How do we best control the flow of electronic information across sovereign borders?

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When all is said and done, the United States must answer one basic question: How do we best control the flow of electronic information across sovereign borders?

Essentially the question is one of power politics. Information is an entity which must be viewed as a form of power. When one considers that 50-60 percent of European domestic records are processed by American companies,¹ it becomes rather apparent that the United States subsequently exerts a great deal of power vis-a-vis Europe. Our "power," or ability to influence, does not end in Europe though, but extends rather significantly into the Third and Fourth Worlds as well, thus making our basic question a global one.

Electronic technology, by providing the means to accumulate, store, change and transmit information on an unprecedented scale,² has recently emerged as an issue of great importance as well as controversy. The complex myriad of issues involves personal data, economic data, financial data, statistical data, etc. and affects our daily lives through television, telephones, satellites, etc. More specifically, electronic technology’s uses can be seen today in the airlines reservations network (SITA), the international banking network (SWIFT), creditworthiness evaluation data bases usually situated in the United States, global satellites providing remote sensing, corporation electronic information systems used in management controls for production, marketing, personnel, capital expenses and investment.³ These examples represent just a few of the controversial issues which governments are beginning to realize that they must confront.

Confrontation has emerged as a necessity for one overriding reason directly related to the recent emergence of electronic technology. That one concern is economic power. Europe has recognized that the uncontrolled flow of data creates hardships for its economy. European political pundits are frightened by the prospect of being cut off from vital data that is stored in foreign data bases. Hence, advisers warn of the dangers of dependence and advocate the creation of domestic data bases. Europeans are quickly developing their own data processing capabilities, yet they remain still far behind the Americans for primarily economic reasons. It should come as no surprise then, that European governments feel an incentive to make their data processing industry competitive with that of the United States. In order to make a domestic data base network more competitive with the United States alternative, Europeans are implementing non-tariff barriers that take on the very appealing appearance of privacy legislation designed ostensibly for the protection of the principles of individual rights and national sovereignty.

It has been stated repeatedly that the principle questions involved in the transborder data flow controversy revolve around the issues of privacy and sovereignty. To view the controversy in terms of these areas is to beg the question. The essence of the dispute is, as stated above, economics. What we are dealing with is a question of economic domination which dwarfs the privacy and sovereignty questions to a status deemed secondary at best.

Privacy and sovereignty are relative objectives within the framework of international affairs. It may be well and good to espouse a policy that fosters absolute privacy and total sovereignty; however, a realistic appraisal must encounter the notion that in a world of interdependence and tradeoffs, there can exist only limited privacy as well as limited sovereignty. The days have passed when we could have viewed both individuals and nations as islands unto themselves. Policies of privacy and sovereignty gain importance, though as convenient diplomatic tools to facilitate economic gains. That is precisely how Europe is using them.

Sweden, France, and West Germany have already implemented restrictive privacy laws and five other Western European nations are considering similar action. These restrictive laws are said to be the basis for the confrontation. Of course both sides want to have the economic edge and it is clear that the United States’ business community is considerably opposed to any non-tariff barriers that might effectively exclude or hinder the opportunities within the European community. On the other hand, France, for example, does not want to be dependent upon the United States for raw data. France considers its present situation to be troublesome. William Fishman of the National Telecommunications and Information Administration noted France’s pre-
From the collection of the Computer History Museum (www.computerhistory.org)
for the information community carries great weight in pol-
itical and economic planning. Inevitably, the solution must
be comprehensive and this is the major criticism that the
author has of the present attempts to deal with the trans-
border data flow problems. Our present approach is a frag-
mented one that carries with it devastating consequences.
Few people are looking at this problem in toto; rather they
maintain specialists who are keyed into certain areas of
controversy.

While it is true that the United States lacks a unified and
coherent national information policy which would give le-
gitimacy to a definition of information; it cannot be denied
that recent major conferences have scheduled information
policy questions on their agendas. It is in that regard that
they are all somewhat similar. The conferences, however,
take on a fragmented appearance:

- A UNESCO meeting in Paris in October, 1978, where
a topic for discussion revolved around a government’s
right to control news generated and reported within its
own borders.
- A World Administrative Radio Conference next Sep-
tember where Third and Fourth World nations will seek
a far larger share of radio frequencies now used by the
United States and other developed nations.
- A United Nations Committee meeting next spring and
summer where many countries will push a resolution
requiring TV broadcasters of one nation to get advance
clearance from another nation before sending programs
there directly via broadcast satellites.
- The United Nations Conference on Science and Tech-
nology for Development meeting will take place next
year where developed and developing nations will dis-
cuss the linkages involved between science and tech-
nology applications and the world economic order.
- The United Nations Conference on the Peaceful Uses
of Outer Space will meet to discuss the implications of
remote sensing. That is, one nation’s surveillance of
another nation’s vital resources.
- OECD will meet to discuss the transborder data flow
problem.

Further adding to the disparate attempts to come to grips
with the problem:

- The President has ordered a review of the recommend-
dations of the Privacy Protection Study Commission
which contains transborder data flow considerations.
- The State Department Advisory Committee on Trans-
national Enterprises has set up a sub-group on data
flows.

This listing of the conferences dealing with information
policy questions is not complete. When one considers how
disjointed our approach to the transborder data flow problem
is, one realizes that our method is dangerous as well as
impractical. Undoubtedly, the United States will be pressed
for concessions at each of these conferences. Should the
United States concede certain holdings at each of these
discussions, as is expected, it will be confronted with a
cumulative effect of astronomical proportions. The United
States must negotiate from a position of strength which will
not be facilitated in a framework in which the United States
is pitted against hostile entities negotiating on a piecemeal
basis.

What is desperately needed is a joining of public and
private sector forces in a comprehensive, international con-
ference where all the relevant issues will be discussed by all
interested nations. This conference should be held in lieu of
the list of conferences mentioned before. The United States
should seek internationally acceptable parameters as to
what information entails. Furthermore, the United States
should seek, similar to the U.N. Law of theSea Conference,
a weighted vote so that bloc voting by the developing nations
will lose some of its effectiveness.

For the United States to achieve its aims, three factors
loom important:

1. Confronted by a demanding Third and Fourth World,
the United States and Europe need to unite on the
common ground that they have. While their interests,
as explained previously, are presently not compatible,
a quick resolution of their differences will strengthen
their position in such a conference. Despite their prob-
lems, Europe and the United States should realize that
they are closer to each other than they are to the LDC’s
and that a united position can only serve to strengthen
their hand.

2. The United States and Europe need to take advantage
of changes within the Third and Fourth Worlds. Some
of the leaders of the developing nations have estab-
lished such a firm political foundation in their lands
that they can afford to be friendly toward the developed
nations and the multinational corporations. The di-
chotomy between a Sadat of Egypt and a Qaddafi of
Libya serves an analytically useful purpose. Both these
lands are designated as developing states, yet no rea-
able man can lump these two states together and
call them identical. Sadat reflects a slow but changing
nature toward prudent judgment within the Third and
Fourth Worlds whereas Qaddafi represents the uncom-
promising element that is just as much a reality today
as well. The key for the United States and Europe
deals with their ability to put the developing nations at
odds with each other. A weighted industrial nation vote
linked with a divided Third and Fourth Worlds vote
does make the prospects for success of American ob-
jectives seem encouraging.

3. Within the context of a comprehensive conference, the
developed nations are afforded the luxury of tradeoffs
and compromises that go into the formation of a unified
and coherent international information policy. The
comprehensive nature of the conference will tactically
provide negotiators with linkages that are not subjects
for discussion within a more limited framework. This
will serve to guard against sacrificing elements on all
issues which would only serve to weaken the United
States’ position in the world.
This comprehensive conference is a realistic solution. The position of the United States should be that it will negotiate on its own terms at a conference of its choosing. This it can do now, because it is U.S. possessions that the others want. A United States refusal to attend WARC with a comprehensive conference offered as an alternative would serve to signal to those Third and Fourth World nations that the United States is ready to take a firm stand.

A more limited comprehensive conference was given the support of Representative Goldwater in his Joint Resolution 1141 offered in the 95th Congress. Unfortunately, Mr. Goldwater’s resolution is internally inconsistent. He claims:

Whereas communications and information transactions and associated activities are of major and growing economic importance to industrialized societies and developing societies which require rapid and reliable information transmission and processing systems to effectively advance commerce and governmental responsibilities; and whereas a growing divergence in national laws, regulations, and practices which impose special conditions, preferential rates, tariffs and technical standards, taxation policies and licensing, reporting, and disclosure practices, may threaten fair commercial competition and may jeopardize the widest sharing and utilization of information and knowledge made possible by electronic technologies; and whereas such a divergence threatens international cooperation and harmony: Now therefore be it resolved that the President of the United States shall

1) convene an international conference on Communication and Information not later than January 1, 1980, to which governments of the PRINCIPAL INDUSTRIALIZED NATIONS (emphasis added) will be invited to designate official delegations to attend.

Mr. Goldwater explicitly states that developing societies are integral to communications and information transactions, but then he calls for a conference that would not contain even all industrialized states, but only the principal industrialized nations.

That is an unacceptable solution. The conference that should be held must invite all interested parties. While the position that the United States takes should be strong, there still is a need to settle the dispute with all interested actors. Failure to do so would simply further the animosity that is felt between the developed and developing nations.

How do we best control the flow of electronic information across sovereign borders? Only when all sovereign states are involved in a major conference that supersedes the present fragmented approach.

REFERENCES