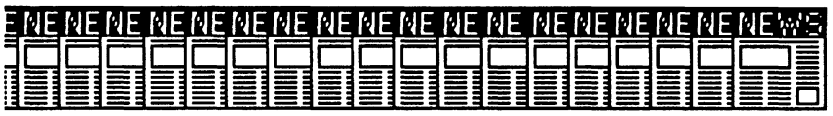

all the news that prints to fit

Australian Computers and Law Conference 1987

The inaugural Australian Computers and Law Conference will be held at the Hilton Hotel, Sydney over three days commencing on 30 October 1987.

The Conference will deal with many aspects of the interaction between law and computers. Topics for the various conference streams include the impact of computers on the practice of law and legal education including legal office technology, computerised legal information retrieval, computerisation of courts and government registries, expert systems and computer-aided instruction.

Sessions will also be devoted to the problems of resolution of high technology disputes, computer crime, data protection, software protection, data communications and computer auditing. The important theoretical areas of artificial intelligence and computer jurisprudence will also be covered.

The Conference program has been designed to accommodate the participants' various areas of interest. The morning plenary sessions will be addressed by speakers of international renown covering topics of more general interest. Each afternoon, concurrent small group sessions will develop these areas and deal with topics of more specialised interest.

Papers related to any aspect of the Conference program are invited by the organisers.

For further information, contact:

Australian Computers and Law Conference 1987
c/-The Centre for the Study of Law and Technology
University of New South Wales
P.O. Box 1
Kensington NSW 2033 phone (02) 697-2249

CINCH seeks copy

CINCH (Computerised Information from National Criminological Holdings) a bibliographic database on AUSINET is looking for details of published and unpublished criminological research to include in its database.

Forms on which to detail research activities are available.

Gratis copies of published material are also requested for inclusion in the national criminological holdings and database. The CINCH Database Users' Guide is available at no charge.

Contributions and enquiries to:
J V Barry Memorial Library,
Australian Institute of Criminology,
P O Box 28,
WODEN ACT 2606

Papers for sale

- "Repetition Strain Injury from Computers" by David Hoffman MBBS LLB and Terry Malone LLB (1985). Copies of this very worthwhile 49 page seminar paper, including 4 pages of references, are available for $27.00.
- "Annotated Bibliography of Computer Law Materials" compiled by Paul Genoni and covering materials in the Beasley Library, University of Western Australia (1984) $10.00; 1985 supplement $10.00; both publications $15.00.
- "Liability Arising From Use of Computers" by John Gladstone, a paper delivered to the "Construction '86" Conference $10.00.

All orders should be addressed to:
The Secretary, WASCL,
GPO Box U1910, Perth, W.A. 6001

WOLFGANG KILIAN VISITS AUSTRALIA

In May, Professor Wolfgang Kilian, Director of the Institüt Für Rechtsinformatik (IRI) at the University of Hannover visited Australia on a lecture tour sponsored by the Goethe Institute. Professor Kilian addressed seminars at a number of University Law Faculties, and public seminars organised by the Victorian, ACT and New South Wales Societies for Computers & the Law.

The extract below on labour law is from "Information Technology and Law", which surveys the legal implications of computerisation in many aspects of West German life, including data protection, media law, industrial property and consumer protection. The full paper will be included in the 1986 NSWSCL Proceedings.

The implication of information technology is currently most clearly demonstrated in the area of labor law. This is not at all surprising since practically all intermediate and large sized corporations employ data processing systems, desktop computers and terminals.

According to a 1982 survey conducted by the Bielefelder-Emnid-Institut, approximately 1 million employees in the Federal Republic of Germany work with terminals. These measures have consequences for personal work and the job market. This rarely leads to the loss of jobs - termination protection regulations and pay contracts prevent this - but internal restructuring, shifts or qualification changes lead to significant reorganisation problems.

The Federal Labour Court has taken a stand on industrial relation issues related to information technology in

Labour Law and Computerisation in West Germany

three decisions. The fact situations reflect the far- reaching changes which the information technology has brought with it.

In the **Texaco** decision from 1982, the issue was whether the introduction of a financial reporting system, a computer supported accounting system conducted over the terminals in the accounting department of the German subsidiary, is an industrial change within the meaning of Section 111, Sentence 2, No. 4 of the Industrial Relations Code.

With the help of this accounting system, all financial information of the German subsidiary was stored in Hamburg and was transmitted to the parent company in Texas by satellite, where it was processed into statistics and reports within a uniform framework and was subsequently sent back to Hamburg.

The works council claimed this reorganisation was an industrial change. An industrial change can, under certain circumstances, trigger a right of co-determination (sec. 111 Industrial Relations Code), which contemplates a balancing of interests through implementation of a social plan (sec. 111 Industrial Relations Code).

The Federal Labour Court decided video display units are to be categorized as plant. This is so, even when they are set up in a separate locality. However, a "change" of equipment requires a certain impact threshhold to be exceeded.

This impact threshhold depends on the relative significance of the new organisation in relation to the old plant equipment. In addition, application of sec. 111 of the Industrial Relations Code requires that "essential disadvantages" for a significant portion of the personnel are involved.

This is automatically presumed when the disadvantages affect more that 5% of the employees in businesses with more than 1,000 employees. This presumption arises in conjunction with sec. 17.1 of the Termination Protection Law.

Since certain facts had not yet been determined, the Federal Labour Court sent the case back to the court of the prior instance. Apparently, the case has been settled meanwhile.

The second decision of the Federal Labour Court dates back to 1983. It involved ergonomic demands associated with the introduction of the video display units by the airline **Pan Am.** According to the works council, the installation of 70 video display units within the framework of a worldwide reservation system (with the central computer located in the U.S.A.) violated ergonomic findings in the area of health protection.

However, the Federal Labour Court denied a general right of co-determination by the works council under setions.91 and 87, para. 7 of the Industrial Relations Code, even where health risks (here eye damage) theoretically exists. Legal regulations would not extend that far. General clauses to para. 120 of the Trade Law or the Work Place Code were too general and thus were not applicable

Issues concerning the new cottage workers are still to be resolved

However, the question of whether a right of codetermination exists comes into consideration for specific individual positions.

The most recent decision of the Federal Labour Court was handed down in September 1984. and concerned the introduction by **Rank Xerox** of a personnel information system coupled with a technician report system.

The Federal Labour Court determined that the duty of customer service technicians to provide product and system performance in connection with the completion of the contract triggers the right of codetermination.

The electronic data processing of these reports is designed to supervise the behaviour and performance of the employees with the help of technical equipment (sec. 87 para 1, no.6 Industrial Relations Code). Thus, it was determined that this regulation, which up until now was only applied to tape recorders (Produktographen: Multimoment cameras), fundamentally applies to the introduction and application of computer combined devices.

Yet another problem area in labour law appears to be the area of terminal homework, also known as tele-homework. The more the technological infrastructure develops in the form of speech, text or images and the more the cost of home computers and word processors falls, the sooner corporations and public agencies will consider relocating job positions into the home.

Possible advantages for the employer will include reduction of costs and the increased flexibility of work. For the employees, socially disadvantaged groups (housewives, handicapped, released convicts, individuals seeking part-time work) could be integrated into the job market.

However, an array of controversial issues has already arisen, e.g. does the Home Work Law of 1953 apply to Terminal Homeworkers? The Labour Court of Munich recently answered this question in a case concerning a female programmer.

Are Terminal Homeworkers merely specially removed employees, persons similar to employees, or are they self-employed persons? Do the protective labour laws, such as the Termination Protection Law, the law protecting expectant and nursing mothers and the law protecting the youth and the Federal Vacation Law, also apply to such individuals.

Which social insurance regulations apply? Does the works council have any right to participate before, during or after the decision to relocate employees? How can trade secrets be protected?

As yet, there are few examples of terminal homework in the Federal Republic of Germany. However, movement in this direction has been contemplated above all in the service sector (banks, insurance companies, public agencies). In the US, a few companies are exploiting the international difference in pay scales and have relocated their information processing job positions to cheaper foreign countries ("off shore" e.g. to Barbados or to the Far East).