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INTERNATIONAL INFORMATION INDUSTRY CONFERENCE

CONGRES INTERNATIONAL DE L'INDUSTRIE INFORMATIQUE

QUEBEC CITY, CANADA, 1 JUNE 1982

INFORMATICS AND SOCIAL RESPONSIBILITY : A PROPOSAL

The Hon. Mr. Justice M.D. Kirby
Chairman of the Australian Law Reform Commission
Formerly Chairman of the OECD Expert Group on Trans Border Data Barriers and the Protection of Privacy

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AN ADEQUATE RESPONSE?

Scientists and technologists, including those in the area of information science, are presenting their societies with difficult and puzzling dilemmas for law and ethics. Scientists, who have such a profound effect on modern society, and those who convert their thoughts to industrial and practical application, have a commensurate duty to communicate better with the societies they serve. The impact of the new information technology presents many difficult social problems. Some of these are being considered in international organisations, for example the OECD and the Council of Europe. Specialist international bodies are also doing useful work. The First World International Information Industry Conference (IIIC) brings together some of the world's leading experts in the information industry. It is a time to face some hard questions — and blunt talk.

One question that should be posed for the Conference is whether the dynamic, generally prosperous and technologically adventurous information industry is responding adequately to the obligation to aid modern societies to study and solve the problems presented by its technology, including to the law. Every country has specialist bodies examining the impact of informatics. But many problems lie unattended, awaiting future treatment. Meanwhile the difficulties present themselves with the speed of the technology. Our institutional means to supply the answers move at a somewhat more languid pace and may not be coping well.

The new information technology has international ramifications. It will force the pace of the development of new international law. This law will come about as much as a result of economic pressure as out of respect for Western democratic values. In Australia, and in other Federal countries, there is a special problem. The Constitutions were drafted before computers and indeed before science and technology presented so many problems which are not always apt to be dealt with State by State. The danger of the development of differing laws to impact the computing industry, and the need for Federal or national attention to uniformity of laws on this subject, must be an important concern and mandate of industry bodies. The economies of informatics could very effectively be undone by the diseconomies of the variety and inefficiency of the law.

More thought should be given to the special social responsibilities of the dynamic, prosperous, inventive information industry. If the social and legal problems presented lie fallow and remain unattended, the successors of today's information industry leaders will say that these were the years the locusts have eaten. The condemnation of current information industry leaders will be that during the 1970s and 1980s, the industry pressed ahead with technological achievements and short term gains, but spent insufficient time and inadequate resources upon helping society to adjust to the social, economic and legal implications of the technology. I hope that you will not allow this to be your historical epitaph.

A PROBLEM OF COMMUNICATIONS

Because scientists and technologists, amongst whom I somewhat indiscriminately lump computerists generally, including people in the various branches of the information industry, tend to be interested in and enthusiastic about this or that scientific or technical advance, all too often they leave the rest of society behind. Worldwide, there is comparatively little communication between scientists and technologists and the rest of the community. Apart from the brave effort of a few scientific journalists, we tend to see little evidence of an endeavour to debate the implications of scientific change for the rest of us mere mortals, the non-scientists who make up the affected community. For example, in Australia recently, in a weekly 50-minute science program, a commentator asked a few pertinent questions which could doubtless be posed for most, if not all, of the countries of the Western community. In the age of mature science and technology, the questions asked were :

- Where are the outstanding, articulate scientists and technologists who are interpreting the technological advances and their implications for society as a whole?

- Where are the skilled scientific journalists who, accurately and without sensation or trivialisation, present the important developments of technology to the general community and help us to interpret the implications for our time and for our species?

- Why is it that in our news media, there is relatively little about science and technology in language which ordinary lay people can understand? How is it that Time and Newsweek can every week present to millions of Americans (and readers overseas) interesting examples of (principally) American science and technology, when local weeklies and even prestigious newspapers find it hard to afford space for more than an occasional item and then so often under extravagant headlines?

- How long is it since you saw a serious documentary about science and technology on commercial television, even after the late late show?

At a symposium on the industrial applications in Australia of genetic engineering, I had the temerity to suggest that the community had a legitimate interest in scrutiny of the risks that might be run by the large-scale industrial application of genetic manipulation techniques. These techniques began in earnest only as recently as 1973 when scientists found ways of cutting the chromosomes of organisms, including man, into small fragments, some containing only one or a few genes. The isolation of these genes can undoubtedly result in the production of substances which have already proved beneficial for mankind, such as human insulin or proteins from which vaccines can be prepared. The danger of the misuse of the new technology is already recognised by at least some legislation and by the decision to establish monitoring committees that will lay down broad guidelines. Instead of acknowledging legitimate community fears, I was alarmed to find some of the scientists at this meeting appearing to challenge the legitimacy of community and lawyerly interest in their activities. A chauvinistic reaction was even espoused, namely that scientists do not seek to intrude on the lawyer's mysteries, so lawyers should leave their activities alone. Banal cavilling at particular instances of community fear about genetic engineering was thought by some of these scientists to settle the debate about the kind of problem presented by the new technology of genetic manipulation. Whether it is doctors or lawyers, geneticists or computerists, we have reached a dangerous pass when the expert resists community interest and involvement in activities which profoundly affect community interests.

People in the information industry, computerists, show less evidence of intellectual arrogance, professional resistance or community indifference. There is, of course, legitimate concern about the dull hand of bureaucracy in laws that are developed to deal with the social implications of computing. There is a perfectly understandable worry about the introduction of legal institutions, rules and procedures which will impede the very efficiency which the new technology can bring. There is a healthy scepticism about the capacity of slow-moving laws and legal institutions to cope with the dynamic of change in information technology today. In countries like Australia there is a quite proper, modest realism, in the realisation that we are 'small fry' in the world information technology league, and therefore unable readily to impose idiosyncratic legal rules upon a technology that is at once universal and virtually instantaneous. But for all these reactions, there has been a spirit of co-operation and a ready willingness to acknowledge that with the advent of the new information technology, we create special new social problems that are legitimately addressed by the law reflecting community concerns. Co-operation of this kind promises success for the introduction of effective data protection and data security laws, such as those upon which the Australian Law Reform Commission is working for the Federal jurisdiction in Australia.

GOOD COMPUTING CITIZENS

For all this, it must be said that the information industry, diverse, international and competitive, is not doing enough either locally or internationally to help our communities unravel the tangle of problems, legal and otherwise, that are presented to us by informatics. For a multimillion dollary industry , in the midst of probably the most dramatic and dynamic and profitable of today's technologies, I do not think it can be said that the computing industry is generous in devoting funds to social research concerning the implications for modern society of the new technology. I realise that some funds are devoted to this purpose. I also realise that not all the funds are expended in a way that will secure immediate public recognition. In a small sector of the market, such as Australia or like countries, the power to influence international corporations is limited. The funds available for what might be called the activities of good corporate citizenship are limited anyway. But if only a tiny fraction of the very great sums which are being expended and received with the rapid expansion of computing in Australia were devoted to the provision of research into social attitudes, legal, social and economic implications and the design of laws to cope, I am sure the result would be a significant contribution towards a legal system that might then come to something of the adaptability and dynamism of the information technology itself.

The information industry is not a charitable institution. It pays its taxes. It looks to government to sort out most of the problems that occur. Some economists would no doubt urge that public-spirited expenditure on research about the social implications of computers would be misguided, could distort market forces and would be suspect anyway because of the association with the industry.

The fact is that industry does invest significantly in scientific research, where the return is easier to see and where the participants are likely to be on the same intellectual wave length as the present computerists. I would like to see the information industry taking equal initiatives to promote disinterested research into the social and legal implications of the technology. Funds could be provided for such research, under adequate guarantees of independence and objectivity and in ways that would ensure that competitive advantage was not secured by one organisation over another. In this way the industry might come to be less reactive to the initiatives of ad hoc governmental inquiries, parliamentary and private bodies, new legislation and so on. A positive contribution could be made that would assist society to digest the changes that are coming upon it so rapidly.

Let there be no doubt that there are many fields worthy of research. They have been identified at an international level, principally by the OECD, in many national reports[4] and locally. They include study of such matters as:

- Privacy : Data Protection and Data Security. The development of data laws and freedom of information laws to accompany the penetration of informatics is now well advanced. International statements of principle, including the OECD guidelines and the Council of Europe Convention, express both the basic rules of fair handling of personal data for domestic jurisdiction and the framework of regulation of international movements of such data.
- Private International Law. However, many problems remain to be studied, including the implications of such rules for private international law (choice of legal regime applicable) and the economics of such rules, including the problem of 'data protectionism'.
- Criminal Law. The implications of information technology for the criminal law include criminal procedure, the capacity of lay judges and juries to cope, the ability of police forces to detect, trace and prove computer fraud and the need to define new crimes.
- Vulnerability. The implications of information technology for the vulnerability of society include its susceptibility to disaster, whether by terrorism, accident, mistaken erasure, loss of vital data and so on. What should we, as a society, be doing about this heightened vulnerability and what legal changes are needed in the wired society.

- Intellectual Property. The implications of information technology for copyright and patent law have been called to attention in many places. A scientific discovery cannot be awarded a patent as an abstract idea. Protection is given to the 'invention' and the 'work' which, though related to information, will not be identical with the information itself.
- Reducing Legal Routine. The implications of informatics for many areas of substantive law need to be examined, including the implications for land title conveyancing, said, in Australia, to constitute 50% of the work and fee income of lawyers. The capacity to reduce many routine disputes and problems presently consuming high cost, slow court time, represent fields for fruitful research directed at a better administration of justice. It does not require a great deal of imagination to envisage the future use of information technology to secure greater consistency in the sentencing of convicted offenders, the use of computers to at least reduce the field of dispute in cases involving unexceptional physical injuries and wage losses. Some writers have even suggested that computers will come to be used to develop new legal principles themselves, in much the same way as they are used for modelling in research in other disciplines.
- Administration of Justice. The implications of computerisation and other technical manipulation of information for the oral trial tradition inherited in Australia as in other parts of the English-speaking world must be studied. The implications of information technology for the more efficient discharge of court business has not really begun. A great field of research of potentially enormous social benefit lies there waiting for funds to become available.

I realise that the information industry is not in the Santa Claus business. In a very fast-moving and competitive market, not without its problems, the industry is seeking to secure the profits with which to continue the technological and industrial advances which have already occurred. The hope of vast sums flowing for the examination of the impact of informatics upon society and its laws is a futile one, and I know it. But for all that, there should be a realisation that the extent to which computers can ultimately serve society depends as much upon the invention and marketing of dazzling new equipment and ideas as on the capacity and willingness of society to absorb that which is presented. If large numbers of persons become suddenly unemployed, if personal privacy is significantly diminished, if society is made unacceptably vulnerable, if national culture and security are undermined by loss of local independence, if computer crime is even partly unattended and if business and industry proceed to reap the benefits of computerisation whilst the administration of justice languishes with antique mediaeval forms and procedures, the

result can only be social dislocation. This will ultimately be destructive of the capacity of the community to absorb more of the technological advances. I put it this way, with an inevitable element of hyperbole, so that the point can be underlined. Ultimately, the business you are in is one of serving a peaceful, contented, law-abiding and safe community. Social advance and acceptance must go hand in hand with technological change. Members of the international information industry must be made to understand that it is in their self interest to help our societies to absorb and cope with the social and legal implications of the technology they are so successfully introducing throughout the world. The modesty of the present investment might attract criticism or even derision in some quarters for the amounts which such a prosperous, adventurous and fast-developing industry is willing to spend on the social, economic and political concerns of industry-wide dimension. I hope the future will see a greater fraction of the income of the information industry devoted to helping the lawmaking process and the institutions of lawmaking to cope with the dynamic changes that attend the rapid penetration of society by informatics.

A PROPOSAL

This first International Industry Conference provides a unique opportunity for the captains of the world information industry, particularly the suppliers of information processing technology, to face squarely the social responsibilities that attend the changes their technology is introducing to society. There will be a natural, and understandable, tendency to say that the social and economic fallout is a problem for government : the national bureaucracy or international agencies. In some countries, this attitude may be reinforced by actual resistance against industry involvement because of the desire of government to distance itself from what may be seen as foreign information-industry giants. Sensitivity to this concern may lead the industry to adopt a 'low social profile' -- contributing to good works here and there, promoting good industrial relations with the staff, supporting widely publicised sporting contests but otherwise keeping out of the politics of social and legal change.

It is my view that this is not good enough. The multiplication of problems of the new information order must impose obligations, if only in self-defence, upon the industry which is presenting the problems. Earlier technology afforded society time to adjust. But as the late US Vice President Rockefeller said, the 'time cushion' that previously existed between scientific and technological change and the need for governmental, social and legal reactions, has now seriously diminished, if not completely disappeared.

It will be a misfortune if the first International Information Industry Conference were to break up without considering the positive responsibility of the industry to help society address, with the efficiency of informatics itself, the social and legal problems that are proliferating in its train. This is not to suggest that the work of international agencies or the government Departments of State can be replaced. But it is surely not asking too much for such a prosperous and dynamic industry to contribute more than it presently does. What is probably needed is the creation of an international centre for the study of the legal and social implications of informatics. It would be necessary to isolate the centre from the industry source of its funds and to guarantee a flow of funds for a sufficient period of time to assure stability and to attract suitable appointments. If it is thought that the legal systems affected are so different and incompatible as to require separate treatment, the establishment of such centres, nationally, should be given priority. It would not be unrealistic to expect the industry to provide the funds for an Institute of Informatics and Society in those countries where the new information technology is penetrating most rapidly. Such an investment would be miniscule by comparison with the income and profits of the industry. It could be seen as a minor cost, an insurance premium if you like, to guarantee that those who present the problems play a responsible and more active part in helping society to provide the solutions.

Unless specialist institutes of the kind I have mentioned are established to promote and extend the dialogue between information technologists and lawmakers, the danger exists that slow-moving democratic procedures will simply not keep pace with the numerous, complex, technological problems presented by the information industry for society, morality and the law.

What we need are lawyers and lawmakers who speak the language of the computerists, who understand the ways they think and who can interpret the technology to a wider audience and facilitate the development of solutions that can be studied by national governments and international organisations. We have surely gone beyond the time when a handful of national experts are constantly looked to for guidance on the range of problems now presenting. We have gone beyond the time of an occasional international gathering which comes together, talks together and then leaves together at the airport. Such an unsystematic and amateurish approach to this incidence of informatics is unworthy of an otherwise efficient industry. To those who fear that interdisciplinary institutes of the kind I have proposed could complicate a free market which is progressing satisfactorily without much legislative regulation, I can only say that the first signals of the backlash can already be seen in developed as well as developing countries. Self-interest in the information industry should promote serious and urgent attention to the obligations of the industry to help our governments and our societies to cope with the social and legal changes their technology remorselessly presents.