



1987 Membership

While many of our 1986 members have renewed their subscriptions for 1987, there are still about half the individual and corporate members who risk missing copies of this year's planned four newsletters and 1986 Proceedings.

Subscriptions remain at:
\$85 for corporate members;
\$30 for individuals; and
\$15 for students.

Please send your cheques made out to
The NSW Society for Computers and The Law,
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234 George Street,
Sydney 2000

Michael Saunders has been thinking:

Law Council of Australia Affiliation

Most States now have a Society for Computers and the Law. Interest in this area of law, which was recognised as an area of law worthy of specialists in the USA in the early 1970's, would appear to be expanding as the computer revolution gains momentum and the world becomes more computerised.

However, there is no national organisation in Australia to promote the interests of the Societies and computer lawyers.

I therefore suggest the various Societies for Computers and Law affiliate themselves with the Law Council of

Australia and become a sub-committee of one of its business sections.

This would create a national forum and enable at least one meeting annually, in which members could meet members from other States and hear speakers on matters of national interest.

Would any member of any Society who supports a national forum please write to the Editor of the Newsletter accordingly?

Mr. Alan Cameron, the Business Law Section Chairman, has expressed an interest in enabling such affiliations to take place if there is a need for it.

This article is taken from the book of the same name by Walter O'Connor, Vice Chairman International of Peat Marwick Mitchell and Co., New York, published by McGraw-Hill.

Today, a broad array of non-tariff barriers to transborder data flow is starting to show up on the books of some three dozen countries.

Such measures can serve any number of purposes:

- * They may protect the privacy of citizens. In Austria, Denmark, Luxembourg and Norway, privacy laws cover legal persons as well as private individuals, obliging foreign companies to divulge confidential market data.
- * They may aim for "cultural integrity" against subversion through foreign books, motion pictures, advertising and TV/radio via satellite - especially an issue in the third world.
- * They may try to control information affecting the national interest, such as technical, financial and economic data, emergency plans and so on. France, for example, had attempted to restrict international flow of information about natural resources, development plans, government-owned and supported industries and certain economic indicators. Similarly, the discovery that the Malmo fire department's computerised emergency plan operated from a database in Florida prompted Sweden to enact a series of stringent data-protection laws.
- * They may allow state PTT (postal telegraph and telephone) monopolies to restrict access to sensitive information or to preserve existing cross-subsidies.
- * Finally, they may aim to protect domestic "infant industries" deemed central to future economic development. Thus, Venezuela requires that only locally manufactured computers, software or telecommunications be used in service company operations.

In general, barriers to transborder data flow fall into two categories: restrictions on content and restrictions of conduit.

The main transborder data flow content issue stems from national concerns with security and privacy protection, which have prompted many international firms to restrictions on the types of

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data transmitted or the location of data processing and storage.

One way of controlling is through taxation of data sent outside borders. France, for example, is weighing a plan to impose duties on imported computer software based on its "intrinsic value", rather than on the value of the magnetic tapes or disks carrying it, as is now the practice.

Should the concept take root, companies fear other kinds of information, everything from memoranda to patent applications, may eventually be taxed on the basis of its intrinsic value.

A second restriction on content requires government approval for external transmission of certain data, particularly in the banking sector.

Thus, Canada's Bank Act of 1980 and a South Korea statute mandate that information about bank customers be physically retained in the country and not entered into a foreign bank's computer at the home office.

Similarly, government restrictions on the transmission of data in several European countries have made it necessary for some U.S. banks to use outside service bureaux instead of central worldwide data processing services for certain accounting and banking operations.

For the most part, restrictions on content have not materialised to any significant degree. However, the potential for widespread content censorship does exist. Under such a regime, it would become impossible to distinguish "news", which has traditionally received near absolute protection in the United States, from other kinds of information that may also have "economic significance".

Recently, for example, CBS reported the State Department had blocked its use of the Intelsat satellite to send a news report on economic conditions in Cuba, on the grounds such news was not considered a specific event of immediate international importance.

For the present, however, the quality and price of data conduits are merging as the key transborder data flow issues. The "quality" of a data conduit consists of several different attributes, including speed, reliability, accuracy, confidentiality, accessibility, security and capacity.

Broadly, conduit issues fall into three

categories: technical standards, leased lines and third-party access to databases.

Compatible technical standards make it possible for computers to communicate with each other.

In the absence of a single international transmission standard, data protocols may be designed to local equipment, without regard to transborder data flow applications, thus impairing the efficiency of foreign equipment and reducing the economies of scale possible through centralised data processing.

Discriminatory restrictions on type, make or design of equipment acceptable from connection to domestic communications networks is another technical barrier that is growing more common.

Like Venezuela, Brazil is requiring companies to use locally made equipment and software, forcing some foreign companies to invest heavily in locally produced equipment that was incompatible with their worldwide data processing equipment.

By imposing volume-based charges, rather than a flat fee, restrictions on the shared use and resale of leased-line capacity typically increase the cost and reduce the flexibility of international communications.

Japan, for one, imposes various policies and practices to discourage or deny the leasing of private circuits and has a multitude of rules designed to protect its own data processing industry.

Germany is also a major offender in this area. A major U.S. computer-

equipment manufacturing and services company, for example, moved to Belgium after West German restrictions on transborder data flow and unilateral replacement of leased telephone lines with volume-sensitive packet switching effectively eliminated its economies of scale.

Finally, governments have imposed a number of restrictions on information competition by access to foreign databases and data processing services.

Most commonly, these take the form of limits on providers of certain international services operating in domestic markets. Canada's insistence that only Canadian satellites be used for data transmissions, for example, allows Ottawa to dictate data transmission routing, which can raise costs and give certain firms an unfair advantage.

Governments also impose restrictions on foreign data processing that entail duplication of equipment and databases, thus reducing or eliminating economies of scale.

Xerox, for instance, reported that it had transferred processing of some payroll information from its data centre in Stockholm to a service bureau in London following the enactment of the Swedish data protection law.

Likewise, onerous regulations forced Continental Illinois National Bank and Trust Company to set up data processing facilities in West Germany to handle data from German customers, duplicating those it had already set up in the United States.

FOR FURTHER READING...

The extract from Walter O'Connor's article on this page was obtained from a NEXIS search carried out by Butterworths Telepublishing to find recent articles on transborder data flows. The search, carried out on 1 May 1986, was over the "Papers, Wires, Mags" files in the Nexis Library, and the search request was "transborder or trans border w/5 data and date is 1986". Four items were retrieved, the titles of which were:

1. Walter O'Connor "Information - the next trade problem?" Data Communications, McGraw-Hill Inc., March 1986
2. Mitch Betts "Soviets possess access to Western data bases - Reagan administration expresses its dismay" Computerworld, February 24, 1986, p.14
3. Article on model set of Japanese rules for transborder data flow, Computerworld, February 3, 1986, p.15
4. Review of "International Information Economy Handbook", Data Communications, January 1986

Two further articles were found through searches of the LAWREV and ABA Libraries:

5. Anne Branscomb "The New Technology in the Communications Industry - Legal problems in a Brave New World" 36 Vanderbilt Law Review 985
6. Mark Feldman "Commercial Speech, Transborder Data Flows and the Right to Communicate Under International Law" 17 The International Lawyer 87.