

**APPENDIX 26. PANEL FOUR: FINAL REPORT ON RENEWED AND STRENGTHENED PARTNERSHIPS BETWEEN THE PUBLIC AND PRIVATE SECTORS FOR PUBLIC INFORMATION DISSEMINATION**

This and the other three panel reports were submitted to the U.S. National Commission on Libraries and Information Science (NCLIS) as part of the assessment. However, the opinions are those of the panel members, not necessarily those of the Commission. Any panel recommendations that the Commission has accepted are reflected in the Commission's own recommendations in *A Comprehensive Assessment of Public Information Resources, Volume 1*.

**REPORT OF ADVISORY PANEL FOUR  
PUBLIC-PRIVATE SECTOR PARTNERSHIPS**

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<sup>68</sup> Available at <http://www.nclis.gov/govt/assess/assess.appen26.pdf>.

## **OVERVIEW OF STUDY BACKGROUND, PANEL'S PURPOSE AND ISSUES IDENTIFIED**

### **Background**

On June 12, 2000, Senator John McCain, Chairman of the Senate Committee on Commerce, Science and Transportation, requested that the United States Commission on Libraries and Information Science ("NCLIS"), "undertake a review of the reforms necessary for the federal government's information dissemination practices. The Senator requested specifically that:

At a minimum, this review should include assessments of the need for:

- 1) proposing new or revised laws, rules, regulations, missions, and policies;
- 2) modernizing organization structures and functions so as to reflect greater emphasis on electronic information planning, management, and control capabilities, and the need to consolidate, streamline, and simplify missions and functions to avoid or minimize unnecessary overlap and duplication;
- 3) revoking NTIS self-sufficiency requirement;<sup>69</sup> and
- 4) strengthening other key components of the overall federal information dissemination infrastructure.

Following Senator McCain's request, NCLIS established four Advisory Panels, including Panel 4—Public-Private Sector Partnerships (Panel "4")—to study redefining public-private sector roles, partnerships, and initiatives vis-à-vis public access to, and dissemination of, government information, given the advent of the World Wide Web, the Internet, and associated technological changes that are driving the Information Age.

### **Panel's Purpose**

During its first meeting, Panel 4 members established the general scope of the inquiry, taking special note of both the requests made by Senator McCain and the principles and recommendations from the 1982 NCLIS Report *Public Sector/Private Sector Interaction in Providing Information Services* ("1982 Report")<sup>70</sup> that would provide valuable background. As part of its charge, the Panel determined that it would review the principles and recommendations contained in that report. The specific focus of the Panel is how development of the World Wide Web ("WWW"), Internet, and associated technologies have affected, and will continue to affect, open access to Federal government information<sup>71</sup> and the roles of the public and private sectors<sup>72</sup> in providing and maintaining access. The Panel decided against limiting the scope of its deliberations solely to electronic information, recognizing that print formats are so often the basis for later electronic documents. Panel members also agreed to consider topics such as copyright or pricing of government documents, if they would be relevant to its deliberations as they relate to the critical issues identified.

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<sup>69</sup> The specific issue of the National Technical Information Service business model for the Information Age is to be addressed by Advisory Panel 1.

<sup>70</sup> U.S. National Commission on Libraries and Information Science, *Public Sector/Private Sector Interaction in Providing Information Services*, Washington, DC: Government Printing Office, 1982. The 2000 edition of *Public Sector/Private Sector Interaction in Providing Information Services* is available at <http://www.nclis.gov/govt/assess/publpriv.html>; principles: page 33 and following, recommendations: page 47 and following.

<sup>71</sup> As in the 1982 Report, Panel 4 considers government information to include information under the auspices of all three branches of government: executive, legislative and judicial. The panel agreed, however, that it would not address issues involving state or local government information policies.

<sup>72</sup> The 1982 Report defined private sector "...to include private enterprise, for-profit and not-for-profit, as well as organizations such as professional societies and trade associations, hybrids that are joint government/private enterprise, and organizations such as privately supported libraries and universities (even though they may be subsidized by public funds)."

Later in the Panel's deliberations, some Panel members felt that the report should note the existence of varying statutory and regulatory definitions of government information, particularly in relation to current problems regarding agencies' complying with dissemination and access requirements. Although there was disagreement among Panel members as to whether the Panel's report should recommend a new definition, it was agreed that a review and some analysis was warranted.

## **CRITICAL ISSUES AND WORKING PANEL REPORTS**

Panel 4 defined "critical issues" to be those that, if left unresolved, could deny the American public open, timely and useful access to Federal government information. Five such issues were identified: (1) Preservation & Permanent Access; (2) Authentication; (3) Finding Information; (4) User Assistance and (5) Channels of Distribution. In each subject area, the Panel Chair established Working Groups tasked to identify issues and assess current government activities, including examples of current policies and practices that have either enhanced or inhibited the roles of the public and private sectors in meeting the American public's need and desire for access to Federal government information.

### **Working Group 1—Preservation & Permanent Access**

#### General Discussion

The use of online systems for dissemination and access to Federal government information products and services has expanded access greatly, but at the same time has created new challenges, particularly in the areas of preservation and long-term access to information in a potentially transitory format. In the print world, the Federal government fulfilled its responsibility to assure permanent public access largely through the regional depository libraries. Those libraries have had a legislative mandate to "retain at least one copy of all government publications in printed or micro facsimile form, (except those authorized to be discarded by the Superintendent of Documents)...."<sup>73</sup> In the transition from a print to an electronic depository program, the responsibility for permanent public access shifts back to the government (GPO, agencies, and partners), since there is no equivalent responsibility for regional depository libraries to provide permanent public access to electronic government information. In fulfilling this mission, GPO relies heavily on the principles enunciated in its 1996 *Study to Identify Measures Necessary for a Successful Transition to a More Electronic Federal Depository Library Program*:<sup>74</sup>

- *Principle 1.* The public has the right of access to government information.
- *Principle 2.* The government has an obligation to disseminate and provide broad public access to its information.
- *Principle 3.* The government has an obligation to guarantee the authenticity and integrity of its information.
- *Principle 4.* The government has an obligation to preserve its information.

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<sup>73</sup> 44 U.S.C. 1912.

<sup>74</sup> U.S. Government Printing Office, *Study to Identify Measures Necessary for a Successful Transition to a More Electronic Federal Depository Library Program; Report to the Congress* (GPO Publication 500.11), Washington, DC: Government Printing Office, 1996; [http://www.access.gpo.gov/su\\_docs/fdip/pubs/study/studyhtm.html](http://www.access.gpo.gov/su_docs/fdip/pubs/study/studyhtm.html).

- *Principle 5.* Government information created or compiled by government employees or at government expense should remain in the public domain.<sup>75</sup>

The government currently has multiple programs and channels for dissemination and access to tangible and electronic government information products and services, but the systems are not coordinated to guarantee comprehensive coverage and ready access or retrieval for current electronic information products, much less long term/permanent public access. The National Archives and Records Administration ("NARA") has responsibility for the retention and preservation of the records of government, but not necessarily for all publications of the Federal government.<sup>76</sup> GPO distributes tangible publications to depository libraries for current and permanent access in decentralized locations around the country, and provides cataloging and locator services for tangible and online Federal government information products and services. In addition, GPO Access provides a number of electronic publications from all three branches of government to the public.<sup>77</sup> GPO also offers many high-interest federal government print and CD-ROM publications for sale on a cost recovery basis.

NTIS collects scientific and technical information ("STI") for their permanent collection and makes copies available for sale in multiple formats. The NTIS catalog and index are only available to the public on a fee basis and most of the STI reports included in the NTIS clearinghouse are not provided to the FDLP for no-fee public access.<sup>78</sup> In addition, a number of agencies also sponsor subject-oriented information clearinghouses for material in tangible and electronic formats in no-fee or cost recovery programs (DTIC, ERIC, MEDLINE, NCJRS, etc.). In addition, many agencies operate public information centers, public reading rooms, or specialized depository programs (such as the Census Bureau, PTO, etc.).

As a rule, however, agencies are focused on their missions, which may or may not emphasize provision of current or long-term broad public access to their information products or services. They are producing an increasing volume of their information products and services on a decentralized, local basis through the Internet. Public access to these web-based information products and services may be limited, since they are not consistently included in the various existing government programs that foster information dissemination or information access, such as GPO Access or NTIS. Moreover, there are no agreed-upon standards used by Federal agencies to produce tangible or online electronic products. The lack of standards causes problems for current access, as well as for preservation and permanent public access. Likewise, there are no coordinated programs or standards for permanent access to or preservation of tangible or online electronic media across all branches of government.

The private sector role in adding value to government information to create new products and services fulfills the needs of those citizens who are willing and financially able to pay for these enhancements or who wish to obtain access to government information from sources other than the government itself. Private sector organizations, both for-profit and non-profit, play an essential, complementary role in making optimum use of government information. They may repackage the information in value-added products, and provide value-added dissemination to reach wider audiences. By

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<sup>75</sup> In discussing agency information activities, Working Group 1 noted that "[T]he government information in such products and services is in the public domain, available for unrestricted use by the public or private and non-profit sectors, except to the extent that any proprietary, copyrighted material is included." See: "Report of Working Group on Preservation and Permanent Public Access Issues," p. 7.

<sup>76</sup> NARA is engaged currently in promising research to preserve and provide permanent public access to electronic records.

<sup>77</sup> GPO assumes responsibility for keeping these titles available for long-term public access. In addition, while GPO Access points to electronic publications on agency web sites, GPO has no control over how long the information will be maintained electronically by the agency. GPO has initiated a digital archive of copies of these items on a pilot basis and has entered into partnership agreements with some agencies to ensure permanent public access.

<sup>78</sup> In January 1999, NTIS initiated a pilot project with the Federal Depository Library Program was initiated to provide access for 22 FDLP libraries to new titles added to the NTIS collection in digital format from October 1997 to the present.

incorporating the information in supplemental catalogs and indexes, they expand use. In some cases, through public-private sector joint partnerships, they assist in the publication of information products that may otherwise not have been published. In the best models of such public-private sector partnership programs, the products are included in GPO'S cataloging services and the publications are provided to the FDLP for some limited no-fee public access to complement the sales access. Moreover, the private sector plays an important role in the development of new technology and new systems for information publication, access and retrieval—functions that enhance government programs. It is very likely that when there is market demand, value-added private-sector government information products and services will be maintained for permanent public access. Once the economic motive disappears, the future access to such products and services is less certain.

The American public's access needs have traditionally been best served through multiple, non-exclusive programs/channels of public and private sector information dissemination and information access to be available to the widest possible public audience. Government products and services have been, and should continue to be, equally and widely available and readily accessible to all members of the public. In the electronic world, it is equally important that government assure their availability on a timely current, contemporary basis, as well as on a permanent basis for reference and historical research.

#### Recommendations of Working Group 1

It is the Federal government's responsibility to assure permanent public access to government information. Given today's current situation, the Working Group on Permanent Public Access recommended the following specific actions:

- Federal government's assuming responsibility for funding programs to maintain online electronic information products and services for permanent public access.
- Developing a clear and simple system for Federal agencies to submit information products and services to the various government programs geared toward information dissemination and public access.
- Improving program regulation, guidance and standards for information producing agencies in the production of tangible electronic products and online resources, including necessary metadata, public access and preservation.
- Establishing better communication and cooperation among information dissemination and information access programs of the Federal government, as well as libraries and the private sector (non-profit and for-profit organizations), to reduce the confusion as to the location of needed information.
- Improved public education and outreach programs focusing on the various methods to identify and retrieve government information products and services.
- Creating sources for technical, expert advice for Federal agencies on data warehousing, data management, standards, etc.
- Conducting more research on preservation of forms, formats, and contents of electronic government information products and services.

### Working Group 2—Authentication

#### General Discussion

Information in electronic formats differs from information in traditional formats in several ways. First, it may have no counterpart in print or recorded formats; having been created, stored, disseminated and archived electronically. Secondly, its own format may differ significantly from more traditional materials, and increasingly, multiple formats are being incorporated into one document. An electronic document does not automatically carry a seal or stamp that denotes its point of origination and validity, and an electronic document can be copied and disseminated endlessly with changes being made easily.

Works of the U.S. government are generally not protected by Federal copyright law.<sup>79</sup> Government information has always been accessible to the American public, including the private sector and libraries that further disseminate the information. Moreover, because of the First Amendment and other long-standing principles of our democratic society, government has not and should not control further use or dissemination of government information, including alteration of a document, product or service once distributed generally to the public. Nevertheless, when the public accesses government information directly from the government, it is crucial that users know the information is authentic.

To date, the most common means to guarantee such assurance has been reliance on source credibility. Increasing electronic dissemination of information by Federal government agencies, however, highlights the need for agencies to take added measures to assure the public that specific information—especially that contained on government websites—has not only been created, validated, and initially provided by the Federal government but to understand which information carries the imprimatur of an official agency promulgation. The growing decentralization of agency electronic information dissemination activities, coupled with the ease of tampering or misrepresenting digital records, are likely to increase the focus on authentication procedures in the near future.

Despite the lack of agencies' applying sophisticated digital watermarking or authentication technology, public concerns that information provided by government in electronic formats may not be authentic have been kept relatively minimal. The American public continues to rely on a trusted source for such information, e.g. an established agency web site.

The Federal government must assume the primary role of assuring authenticity. Several challenges must be overcome, however. First, agencies have no history of or experience in attempting to ensure authentication of electronic information. Second, government information is produced by so many agencies in all three branches of government that any attempt at consistent application of standards or new technologies to provide a digital watermark or other types of digital rights management controls is almost impossible—not to mention the threat that employing such technologies may likely interfere with unrestricted access to and re-dissemination of government information. Third, technology that would provide some sort of automatic electronic authentication is still in the developmental stages. Applying such technologies would be costly or technologically challenging—both for government and the public.

As we advance further into era of e-government, with its concomitant and significantly increased public need to obtain government information electronically, concerns about what constitutes authentic government information provided Federal agencies will also grow. If a technological solution is chosen, the greatest challenge will be to ensure that the public has the means by which to

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<sup>79</sup> 17 U.S.C. 105.

access the information with minimal encumbrance, so that there is no threat to the unfettered flow of government information.

#### Recommendations of Working Group 2

- The Federal government must assume the primary role of ensuring the authenticity of electronic Federal government information, particularly that offered through agency websites.
- Federal government agencies should initiate procedures to remain informed of developing technologies that will authenticate government information provided electronically by agencies.
- Should new laws or regulations mandating increased technological protections be promulgated, they must respect both the potential growth and limitations of technology. Additionally, it is important that new laws or regulation be technology neutral and market-driven.
- Agencies should establish procedures by which there is control over what is posted on websites and clear indication whether government information available electronically represents and official opinion or promulgation of any particular agency.
- The Federal government should increase security measures to assure that government sites do not fall prey to manipulation or alteration of electronic government information provided directly to the public.
- The legal and regulatory framework surrounding authentication of digital government information must continue to provide the public and private sectors, as well as not-for-profit information users and disseminators, the opportunity to maximize opportunities for further dissemination and broader access to electronic government information.

#### **Working Group 3—Finding Information**

##### General Discussion

The question of whether electronic information can be located without cataloging, indexing, or offering access at the document level is an important consideration, since it directly relates to the costs associated with providing public access to government information...

Federal agencies should not be expected to provide an equal level of access to every type of information—especially if providing this information without adequate summarizing, abstracting and indexing/metadata, created at considerable cost, means that it is only added to a mountain of digital objects that users will have to wade through. The private sector and libraries have traditionally filled an important role in adding value to government information by cataloging, abstracting and indexing, and there is little evidence to suggest that their ability to serve the public through such services has become obsolete. Government should be aware of the efforts and associated costs required to effectively abstract and index information. In some cases, government may find it more beneficial to the public to partner with the private sector and libraries to accomplish the task. Alternatively, government can determine when it is more appropriate to allow the private sector and libraries to assume primary responsibility for meeting public demands for increased search and retrieval functionality.

Problem areas include:

If the Federal government continues to adopt a distributed approach to government information—i.e., each agency develops a website for the distribution of its own information products and services—

then the public, especially those with scant knowledge of the structure of the Federal government, will face difficulties in finding government information at the source. The first challenge for government, then, is to assure that the public can identify which agency might hold the information desired. The second challenge becomes navigating the agency's website, which can vary widely in complexity and user friendliness. To navigate them often requires an intimate knowledge of not only the agency's structure but its internal terminology. It can be very difficult to find a specific item, even if the user knows its name. It should be noted, however, that GPO Access's cataloging and locator services and FirstGov, under the authority of the General Services Administration ("GSA") do provide access to centralized search capabilities that allow users to retrieve information from a broad array of agencies and branches of government.

Although it was presumed in the early days of the WWW that full-text search engines and relevance ranking algorithms would provide adequate search results, the providers of commercial search engines on the Internet quickly realized that this was not true. Today's WWW searching is far superior to performance just a few years ago, but this is not entirely due to technological improvements, it is also very much related to human intervention (in the form of librarians visiting and evaluating websites before delivering them as answers to the searcher's question); the adoption of classification methodologies; and further development of controlled vocabularies (thesauruses or taxonomies) that have long been used in the construction of bibliographic databases.

There is currently much discussion about the need for developing and deploying "metadata" or indexing systems to aid in the retrieval of documents, data sets, and other digital objects.<sup>80</sup> If Federal government agencies do not go to the effort of adding metadata/indexing terms to the digital objects they are providing on the WWW, neither the Internet search engines nor agency/interagency search engines can retrieve them in a reliable or consistent way or rank them for the user. The result of skipping the indexing step is a bad experience for most users.

The more information that becomes available in electronic form, the more necessary it is to provide would-be users of the information with a summary of the contents to facilitate indexing and retrieval. Of the technologies available today, automatic summarization programs generally extract only the first few lines of text as the summary. This method works if the author of the document has summarized its findings in the first few lines. Too frequently, however, the first few lines tell the user nothing about the contents of the document. This exacerbates the ability of the public to effectively sort through an answer set—one that may include hundreds of possible "hits"—to find the information sought. In short, summarizing or abstracting information has classically been done by humans, and often at great expense. That situation is likely to continue into the foreseeable future.

The crucial question to address is whether the government can and should invest the resources required to add metadata/indexing functionalities to all Federal government information or whether priorities, primarily the need of the American public to gain access, should be established as to which information requires such detailed handling.

### Recommendations of Working Group 3

- The Federal government should continuously review and distinguish among the types of information produced by Federal agencies and the uses for which these information types are employed, in order to prioritize which types of information made available receive which levels of

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<sup>80</sup> For example, the National Federation of Abstracting and Indexing Services (NFAIS) sponsored, under an agreement with the U.S. Geological Survey, a conference on this subject in 1997 and will sponsor another in 2001. In the process of organizing these conferences NFAIS discovered hundreds of government agencies working on metadata projects.



indexing/metadata.<sup>81</sup> Key factors should be the general usefulness of the information, the public demand for the information, and the national priority for its dissemination.

- The Federal government should develop strategies for investing in system improvements and encouraging cooperation among agencies in areas where the public need for detailed access is greatest. Among the considerations should be the degree to which that need is currently being addressed by the private sector and libraries.
- Congress should continue to authorize and fund specific central agencies to focus on information and information technologies that serve priority purposes of the Federal government.
- Federal agencies should be encouraged to follow the provisions of existing government information policy guidelines and laws. Congress should adopt enforcement provisions to assure that agencies are in compliance.
- Federal agencies should continue to form partnerships with private sector organizations so that the cost of the investment can be shared and the free-enterprise system can continue to bring innovation and expertise to the process, provided that federal government information remains free of copyright and there is unfettered public access.

### **Working Group 4—User Assistance**

#### General Discussion

User assistance is of critical importance in facilitating use of electronic information. Technology continues to enhance the means of providing huge amounts of information in electronic formats—whether on disk, CD-ROM or directly through the WWW and the Internet. As the number of resources grows, users are in greater need of tools to help identify both sources of information and data sets—critical components of those information sources—in order to meet their specific needs.

There are several means by which users can gain assistance: (1) personal interface, e.g. in non-profit and corporate libraries or through Federal agency user support hotlines; (2) summary source information, provided most commonly in any number of formats as of indices and abstracts of information sources, summarizing both general information sources, as well as specific data sets within general sources; (3) search engines/locator services, used primarily to locate general information resources online effectively and quickly; and (4) search and retrieval technologies, normally specialized software delivered as part of the information product or service and used primarily to locate specific data or data sets once access to a digital information source is achieved.

Several other issues affect the provision of assistance to users. Among the most critical of these—regardless of whether assistance is provided by government, the private sector or libraries—are (1) cost to both the provider and members of the public; (2) quality, often tied directly to the cost of providing the assistance; and (3) innovation, i.e. developing, testing and providing new means of obtaining and using information sources or data sets to meet the public demand

Two major problem areas exist in user assistance issues related to government information, regardless of the branch of government involved. The first is a lack of widespread, public knowledge about what information sources are available, particularly online sources supplied directly by government. The second is the inability to search and retrieve specific data sets once an information source has been identified.

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<sup>81</sup> For example, there is a clear difference between the level of indexing required for online government information products and internal records of agencies, such as email and memorandums.

The private sector and the library community have traditionally provided the bulk of user assistance functionalities, particularly in the print environment and at the beginning of the transition to electronic data delivery. More recently, the advent of GPO Access, NTIS' FedWorld, and the GSA FirstGov website demonstrate that the Federal government is now entering this field of activity with enhanced indexing capabilities and support functions enabled by new technology.

Regardless of whether user assistance is provided by the public or the private sector, however, the public often experiences mixed results. In terms of private sector WWW and Internet locator and search engine services, many such providers rank websites based on special or exclusive—and sometimes economic—agreements with website purveyors or on how frequently websites are requested and successfully found by users. Government agencies are unlikely to enter—and under 44 U.S.C. 3506(d), executive branch agencies are statutorily prohibited from entering—into special agreements with the private sector. More importantly, if the public is not aware that an agency has placed a site on the web or added new information sources to the site, it is unlikely that it will be ranked highly on a private sector service due to a large number of hits.

Problems also exist in regard to government locator services. GPO Access, for example, contains a broad array of links to federal government information. Yet in many instances, GPO must on its own seek out these online resources in order to assure that the general public is aware of them. Similar problems plague the Library of Congress' Thomas system in its collection of congressional information, and NTIS' FedWorld in its efforts to collect federal scientific and technical information. The judicial branch has proven particularly problematic in terms of providing locator services of even the most basic nature. This is due primarily to the lack of a defined and implemented program for posting opinions and court decisions online.

Specialized government search and locator services run by private or non-profit sector entities have even greater difficulty in keeping up with new federal information sources provided online. Unlike the Government Printing Office or the Library of Congress, private sector enjoys no special relationship, nor has it been able to rely on a legal or regulatory mandates, to assure that they are kept informed of new government information services. Two areas of user assistance in which the private sector tends to excel for those who purchase the services are in providing personal interfaces and in maintaining quality search and retrieval mechanisms. They have likewise been more effective in developing and providing summary source information, including special indexing and abstracting services.

The Federal government has also been somewhat successful in the provision of search and retrieval capabilities to assist users once they have gained access to a website. However, depending on how the agency has organized the information provided through the website, the public can sometimes encounter difficulties in locating specific data—unless they are already well-versed in the technologies of the web or unless they have been able to identify specific parameters to help narrow their search (e.g., the date of a notice; the precise name or public law number of a statute or court decision; or the date or number of a regulation implementing a statute).

The inevitable limitations on availability of government resources, however, demand that the government should undertake only the most necessary user assistance activities and need not duplicate or adopt all types of services that private sector and library providers offer to their customers and patrons. Cost and unmet public needs will always be major factors in the evaluation by government agencies of what user assistance services to provide. In addition, although the government has a general mandate primary responsibility to make widely available the information it creates and maintains, it also has a responsibility to encourage the development of alternative sources for government information, including online sources—whether private or non-profit in origin. Therefore,

regardless of what services it develops, government must make them available to the public at large—including private and non-profit sector providers—at little or no cost.

#### Recommendations of Working Group 4

- The Federal government must take more positive steps to establish its own locator and search engine capabilities. Centralized authority for government dissemination activities should be established within each branch of government. Regardless of whether such central authorities are established, agencies across all three branches of government should cooperate to set standards for agencies, particularly in the areas of locator and search engine functionality and search and retrieval technologies.
- Guidelines for how Federal Government websites are organized, the search and retrieval mechanisms used by those sites, and links to other sources should be standardized, to the extent possible given issues involving constitutional separation of powers. Consistency in locator service and search and retrieval functionalities within each branch may best be achieved by establishing some sort of central coordinating or oversight body.
- In terms of specific statutory reforms, the Working Group recommends:
- Reforming Title 44 by strengthening or adding enforcement provisions to assure agency compliance with dissemination and access activities, including: (1) the Paperwork Reduction Act of 1995 ("PRA")—particularly those provisions contained in 44 U.S.C. 3506(d) and the legislative history accompanying them; and (2) provisions governing the indexing of government documents (44 U.S.C. 1710 & 1711) and the depository library program (44 U.S.C. 1902 & 1903). In addition, provisions of 44 U.S.C. 3506(d) should be extended to apply to the legislative and judicial branches of government as well.

Some issues that need to be addressed in regard to statutory reform include:

- a. Any constitutional issues that must be considered.
- b. Ability of the private sector and libraries to either gain or be able to maintain access to information from all branches of government to assist the American public in finding and using information sources.

#### **Working Group 5—Channels of Distribution**

##### General Discussion

Changes in technology have resulted in extraordinary changes in how information is created, stored, indexed, accessed, and thought about. The Federal government provides increasing amounts of information in electronic formats—particularly the WWW and the Internet. As with all government information activities, establishing distribution channels and maintaining access to them should have as its primary focus meeting the needs of the American public, including the private sector and libraries that act as further distribution channels.

Currently, the laws for the provision of electronic information to programs such as the FDLP or NTIS, or even NARA, are honored more in the breach than in fact. There are no standards governing the manner in which even Federal executive branch agencies select and maintain distribution channels for the information they provide electronically. The lack of uniform means of dissemination—and therefore easily recognizable and useable means of access for the public—is also applicable to legislative and judicial branch activities. Likewise, few if any mechanisms are in place to encourage

Federal government agencies to assess public needs and then adjust their policies and practices to meet those needs in the face of limited resources.

Many programs do exist that serve as portals for a wide variety of government information. GPO Access, NTIS FedWorld and the GSA FirstGov project are perhaps the most familiar examples of these types of portal activities undertaken by the Federal government. However, as has been noted by other Working Groups, none of these websites can be considered comprehensive. The public—including re-disseminators of government information—must often access several Federal government websites to find the information they seek.

Some fundamental issues to be considered are: (1) whether the Federal government should create and maintain one central point of access for all government information; (2) how a central access point would facilitate or hinder the ability of the American public to find and use government information more efficiently; and (3) whether the government should undertake development of new distribution channels independently, in partnership with the private sector and libraries, or leave such activity generally to the private sector and libraries.

### **Recommendations of Working Group 5**

- Coordination among Federal agency distribution channels for government information is necessary. In order to encourage this development, it may be necessary for Congress to statutorily mandate it.
- It is unlikely that any one channel of distribution can meet the American public's need and desire to find and use government information efficiently and effectively. Therefore, agencies should work together, and cooperate across the three branches of government, to establish a number of central and specialized distribution channels or portals. Agencies should also work together to facilitate both centralized and inter-agency distribution channels.
- Federal agencies should cooperate with private sector and library providers to enhance access points for the American public, including consideration of non-exclusive partnerships with private sector and library providers to create and maintain distribution channels.
- Regardless of how many channels are established and what government information is provided through them, the government must continue to assure that access to those channels remains unrestricted, as well as assuring that further dissemination through the channels is available to the American public, including private sector and library organizations.

### **COMMON THEMES/CONCERNS OF THE WORKING GROUPS**

Not all members of Panel 4 agree on specific recommendations of each Working Group. Nevertheless, there is some agreement on certain common themes, concerns and principles that arise from the reports and subsequent discussions of those reports among Panel members. Among the most prevalent of those are:

- The growing trend among Federal government agencies in all three branches of government to provide Federal government information in electronic formats should be encouraged.
- There does appear to be a lack of understanding among Federal government agencies of the impact of this development on the traditional means of disseminating and guaranteeing access to such information, including the roles played by libraries and the private sector.

- Other than Chapters 17 and 19 of Title 44, there is an absence of statutes or regulations providing guidance, particularly to legislative and judicial branch agencies, on policies governing dissemination of and access to government information.
- There is a lack of coordination or direction among agencies in all three branches of government regarding policies and procedures for disseminating and maintaining access to government information sources.
- There is a failure of federal executive branch agencies to adhere to existing laws and regulations governing their information dissemination activities.

### DEFINITIONS OF GOVERNMENT/PUBLIC INFORMATION

Many members of Panel 4 expressed serious concerns about the lack of uniformity in the definition of government information to be disseminated or accessible under U.S. law and regulation. The difficulty of trying to define government information was evident already at the time of 1982 Report, prior to the advent of the WWW and the Internet:

The term "information" was repeatedly used in the Task Force discussed [sic], but it was impossible to arrive at an agreed upon definition. It appeared and was generally understood to refer to the content or symbolic substance of a communication, as separate from the physical form in which the communication occurred. But despite the appearance of a general understanding of the term, it simply eluded specific definition.<sup>82</sup>

Nevertheless, any one statute's or regulation's definition of government information (also sometimes referred to as "public information") affects substantially the roles of both the public and private sectors in providing access to that information. Panel 4 therefore believes it worthwhile to review some of more commonly used definitions.

The two broadest definitions are to be found in the preamble to the *NCLIS Principles of Public Information* and in the provisions of Title 44 of the U.S. Code. The NCLIS preamble reads as follows:

We define public information as information created, compiled and/or maintained by the Federal Government. We assert that public information is information owned by the people, held in trust by their government, and should be available to the people except where restricted by law.

Chapter 19 of Title 44, dealing with the GPO's Federal Depository Library Program, states simply that "[g]overnment publication" as used in this chapter, means informational matter which is published as an individual document at Government expense, or as required by law,<sup>83</sup> and that "[g]overnment publications, except those determined by their issuing components to be required for official use only or for strictly administrative or operational purposes which have no public interest or educational value and publications classified for reasons of national security shall be made available ... for public information."<sup>84</sup> Chapter 34 of Title 44—the PRA—also supplies a very broad definition: "the term

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<sup>82</sup> *Public Sector/Private Sector Interaction in Providing Information Services*, 2000 edition, page 81.

<sup>83</sup> 44 U.S.C 1901.

<sup>84</sup> 44 U.S.C. 1902.

'public information' means any information, regardless of form or format, that an agency discloses, disseminates, or makes available to the public."<sup>85</sup>

In terms of existing Federal government regulations, Circular A-130, promulgated by the Office of Management and Budget, governing executive branch agency information dissemination practices, provides the following definition of government information:

- a. The term "government information" means information created, collected, processed, disseminated, or disposed of by or for the Federal Government.
- b. The term "government publication" means information which is published as an individual document at government expense, or as required by law. (44 U.S.C. 1901).
- c. The term "information" means any communication or representation of knowledge such as facts, data, or opinions in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms.
- d. The term "information dissemination product" means any book, paper, map, machine-readable material, audiovisual production, or other documentary material, regardless of physical form or characteristic, disseminated by an agency to the public.<sup>86</sup>

The focus of Panel 4's discussions was the tangible or electronic information products distributed or readily accessible to the public. Nevertheless, the Panel recognized that records of government accessible under the Freedom of Information Act ("FOIA") also can affect further dissemination and access, since once made available, this information can be redisseminated without restriction. Federal government executive branch information subject to disclosure under FOIA is defined as follows:

Each agency, in accordance with published rules, shall make available for public inspection and copying

- (A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;
- (B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register;
- (C) administrative staff manuals and instructions to staff that affect a member of the public;
- (D) copies of all records, regardless of form or format, which have been released to any person under paragraph (3) and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records; and
- (E) a general index of the records referred to under subparagraph (D).<sup>87</sup>

Nevertheless, FOIA recognizes that agencies can withhold certain types of information in their possession. As explained in the House Report accompanying the *Electronic Freedom of Information Amendments of 1996*:

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<sup>85</sup> 44 U.S.C. 3502(12).

<sup>86</sup> OMB Circular A-130, Transmittal Memorandum 3 (February 8, 1996). OMB makes special note that even these general governing definitions are subject to modification by other existing law, including FOIA, the Privacy Act of 1974 and "appropriate national security directives." It is also important to note that the OMB Circular A-130 definitions are the most recently promulgated and were issued after broad dissemination of various drafts and receipt of public comments from the American public, including a wide variety of private sector and library providers of government information.

<sup>87</sup> 5 U.S.C. 552(a)(2).

The nine exemption categories are listed below:

- Information that is classified for national defense or foreign policy purposes;
- Information that relates solely to an agency's internal personnel rules and practices;
- Information that has been clearly exempted under other laws.
- Confidential business information, such as trade secrets;
- Internal government deliberative communications about a decision before an announcement;
- Information about an individual that, if disclosed, would cause a clearly unwarranted invasion of personal privacy;
- Law enforcement records, particularly of ongoing investigations;
- Information concerning bank supervision;
- Geological and geophysical information, such as maps.<sup>88</sup>

Time limitations have not provided Panel 4 an opportunity to fully review these statutory and regulatory definitions of government or public information, other than to note their existence and variances. It may not be possible to craft one definition for all government information dissemination and access issues. Indeed, the 1982 Report acknowledged as much.<sup>89</sup>

Nevertheless, it may be worth more study to determine whether it is necessary to establish a new, uniform definition to guide Federal government agencies in all branches of government, so that they can better determine priorities for disseminating the broad array of information under their control.

### REVIEW OF NCLIS PRINCIPLES

Panel 4 remained cognizant of the 1982 Report, and some Panel members felt that this report should highlight those principles, as well as the summary of the roles played by the government, the private sector and the libraries in assuring broad public access to government information. Others felt that similar, subsequent statements by NCLIS and other organizations were deserving of note, as well. The limited time available to the Panel precluded thorough discussion and consideration of these principles, although there was general recognition that the government has a fundamental responsibility for dissemination of and access to government information in the first instance, supplemented by private sector value added dissemination and access.

The 1982 Report enunciated six fundamental principles:

- *Principle 1.* The Federal government should take a leadership role in creating a framework which would facilitate the development and foster the use of information products and services.
- *Principle 2.* *The Federal government should establish and enforce policies and procedures that encourage, and do not discourage, investment by the private sector in the development and use of information products and services.*

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<sup>88</sup> House Report 104-795, 2<sup>nd</sup> Session, 104<sup>th</sup> Congress, citing provisions of 5 U.S.C. §552(b).

<sup>89</sup> *Public Sector/Private Sector Interaction in Providing Information Services*, 2000 edition, page 33 and following.

- *Principle 3. The Federal government should not provide information products and services in commerce except when there are compelling reasons to do so, and then only when it protects the private sector's every opportunity to assume the function(s) commercially.*
- *Principle 4. The Federal government, when it uses, reproduces, or distributes information available from the private sector as part of an information resource, product, or service, must assure that the property rights of the private sector sources are adequately protected.*
- *Principle 5. The Federal government should make governmentally distributable information openly available in readily reproducible form, without any constraints on subsequent use.*
- *Principle 6. The Federal government should set pricing policies for distributing information products and services that reflect the true cost of access and/or reproduction, any specific prices to be subject to review by an independent authority.*

In terms of the roles of the three primary sectors involved in disseminating Federal government information, the 1982 Report stated the following:<sup>90</sup>

### Role of Private Enterprise.

The kinds of things that the private sector can do most effectively are those which respond most directly and immediately to the needs of the marketplace and thus to the consumer:

- Marketing and active distribution
- Re-packaging to meet specific needs
- Providing speed and flexibility of response
- Reacting to new situations with minimal delay
- Anticipating and assessing potential needs
- Creating new information products and services
- Injecting private investment funds to meet the opportunities for growth....

### Role of Libraries.

The kinds of things that libraries can provide, because of their nature and the history of their development, are the following:

- Assure the preservation of the record
- Provide points of access to information resources, products, and services
- Provide the "safety valve" for information access for society, especially so that "ability to pay" does not prevent persons from getting access to information they need
- Provide means for distribution, on a less active basis than would be provided by the entrepreneur
- Provide the staff for general information service, in contrast to the specialized information service provided by the entrepreneur....

### Role of Government.

The kinds of things that government can provide are the following:

- Assure that needs are met that are regarded as important by the society as a whole even though they may not be served by the entrepreneur.

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<sup>90</sup> *Public Sector/Private Sector Interaction in Providing Information Services*, 2000 edition, page 24 and following.



- Provide capital investment in information resources that are beyond the capacity of private investment.
- Provide for availability of information in areas, exemplified by the national census, for which it has specific responsibilities.<sup>91</sup>

NCLIS adopted a later iteration of basic principles for public access to Federal government information on June 29, 1990 and republished for comment in the June 9, 1995 *Federal Register*.<sup>92</sup>

- *Principle 1.* The public has the right of access to public information.
- *Principle 2.* The federal government should guarantee the integrity and preservation of public information, regardless of its format.
- *Principle 3.* The federal government should guarantee the dissemination, reproduction, and redistribution of public information.
- *Principle 4.* The federal government should safeguard the privacy of persons who use or request information, as well as persons about whom information exists in government records.
- *Principle 5.* The federal government should ensure a wide diversity of sources of access, private as well as governmental, to public information.
- *Principle 6.* The federal government should not allow cost to obstruct the people's access to public access.
- *Principle 7.* The federal government should ensure that information about government information is easily available and in a single index accessible in a variety of formats.
- *Principle 8.* The federal government should guarantee the public's access to public information, regardless of where they live and work, through national networks and programs like the [Federal] Depository Library Program.

Although they were not discussed in depth, many Panel members believe the principles enunciated in the 1982 Report remain generally viable. The later principles developed by NCLIS complement the 1982 principles. In addition, many Panel 4 members believe that the 1982 Report's summary of the traditional roles of private enterprise, libraries and government in disseminating and providing access to government information remain valid in the electronic information marketplace, while at the same time recognizing that those roles—particularly the dissemination and recognizing that those roles—particularly the dissemination and access activities of government and libraries—are evolving as electronic commerce increases and may need to be reviewed. Nevertheless, the Panel agreed that the Federal government should strive to encourage that a diversity of sources for government information are maintained, in order to assure that each sector can maximize its resources and capabilities to assure broad access by the American public to government information.

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<sup>91</sup> It should be noted that the 1982 Report also contained statements explaining the view of some members of the NCLIS Task Force on the need for a more active role of direct government intervention in the marketplace. The 1982 Report mentions specifically the following possible activities: (1) changing incentives so that the forces of the marketplace will fill the needs; (2) providing subsidies to producers or consumers; (3) directly intervening in the marketplace, and (4) providing products and/or services in commerce as a government activity. However, the 1982 Report seems clearly to reject that model. See: *1982 Report Revised*, pp. 56 ff. Subsequently, Congress also determined – in enacting the PRA – that the government should take a more limited role in the commercial marketplace. See: 44 U.S.C. §35065(d).

<sup>92</sup> U.S. National Commission on Libraries and Information Science. *Principles of Public Information*; adopted June 29, 1990, <http://www.nclis.gov/info/pripubin.html>. They were published in the *Federal Register* on December 11, 1990, page 50899-50900, Volume 55, Number 238.

### RECOMMENDATIONS

Panel 4 has considered a number of specific issues relating to public-private sector partnership relating to the dissemination of and access to government information in an era where the American public is increasingly demanding and using information in electronic formats. The Panel focused on not only current statutory and regulatory provisions government Federal agency activities, but also on the practices and policies of agencies that have developed in relation to—or outside of—current law and regulations.

As noted previously, the Panel's discussions of issues occurred against the backdrop of the 1982 Report—including the principles and sector roles discussed as part of that report—and in the context of current definitions of government/public information. Although the Panel did not have an opportunity to analyze in detail the 1982 Report or current statutory and regulatory definitions of government information, Panel 4 does believe that any consideration of statutory or regulatory changes affecting access to Federal government information must be undertaken with special attention to (1) such general principles; (2) the roles of the various sectors in disseminating and maintaining access to government information, (3) and a clearer enunciation of what constitutes Federal government information.

There remains tension between private sector and library providers of government information. Many private sector representatives on Panel 4 cautioned that government must restrain its activities, particularly if taxpayer funding is used to create products and services that already exist in the marketplace. Some library community representatives stressed that the government has an obligation to maintain no-fee public access to all government information made available to the public.

In terms of specific actions on the part of Congress and Federal government agencies, Panel 4 recommends:

- Assure that the Federal government continues to have primary responsibility for the entire life cycle of electronic government information, including the dissemination and permanent public access to government information, without restrictions, to the American public.
- Recognize that the private sector and libraries continue to play a crucial role in enhancing dissemination of and access to government information, and that government has an affirmative obligation to facilitate a diversity of sources for disseminating and gaining access to government information.
- Consider applying provisions—or provisions like those—contained in 44 U.S.C. 3506(d) to legislative and judicial branch agencies [see Appendix A].
- Create realistic, statutory enforcement provisions to assure that agencies abide by requirements to disseminate and provide access to government information. Such enforcement mechanisms are important regardless of whether the requirement is a more general one, e.g., to provide such information to all members of the public, or more specific, e.g., the provisions for cataloging, indexing and no-fee public access to Federal government information through the FDLDP [see Appendix B]. Agencies that run afoul of the law should be subject to enforcement mechanisms with real consequences.
- Establish effective means for consultation and cooperation among the three branches of government to assure the greatest extent possible that all Federal government information is disseminated, and access to it maintained, in a manner most effective to meet the needs of the American public. Coordination of policies and procedures across the executive, legislative and judicial branches is crucial. A commitment by agency officials in each branch to share information

and ideas would be advantageous to all sectors involved in disseminating and providing access to government information.

One area where Panel 4 could not reach agreement is in regard to creating central government information policy authorities within each branch of government, or for the government as a whole. Clearly, Congress would have to mandate such authorities.

Some members favored creation of central policy authorities. The central authority would provide clear direction to agencies; assure sharing of procedures, technologies and new standards; and provide the American public—including private sector and libraries—to share their knowledge and concerns easily with government officials who establish and oversee Federal government information policies.

Other members expressed concerns about creating central authorities. For some, there was philosophical dislike for centralized government functions. Other members pointed out the practical problems with establishing such a central authority. Concerns included the extent to which agencies would resist coming under the authority of such a centralized power; whether a central authority could be flexible enough to review and alter regulations and standards in the rapidly evolving Internet environment; and generally whether any one governmental body could obtain the funding and resources necessary to adequately advise and oversee agency activities.

In the end, Panel members agree on the need for greater coordination and oversight of information policies undertaken by all three branches of government. However, Panel 4 cannot report a unanimous recommendation that Congress create one or more central authorities to oversee Federal government information policies.

**PANEL 4, APPENDIX A: PROVISIONS FROM THE U.S. CODE, TITLE 44, SECTION 3506(D)**

Statutory Provisions of 44 U.S.C. 3506(d), the *Paperwork Reduction Act of 1995*:

- (d) With respect to information dissemination, each agency shall
  - (1) ensure that the public has timely and equitable access to the agency's public information, including ensuring such access through -
    - (A) encouraging a diversity of public and private sources for information based on government public information;
    - (B) in cases in which the agency provides public information maintained in electronic format, providing timely and equitable access to the underlying data (in whole or in part); and
    - (C) agency dissemination of public information in an efficient, effective, and economical manner;
  - (2) regularly solicit and consider public input on the agency's information dissemination activities;
  - (3) provide adequate notice when initiating, substantially modifying, or terminating significant information dissemination products; and

- (4) not, except where specifically authorized by statute -
  - (A) establish an exclusive, restricted, or other distribution arrangement that interferes with timely and equitable availability of public information to the public;
  - (B) restrict or regulate the use, resale, or redissemination of public information by the public;
  - (C) charge fees or royalties for resale or redissemination of public information; or
  - (D) establish user fees for public information that exceed the cost of dissemination.

**PANEL 4, APPENDIX B: SELECTED STATUTORY PROVISIONS FROM THE U.S. CODE, TITLE 44, CHAPTERS 17 AND 19**

Selected Statutory Provisions from Title 44, Chapters 17 and 19 of the U.S. Code:

**Section 1710. Index of documents: number and distribution**

The Superintendent of Documents, at the close of each regular session of Congress, shall prepare and publish a comprehensive index of public documents, upon a plan approved by the Joint Committee on Printing. The Public Printer shall, immediately upon its publication, deliver to him a copy of every document printed by the Government Printing Office. The head of each executive department, independent agency and establishment of the Government shall deliver to him a copy of every document issued or published by the department, bureau, or office not confidential in character. He shall also prepare and print in one volume a consolidated index of Congressional documents, and shall index single volumes of documents as the Joint Committee on Printing directs. Two thousand copies each of the comprehensive index and of the consolidated index shall be printed and bound in addition to the usual number, two hundred for the Senate, eight hundred for the House of Representatives and one thousand for distribution by the Superintendent of Documents.

**Section 1711. Catalog of Government publications**

On the first day of each month the Superintendent of Documents shall prepare a catalog of Government publications which shall show the documents printed during the preceding month, where obtainable, and the price. Two thousand copies of the catalog shall be printed in pamphlet form for distribution.

**Section 1901. Definition of Government publication**

"Government publication" as used in this chapter, means informational matter which is published as an individual document at Government expense, or as required by law.

**Section 1902. Availability of Government publications through Superintendent of Documents; lists of publications not ordered from Government Printing Office**

Government publications, except those determined by their issuing components to be required for official use only or for strictly administrative or operational purposes which have no public interest or educational value and publications classified for reasons of national security, shall be made available to depository libraries through the facilities of the Superintendent of Documents for public

information. Each component of the Government shall furnish the Superintendent of Documents a list of such publications it issued during the previous month, that were obtained from sources other than the Government Printing Office.

**Section 1903. Distribution of publications to depositories; notice to Government components; cost of printing and binding**

Upon request of the Superintendent of Documents, components of the Government ordering the printing of publications shall either increase or decrease the number of copies of publications furnished for distribution to designated depository libraries and State libraries so that the number of copies delivered to the Superintendent of Documents is equal to the number of libraries on the list...

The Superintendent of Documents shall currently inform the components of the Government ordering printing of publications as to the number of copies of their publications required for distribution to depository libraries. The cost of printing and binding those publications distributed to depository libraries obtained elsewhere than from the Government Printing Office, shall be borne by components of the Government responsible for their issuance; those requisitioned from the Government Printing Office shall be charged to appropriations provided the Superintendent of Documents for that purpose.

**Section 1911. Free use of Government publications in depositories; disposal of unwanted publications**

Depository libraries shall make Government publications available for the free use of the general public, and may dispose of them after retention for five years under section 1912 of this title, if the depository library is served by a regional depository library. Depository libraries not served by a regional depository library, or that are regional depository libraries themselves, shall retain Government publications permanently in either printed form or in microfacsimile form, except superseded publications or those issued later in bound form which may be discarded as authorized by the Superintendent of Documents.

**PANEL 4, APPENDIX C: MEMBERS OF PANEL 4**

**Wayne Kelley**, Panel 4 Chairman, formerly Superintendent of Documents, U.S. Government Printing Office (GPO) and private sector publisher

**Mary Alice Baish**, American Association of Law Libraries (AALL)

**Francis Buckley**, U.S. Government Printing Office (GPO)

**Anne Caputo**, Special Libraries Association (SLA)

**Blane Dessy**, U.S. Department of Justice

**Dan Duncan**, consultant, formerly with the Information Industry Association (IIA) and the Software and Information Industry Association (SIIA)

**Wally Finch**, National Technical Information Service (NTIS)

**Neal Gregory**, consultant

**Donald Hagen**, Bernan Associates

**Richard Kaser**, National Federation of Abstracting and Information Services (NFAIS)

**Nancy Kranich**, American Library Association (ALA)

**David LeDuc**, Software and Information Industry Association (SIIA)

**Edwin A. Levine**, U.S. Environmental Protection Agency (EPA)

**Eric Massant**, Reed Elsevier Inc.

**Peyton Neal**, consultant, PRN Associates

**James Nelson**, State Librarian and Commissioner for Libraries and Archives, Kentucky

**Roxanne Williams**, formerly U.S. Department of Agriculture

**Panel 4 Observers**

**Lynne Bradley**, American Library Association (ALA)

**Steve Buckley**, Radian Inc.