Steps in Effective Dissemination of Executive Branch Information

NewsBank's experiences with *World News Connection* are doubly relevant to today's hearing, Mr. Chairman. First, as an agency that is acting increasingly as a third-party disseminator of executive branch information, NTIS has demonstrated the dangers that lie in not strictly enforcing PRA principles all along the chain of information dissemination by the government. In contrast to NTIS, IIA has found GPO to be a responsible third-party disseminator of executive branch information. However, there is no guarantee that in a rapidly changing information marketplace, tomorrow's GPO may not be pressured to act more like a competitor than a provider, nor that agencies will use GPO to avoid the mandates of the Act. One certain way to avoid the problem is to apply the sound information dissemination principles of PRA to GPO.

The second relevant issue that arises from NewsBank's experience with NTIS is that two years after passage, PRA has not yet proven fully effective. Many of our fellow IIA members have witnessed a number of proposed or implemented actions by federal agencies that show clear ignorance, or defiance, of the mandates of the Act.

The Association's initial and continued support of PRA is rooted in the understanding that Congress meant PRA to achieve a proper balance between the roles of the public and private sector in disseminating executive branch information. On the one hand, the Act reinforces the obligations of federal agencies to provide government information to the public. The other part of the balance, however, is that agencies act responsibly and that they meet public needs without undue expenditures of time, money and effort. Congress recognized in PRA that a vibrant private sector was a necessary, established and vital part of the American system of disseminating government information. That is precisely why the Act contains such clear language cautioning against government activities that threaten the private sector.

Yet my experiences with NTIS on behalf of NewsBank, and the experiences of other members of IIA with NTIS and other agencies, leads industry to believe passage of the PRA was not enough. The problems encountered since 1995, however, are not without solution.

IIA would urge this Subcommittee -- and Congress in general -- to insist on strict adherence to and enforcement of all provisions in PRA. Without congressional involvement now, the information industry fears that the benefits of the dissemination policies envisioned by this Subcommittee in crafting the original legislation will never be fully realized.

IIA would respectfully suggest that the Subcommittee review how many agencies have yet to appoint or empower the requisite, qualified information officers called for under the Act. In addition, IIA is unaware that OIRA has undertaken any significant efforts to educate agency officials about the specific requirements under 44 USC 3506(d), and we would request that Congress look into this matter, as well. Although I cannot personally speak to other, specific instances, IIA would be glad to provide further information to the Subcommittee about other problems that have arisen because agencies have not complied with the information dissemination provisions of PRA.

The information industry does not make this request lightly, but only after attempts to deal directly with OIRA and several agencies have proven unsatisfactory. There appears to be a general lack of enthusiasm for PRA within the executive branch that only congressional intervention may help overcome. Few agencies appear to recognize that they have any obligations under this statute, other than to produce as much information in as many formats as possible, regardless of user needs and marketplace realities. Such a trend, if left unchecked, threatens potentially much of the commerce that relies on the unfettered flow of government information. Equally important, it will eventually hamper citizens' ability to choose from a diversity of providers to obtain information by and about their government -- a result with unmistakably grim consequences.

Conclusion

In closing, Mr. Chairman, I want to express again my appreciation to you and the Subcommittee for the opportunity to appear today. The issues involved in establishing sound executive branch information policies, whether in relation to GPO or the agencies that originate the data, are of the greatest importance to the information industry, including NewsBank. The Committee's interest and leadership in this area of the law is unparalleled, and this Subcommittee inquiry could not come at a more appropriate time.

IIA encourages you to go forward with this effort and build upon your work in helping craft the *Paperwork Reduction Act of 1995*. That Act contains important provisions to assure that Americans continue to enjoy a wealth of diverse and reliable information sources by and about their government. But until PRA is clearly understood and enforced, its goals may never be realized.

NewsBank's experiences with NTIS and the *World News Connection* have convinced me of that fact, and I join with other members of IIA in stating our willingness to work with the Subcommittee in assuring that the dissemination of executive branch information is undertaken in a responsible manner.

I will be pleased to answer any questions.

Mr. HORN. Well, we thank you. That's a very interesting story, and we will followup on that and see if that publication is in line with the mission of the agency. It seems to me, if they are into generalized aspects that aren't, as you suggest, in their scientific-technical role, I don't know what justification they can have for it, other than to make a couple of bucks.

[The information referred to follows:]

Mr. Horn raises a very important point here regarding the mission of the National Technical Information Service (NTIS).

NTIS was created and exists today strictly to collect and disseminate scientific, technical and engineering information ("STEI") which is generated by various federal government agencies. In effect, NTIS acts as a central repository for such information, which is originally collected by the agencies using taxpayer dollars in order to fulfill the essential dissemination responsibilities which are a part of those agencies' missions.

The governing statute that provided NTIS with this special role for STEI is the American Technology Preeminence Act ("ATPA" P.L. 102-245). By mandating that all federal agencies transfer to NTIS all STEI that results from federally funded research and development ATPA sought to increase American participation in technology development.

The mandate for transfer of STEI was intended to allow NTIS to become an efficient service for providing information to the American people in order to aid the drive for increased American competitiveness. However, in a business-like effort to expand its inventory to make it more attractive to potential users, NTIS has adopted a very broad, *1954* Comptroller General's Opinion regarding the definition of "technical information." This broad definition, which was nearly 40 years old when the ATPA was adopted, creates a situation whereby the originating agencies are transferring whole classes of information to NTIS for dissemination and in some cases then refusing to provide it directly to users. In so doing, NTIS, rather than fulfilling the crucial role of granting wider access to scientific, technical and engineering information, has undertaken steps that serve in some instances to forestall broad dissemination of this material. In other instances -- like the World News Connection -- the agency has extended its reach far beyond its mission to unnecessarily duplicate the dissemination efforts of the private sector.

The lack of a sharply-focused statutory definition has also resulted in NTIS' duplication of existing government information collection and dissemination efforts -- namely those of the Government Printing Office ("GPO"). This is precisely why Congress, as a condition of granting NTIS an FY 1995 appropriation, tasked NTIS with working with GPO to eliminate this duplication.