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INTERNATIONAL DATA FLOW

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HEARINGS

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON GOVERNMENT OPERATIONS HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS
SECOND SESSION

MARCH 10, 13, 27; AND APRIL 21, 1980

Printed for the use of the Committee on Government Operations



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HOUSE OF REPRESENTATIVES
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INTERNATIONAL DATA FLOW

MONDAY, MARCH 10, 1980

HOUSE OF REPRESENTATIVES,
GOVERNMENT INFORMATION
AND INDIVIDUAL RIGHTS SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:10 a.m., in room 2247, Rayburn House Office Building, Hon. Richardson Preyer (chairman of the subcommittee) presiding.

Present: Representatives Richardson Preyer, Robert F. Drinan, David W. Evans, Peter H. Kostmayer, M. Caldwell Butler, and John N. Erlenborn.

Also present: Timothy H. Ingram, staff director; Christopher J. Vizas, counsel; Euphon Metzger, clerk; Thomas G. Morr, minority professional staff, Committee on Government Operations; and Jane Bortnick, analyst, Congressional Research Service, Library of Congress.

Mr. PREYER. The committee will come to order.

Our inquiry today represents a rare pattern of investigation for this subcommittee. In seeking to evaluate the effectiveness of the activities and operations in the executive branch of the Federal Government, we turn to the private sector for understanding and, perhaps, guidance. Over the next 2 days of hearings we will ask the public and business—those most affected by the particular questions of Government operation into which we inquire—what their experiences have been with the problems of international data flow and how they feel the executive branch could best be organized to represent the interests of the United States.

The hearings which begin today also represent the first active oversight, during my tenure as Chairman of the Federal Communications Commission and the communications functions of the Department of State.

Before we can determine how the responsibilities and authority to cope with problems of international data flow ought to be organized within the executive branch, we must first understand the dimensions of the problem. At one level, the issue is a traditional trade question, involving tariffs and ordinary, economically motivated, nontariff trade barriers. At a second level, however, barriers to trade are emerging from Government information laws intended to serve very different purposes, such as the protection of personal privacy.

Both sorts of barriers are inextricably intertwined. They affect not only the data processing and communications industries, but all other businesses in international commerce as well. For inter-

national business today is dependent on rapid and effective data processing and telecommunications, whether directly as a user of these technologies, or indirectly through dependence on those services such as banks, to whom these technologies are vital.

Given this subcommittee's oversight jurisdiction, particularly of the FCC and the general information laws and policies of the U.S. Government, it is in a unique position to determine how our Government can respond most effectively to these problems and ensure that American interests are protected.

And it appears vital that the subcommittee pursue its inquiry with both speed and thoroughness. In its initial inquiries, the subcommittee has found confusion and lack of coordination among—and within—the executive agencies whose expertise and experience is crucial to the proper development of a national policy. Indeed, to the extent federal departments have become involved and taken positions in this policy area, American efforts have been reactions to agendas set by others, rather than affirmative steps taken from a firm base of national policy.

In this first day of hearings, the subcommittee will hear from key representatives of the data processing and telecommunications industries.

Before I call our first witness, I will ask Mr. Butler if he has any comments to make.

Mr. BUTLER. Thank you, Mr. Chairman. No comments, except to welcome the witnesses and to express my appreciation that the chairman is undertaking this series of hearings on this vital issue.

Mr. PREYER. Thank you, Mr. Butler.

Our first witness will be Mr. John Rankine of the International Business Machines Corp.

We are pleased to have you, Mr. Rankine, and we will ask you to proceed in any manner in which you see fit. Your statement will be made a part of the record.

**STATEMENT OF JOHN RANKINE, DIRECTOR OF STANDARDS,
PRODUCT SAFETY AND DATA SECURITY, IBM CORP., ARMONK,
N.Y.**

Mr. RANKINE. Thank you, Mr. Chairman.

My name is John Rankine. I am IBM's corporate director for standards, product safety, and data security; and I'm located at IBM's corporate headquarters in Armonk, N.Y. Prior to my current position, I was the corporate director for data communications. Among my current responsibilities with IBM is monitoring the issues involved in transborder data flow, sometimes called international information flow. This has provided me with an opportunity to watch these issues evolve over the past several years.

Specifically, Mr. Chairman, your letter of invitation requested that I discuss the following: First, an assessment of the range and complexity of international information flows problems which may affect private sector enterprises such as IBM; second, a description of any particular difficulties IBM has encountered; and third, views on how the U.S. Government can effectively represent American interests and assist American business.

My testimony will address these questions from the perspective of a corporation dependent upon international information flow.

IBM does business in over 120 countries. We are, therefore, very dependent on a free flow of information in order to maintain our operations worldwide.

We need this flow of information in order to communicate worldwide engineering, design and manufacturing information as well as to inform our customers about technical changes and improvements to our products on which, in turn, their operations depend. It is also necessary for us to match available engineering, technological, and marketing support skills with user requirements.

All of this inevitably requires that we maintain an inventory of the employee skills available worldwide, so that we can provide people with necessary skills wherever they are needed. We must have the ability to move financial and operational information among our various organizations as freely as possible. Finally, we must interact continuously with international banking and transportation facilities, such as airlines, which, in turn, also depend on a free flow of information to conduct their operations.

In response to your desire to know of any particular difficulties which IBM has encountered on this matter, I want to be candid: None of any great significance so far has occurred. This does not mean that we are relaxed about the subject for it is one where the potential problems, if they occur, will already have done a lot of damage before they can be remedied. A more detailed understanding of what the subject of information flow is all about may be helpful in clarifying my view.

International information flow is a topical subject because of recent advancements in information processing technology and parallel advancements in telecommunications. The new technology makes possible the rapid exchange of enormous quantities of information over substantial distances. This has resulted in new dimensions for international information flow and is causing an increased focus by countries around the world on the social, economic and political implications of the subject.

To date, there has been essentially a free flow of information across national boundaries throughout the free world, basically because international information flow is fundamental to the arts, science, media, and commerce.

No nation has a monopoly on inventiveness and creativity, and all nations, including the United States, have benefited significantly from information exchange of all kinds.

For example, neither the United States nor European aerospace industries could have progressed as they have without a high degree of information exchange, thus ushering in a whole new era in air transportation. Similar examples exist in the fields of medicine, education, communications, energy, information processing, and consumer services.

There has been an increasing recognition that information is an asset, a resource, and a commodity with social, economic, and political value. Furthermore, there has been growing concern that international information flow, if misused, could potentially affect individual privacy and national security.

Over the past decade, many countries have taken an interest in the protection of the privacy of individuals, and several countries today have privacy legislation. A country which has legislation to

protect the privacy of individuals within the country would obviously be concerned that data on persons which is being moved from that country to another country might be insufficiently protected. There has, therefore, been increasing focus in some countries on transmittal of data on individuals across national boundaries and, in some cases, a desire to register and regulate this movement.

A second concern which has been expressed relates to national security. Countries may have a problem with data which they perceive to be necessary to their security but which is resident in another country. Third, there is a set of considerations which I can best refer to as socioeconomic and political in nature. For example, people in one country may need information available only from a data bank in another country. The country which does not possess the data bank may feel that it is being denied ownership of a resource which has social, economic, and political value, offering job opportunities and greater control of its own destinies.

In addition to these three problems which relate to the data, there are others which relate to the process of communicating the data. The first of these has to do with the price paid for transmitting data across international boundaries. In many countries telecommunications charges are decided by the Government or by Government-controlled telephone authorities. If these charges are predicated on considerations other than the cost of providing the communications service, the result could be a barrier to information flow. Second, a technical factor which we must also consider is the development of national standards which could inhibit the flow of information by restricting the degree of interconnection between different kinds of networks and information-handling equipment.

Our position is that it is entirely possible to balance valid concerns of national authorities in all these areas with the requirement of the arts, science, media and commerce for the free flow of information across international boundaries.

Toward this end, we are following with great interest the activities which are going on in international organizations, such as the OECD, the Council of Europe, and the Intergovernmental Bureau for Informatics, as well as in international standards bodies such as the International Standards Organization (ISO) and the International Telecommunications Union (ITU).

The OECD has now drafted a set of guidelines governing international information flow as related to individual privacy which we view to be both realistic and workable.

The question now arises whether the implementation of these guidelines at the national level will provide an acceptable environment for organizations which are engaged in and which depend on the flow of information internationally. The answer to this question remains to be seen.

The treaty being negotiated among the Council of Europe members raises the same question and the answer there is also not yet final. There are some added dimensions in the Council of Europe which are significant. An example is the concept of protecting the privacy of legal persons in addition to individuals. This approach, which is contained in Austrian, Danish, Norwegian, and Luxembourg privacy laws, offers a level of protection for sensitive infor-

mation about organizations and businesses similar to that provided to individual persons.

Although it is supposed to extend privacy protection to a broader range of parties, it is important to realize that the concept could also be employed to subject a much wider range of business and institutional data to government control. For example, if a national privacy protection law covering legal persons is interpreted to mean that each subsidiary of a corporation is a legal person, separate from the parent, then a substantial amount of internal information belonging to the subsidiary could be subjected to government scrutiny and control.

This has caused many to question whether the inclusion of legal persons in the privacy laws of some countries might be used to gain Government control over international organizations. Many experts expect that by the end of 1981 most European countries will have privacy legislation in place, and the trend seems to be toward including legal persons in such legislation.

The Intergovernmental Bureau of Informatics (IBI) is concerned at the present time about the potential effects of international information flow on the interests of the developing nations. It is my view that the developing nations are very dependent on a free flow of information in order to provide them with the educational facilities and technological information which they require for their advancement.

A meeting which is coming up in Rome in June of this year, sponsored by the IBI, will raise many questions concerning the subject of international information flow, from the viewpoint of the developing nations.

From my involvement with this entire subject, it is my impression that the dialogs going on in the organizations which I have mentioned are generally constructive and well intentioned. I am concerned, however, that there may be some who will be tempted to use the valid concerns of protecting the privacy of individuals and also national security to gain greater control over organizations or information which are not currently within their scope.

For this reason, it is very essential that the private sector, including the arts, sciences, media, and commerce, be fully informed on this issue so as to protect their vital interests. If this subject is not approached carefully and with a considerable degree of foresight and commonsense, unnecessary and restrictive practices will result.

As I have said, thus far the flow of information across international boundaries has been relatively free. We hope it will continue to be. But realistically the volume of the information flow is bound to increase dramatically in the period just ahead, and the temptation to interfere with the flow may mount. Such interference could come in the form of discriminatory charges for telecommunications facilities, restrictions on movements of certain types of information, registration or other forms of control of data bases, and so forth. We feel it is important for everyone who has a stake in the free flow of information to be on the alert to these or similar restrictions.

We hope the advocates of such restrictions may also come to be aware of the possible consequences. For example, if an internation-

al organization wants to promote an individual in country A to a position at its headquarters in country B and country A passes a law forbidding transmission of information about its citizens outside the country, the effect may well be to deny its citizen the promotion to the job in country B that his talents and performance might otherwise have earned him. Far from protecting the individual employee, such legislation could very well diminish his professional opportunities.

If I have one major concern about this entire subject at the present time, it is the following. In the majority of the dialog which I have listened to, the emphasis has been too much on the evils which might theoretically, under some remotely imaginable circumstance, result from a flow of information across national boundaries, while too little emphasis has been placed on the substantial benefits which have accrued and will continue to accrue from such information flows.

How would we travel around the world as we do, for example, if it were not for the fact that the airlines maintain records of where we are going and where we can be reached so that they can obtain reservations for us on a worldwide basis and keep us informed of changes in flight plans?

Similarly, how would it be possible to obtain credit in a foreign land, or cash a check, or make a purchase if we were not able to have a flow of information concerning our credit and ability to pay?

How will the developing nations, indeed, be able to expand their knowledge, particularly in higher technology areas, without the ability to freely access knowledge across national boundaries? They must be able to capitalize on the best know-how in specific areas regardless of where that know-how may be located in the world.

It is only by carefully addressing the issues in the proper perspective that we shall arrive at common sense conclusions on this subject. I firmly believe that it is possible to protect individual privacy and national security on one hand without unnecessarily disrupting the free flow of information required for the arts, science, media, and commerce on the other.

Finally, it is important from a national viewpoint to realize that the benefits of international information flow stem from not only business and technical data but the whole range of information provided by the graphics, recording, and publishing industries, by printed and broadcast journalism, and by the academic and research communities. It involves the free passage of information, both within and among countries; and it involves the interrelated issues of privacy, economics, national sovereignty, national security, and cultural independence.

Involved with each of these issues, individually and collectively, are a number of different interest groups from the public and private sectors. For this reason, I feel it is of paramount importance that the existing mechanisms in the U.S. public sector, utilizing adequate skills and resources, work very closely together and in concert with the private sector.

The variety of political, social, economic, and national security issues involved is broad and important. Accordingly, there is great value in having balanced perspectives from the Departments of

State, Commerce and Labor, NTIA, FCC, the Office of the U.S. Trade Representative, and others in determining the most intelligent courses of action.

However, as the issue of international information flow continues to mature in the various international organizations which are addressing specific segments of the issue, there will be increasing need for close coordination within the Government to insure consistent actions in the national interest.

It is my understanding that under the recently passed Trade Reorganization Act the Office of the U.S. Trade Representative was given the responsibility for overall U.S. international trade and investment policy. Although the subject before you today has broadly based social, cultural, and political ramifications, its economic effect is on the U.S. balance-of-trade and payment accounts. For this reason, the Congress may want to look to the U.S. Trade Representative for this coordinating function.

However, as with other issues, they will require assistance from the agencies currently involved in the formulation and implementation of this policy. Also, continued private sector participation in the development of the U.S. Government's position on international information flow will be essential.

Thank you, Mr. Chairman, for allowing me this opportunity to present my views; and I am now happy to attempt to answer any questions which you and the committee may have.

Mr. PREYER. Thank you very much, Mr. Rankine, for a the fine overview of the problem that you have given us. You indicate that to this point in time IBM has been fairly satisfied with the way the flow of information has gone in the world. As I understand it, you have not until today spoken out as a company before Congress on this subject.

I might ask you why, at this particular time, did IBM choose to address the issue? Do you feel these issues are beginning to mature, to use your word, to come to a point where they can be resolved, or are you facing specific problems from the privacy laws, problems for your customers perhaps? Why does IBM choose this moment to speak out?

Mr. RANKINE. Mr. Chairman, in answer to your several questions, we have been concerned about the subject from its outset. We are speaking out in this testimony because it is the first occasion on which we have been invited or had the opportunity to present congressional testimony. Approximately 2 years ago, when the subject began to get notice in Washington, we were asked by the State Department if we were concerned, and at that time we stated in writing our concern, and welcomed the activities of State.

Over the past few years, we have been considerably active on the issue. We have our data security director, Mr. Harry DeMaio, on the State Advisory Committee. We have also been following closely, as I mentioned, the OECD, Council of Europe, and IBI activities, and we have participated and spoken in several associated conferences, some of which have been run by an organization called On Line.

We also testified quite some time ago before the European parliament on the subject, and I would be happy to obtain copies of some of these items for the record.

We feel, as we have from the outset, again as I mentioned in my testimony, that the potential exists for real problems, and while no major problem exists at this time, there certainly has been some cause for concern for us and our users and our way of doing business. But our concern has been, and continues to be, the potential that exists.

Let me try and crystallize that point. When you point out the issues of privacy, national security, the economic-political considerations I have mentioned, the areas of standards and telecommunications, you provide a new set of tools for anyone who might want to play the protection game. Therefore, we are very concerned to see that no unnecessary costs befall the industry or its users.

Mr. PREYER. You speak of potential problems, but in a vein that I take it means that these are not conjectural problems. These are real problems, and are potentially getting much worse than they are at the present time. Would that be right?

Mr. RANKINE. Yes. I think there is a trend. Really the problem, if we take the OECD as an example, is going to exist in how the national implementations are made of the OEDC guidelines. In each of the other areas, the areas of telecommunications and standards, there are always potential problems that exist, and the best way around these is to have as objective a look, as I mentioned, not just only at the negative aspects of information flow, but also at the positive aspects from national and individual viewpoints, so we arrive at balanced conclusions, not unnecessarily inhibiting information flow and trade.

Mr. PREYER. What would you estimate would be the effect on the use of data processing and data communication by your customers if assurances could not be made that their data transmission were secure and unmonitored?

Mr. RANKINE. The industry has for some years been very concerned that electronic information systems be adequately protected, and has invested considerable resources and effort in such protection. The ability to access a computer system today can be very tightly controlled, to be sure it is the correct individual, that they are getting the information asked for, no more and no less. Also important are recent developments in data encryption, which is a means of scrambling information, so that if anyone does capture it, it might take on the order of 1,000 or even 2,000 years to decipher it.

These techniques which the industry has been bringing forward have made the ability to protect data and data processing systems very good indeed, but one effect of information flow barriers could be a heavier investment in data security protection by the users in the industry.

It is also possible that if the laws implemented in certain countries to protect privacy and information are overly restrictive, they might also force users to invest in more information-processing equipment than they might otherwise need.

Mr. PREYER. You mentioned the new privacy laws that other nations are adopting, some of which apply to legal persons, such as corporations. If legal persons are protected by national privacy laws, won't this result in businesses having access to records about them in the hands of their competitors? In other words, what

would be the effect of the access by your competitors to your company's information about them? How would it affect your marketing strategy?

Mr. RANKINE. I really could not forecast what might happen there. It is a subject I haven't addressed. The legal person mechanism could be used, as you suggest, to open up all kinds of business information, including trade secrets and other things which all manufacturers and also users of equipment have.

I cannot speculate what we might do. Action would have to be taken in terms of the particular circumstance, but our basic concern with the legal person issue is not one of competitive information so much as one of actual control of the entity involved.

Mr. PREYER. Thank you. Mr. Butler.

Mr. BUTLER. Thank you, Mr. Chairman.

I would refer to page 10 of your statement, the sentence which reads:

I firmly believe that it is possible to protect individual privacy and national security on one hand without unnecessarily disrupting the free flow of information required for the arts, science, media, and commerce on the other.

Have you got a program to suggest that would bring us to that situation? How would you recommend that we now go about achieving the international situation which has these results?

Mr. RANKINE. Mr. Butler, I cannot speak to the national security aspect, but from the view of protecting individual privacy, I think it is a very valid consideration. Many of the privacy laws, a good example is the Privacy Act of 1974 in the United States, give the individual protection in regard to Government files, give him the right to know about information that has been kept on him, to see this information, and to comment on it.

As you know, there is a move to carry such legislation into the private sector. I believe that these are positive and practical steps that pay attention to respect for the individual, yet at the same time do not interfere with or inhibit other kinds of information needed for the arts, science, commerce, and industry. So by having sensible law, paying full respect to individual privacy, and national security, which as I say is an area to which I cannot speak, I think these components can be handled without upsetting the others.

Mr. BUTLER. That is very nice, but how do we achieve internationally sensible standards and laws in this area? That, I think, is the matter which concerns us today.

Mr. RANKINE. I think in two ways. One has already been pursued, and that is participation by the United States in the OECD and other forums where the issues are currently being addressed from a policy and legal point of view, carrying forward the U.S. experience.

Then, as far as telecommunications and standards are concerned, supporting the activities of the voluntary standards system in key international arenas, such as the International Standards Organization and the ITU, communicating the harm that could result to all if sensible law is not reached.

I believe it necessary to communicate an understanding of the issues and their effects and their full scope to all affected parties, to other governments, to other industries. That requires many efforts on many fronts.

Mr. BUTLER. Do you think that we are sufficiently alert to this problem at this moment, or what would you suggest that our country ought to be doing in regard to this?

Mr. RANKINE. The activities I have mentioned that we have been involved in with State, the advisory committee, the interest the NTIA and other agencies have taken in it, including the interest of this committee this morning, are all indicative of a good level of interest. The problem now is to focus that interest and carry it forward in the international arena, both from a public and a private sector viewpoint, to make sure that the issue is thoroughly understood.

Mr. BUTLER. I thank the gentleman. I yield back, Mr. Chairman.

Mr. PREYER. Thank you, Mr. Kostmayer.

Mr. KOSTMAYER. Mr. Rankine, do you think that our own policy and laws in this country are too restrictive? Have they proved an inhibition on your own work?

Mr. RANKINE. No, sir. I think the privacy laws, such as the Privacy Act of 1974, are a good example of what good privacy laws should be.

Mr. KOSTMAYER. Thank you, Mr. Chairman. That is the only question I have.

Mr. PREYER. Thank you, Mr. Drinan.

Mr. DRINAN. Thank you, Mr. Chairman.

I want to thank the witness. I have read all the material for this morning's very fascinating hearing, but it seems to me that the question is premature for consideration by the Congress. I wonder if Mr. Rankine would disagree.

As I read his testimony, neither he nor IBM is asking for anything specific of the Congress, nor do I hear any criticism of the U.S. trade representative or of the State Department. Is there anything in your judgment, sir, that the executive agencies could or should be doing now with respect to this problem?

Mr. RANKINE. No, sir. I think that essentially the right thing has been done. The matter has been given close attention, and I think the hearings are a very good example of it, and a great deal will depend on what you hear from the other witnesses, in determining a form or course of action. But I think it is a subject that requires constant understanding and attention and anticipation, so that it does not get out of hand, and we are not left, as I mentioned in my testimony, with situations that cannot be easily remedied.

Mr. DRINAN. I am inclined to think that even the problem is still a potential problem, and I was encouraged reading all this material with the thought that the computer industry, being as ingenious as it is, can resolve all of the potential problems which you are outlining or anticipating.

Mr. RANKINE. No, sir, I do not feel that way. I spoke from the viewpoint of our particular company essentially, and I mentioned that while we have had some problems, we have had no insurmountable problems. You may well hear testimony from other witnesses that give you a different picture, and again I would stress that although the problems are potential problems, they are real, and if they happen, it will be very difficult to remedy, and also very costly to remedy, not just for the industry but for its users.

Mr. DRINAN. I thank the witness very much and I yield back the balance of my time.

Mr. PREYER. Thank you. Mr. Erlenborn.

Mr. ERLENBORN. No questions, Mr. Chairman.

Mr. PREYER. Thank you.

Mr. Rankine, we appreciate your being here today. We look forward to working with you and your company as we develop our inquiry into international data flow problems. Since we don't have the chance to ask some detailed questions here in the hearing, because of the pressure of time, we would like to get your written answers to questions for the sake of the record, if that would be agreeable with you.

Mr. RANKINE. We would be most happy to cooperate. Thank you very much, Mr. Chairman.

Mr. PREYER. We may send you some followup questions. Thank you.

[Mr. Rankine's response to the subcommittee's followup questions follow:]

- Q1. Are you concerned that competitors could have access to confidential information maintained in your files if national privacy laws include the term "legal person"?
- A1. Since the privacy laws are not fully implemented, it is not clear what information contained in a corporate response will be held confidential by a government and what information will be publicly available. Our broad concern in this matter is that the privacy laws, if misused, may allow access to confidential material such as corporate accounts and records, product planning information, manpower planning data, and trade secrets.
- Therefore, privacy laws should be directed towards personal information rather than corporate information. If the personal information maintained by a corporation is to be covered by the law, then specific coverage should be stated rather than providing general coverage by including all corporate information via legal person.
- Q2. Have you encountered any excessive requests for inspection of your facilities in foreign countries which you feel is designed to gain access to proprietary information or American know-how?
- A2. To the best of my knowledge, this has not occurred.
- Q3. The State Department has an Advisory Committee on Transborder Data Flows. Do you think this is an effective mechanism for representing private sectors interests in government decision making?
- A3. The use of Advisory Committees proved to be an effective mechanism for representing the private sector's interest in the development of the U.S. Government's position during the recent GATT negotiations. To achieve similar results, the State Department's Advisory Committee on Transborder Data Flow needs to increase the private sector's partnership in the decision making process, rather than using the Committee as a "review and comment" organization. In addition, use of working subcommittees and/or task groups to complement the State Department's policy development activities would result in greater private sector participation and value.
- Q4. You mentioned in your statement that the U.S. Trade Representative might best serve a coordination function in this area. If that were to occur, (a) Do you feel that a private sector advisory committee drawn from the service industries is an effective approach to getting private sector input or is the committee, embracing all

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service industries, far too broad in scope? (b) Would you consider the USTR to be the appropriate place for all negotiations to be handled, for policy to be developed, or for both?

- A4. (a) Although there is a strong overlap and relationship between the concerns surrounding barriers to services industries and transborder data flow, a single committee may prove ineffective in dealing with the multiplicity of issues concerning the services industries. Therefore, the emphasis should be on coordinating the efforts of smaller expert groups that address the specific issues. (b) As was proposed in my statement, there exists a need for a focal point organization within the government and, given proper staffing, the USTR may fulfill that role. This would not mean that all policy development and international negotiations on specific issues should be the responsibility of the USTR. The important consideration in this issue is to have a designated focal point organization with the mission to insure a coordinated policy. Issue experts from agencies, like NTIA, the FCC, and the Department of State, should continue to participate in the development and negotiation of international policy for the specific topics such as transborder data flow and international telecommunications. However, since these issues are essentially economic and trade related, the USTR should participate in these activities to insure that the government's overall trade negotiations maintain a balanced, consistent posture.
- Q5. What recommendations might you have for better coordinating and utilizing the existing expertise and responsibilities for international information and communications issues within the executive branch?
- A5. To insure that the individual issues are placed in proper perspective, an interagency review structure should be developed that relies on private sector advice and that is chaired by a focal point organization with the appropriate knowledge base, skill and expertise.
- Q6. You have noted that IBM has not faced any specific problems resulting from data protection laws. Have your customers indicated that they are experiencing additional costs or restrictions on their transmission of data?
- A6. Normally, our customers would not complain to IBM, since we are not the source of the new laws. However, we are aware of a few examples where international corporations have had difficulties, mainly in Sweden. Since the laws of other countries are essentially in the implementation stage, the cost to industry has been primarily confined

to administrative planning and implementation and the establishment of auditing procedures to insure compliance with these statutes.

- Q7. The data processing industry is a significant and growing contributor to the economic well-being of this nation and the world. If enterprises feel compelled to employ nonautomated procedures or less sophisticated technologies, what ramifications might this have for future industry growth?
- A7. If enterprises feel compelled to implement nonautomated procedures due to regulations resulting from restrictions on automated information flow, a negative trend in the use of information processing equipment may result. However, it is difficult to quantify in the absence of tangible examples.
- Q8. The free flow of information and the continued advancement of technology are positive factors in the development of all nations. Are you concerned that the creation of artificial barriers to the implementation of this technology might hamper this progress?
- A8. Yes. Artificial barriers to prohibit free information interchange could create real barriers to free trade. Information interchange is essential and fundamental to the continued development of the arts, science, media, and commerce. No nation has a monopoly on inventiveness and creativity, and all nations have benefitted from information exchanges of all kinds. Therefore, information flow should not be specified in terms of national boundaries but in terms of information sources and needs.
- Q9. In the 1960s, failure to adopt uniform international formatting, transmission, and production standards in color televisions effectively barred American companies from the European market. Do you see a potential for similar technical standards problems adversely affecting U.S. data processing and communications enterprises?
- A9. The use of standards as nontariff trade barriers is always a potential problem for international trade in goods and services. The product standards code provision of the GATT is directed specifically at preventing this type of a trade barrier problem. Additionally, the U.S. data processing industry actively participates in standards development activities both nationally and internationally as a way of avoiding such problems.

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- Q10. Have you made any estimates on the loss of revenues which might result from having to conform to differing foreign standards?
- A10. We do not view conformance to standards from the perspective of "the loss of revenues." However, differing national standards can increase the cost of doing business, because in marketing IBM products and services to our customers on a worldwide basis, we modify our products to meet marketplace requirements on a country-by-country basis. Such modifications result not just from standards, but from differing customer requirements, local laws and regulations, and customs in that country.
- Q11. European countries and Japan are employing data processing and communications equipment manufactured by domestic companies where possible. Do you anticipate increased problems with interfacing your equipment and services with theirs?
- A11. Possibly. IBM products and services are offered with the functional capability necessary to meet our customer requirements. When a requirement to attach or interface IBM products and services to other equipment is identified, normal business evaluations are made on providing such support.
- Q12. Recently, in Egypt, a consortium of U.S. telecommunications firms lost a contract to a European consortium due to governments guaranteeing "soft" or concessionary financing. How do you see such tactics on the part of foreign nations to support their own enterprises affecting your ability to compete in various markets?
- A12. I am not familiar with this particular situation. IBM is only occasionally involved in business deals that include U.S. Export-Import Bank financing. Nevertheless, we strongly believe that until a meaningful and enforceable international agreement can be reached on the terms of permissible financing, the United States should be able to match rates and terms which underwrite the bids of our competitors abroad. The Export-Import Bank, therefore, should be given increased size, scope and flexibility in its facilities.
- Q13. Most of the data protection laws in Europe require registration of data bases and various licensing procedures for compliance. What impact does this have on the cost, efficiency, and security of doing business in these countries?

- A13. Since the majority of these laws are in the process of implementation, it is difficult to assess the security exposures that may result from compliance. The administrative and auditing costs will naturally increase due to the new regulations and reporting requirements imposed by these laws, just as any regulation imposes increased costs.
- Q14. If some kind of cooperative agreement for the protection of privacy is not reached soon in the OECD, do you anticipate increased difficulties in operating internationally?
- A14. Possibly, depending on how the national laws are implemented in the absence of an international agreement. Operating with a set of sound international guidelines is definitely preferable to operating on an ad hoc country-by-country basis.
- Q15. In some instances, U.S. enterprises have circumvented barriers by operating through partially owned foreign subsidiaries. What does such an approach mean in terms of the cost and efficiency of doing business abroad and how does it affect your ability to produce goods and provide services directly from the U.S.?
- A15. IBM's basic objective is to provide our customers with the best equipment and technology available in a timely basis at the lowest cost possible. To do this, we have adopted a fully integrated approach to the development, manufacture and marketing of a worldwide product line. This requires managing large amounts of information and knowledge and the ability to make numerous decisions in a short amount of time. To sacrifice our long-range objectives for a few short-term gains -- as would happen by sharing equity in our overseas operations -- would decrease significantly our efficiency and ability to meet our basic objective. We believe full ownership provides us with the flexibility required to manage our complex operations and the ability to serve our customers most effectively.
- Q16. In your corporation, to what extent have data flow considerations become an element in planning marketing strategy?
- A16. It is an element for strategy consideration, and we have been making our development and marketing management aware of the issue.

Mr. PREYER. Our next witnesses are Mr. Hugh Donaghue, vice president and assistant to the chief executive officer, and Mr. Philip C. Onstad, manager of telecommunications policies of the Control Data Corp.

It is a pleasure to have you gentlemen with us today. Your statement will be a part of the record.

STATEMENT OF HUGH P. DONAGHUE, VICE PRESIDENT AND ASSISTANT TO THE CHIEF EXECUTIVE OFFICER, CONTROL DATA CORP., GREENWICH, CONN.; ACCCOMPANIED BY PHILIP C. ONSTAD, MANAGER OF TELECOMMUNICATIONS POLICIES

Mr. ONSTAD. I will go through my prepared remarks and briefly summarize them. Mr. Chairman and members of the subcommittee, my name is Philip C. Onstad and I am director of telecommu-

nifications policies for Control Data Corp. My area of responsibility includes domestic and international telecommunications policies as well as security and privacy policies for data processing service offerings.

I have been involved in matters of international telecommunications and transborder information flows for a number of years. I am chairman of the International Relations Committee of the Association for Data Processing Service Organizations—ADAPSO—and chairman of the Telecommunications Committee of the Computer and Business Equipment Manufacturers Association—CBEMA.

I participate in the work of the U.S. organization to the Consultative Committee for International Telegraph and Telephone—CCITT—and have been a member of the U.S. delegation to the CCITT Study Group III on rates, tariffs, and regulations. I participated as a representative from the United States to the symposium on transborder data flow sponsored by the Organization for Economic Cooperation and Development—OECD. I am appearing here today on behalf of Control Data Corp.

Control Data Corp. is a supplier of data processing systems, equipment and services as well as financial and educational services. We serve a worldwide market for all our products and services. Our data processing services include general timesharing, remote access and data base management systems as well as a number of specialized financial, educational, reservation, and inquiry services. These services use telecommunications as the transportation medium between Control Data's computer centers and input/output terminal equipment located throughout the world on our customers' premises.

All types of switched and private line of telecommunications services from low-speed circuits operating at 10 characters per second to high-speed service operating at over 5,000 characters per second run between Control Data's computer centers in the United States and Europe and to several hundred access points throughout the world. At these access points, customers may connect their terminals to the computer centers, either by placing a local telephone call or through leased local loops running from the customer's terminal to the nearest linking center.

Timesharing allows many users to share a single data processing system and share the cost of it, thus lowering the cost to each user. On a practical basis this can only be done through the use of specialized telecommunications services. Control Data's computer centers, when combined with communications, meld together to form a worldwide data-processing network which allows a user almost anywhere in the free world to have unlimited computer power at their fingertips.

The United States is second to none in the development and application of technology in the fields of electronics, information processing and telecommunications. Our country also leads the world in the uses of these technologies in science, business, finance, medicine, education, and many other fields which affect human well-being.

Information processing and telecommunications are important and growing areas of world trade and account for a positive balance of payments for the United States. They have important ramifications

for foreign policy, national defense and economic growth. Continued U.S. leadership in the fields of information processing and telecommunications is, therefore, of critical importance.

There is now a world-wide evolution from industrial society to information society. The United States and other countries are becoming increasingly sensitive to the importance of this change. Increased world-wide interest in difficult issues which relate to international information flow is evidence of this evolution.

International attention to questions engendered by information flow between nations has generally focused on three issues: (1) telecommunications; (2) privacy and security; and (3) economic and labor displacement factors. Foreign nations, the U.S. Government—for example, the Interagency Task Force, and the State Department Advisory Committee—and international organizations—for example, the Council of Europe, the Organization of Economic Cooperation and Development—OECD—generally consider information flow issues to be divided into these three subject areas.

Other concerned parties will be testifying before the subcommittee on the issues of privacy and security, and economics and labor displacement. For this reason, my comments focus on telecommunications issues.

Typically, within the United States, where both ends of a telecommunications service terminate within the country, U.S. law and the rules and regulations of the Federal Communications Commission apply to the entire service offering. In international service, U.S. law and the rules and regulations of the Federal Communications Commission apply only to one end of the telecommunications service. The other end of the service is under the jurisdiction of the telecommunications entity—either government administration, ministry of posts and telegraphs, or government-controlled carrier—of a sovereign foreign nation. Any involvement of U.S. regulatory authority over and control of services and facilities by U.S. telecommunications entities ends at the midpoint of any international facility or service.

At that point, both U.S. regulatory authority and operational control of the facility and the services being offered over it terminate. Authority for and operational control of the facility and the service offered over it then lie with the specific foreign nation in which the other end of the facility or service terminates. In most cases, these foreign nations have absolute monopoly control and/or ownership over all aspects of the facility or service on the other end. Therefore, mutual agreement of both parties must be reached on all aspects of any facility or service, or there is no service.

For these reasons, negotiations between the U.S. international carriers and the foreign government entity in charge of telecommunications must take place prior to the institution of any international service. Successful completion of such negotiations is a prerequisite to the provision of telecommunications service between the United States and any foreign country.

The U.S. international carriers, which under the U.S. system of private ownership of international facilities and services by competing entities provide international service, as well as U.S. users of international facilities and services, have run into changing

attitudes on the part of foreign nations. Some countries are disturbed by the U.S. leadership in telecommunications and data processing. Many of these countries own their own telecommunications systems, and often offer data processing capability as well. Some countries place restrictions on the use of international telecommunications services, which restrict U.S. participation in the international marketplace for information as well as other services.

Several countries have placed restrictions on the use of international private line services when used for data transmission. One nation has proposed replacing all full-period, that is, continuously usable without price adjustment for use, international private line service by a service which utilizes usage-sensitive rates. Other countries are attempting to transfer all data transmission to various types of value added networks which, in many instances, are less efficient for users which have high-volume data transmission requirements. Still other nations are attempting to price services on a value of service, rather than cost-related, basis.

Control Data, and the data processing industry, have fully supported and welcomed the Commission action extending Dataphone Service internationally and the advent of new international data communications services, such as digital and packet-switched service, which give large and small users the ability to transmit data internationally. But, when a foreign government, or foreign government-controlled communication entity, using their control over one-half of an international telecommunications circuit, forces U.S. users to switch from full-period to usage-sensitive service, it may mean higher profits for the foreign entity, higher costs to U.S. users, and higher prices to U.S. end-use consumers.

I emphasize the word "forces." U.S. users can be forced to use usage-sensitive services either by foreign-imposed rate structures which make using full-period service economically impossible, or by the actual elimination by the foreign entity of full-period service. When a foreign entity permits the offering of both full-period and usage sensitive service at rates which fairly reflect the relative costs of both kinds of services, there is no problem and, indeed, small users which could not in the past afford to lease an entire circuit, are helped.

In general, the various actions by foreign telecommunications entities I have described serve either to increase prices to U.S. data processing service organizations when competing with foreign entities, or to impose technical restrictions which, because they require additional expense and/or technical adjustments, result in loss of efficiency for U.S. firms. Any of these actions is an artificial non-tariff trade barrier which limits the ability of U.S. firms, especially those engaged in the offering of data processing services, to compete effectively in world markets.

Additional problems for U.S. users result from the fact that the interests of international carriers and those of U.S. users of international telecommunication service do not always coincide. Types of service available and the duration of them, for example, can be areas in which international foreign telecommunications entities can exert pressure on U.S. carriers, which can make the U.S. carriers have more interest in accommodating their foreign counterparts than in satisfying the needs of U.S. users.

The developments discussed briefly above are only some examples of the worldwide tendency in foreign nations to modify domestic laws, to pass new laws, or to seek to alter guidelines set forth in international conventions, to reflect their new attitudes about international telecommunications and information flow. Other recent actions by foreign nations highlight further the need for the United States to pay increased attention to new forms of restraints on the flow of information across national borders.

Several European nations have introduced contributions before study groups of the CCITT requesting that the CCITT consider replacement of full-period, private-line international service with service for which charges would be made on a usage-sensitive basis. Studies made by several nations propose various means to legislate restrictions on the flow of data across international boundaries.

Careful consideration of the goals which such actions seek to further is necessary. It is contended that such foreign nation activities in the international telecommunications and data flow areas may be designed to protect the privacy and individual rights of their citizens. We are, of course, particularly sensitive to such concerns. Individual rights are the cornerstone of U.S. society and government. It may be, however, that such actions by foreign nations are not designed to protect individual rights, in every case, but rather to erect subtle nontariff trade barriers, which block information flows and impede the ability of U.S. businesses to enter or expand in these countries. Such actions, of course, advantage the domestic business entities incorporated in the foreign nation. The United States, however, has not taken, nor has it contemplated taking, responsive restrictive actions in respect to telecommunications or other service offerings by foreign nations.

These recent developments are troubling and troublesome. Like petroleum, word trade and information flow requires an effective worldwide delivery system, that is, effective worldwide telecommunications media. If such an effective information flow is to be established and maintained, deficiencies in the current method of U.S. participation in international telecommunications issues must be clearly understood and corrected, if necessary.

One, there is no central authority in the United States to establish overall policies for the United States regarding international telecommunications. Rather, authority in the area of international telecommunications is divided between the FCC, the National Telecommunications and Information Administration of the Department of Commerce (NTIA), the Department of State, and others.

Two, there is no single authority to negotiate the basic ground rules for international telecommunications services between the U.S. providers of such facilities and services and governmental telecommunications authorities of foreign nations;

Three, there is no mechanism to enforce U.S. policy in the international field when there are difficulties with a foreign government or foreign government-controlled carrier;

Four, there is no government entity with authority to analyze user requirements and formulate and advocate the development of the types of international services needed by U.S. users.

While the U.S. Government authority over and treatment of international telecommunications issues is diffuse, fractionated, and

divided, this is not true in foreign nations. It is evident from the recent actions, discussed above, and from such studies as "The Computerization of France," commissioned by the French Government, that other nations realize the importance of international telecommunications and information flow, and how control of telecommunications and information flow can control international commerce in products and service. Not only do the governments of foreign countries have more power than the U.S. government to exercise control over international telecommunications and information flow, but also their governments exercise such control.

As noted above, unlike foreign nations, in the United States international telecommunications facilities and services are provided on a private, not on a governmental, basis. Also unlike foreign nations, the United States has no government entity which formulates, negotiates, implements and enforces U.S. international telecommunications policy. Indeed, in some instances, it may be fair to say that because of the diffusion of authority and responsibility in the international areas, the United States does not have an international telecommunications or information policy.

Unfortunately, this dispersion and diffusion of U.S. Government authority and organization is highlighted by a number of examples of unresolved problems. Let me mention a few problems encountered in the data processing services industry:

One, in the ADP case, an American data processing service company, ADP, requested authority from a major European government to form a subsidiary in that country. ADP was told by the foreign government that it could not do so. That European nation indicated that the competition to local, domestic companies which would be presented by entrance of ADP into local markets would not be in its national interest. Although the matter was brought to the attention of the U.S. Government agencies, and although there is a treaty of "friendship and trade" with that and other nations, to date, there has been no significant action by the U.S. Government to resolve this problem.

Two, Germany has enacted a law, which will become effective January 1, 1982, which provides that no entity—data processing service company or otherwise—can bring international leased lines into Germany, unless the international leased line terminates hardwired into a single terminal device, or terminates in a computer system and substantial data processing is performed—in Germany—on the information transmitted over the international circuit, before its distribution in Germany. This law severely restricts information flows into and information processing in regard to Germany. Laws of this type must be viewed as, at a minimum, forms of nontariff trade barriers.

Three, Control Data and a number of other companies in the data processing services industry have encountered serious problems in Japan.

In 1976, after 2 years of delay by the Japanese, Control Data, through Data Services Far East, Japan Branch (DSFEJ), a subsidiary of Control Data, entered into a contract with Kokusai Denshin Denwa Co., Ltd. (KDD), Japan's international record carrier. The contract provided for private leased line service to transmit data between Japan and the United States. The contract, which pro-

vides for lease of the private line at a flat monthly rate, contains restrictions which limit Control Data's ability to offer data services in Japan. Control Data accepted these restrictions, under protest, because there was no other way for it to obtain the needed international circuit between Japan and the United States.

The most significant restrictions contained in the contract are:

One, a limitation on the transfer of data between Control Data's data processing centers in the United States. This limitation is based on the view of the KDD that such data transfer constitutes message-switching prohibited by Japanese law, although the data transfer would occur in the United States and totally within the Control Data Corp. The data transfer does not constitute message-switching under either the recommendations of the CCITT, or under the rules of the Federal Communications Commission, and therefore does not contravene either the applicable international convention or applicable U.S. law.

Two a requirement that when KDD starts service through a new public, usage-sensitive data network called "VENUS"—now being made operational—"DSFEJ shall respond to KDD's consultation with a premise of transfer to this service * * *," that is, will replace its private line service with the new usage-sensitive service.

The data transfer restriction severely limits the number of services which Control Data can offer in Japan by limiting the number of computer bases in the United States upon which Control Data may draw to offer such services in Japan. Control Data spreads its data processing services among five operating centers in the United States, primarily for backup and security reasons. The KDD-imposed restriction means that only one of these five centers can be connected with the international circuit to Japan. This restriction thus not only limits Control Data's ability to market in Japan its full line of services, but also restricts the ability of Control Data to provide the full range of backup and security functions for the services which it does offer its Japanese clients.

The second KDD-imposed restriction raises the concern that, despite certain recent assurances by KDD and the U.S. international record carriers to the contrary, the existing private line services now available to Control Data may be terminated or subject to even further curtailment.

Curtailing Control Data's ability to compete in Japanese data processing markets by imposition of such limitations gives a competitive advantage to the Japanese domestic telephone company, Nippon Telephone & Telegraph—NTT. NTT, unlike U.S. carriers, is government owned, and can and does provide, without such restrictions, both communications and data processing services. KDD-imposed restrictions on services offered by control data in Japan—accomplished by KDD's exercising control over United States-Japan international communications circuits—result in a significant and unfair advantage to NTT over its American competitors.

Since the KDD-DSFEJ contract was executed in 1976, Control Data has repeatedly tried, without too much success, to have the KDD-imposed restrictions on private line service removed. Control Data has tried—unsuccessfully—to have these restrictions lifted through discussions with KDD's New York office, the Ministry of

Posts and Telegraphs representative at the Japanese Embassy in Washington, D.C., the Joint Japan-United States Trade Facilitation Committee of the Department of Commerce—TFC—the NTIA, the Office of the Special Representative for Trade Negotiations—STR—the State Department and the U.S. international record carriers.

In addition, Control Data has taken actions in the FCC, which has had, since early in 1979, one part of this problem under consideration. U.S. international carriers, under section 214 of the Communications Act of 1934, which sought to provide the U.S. portion of the proposed VENUS/ICAS service between Japan and the United States, were required to seek advance approval from the FCC for the service. Control Data opposed the application of U.S. international record carriers—WUI, ITT, RCA—for the FCC authorization necessary for commencement of VENUS/ICAS service, the usage-sensitive, packet-switched data service between the United States and Japan which KDD wishes to offer. ADAPSO and CBEMA also petitioned the Commission to deny the section 214 authorizations requested by the U.S. international record carriers.

Control Data and others showed that grant of these authorizations was improper under the Communications Act of 1934, was contrary to the U.S. position before the CCITT, and would permit and even foster continued restriction of the private line service between Japan and the United States, contrary to U.S. trade policy. Control Data also pointed out that the KDD-imposed restrictions were a form of nontariff trade barrier, the fostering of which was not in the public interest.

NTIA submitted a letter to the Commission, stating that trade aspects to the KDD restrictions on private line service should be considered by the Commission, and offering to have representatives of the TFC brief the Commission in this regard. While the section 214 authorization matter was being considered by the Commission, Control Data, in a letter of October 24, 1979, suggested to KDD other possible technical solutions to what KDD perceived as the "message-switching" problem. No formal response to this suggestion was received.

Despite all of these efforts, on January 14, 1980, the Common Carrier Bureau of the FCC granted the applications of the U.S. international record carriers for VENUS/ICAS service. The cursory opinion of the Commission's Common Carrier Bureau did not deal with the important problems raised by the applications, nor did it even refer to the NTIA letter or the TFC offer. A petition for review of that decision has been filed by ADAPSO.

Four years after execution of the contract with KDD, and 4 years after Control Data first sought assistance from U.S. government entities, the KDD-imposed restrictions on the Japan-United States international circuit continue to exist. Although Control Data has requested, and in some cases received, the assistance of relevant U.S. Government agencies, the problem persists. (The 4-year search for relief which Control Data has been forced to undergo would be impossible for smaller companies to pursue.)

These developments in the international telecommunications and information flow area raise important questions for the United States. First, it is clear that no U.S. Government entity is responsible for the formulation, enunciation, implementation and enforce-

ment of U.S. international telecommunications policy, to the detriment of U.S. interests.

Further, because such a vacuum exists, foreign nations are encouraged to exploit it. To prevent this and to fill the vacuum, the Federal Communications Commission has recently tried to discuss with foreign administrations and ministries the terms and conditions for new services. Such actions, which have been strenuously opposed by the international carriers, both at the Commission and in court, are generally considered to be outside the statutory scheme set forth by the Commissions Act of 1934, and cannot lead to the resolution of existing problems in the international telecommunications and information flow area. These actions are, however, symptoms of the divided authority in this area, and of the problems this fractionalization can cause.

International telecommunications and information flow problems are not solely technical communications problems, or solely trade problems. They are both. Consideration must be given to these ramifications. In addition to establishing an entity to handle international telecommunications and information flow matters, the Congress should assure that any new or existing Government entity will not make disadvantageous trade-offs between U.S. international interests in this and other areas.

The United States must, of course, maintain its leadership position in the field of international telecommunications and information flow. To do this, as noted above, and in testimony on behalf of Control Data provided to the Subcommittee on Communications of the House and Senate Communications Subcommittees in 1978 and 1979, the United States must: (1) recognize the serious threat to its leadership in the areas of information and telecommunications technology; and (2) establish one governmental entity to deal with such matters, in order to guard against the loss of its leadership in these important fields.

The importance of assuring continued U.S. leadership in the telecommunications and data flow fields is underscored by the fact that a number of private organizations have formed committees to attempt to deal with these problems, including CBEMA, ADAPSO, the U.S. chapter of the International Chamber of Commerce, the International Commerce Association, the Information Industries Association, the Financial Executives Association, the American Pharmaceutical Association, and the International Federation of Information Processing Societies (IFIPS). I am sure there are others. I believe that all of these organizations, as well as private companies, would be glad to work with the subcommittee to try to devise solutions to these important problems.

I appreciate the opportunity to have appeared before you today, and to testify on these important subjects. I would, of course, be glad to provide whatever further information the subcommittee would like, and to answer any questions that the subcommittee may have.

Mr. PREYER. Thank you very much, Mr. Onstad. You have outlined a very dramatic example, and I think a very discouraging one, concerning your Japanese problem. The type of restrictions that you encountered there, the nontariff trade barriers, are some-

thing that the Japanese have placed on other industries trying to enter that market, for example, small appliances.

Do you see the Japanese actions as part of their industrial planning strategy?

Mr. ONSTAD. My involvement is primarily in the services area. Mr. Donaghue may want to address that problem. I would like to make one remark. In this particular case we are also talking about a Japanese Government-owned entity competing with a private entity or entities in the United States.

Mr. DONAGHUE. I would certainly say that it is part of the Japanese overall industrial planning strategy. The Japanese have made it known for a number of years just where they intend to go in the information society. They have made clear their understanding of this several years ago. They made it clear to the world. They published two or three white papers on the subject. It is quite obvious from all the actions the Japanese have taken over the years that they intend to promote and exploit their data processing and telecommunications activities worldwide, and that this protection of their industry is certainly just one portion of this plan.

Mr. PREYER. If the Japanese are successful in defending their interpretation of the CCITT standards, what effect will this have on other nations? Do you think other nations will adopt the same interpretation with the same effect on you?

Mr. ONSTAD. To date we have not found that, Mr. Chairman. However, we are finding, as I mentioned, a new law in Germany very similar to the Japanese restriction. Whether an interpretation of the actual CCITT ruling will be requested is not known at this time. It is not necessary presently for Japan to ask for an official interpretation at the CCITT, because as a sovereign nation they merely impose the restriction and say it is part of Japanese law. Since we don't seem to use—or have—any leverage against that on a unilateral basis, the restriction goes into effect.

We are certainly concerned about other countries throughout the world watching the imposition of such a restriction and finding that if one nation can impose it, they can also. We would therefore have more restrictions.

Mr. PREYER. You mentioned that the restrictions placed on data transmission by the Japanese have resulted in your being able to market only 10 percent of your potential services in Japan. Could you make any ballpark estimate of the increased cost and the loss of revenues resulting from this?

Mr. ONSTAD. Mr. Chairman, while I don't have exact figures or estimates of revenue loss, one of the main examples that we can cite is that we pay—between the Japanese carrier and the U.S. carrier—approximately \$33,000 a month for a leased private line operating between Tokyo and the United States, which we can use at only 10-percent capacity because of the restriction.

Now with regard to other Control Data services, we recognize the need to market our entire line of services, and since this problem arose last July Control Data announced the construction and building of a very substantial data processing center in downtown Tokyo, which will contain one of the largest computers built by Control Data, and will offer a full range of Control Data-based services to the Japanese marketplace in Japan.

We still have not solved our problem, because in the marketing of data processing services much is marketed to local marketplaces, but also much is marketed to multinational corporations, both United States and otherwise, that have the requirements for common data bases, which may be located in any one of our centers throughout the world, depending upon where the traffic is heaviest.

While we will gain a large foothold in the Japanese marketplace through the setting up in Japan of this center, it still, of course, does not help the balance of trade problem with the United States because we are moving the work there, done by Japanese people within Japan.

Mr. PREYER. One of the most discouraging things about your Japanese experience is your failure to get effective assistance from the U.S. Government agencies. On that score, let me ask you what agency did you first turn to for assistance in government, when you were having difficulties? After you made the first contact, what happened then, and what factors do you think caused you not to get effective assistance?

Could you give us a rundown of your history on that?

Mr. ONSTAD. It is a long story which I will try to get down to a few words. Our original contact was with the Economic Bureau of the State Department, under the Office of International Telecommunications Policy. We worked with the Economic Bureau people. We also at the same time carried on discussions with the special trade representative. Between those two groups, there was a period of about a year—I think—when we had various wires going back and forth to the Commercial Attaché in Japan and back and forth to the United States to establish if there was a problem or not. Eventually, that problem was turned over by those groups to a group in the Commerce Department called the Joint Japanese-American Trade Facilitation Committee (TFC).

We were not entirely turned down by these Government agencies. Rather, it has just been a “no-significant-result-type” action. In other words, there have been discussions. But one of the main problems we have seen is that there is no leverage, because no one really knows where authority lies or accepts the responsibility and the authority if they have it, or part of it.

The TFC group at the Commerce Department, of course, is continuing to carry on discussions on various trade issues with the Japanese in many, many areas, and this is one of them.

In order to achieve some relief, we determined last year to file with the Federal Communications Commission an objection to the new service proposed by Japan's KDD, on the basis that reciprocity should not include KDD bringing a new service into the United States and the FCC allowing it to operate in the United States, while the Japanese were still imposing restrictions on service.

We had the support at that time, and still do, of two trade associations, because we are not the only company affected by such restrictions. You will hear of more companies today that are having problems with the Japanese.

However, the Common Carrier Bureau of the Commission determined this approach was not a relevant factor, and went ahead to grant clearances for the U.S. carriers to start offering the new

packet-switched service to Japan. Some leverage, we felt, was lost there.

Now the matter is still presently before and is being, as we understand, actively discussed within the Trade Facilitation Committee. We are also looking into the possibility of filing in connection with our views, this area, either through a trade association, or directly before the Special Trade Representative pursuant to the Trade Reorganization Act of 1979. This is a rather new approach, because we are talking about a services area whereas the SDR primarily handles product areas in GATT, but it is another avenue that is open to us.

I think the most important thing we would like to put across here is that although we are a rather large company in this field, if we can't accomplish any results in this many years, think of the number of small companies that couldn't possibly expect to spend this much time on such a problem. The crux of the matter is that there is no central authority that we find or any central place to have these matters discussed.

Mr. PREYER. I gather you feel that the FCC, in granting market entry into our markets by foreign commerce, ought to exact some sort of reciprocity, or use their leverage to bring about fair trade. Do you think the FCC is the right forum, considering those questions of reciprocity?

Mr. ONSTAD. Certainly not ultimately. I have two problems. I think there are some governmental structural questions, as I brought out in my testimony, about whether under the Communications Act, the Commission has the authority to negotiate international agreements and international treaties.

Second, I have a substantial philosophical question, that is, whether the judge and the prosecutor should be the same entity. In other words, if the Commission makes rules for and quasi-judicial decisions about international telecommunications, as it does within the United States, and I have a question whether that same group should also be negotiating directly with the international entity about which it will, in turn, be going to pass judgment as to the legality or the policy reached or the application of it in regard to that entity or more generally.

Mr. PREYER. You have certainly made a good case about the lack of single authority to act in this country, the vacuum there. What is your suggestion as to how we could best centralize authority, could best handle this matter of procedure?

Mr. ONSTAD. Mr. Chairman, during our testimony on the new proposed Telecommunications Act, we provided detailed comments on the appropriate structure in this particular area. We will be happy to furnish that testimony to the subcommittee. It is too lengthy to discuss here.

Mr. PREYER. That would be helpful.

Mr. ONSTAD. One of the things that I would like to emphasize is that at this point I am not in a position to say whether single authority should be in the Commerce Department, or the State Department, or any specific place. I think that has to be determined within the administration and by the Congress. But more importantly, I think it is important that the need for this approach

be recognized: Where does a user or others go when he has problems?

Mr. PREYER. Thank you very much, Mr. Onstad. Mr. Butler.
Mr. BUTLER. I yield my time to Mr. Erlenborn, Mr. Chairman.
Mr. PREYER. Mr. Erlenborn.

Mr. ERLENBORN. Thank you, Mr. Chairman. I thank my colleague. I am not going to take a great deal of time. Let me first say that your statement has been very informative. I think we have learned a lot.

Mr. ONSTAD. Thank you.

Mr. ERLENBORN. I for one have learned one thing, and that is that the private sector uses acronyms almost as much as we do in the public sector.

This principal recommendation that you have of having a single entity to handle international telecommunications and information flow matters I think has been highlighted by the chairman, and is the principal recommendation contained in your testimony. As you said in answer to the chairman, you are not ready to recommend just exactly where that should be or its structure, but let me explore with you what we have had in the past. I do not recall whether we do now, but at one time we had a White House Office of Telecommunications Policy.

Mr. ONSTAD. Yes.

Mr. ERLENBORN. And I do not recall which President it was, whether it was Nixon, Ford, or Carter, but the office was abolished. I think it may have been in the Ford administration, but my recollection is faulty, I am afraid.

Mr. ONSTAD. Under President Carter.

Mr. ERLENBORN. Was it Carter?

Mr. ONSTAD. Yes.

Mr. ERLENBORN. The White House Office was abolished. Was this a useful agency? Was this a good place to have such a focus on policy? Before you answer that, let me just pose a few of the considerations that I think are involved.

If you have the single entity in the FCC, that is an independent agency, not really subject to direction by the President as to his present foreign policy and so forth. If you have it in the State Department, this is an equal among other Federal departments, and what they may recommend often will be taken with a grain of salt by a sister department that feels it is an equal and wants to keep its status of equality. The same would be true if it were in the Commerce Department.

With these considerations in mind, do you think that a White House Office of Telecommunications Policy might be more fitting, in that it is a step above the independent agencies or the several departments.

Mr. ONSTAD. Yes; I think it would be useful to go back and look at the history. OTP, or the Office of Telecommunications Policy, was abolished, but many of the activities of that office were then reestablished in the National Telecommunications and Information Administration under the Commerce Department, and much of that activity still continues as part of Commerce.

Certainly I think you have outlined most of the points in considering this problem. Let us say that authority was at the Commerce

Department in the STR. One of the questions involved—and we are unable yet to answer this—who has the responsibility and the authority within the U.S. Government to negotiate on behalf of the United States with foreign entities in the area of services, and specifically in telecommunications.

Many people believe, and it is one of the things we are looking at now, is that this can be accomplished through the new setup put into effect in regard to trade by the Congress last November, which gave much of this authority to the Department of Commerce and the Special Trade Representative. But one of the things I think we must be very careful about in the areas of telecommunications and information flow, since these two areas are extremely critical to all commerce—whether product or service—where the flow of information is critical, I think we should set this up in such a way that we are not trading off telecommunications with shoes, and oil, and iron, because communications is too basic a service to be treated that way.

One solution might be another Office of Telecommunications Policy directly at the White House. I think, though, that when we are looking at the direction this new entity should take, it will have to include more than a policy area recommendations and analysis. It will have to have the ability to actually negotiate, which I do not think was effectively done by the Office of Telecommunications Policy in the international area at that time. I think there was even a question at the time OTP existed of whether the State Department was responsible, because the State Department has a like Office of International Telecommunications Policy, or the White House, or the Commerce Department, or the FCC was responsible. This situation is still really open for question, and we all question it as users.

Mr. ERLENBORN. Is it practical to have a separate entity devoting its entire time to negotiations in the international sense to this question of telecommunications policy alone, or is it not desirable to have something to trade with? You have suggested you ought not trade off telecommunications policy for shoes, and automobiles, and so forth. On the other hand, might you not be able to enhance your trading position in telecommunications policy if you could trade off shoes and automobiles?

Mr. ONSTAD. You may. But if you look at telecommunications and information as an area in itself, and possibly include other services in that area, the result is a very vast area. The world is changing from a product-oriented society to a service and information-oriented society. You may, therefore, be able to confine the tradeoff to those specific areas rather than to move into the entire broad product area.

Mr. ERLENBORN. Do you have any comments as to the effectiveness of the White House Office of Telecommunications Policy when it did exist? Was it effective in establishing governmentwide a cohesive policy? Was it utilized for that purpose?

Mr. ONSTAD. I would say, and this goes back a little bit before the time when I was extremely involved with this, that OTP did a lot of work within the Government itself in the establishment of a good telecommunications system and policy, the protection and assignment of the radio spectrum, and the like. I do not, however,

recall if OTP became truly effective in the area of establishing an international telecommunications and information policy structure for the United States, in regard to both the private and the public sector.

Mr. ERLENBORN. Thank you very much.

Thank you, Mr. Chairman.

Mr. PREYER. Thank you.

Mr. Evans.

Mr. EVANS. I have no questions, Mr. Chairman.

Mr. PREYER. I just have two more questions.

One: We discussed the Japanese problem. You also mentioned in your testimony a problem with West Germany, which is beginning to require the processing of data within that country before they transmit it over their network. How would this increase your costs and affect your competitive position?

Mr. ONSTAD. Mr. Chairman, on the part of Control Data, I do not see much effect, because we happen to be in the fortunate position of having a very large data processing center in Frankfurt, Germany, and process not only data from the German market there, but also data coming into Frankfurt from outside the German market.

The new law will have some effect on our multinational customers, which include German companies having branches outside of Germany as well as non-German companies having branches within Germany. We are in the process of negotiating in connection with that right now, and I really cannot give an answer until I see how negotiations with the German Bundespost come out in this respect. We will have to find some solution, though.

Mr. PREYER. On the question of Government organization, I understand the State Department right now has an advisory committee on transborder data flows, and that the Trade Representative is establishing a private sector advisory committee drawn from the service industries. Do you think this is an effective approach to getting private sector input, or do you think the committee, since it embraces all service industries, is too broad in scope to accomplish the goals you seek?

Mr. ONSTAD. Since I have the chairman of that advisory committee next to me, I will let him address those questions.

Mr. PREYER. I did not realize we had the chairman here.

Mr. DONAGHUE. If I had to do it all over again I think I would reconstruct the Advisory Committee on Transborder Data Flows. You have asked two questions here, one with regard to the State Department, and I would like to address that first, and then answer your question with regard to the Private Sector Advisory Committee on Services in the STR.

The formation of the Advisory Committee on Transborder Data Flows came about 2½ years ago. At that time there was an OMB regulation that restricted the number of public advisory committees that the Government could establish. This occurred shortly after President Carter had taken office.

As a result, we tried to establish an Advisory Committee on Transborder Data Flows as a subcommittee of another committee in the State Department. There was recognition of the need for such a committee, but we were convinced—or the State Depart-

ment was convinced—that if it sought to establish a full advisory committee, that its request to establish such a committee would be denied. Therefore, we used the mechanism of an advisory committee, now called the Advisory Committee of Multinational Trade and Investment Committee of the State Department.

As a result, we were only able to put on the committee two or three members, and that meant we did not get the broad sector representation that we needed. However, this situation has been improved over the last year. The committee, with the assistance of the NTIA and the State Department, has been very effective in developing the current set of guidelines in the OECD. As a matter of fact, the guidelines are very representative of the private sector views. Private sector views have been taken fully into consideration, and our negotiators at the OECD have done an excellent job of representing that viewpoint and seeing that the other OECD members concurred in it.

The area we covered had been primarily dealing with the issue of the privacy of the individual. Now, as we move into what we call phase 2, the areas involving nonpersonal data, involving the issue Mr. Onstad mentioned on legal persons, the situation is going to change somewhat. We think we are going to see a far more complex set of issues raised before the OECD, and we are going to see a number of other players in the U.S. Government taking part as well as other players in the private sector. Therefore I firmly believe that the committee ought to be a full committee on its own, ought to have increased membership from many other sector groups, and ought to be heard in parts of the Government other than just within the State Department.

With regard to the STR, and the private sector advisory committee that is being drawn up for the services area, as this committee is probably fully aware, during the current GATT negotiations and the just recently concluded GATT negotiations, services were not included. Yet here in the United States over 50 percent of our GNP is derived from service industries.

Under the new Trade Reorganization Act, as part of new STR functions, an advisory committee for services was drawn up, and I think that this is a good idea.

It is my understanding that within that committee there will be, as there was in the original GATT, a public advisory committee that will look at the broad policy issues very much as we did in the GATT negotiations.

I understand that there is now discussion of allowing a subcommittee structure under that committee. That step will allow a look at various sectoral groups, such as transportation, insurance, and this issue of data transmission. If that comes about, then I feel satisfied that we have had a good response from the STR. If indeed there is only that one committee looking at broad policy, I would not be satisfied with that.

Mr. PREYER. Thank you.

Mr. Ingram.

Mr. INGRAM. Just one question.

Mr. Onstad, at the bottom of page 6 you referred to one nation currently considering replacing all full period international private-line service by a service which utilizes using certain rates, in

other words going from the current use of the private line with a fixed monthly fee to a public network which might charge on the basis of the amount of traffic over that line.

Mr. ONSTAD. Right.

Mr. INGRAM. If you were effectively forced from a private leased line onto a public daily network, what impact would this have in terms of possible increased costs, particularly for the larger user?

Mr. ONSTAD. There are two aspects to increased cost. One is the cost of using sensitive pricing as measured against the cost of a full period private line. There is always going to be a break-even point where a company will employ a usage sensitive—providing it is available—transparent method. In other words, there will be use of long-distance telephone calls to the point where a private line, over a full period, will give a better cost break than the usage-sensitive line. That point can vary. I have tested it on some of the circuits we currently have in place. Cost would go up just on a normal flow of data in connection with a test I took of one channel—running internationally—by 700 percent.

Mr. INGRAM. About 700 percent?

Mr. ONSTAD. Yes; over the cost of operation on a normal full period line. Now the other side, though, that is even more critical, is that most of these usage-sensitive price systems that are being proposed are protocol systems. In other words, they are packets with technologies whereby the carrier is imposing what normally a data processing company has imposed onto the circuit to get data to move across it. I will not go into all the details—but what you find with very large users is that—in most cases—they have their own technology in that particular area. We buy a private line, you might say a pair of wires, and we impose a protocol onto that pair of wires to best transmit our data over those circuits. We do this in one respect, an airline in another respect, to make the data processing environment work the best.

When we have to operate under environments where a carrier, a foreign entity, is imposing its set of protocols onto that circuit rather than ours, we have—in some cases—a very substantial loss in efficiency of our system, which has to work with a higher level protocol than normal in communications. The cost can be felt in two ways. It can be a higher outright cost for the service being offered by the carrier, but more importantly, it can be an inefficient service to a specific data processing environment, therefore raising costs that way.

Mr. INGRAM. So the cost is a consideration, but you appear even more concerned about reliability.

Mr. ONSTAD. Yes; and the efficiency of the environment.

Mr. INGRAM. The efficiency on that transfer. What about the security of the data transmissions? Would this also be a consideration?

Mr. ONSTAD. Certainly, yes; as part of that efficiency the security would be a very major consideration to us.

Mr. INGRAM. As I understand it now, for example, some of the European PTT's do not even allow the encryption of transmissions made over those lines.

Mr. ONSTAD. And in some circumstances you must give them the key to be able to decrypt anything.

Mr. INGRAM. So that your bank with highly sensitive financial information going from one country let us say to the United States, the corporate office here, might be extremely concerned about that nation's access.

Mr. ONSTAD. Right.

Mr. INGRAM. To that financial information.

Mr. ONSTED. Certainly.

Mr. INGRAM. And I suppose that if you are dealing with the intelligence community in the United States, they have their own use for the information, but if you are dealing with a nation-owned communications carrier or particularly where you have the nation involved in financial matters, you are even more concerned about the carryover of that information.

Mr. ONSTAD. It may not only be financial matters. It may be matters of production control, formulas for companies. You might consider secret engineering information going back and forth over a circuit for a company, for instance, in Brussels, that is competing on a bridge design analysis on one of our systems in Minneapolis and Cleveland and keeps that information confidential. Most of that today is kept through passwords and keyword indexes and such. It is confidential to that user, but in many cases may have to be made available, certainly at least to, their Governments, in the case of Germany, or Sweden, for personnel records in another country—as you and Mr. Rankine was speaking of—and this gets into questions of legal persons, and corporations, and entities which can involve breaking of that privacy.

Mr. INGRAM. Thank you.

Mr. PREYER. Thank you very much, Mr. Onstad and Mr. Donaghue. Your testimony has been very helpful.

[The prepared statement of Mr. Onstad and the response of Messrs. Onstad and Donaghue to written questions from the sub-committee follow:]

Statement of

PHILIP C. ONSTAD
Control Data Corporation

Before the

SUBCOMMITTEE ON GOVERNMENT INFORMATION AND INDIVIDUAL RIGHTS
HOUSE COMMITTEE ON GOVERNMENT OPERATIONS

March 10, 1980

Mr. Chairman and Members of the Subcommittee:

My name is Philip C. Onstad and I am Director of Telecommunications Policies for Control Data Corporation. My area of responsibility includes domestic and international telecommunications policies as well as security and privacy policies for data processing service offerings.

I have been involved in matters of international telecommunications and transborder information flows for a number of years. I am Chairman of the International Relations Committee of the Association for Data Processing Service Organizations (ADAPSO) and Chairman of the Telecommunications Committee of the Computer and Business Equipment Manufacturers Association (CBEMA). I participate in the work of the United States Organization to the Consultative Committee for International Telegraph and Telephone (CCITT) and have been a member of the United States Delegation to the CCITT Study Group III on rates, tariffs and regulations. I participated as a representative from the United States to the

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symposium on transborder data flow sponsored by the Organization for Economic Cooperation and Development (OECD). I am appearing here today on behalf of Control Data Corporation.

Control Data Corporation is a supplier of data processing systems, equipment and services as well as financial and educational services. We serve a world wide market for all our products and services. Our data processing services include general timesharing, remote access and data base management systems as well as a number of specialized financial, educational, reservation and inquiry services. These services use telecommunications as the transportation medium between Control Data's computer centers and input/output terminal equipment located throughout the world on our customers' premises.

All types of switched and private line telecommunications services from low speed circuits operating at ten characters per second to high speed service operating at over five thousand characters per second run between Control Data's computer centers in the United States and Europe and to several hundred access points throughout the world. At these access points, customers may connect their terminals to the computer centers, either by placing a local telephone call or through leased local loops running from the customer's terminal to the nearest linking center.

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Timesharing allows many users to share a single data processing system and share the cost of it, thus lowering the cost to each user. On a practical basis this can only be done through the use of specialized communications services. Control Data's computer centers, when combined with communications, meld together to form a world wide data processing network which allows a user almost anywhere in the free world to have unlimited computer power at their fingertips.

The United States is second to none in the development and application of technology in the fields of electronics, information processing and telecommunications. Our country also leads the world in the uses of these technologies in science, business, finance, medicine, education and many other fields which affect human well-being.

Information processing and telecommunications are important and growing areas of world trade and account for a positive balance of payments for the United States. They have important ramifications for foreign policy, national defense and economic growth. Continued United States leadership in the fields of information processing and telecommunications is, therefore, of critical importance.

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There is now a world-wide evolution from industrial society to information society. The United States and other countries are becoming increasingly sensitive to the importance of this change. Increased world-wide interest in difficult issues which relate to international information flow is evidence of this evolution.

International attention to questions engendered by information flow between nations has generally focused on three issues: (1) telecommunications; (2) privacy and security; and (3) economic and labor displacement questions. Foreign nations, the United States government (for example, the Interagency Task Force, and the State Department Advisory Committee) and international organizations (for example, the Council of Europe, the Organization of Economic Co-operation & Development (OECD)) generally consider information flow issues to be divided into these three subject areas.

Other concerned parties will be testifying before the Subcommittee on the issues of privacy and security, and economics and labor displacement. For this reason, my comments focus on telecommunications issues.

Typically, within the United States, where both ends of a telecommunications services terminate within the country, United States law and the rules and regulations of the Federal Communications Commission apply to the entire service

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offering. In international services, United States law and the rules and regulations of the Federal Communications Commission apply only to one end of the telecommunications service. The other end of the service is under the jurisdiction of the telecommunications entity -- either government administration, ministry of posts and telegraphs, or government-controlled carrier -- of a sovereign foreign nation. Any involvement of United States regulatory authority over and control of services and facilities by United States telecommunications entities ends at the midpoint of any international facility or service. At that point, both U.S. regulatory authority and operational control of the facility and the services being offered over it terminate. Authority for and operational control of the facility and the service offered over it then lie with the specific foreign nation in which the other end of the facility or service terminates. In most cases, this foreign nation has absolute monopoly control and/or ownership over all aspects of the facility or service. Therefore, mutual agreement of both parties must be reached on all aspects of any facility or service or there is no service.

For these reasons, negotiations between U. S.

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international carriers and the foreign government entity in charge of telecommunications must take place prior to the institution of any international service. Successful completion of such negotiations is prerequisite to the provision of telecommunications service between the United States and a foreign country.

The United States international carriers, which under the U.S. system of private ownership of international facilities and services by competing entities, provide international service, as well as United States users of international facilities and services, have run into changing attitudes on the part of foreign nations. Some countries are disturbed by the United States' leadership in telecommunications and data processing. Many of these countries own their own telecommunications systems, and often offer data processing capacities as well. Some countries place restrictions on the use of international telecommunications services, which restrict United States participation in the international marketplace for information as well as other services.

Several countries have placed restrictions on the use of international private line services when used for data transmission. One nation has proposed replacing all full

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period, that is, continuously usable without price adjustment for use, international private line service by a service which utilizes usage-sensitive rates. Other countries are attempting to transfer all data transmission to various types of value added networks which, in many instances, are less efficient for users which have high volume data transmission requirements. Still other nations are attempting to price services on a value of service, rather than cost-related, basis.

Control Data, and the data processing industry, have fully supported and welcomed the Commission action extending Dataphone Service internationally and the advent of new international data communications services, such as digital and pocket-switched service, which give large and small users the ability to transmit data internationally. But, when a foreign government, or foreign government controlled communication entity, using their control over one-half an international telecommunications circuit, forces U.S. users to switch from full period to usage-sensitive service, it means higher profits for the foreign entity, higher costs to the U.S. user, and higher prices to U.S. consumers. I emphasize the word "forces." U.S. users can be forced to use usage-sensitive service either by foreign-imposed rate structures which make

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using full period service economically impossible, or by the actual elimination by the foreign entity of full period service. When a foreign entity permits the offering of both full period and usage sensitive service at rates which fairly reflect the relative costs of both kinds of services, there is no problem and, indeed, small users which could not afford to lease an entire circuit, are helped.

In general, the various actions by foreign telecommunications entities I have described serve either to increase prices to United States data processing service organizations when competing with foreign entities, or to impose technical restrictions which, because they require additional expense and/or technical adjustments, result in loss of efficiency for United States firms. Any of these actions is a artificial non-tariff trade barrier which limits the ability of United States firms, especially those engaged in the offering of data processing services, to compete effectively in world markets.

Additional problems for U.S. users result from the fact that the interests of international carriers and those of United States users of international telecommunication service do not always coincide. Types of service available and the duration of them, for example, can be areas in which international foreign telecommunications entities can exert

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pressure on U.S. carriers, which can make the U.S. carriers have more interest in accommodating foreign counterparts than in satisfying the needs of U.S. users.

The developments discussed briefly above are only some examples of the world-wide tendency in foreign nations to modify domestic laws, to pass new laws, or to seek to alter guidelines set forth in international conventions, to reflect their new attitudes about international telecommunications. Other recent actions by foreign nations highlight further the need for the U.S. to pay increased attention to new forms of restraints on the flow of information across national borders.

Several European nations have introduced contributions before Study Groups of the CCITT requesting that the CCITT consider replacement of full-period, private line international service with service for which charges would be made on a usage sensitive basis. Studies made by several nations propose various means to legislate restrictions on the flow of data across international boundaries.

Careful consideration of the goals which such actions seek to further is necessary. It is contended that such foreign nation activities in the international

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telecommunications and data flow areas are designed to protect the privacy and individual rights of their citizens. We are, of course, particularly sensitive to such concerns. Individual rights are the cornerstone of United States society and government. It may be, however, that such actions by foreign nations are not designed to protect individual rights, but rather to erect subtle non-tariff trade barriers, which block information flows and impede the ability of United States businesses to enter or expand in these countries. Such actions, of course, advantage the domestic business entities incorporated in the foreign nation. (The United States, however, has not taken, nor has it contemplated taking, responsive restrictive actions in respect to telecommunications or other service offerings by foreign nations.)

These recent developments are troubling and troublesome. Like petroleum, world trade and information flow requires an effective world-wide delivery system, that is, an effective world-wide telecommunications media. If such an effective delivery system is to be established and maintained, deficiencies in the current method of United States participation in international telecommunications issues must be clearly understood:

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(1) There is no central authority in the United States to establish over-all policies for the United States regarding international telecommunications. Rather, authority in the area of international telecommunications is divided between the FCC, the National Telecommunications and Information Administration of the Department of Commerce (NTIA), the Department of State, and others;

(2) There is no single authority to negotiate the basic ground rules for international telecommunications services between the United States providers of such facilities and services and governmental telecommunications authorities of foreign nations;

(3) There is no mechanism to enforce U.S. policy in the international field when there are difficulties with a foreign government or foreign government-controlled carrier;

(4) There is no government entity with authority to analyze user requirements and formulate and advocate the development of the types of international services needed by United States users.

While the United States government authority over and treatment of international telecommunications issues is diffuse, fractionated and divided, this is not true in foreign nations. It is evident from the recent actions, discussed

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above, and from such studies as "The Computerization of France," commissioned by the French government, that other nations realize the importance of international telecommunications and information flow, and how control of telecommunications and information flow can control international commerce in products and service. Not only do the governments of foreign countries have more power than the United States government to exercise control over international telecommunications and information flow, but also their governments exercise such control. As noted above, unlike foreign nations, in the United States international telecommunications facilities and services are provided on a private, not on a governmental, basis. Also unlike foreign nations, the United States has no government entity which formulates, negotiates, implements and enforces United States international telecommunications policy. Indeed, in some instances, it may be fair to say that because of the diffusion of authority and responsibility in the international areas, the United States does not have an international telecommunications or information policy.

Unfortunately, this dispersion and diffusion of U.S. government authority and organization is highlighted by a number of examples of unresolved problems. Let me mention a

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few problems encountered in the data processing services industry:

(1) In the ADP case, an American data processing service company, ADP, requested authority from a major European government to form a subsidiary in that country. ADP was told by the foreign government that it could not do so. That European nation indicated that the competition to local, domestic companies which would be presented by entrance of ADP into local markets would not be in its national interest. Although the matter was brought to the attention of the United States government agencies, and although there is a treaty of "friendship and trade" with that and other nations, to date, there has been no significant action by the United States government to resolve this problem.

(2) Germany has enacted a law, which will become effective January 1, 1982, which provides that no entity -- data processing service company or otherwise -- can bring international leased lines into Germany, unless the international leased line terminates in either a single terminal device, or terminates in a computer system and substantial data processing is performed -- in Germany -- on the information transmitted over the international circuit, before its

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distribution in Germany. This law severely restricts information flows into and information processing in regard to Germany. Laws of this type must be viewed as, at a minimum, forms of non-tariff trade barriers.

(3) Control Data and a number of other companies in the data processing services industry have encountered a serious problem in Japan.

In 1976, after two years of delay by the Japanese, Control Data, through Data Services Far East, Japan branch (DSFEJ), a subsidiary of Control Data, entered into a contract with Kokusai Denshin Denwa Co., Ltd. (KDD), Japan's international record carrier. The contract provided for private leased line service to transmit data between Japan and the United States. The contract, which provides for lease of the private line at a flat monthly rate, contains restrictions which limit Control Data's ability to offer data services in Japan. Control Data accepted these restrictions, under protest, because there was no other way for it to obtain the needed international circuit between Japan and the United States.

The most significant restrictions contained in the contract are:

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(1) A limitation on the transfer of data between Control Data's data processing center in the United States. This limitation is based on the view of the KDD that such data transfer constitutes message-switching prohibited by Japanese law, although the data transfer would occur in the United States. The data transfer does not constitute message-switching under either the Recommendations of the CCITT, or under the rules of the Federal Communications Commission, and therefore does not contravene either the applicable international convention or applicable U.S. law.

(2) A requirement that when KDD starts service through a new public, usage-sensitive, data network called "VENUS" (now being made operational), "DSFEJ shall respond to [KDD's] consultation with a premise of transfer to this service . . .," that is, will replace its private line service with the new usage-sensitive service.

The data transfer restriction severely limits the number of services which Control Data can offer in Japan by limiting the number of computer bases in the United States upon which Control Data may draw to offer such services. Control Data spreads its data processing services among five operating centers in the United States, primarily for backup

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and security reasons. The KDD-imposed restriction means that only one of these five centers can be connected with the international circuit to Japan. This restriction thus not only limits Control Data's ability to market in Japan its full line of services, but also restricts the ability of Control Data to provide the full range of backup and security functions for the services which it does offer in Japan.

The second KDD-imposed restriction raises the concern that, despite certain recent assurances by KDD and the United States international record carriers to the contrary, the existing private line service now available to Control Data may be terminated or subject to even further curtailment.

Curtailing Control Data's ability to compete in Japanese data processing markets by imposition of such limitations gives a competitive advantage to the Japanese domestic telephone company, Nippon Telephone and Telegraph (NTT). NTT, unlike United States carriers, can and does provide, without such restrictions, both communications and data processing services. KDD-imposed restrictions on services offered by Control Data in Japan (accomplished by KDD's exercising control over United States-Japan international communications circuits) result in a significant and unfair

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advantage to NTT over its American competitors.

Since the KDD-DSFEJ contract was executed in 1976, Control Data has repeatedly tried, without success, to have the KDD-imposed restrictions on private line service removed. Control Data has tried -- unsuccessfully -- to have these restrictions lifted through discussions with KDD's New York office, the Ministry of Posts and Telegraphs representative at the Japanese Embassy in Washington, D. C., the Joint Japan-United States Trade Facilitation Committee of the Department of Commerce (TFC), the NTIA, the Office of the Special Representative for Trade Negotiations (STR) and the United States international record carriers.

In addition, Control Data has taken actions in the FCC, which has had, since early in 1979, one part of this problem under consideration. U.S. international carriers, under Section 214 of the Communications Act of 1934, which sought to provide the United States portion of the proposed VENUS/ICAS service between Japan and the United States, were required to seek advance approval from the FCC for the service. Control Data opposed the application of United States international record carriers (WUI, ITT, RCA) for the FCC authorization necessary for commencement of VENUS/ICAS service, the

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usage-sensitive, packet switched data service between the United States and Japan which KDD wishes to offer. ADAPSO and CBEMA also petitioned the Commission to deny the Section 214 authorizations requested by the U.S. international record carriers.

Control Data and others showed that grant of these authorizations was improper under the Communications Act of 1934, was contrary to the United States position before the CCITT, and would permit and even foster continued restriction of the private line service between Japan and the United States, contrary to United States trade policy. Control Data also pointed out that the KDD-imposed restrictions were a form of non-tariff trade barrier, the fostering of which was not in the public interest. NTIA submitted a letter to the Commission, stating that trade aspects to the KDD restrictions on private line service should be considered by the Commission, and offering to have representatives of the TFC brief the Commission in this regard. While the Section 214 authorization matter was being considered by the Commission, Control Data, in a letter of October 24, 1979, suggested to KDD a "technical solution" to what KDD perceived as the "message switching" problem. No formal response to this suggestion was received.

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Despite all of these efforts, on January 14, 1980, the Common Carrier Bureau of the FCC granted the applications of the United States international record carriers for VENUS/ICAS service. The cursory opinion of the Commission's Common Carrier Bureau did not deal with the important problems raised by the applications, nor did it even refer to the NTIA letter or the TFC offer. A petition for review of that decision has been filed by ADAPSO.

Four years after execution of the contract with KDD, and four years after Control Data first sought assistance from United States government entities, the KDD-imposed restrictions on the Japan-U.S. international circuit continue to exist. Although Control Data has requested, and in some cases received, the assistance of relevant United States government agencies, the problem persists. (The four-year search for relief which Control Data has been forced to undergo would be impossible for smaller companies to pursue.)

These developments in the international telecommunications and information flow area raise important questions for the United States. First it is clear that no United States government entity is responsible for the formulation, enunciation, implementation and enforcement of United States

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international telecommunications policy, to the detriment of United States interests. Further, because such a vacuum exists, foreign nations are encouraged to exploit it. To prevent this and to fill the vacuum, the Federal Communications Commission has recently tried to discuss with foreign administrations and ministries the terms and conditions for new services. Such actions, which have been strenuously opposed by the international carriers, both at the Commission and in court, are generally considered to be outside the statutory scheme set forth by the Communications Act of 1934, and cannot lead to the resolution of existing problems in the international telecommunications and information flow area. These actions are, however, symptoms of the divided authority in this area, and of the problems this fractionalization can cause.

International telecommunications and information flow problems are not solely technical communications problems, or solely trade problems. They are both. Consideration must be given to these ramifications. In addition to establishing a single entity to handle international telecommunications and information flow matters, the Congress should assure that any new or existing government entity will not make disadvantageous trade-offs between U.S. international interests in this and other areas.

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The United States must, of course, maintain its leadership position in the field of international telecommunications and information flow. To do this, as noted above, and in testimony on behalf of Control Data provided to the Subcommittee on Communications of the House and Senate Communications Subcommittees in 1978 and 1979, the United States must:

(1) recognize the serious threat to its leadership in the areas of information and telecommunications technology; and

(2) establish one governmental entity to deal with such matters, in order to guard against the loss of its leadership in these important fields.

The importance of assuring continued United States leadership in the telecommunications and data flow fields is underscored by the fact that a number of private organizations have formed committees to deal with these problems, including CBEMA, ADAPSO, the United States Chapter of the International Chamber of Commerce, the International Commerce Association, the Information Industries Association, The Financial Executives Association, the American Pharmaceutical Association, and the International Federation of Information Processing Societies (IFIPS). I believe that all of these organizations, as well as private companies, would be glad to work with the Subcommittee to try to devise solutions to these important problems.

I appreciate the opportunity to have appeared before you today, and to testify on these important subjects. I would, of course, be glad to provide whatever further information the Subcommittee would like, and to answer any questions that the Subcommittee may have.

RESPONSES TO QUESTIONS SUBMITTED TO THE CONTROL DATA CORPORATION BY THE GOVERNMENT INFORMATION AND INDIVIDUAL RIGHTS SUBCOMMITTEE OF THE COMMITTEE ON GOVERNMENT OPERATIONS

1. You indicated in your statement that the interests of the international record carriers are not necessarily the same as those of their U.S. users. What can the government do to better ensure that the interests of the users of international telecommunications services are represented when negotiations with foreign PTTs take place?

Answer: The government can assure that the interests of the users of international telecommunications services are represented when negotiations with foreign PTTs take place by establishing a single government entity that will set the ground rules for the provision of international telecommunications service. This entity, no matter where located in the government, would be required, by statute, to consult with and obtain the views of users as well as suppliers of international telecommunications services prior to the establishment of United States policy, and prior to the articulation of that policy in the form of ground-rules for such negotiations. Suggestions as to how this can be accomplished are contained in the testimony given on behalf of the Control Data Corporation before the Subcommittee on Communications of the Committee on Interstate and Foreign Commerce. In that testimony, which has been furnished to this Subcommittee, legislative language was provided to establish appropriate consultations and committees to assure that users of international telecommunications services had adequate input into establishing appropriate United States policy.

2. You mentioned that several European nations have suggested to the CCITT that it consider replacement of full-period, private-line international service with service for which charges would be made on a usage-sensitive basis. Although CCITT standards are not binding, what impact do you feel such a proposal might have for U.S. enterprises?

Answer: Replacement of full-period, private-line international service with service for which charges would be made on a usage-sensitive basis would increase the costs of international telecommunications service for U.S. enterprises. There are two ways in which such costs would be increased:

- (a) The costs of obtaining adequate capacity (that is, enough international circuits) would be increased and (b) additional costs would be incurred by the need to make the circuits obtained conform to user requirements so that they could use the circuits efficiently. Thus, not only would the absolute cost of obtaining circuits be increased, but also U.S. enterprises would have to bear the additional cost of modifying the circuits to suit individual needs and to produce efficient service.
3. You noted that no central authority exists in the U.S. for establishing overall policy for international telecommunications, for negotiating basic ground rules for services, for enforcing U.S. policy in this field, or for analyzing user requirements and formulating new services. Do you think that all of these functions should reside within one entity or, for example, do you believe that the policy functions and negotiating functions should be handled by separate groups?
- Answer: International telecommunications services are the pipeline through which information necessary to international trade in products and services flow. Control of international telecommunications services is, therefore, control of international trade in products and services. Accordingly, it is essential to the United States for this life-line which underlies international trade to be handled in an effective, efficient and coordinated manner. Establishment of overall policy for international telecommunications and information flow, negotiation of basic ground rules for services, and implementation and enforcement of U.S. international telecommunications and information flow policy should be placed within one entity in the United States government. Separation of policy and negotiating functions would continue the existing pattern of fragmentation of responsibility for U.S. international telecommunications policy, and accordingly, would not be in the best interests of the United States.
4. Your company recently established a large data processing center in Tokyo which you indicated will assist you in penetrating certain parts of the Japanese market. If U.S. firms are forced to operate through foreign subsidiaries rather than their home-based offices, what will this mean in terms of efficiency of operations and contribution to the U.S. economic position?

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Answer: If U.S. firms engaged in the marketing of services are forced to operate through foreign subsidiaries utilizing foreign employees, rather than performing all operations except marketing in the United States, their operations will be less efficient, and there will be an adverse impact on the United States balance of payments, and on the employment of United States personnel. The balance of payments in the United States will be decreased, since only profits will be transferred to the U.S. Activities and jobs which were previously in the United States, would, of necessity, have to be performed abroad by the foreign subsidiary. The result would be a loss of revenues for the United States, and equally as important, the potential loss of jobs.

5. You noted that the U.S. fails to exercise leverage in dealing with foreign entities concerning international telecommunications services and that your petition before the FCC was an attempt to establish some form of reciprocity in these matters. What methods do you think would be most appropriate for indicating to our trading partners that the U.S. Government is willing to take steps to ensure that American enterprises are not treated inequitably?

Answer: The United States must make foreign nations aware of its sense of the critical inter-relationship between international telecommunications and international trade, discussed in answer to Question 3, above. The willingness of the United States Government to take steps to ensure that American enterprises are not treated inequitably by foreign entities in regard to international telecommunications services would be signaled by increased emphasis on international telecommunications services in the context of trade negotiations, or by the implementation of a policy of reciprocity at the Federal Communications Commission, and by increased formal and informal activity by the Department of State. Consultation by the Department of State or the NTIA with foreign entities responsible for international telecommunications services and information flow matters might

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also be useful. Most importantly, as suggested in response to Question 1, the United States must centralize and coordinate United States international telecommunications and information flow policy.

6. You argue in your testimony that we should not balance telecommunications trade concerns with commodities like steel or shoes in international negotiations. If information and communications are unique from other types of goods and services, how can policies best be formulated to reflect this fact?

Answer: United States policy can be formulated to reflect the fact that information and communications are unique amongst types of goods and services. Telecommunications and information are the lifeline for, and underlie, all international trade. Telecommunications and information flow policies should be developed after careful study of the international telecommunications information transfer and communications areas, and after careful consideration of the defense and national securities aspects of these matters. If there is appropriate government coordination and participation in the formulation of policy, the unique aspects of these two areas can be stressed, and their importance, not only to the United States, but also to foreign nations, can become increasingly clear, and increasingly a basis on which mutually agreeable arrangements can be reached.

7. You testified that only larger U.S. firms can establish data processing centers around the world or pursue lengthy negotiations with foreign governments. What recourse do smaller producers of information and communications goods and services have in addressing these problems?

Answer: Small enterprises involved in the information and communications goods and services industries have available few avenues to address the problems now presented in the international telecommunications and information transfer areas. Some of these enterprises may belong to trade associations which

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are active in seeking them to resolve these important issues. Others may not. Large companies cannot find a single government agency with authority to assist in resolution of international telecommunications and information flow problems. Small companies cannot afford to deal with the 5 or 6 government agencies whose activities are relevant to such problems.

8. The adverse impacts caused by inequitable barriers to data flow will be felt by all multinational enterprises and their customers -- not solely U.S. enterprises. What steps might be taken to convince our trading partners that the elimination of unnecessary data flow barriers will benefit all nations?

Answer: Participation by the United States in the OECD and in the CCITT, and in other international organizations which are considering questions of international information flow, will be helpful in the elimination of unnecessary information flow barriers. Increased attention to this matter by the United States government, and the designation of one entity in the government to be responsible for and to have authority over these matters would also be useful.

9. Have you made any estimates on the effects on revenues and profitability caused by the imposition of tariffs or tariff equivalents on the transmission of data across national boundaries?

Answer: It is difficult to estimate the effects on revenues and profitability of the imposition of tariffs or tariff equivalents on the transmission of data across national boundaries. However difficult to quantify, there can be no doubt that the impact of such restrictions will be substantial, not only in pure dollar terms, but also in terms of efficiency, and loss of possible markets.

Although difficult to quantify, Control Data has estimated that the costs of imposition of tariffs or tariff equivalents is sufficiently high that it has established data processing centers in Belgium, England, France, Germany, Australia, Japan and Brazil.

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10. In the 1960's, failure to adopt uniform international formatting, transmission, and production standards in color televisions effectively barred American companies from the European market. Do you see a potential for similar standards problems adversely affecting U.S. data processing and communications enterprises?

Answer: Establishment of appropriate and workable uniform international standards for data processing and communications is of critical importance to the United States. At present, creation of such standards is being controlled by the Europeans, not the United States.

The United States, therefore, must take a more active leadership role in the formulation of such international standards. It must start to collect input from a wide range of interested parties, not just the international carriers. Users of international telecommunications services and equipment manufacturers must also be consulted and their views represented. Once the United States policy on standards has been formulated, the United States should take a hard stand and press vigorously for its position.

The United States must participate actively in the formulation of international standards in regard to data processing and communications. Absent such standards, there will be a potential for non-tariff trade barriers (assuming that these matters are not resolved in the context of a bi- or multilateral trade agreement (to effectively bar American enterprises from world markets.)

11. What efforts can the U.S. Government make to ensure that new international standards are truly international and uniform and do not adversely affect U.S. enterprises?

Answer: The United States government must participate actively in international forums which are establishing international standards. It must press for the adoption of reasonable, uniform, and fair standards, after consultation with the private sector including users and manufacturers, and other affected groups. In addition, the establishment of appropriate

standards must be regarded as a trade question, and action must be taken in this connection by the Office of the Special Trade Representative, and others.

The United States has in the past participated actively in the CCITT, and with good results. The views of all interested parties (carriers, users, manufacturers and others) have been integrated into U.S. positions before the CCITT, and United States interests have been pressed strongly. Continued active participation by the U.S. in the CCITT is essential to the favorable resolution of standards issues.

12. The British Government is currently tariffing data transmissions and other nations are imposing substantial additional operating costs which have the same effect. Have you estimated what these added costs mean both for you and for the customers you serve?

Answer: Additional cost estimates have been made. As noted in response to Question 9, Control Data has established a number of data processing centers abroad to guard against the adverse impact on it and its customers of such tariffs and additional operating costs.

13. In your corporation, have data flow considerations become a major element in planning marketing strategy?

Answer: Information flow considerations have increasingly come to be an important element in planning and marketing. Any company involved in the information industry must give serious consideration to the need for free flow of information among countries, and the existence of adequate communications facilities to transport that information. Both the transport medium, and the absence of barriers to information flow, are essential elements of a planning and marketing strategy.

Mr. PREYER. Our next witness is Mr. Warren Burton, vice president of Tymshare, Inc., California.

Mr. Burton, we are glad to have you.

**STATEMENT OF WARREN BURTON, VICE PRESIDENT,
TYMSHARE, INC., CUPERTINO, CALIF.**

Mr. BURTON. Mr. Chairman and members of the subcommittee, I appreciate the opportunity of being with you today, and to be able to discuss some of the problems that we have encountered in international data flow. I would like to express our regret that Mr. Alden Heintz, who is our vice president of international operations, who has been living with these problems for a number of years, cannot be here today, but in fact he is out of the country working on some of these problems. The information industry is expanding at an explosive rate, and as an example of that, I would just like to mention the experience of Tymshare. We started 14 years ago, at ground zero. We are now one of the leading firms in remote access computer services throughout the United States, Canada, and overseas. In the United States we employ 3,000 people. We had revenues last year of \$193 million. We also operate a subsidiary in the

United States, Tymnet, which is a value-added data communications carrier licensed by the FCC. Overseas through our affiliated companies we operate in the United Kingdom, France, West Germany, Belgium, Holland, Switzerland, and Japan. Together these companies had 1979 revenues of \$93 million and employed over 1,000 people.

The growth of the U.S. information industry has not gone unnoticed by foreign governments. In 1973, European and Third World countries began to initiate a wide variety of barriers, obstructions, and restrictions against open and competitive business operations, especially against U.S. information processing and equipment companies.

These barriers include legislative, regulatory, and administrative actions, but generally fall into three broad categories of issues.

First: Human rights, which includes issues such as protection of privacy for individuals, and the freedom of access to information.

Second: The sovereignty of nation-states, which includes such issues as military security, cultural independence, and interdependence, and control of the social and political environment.

Third: International trade and economics, which covers such issues as productivity, employment, balance of trade, nontariff barriers, and so on.

Regarding human rights, the concept of a central Government which knows and controls the information on all citizens and commerce seems to contradict in practice the protection of human rights.

Contrary to our foreign competitors who are helped by rather well organized Government machinery, we must deal with a number of different U.S. Government entities, each of which has very limited jurisdiction over the entire issue of international information flow.

In establishing and operating business activities in foreign countries, we have been frustrated and disappointed.

Specifically, for example, we encountered arbitrary regulations by the Japanese Government which obstructed our attempts to establish computer services in Japan. The implementation of barriers by Japan involved rather insidious and especially intimidating obstructions. We and our Japanese affiliate were initially encouraged and misled by the Japanese Government's rather swift approval of both the formation of the joint venture, and the permission to transfer adequate funds into Japan with which to finance the business.

We had expected difficulties in both of these matters but experienced none. In this encouraging environment, our affiliate proceeded to hire a staff, rent office space, and make all the financial commitments for the imminent startup of a long-term business venture. However, within a few months prior to our actually starting operations, the Japanese International Telephone Agency, known as KDD, informed our affiliate that there would be some problems in their approval of the dedicated transpacific telephone line that we had ordered from them.

This communications link is a vital resource since the basic computer service, which the affiliate would sell, was to be provided from U.S.-based computers to Japan, exclusively by means of this

transpacific telephone line. In effect, without this line, our affiliate could not operate, and the Japanese knew this.

During the ensuing 16 months, the Japanese International Telephone Agency (KDD) gave us and our affiliate exceedingly frustrating and unpleasant experiences—in delays, intimidations and constant obstructive ploys which included:

One: Extremely detailed inspections of our equipment centers and proprietary software which gave us grave concern whether they were really appropriating our technical know-how. Not incidentally, KDD's sister agency, which provides domestic telephone services in Japan, is also the largest supplier of computer services in that country.

Two: A demand for special modifications to our standard computer services. This had the effect of decreasing the range of services we could offer as well as weakening the competitive capability of our product line, thereby reducing the likelihood of our successful penetration of the Japanese marketplace.

Three, onerous terms as a condition of our use of the telephone line. After the 16-month delay, during which time our affiliate consumed virtually all of the initial funding intended for the startup of business operations, KDD offered to provide the dedicated transpacific phone line to our affiliate, but under a set of conditions which were highly restrictive, and which further limited our capabilities.

At that point we were in a desperate situation. We reluctantly agreed under protest, and accepted the line under their terms.

Four, one of the conditions imposed on our use of the telephone line by KDD was that the only services our affiliate could offer in Japan were those processed on specific computers at the one computer center allowed to be attached to the transpacific telephone line. Our affiliate in Japan has since been informed by KDD that if it subscribed to a brandnew KDD communication service, instead of using the present fixed cost, dedicated telephone line, that we would be permitted to offer and sell our full range of services in Japan. We estimate that this new communications service would over time, cost about 10 times more than the fixed-cost, dedicated telephone line, and that if we were forced to use this service, we would be unable to compete economically in Japan. This matter still is not resolved.

During this rather agonizing 16-month period, while we were kept idly waiting and while our affiliate was spending all the startup capital, we worked extensively with the numerous U.S. Government agencies apparently involved in the area of international information flow, in an attempt to get some useful assistance. These agencies include the Department of State, the Department of Commerce including the Trade Facilitation Committee and the National Telecommunications and Information Agency, the FCC, the Executive Office of the President, and the Special Trade Representative.

I might add that we have a fully documented file on these negotiations.

Unfortunately our experience with the various U.S. Government agencies was in some ways more frustrating than the agonies in dealing with the Japanese. We had hoped and expected some sup-

port and assistance from the U.S. Government agencies. The most common comment we heard was "Your company really has a tough situation and a very strong, well-documented case, but there is nothing we are empowered to do."

If the quote "Information is power" is correct, then we are indeed involved in an international economic power struggle, a struggle which will only intensify as time goes on. U.S. companies engaged in the business of international information processing need one focal point in the U.S. Government empowered to take effective actions and deal with the type of barriers being used against U.S. companies in the form of international information flow restrictions.

We suggest that our Government have a designated senior official at some specific agency in the executive branch of Government who has the responsibility to represent the best interest of our industry and our country. We feel it is extremely urgent that the U.S. Government achieve a unified posture on international information flow and telecommunications and play an active role in this very important international issue.

Vital U.S. interests appear to be dependent upon this corrective action. The sustained growth of our economy, our balance-of-trade problems, our unemployment and our productivity situation, and our technological leadership role among nations are at risk.

Mr. Chairman, I appreciate the opportunity to be here. If there are any questions from the committee I would be happy to attempt to answer them.

Mr. PREYER. Thank you very much, Mr. Burton. We appreciate your testimony on behalf of Tymshare. You have given us another dramatic example of a Japanese problem, and also the ineffectiveness of assistance from our agencies to help you resolve it.

What factors do you think contributed to the inability of our agencies to help you resolve your problem?

Mr. BURTON. Mr. Chairman, I think that it is obvious that the people who work in the various Government agencies that I mentioned recognize the charter delineated in the legislation that established those agencies, and as long as they are dealing within the charter that they understand and think they have, they do a good job.

We were dealing here with an issue where no one agency recognized a particular charge within their mission to provide the kind of service that we were requesting from these agencies.

Mr. PREYER. The U.S. Government has been criticized by other nations for not having some centralized authority for determining information and communication policy. How do you think government can effectively represent private-sector views without creating some information czar?

Mr. BURTON. I really cannot give you a firm suggestion on how that should be done. We do feel that it is important that there be a focal point in government with a senior official empowered to act and help American industry, but I think that even with the experience that we have had to date, that goes back over several years, it is really too early for us to make a suggestion on how that office should be structured.

Mr. PREYER. Thank you.

Mr. Erlenborn.

Mr. ERLENBORN. Thank you, Mr. Chairman.

Just one question. In your experience in the past did you have any dealings with the White House Office of Telecommunications Policy?

Mr. BURTON. It is my recollection is that there was some contact with OTP. We did go to the Executive Office of the President, and requested assistance from some of the special assistants at the Executive Office.

Mr. ERLENBORN. And that is where you failed to receive satisfaction?

Mr. BURTON. Yes, sir.

Mr. ERLENBORN. So I guess from your experience just having it at the top of the hierarchy of the executive branch in the Office of the President did not seem to solve the problem.

Mr. BURTON. It did not solve our problem at all, sir.

Mr. ERLENBORN. Thank you very much.

Mr. PREYER. Thank you.

Mr. Butler.

Mr. BUTLER. I am not sure I caught all of Mr. Erlenborn's questions, but I guess my basic question is there are a number of proposals for tying responsibility into one particular agency inside the U.S. Government. What agency within our Federal Government has the technical know-how to satisfactorily meet your problems?

Mr. BURTON. I think you have technical know-how spread among a number of Government agencies. Obviously there is some technical know-how in the FCC, there is some in NTIA. There is certainly technical know-how in the military departments to some extent. I do not know at this time where we would suggest a focal point in the Federal Government.

Mr. BUTLER. I guess what I really wanted to know is the problem as you view it one of authority, not a problem of having the information or knowledge or technical know-how to deal with it from a point of view of making the Government's policy. I think it is basically a question of locating the authority and zeroing in on that, rather than collecting the technical know-how. You do not think that is the big obstacle.

Mr. BURTON. That is correct, sir. No, we do not see the lack of technical know-how as an obstacle. The problem that we see is that nobody has the charter to represent us and other companies in the kinds of problems that we are trying to solve in international data flow and in telecommunications. Nobody has the specific responsibility to be responsive to our requests.

Mr. BUTLER. I thank you.

I yield back, Mr. Chairman.

Mr. PREYER. Thank you.

Mr. Ingram, do you have questions?

Mr. INGRAM. No, Mr. Chairman. Mr. Vizas has questions.

Mr. VIZAS. Mr. Burton, as you are aware, West Germany has decided to restrict the connection of private lines directly to their public data communications network, which users in Germany are required to use. How is that barrier going to affect your ability to offer services in West Germany?

Mr. BURTON. We have an affiliate company in West Germany with a computer center there. As far as the effect of the new German law in restricting the flow of services from the United States, I think it is really too early to tell. It will primarily be one of cost. In January 1982 we are going to be required to connect with the packet switched network within Germany. We are not sure exactly what those costs are going to be. Historically, costs start out low and get higher, so that at first glance it looks like maybe those costs are not going to be so bad in Germany. We are always suspicious that it is a loss leader to begin with, once you are on the network they continue to raise the prices.

Mr. VIZAS. What about the additional requirement that you do some data processing in Germany before transmitting within their public data network?

Mr. BURTON. That, of course, would hinder us in rendering straight processing service from the United States.

Mr. VIZAS. Would that be a substantial detriment to the current business that you conduct there?

Mr. BURTON. I cannot give you a dollar estimate of that. I really cannot say.

Mr. VIZAS. We heard testimony earlier from Control Data about technical standards, the sorts of barriers that they could be used to create. Have you had any problems because technical standards were used as a barrier to your markets, and do you believe that they may become barriers?

Mr. BURTON. To date we have not had any problem with technical standards. Within the computer industry generally, each manufacturer essentially establishes his own de facto standard for his equipment. All equipments are not compatible directly, but interfaces are built, hardware, software.

Mr. VIZAS. Thank you, Mr. Burton.

Thank you, Mr. Chairman.

Mr. PREYER. Thank you very much, Mr. Burton. We appreciate your testimony. It has been very helpful.

[The prepared statement of Mr. Burton and his response to the written questions of the subcommittee follow:]

STATEMENT OF
WARREN E. BURTON
VICE PRESIDENT, GOVERNMENT AFFAIRS
TYMSHARE, INC.

BEFORE THE
SUBCOMMITTEE ON GOVERNMENT INFORMATION AND INDIVIDUAL RIGHTS
COMMITTEE ON GOVERNMENT OPERATIONS
HOUSE OF REPRESENTATIVES
ON PROBLEMS IN THE AREA OF INTERNATIONAL DATA FLOW

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE;

I APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE YOUR SUB-COMMITTEE TODAY TO DISCUSS THE GROWING PROBLEMS OF FOREIGN GOVERNMENT RESTRICTIONS ON INTERNATIONAL DATA FLOW. I WANT TO GIVE YOU OUR GENERAL VIEWPOINT ON THE SUBJECT AND AN ASSESSMENT OF THE DIFFICULTIES ENCOUNTERED BY TYMSHARE IN CONDUCTING BUSINESS OVERSEAS IN THE ELECTRONIC PROCESSING AND TRANSFER OF INFORMATION ACROSS NATIONAL BORDERS.

MANY REFERENCES HAVE BEEN MADE WITHIN THE INFORMATION PROCESSING AND DISTRIBUTION INDUSTRY THAT WE ARE NOW IN THE MIDST OF AN "INFORMATION REVOLUTION" WHICH WILL HAVE MORE IMPACT ON SOCIETY THAN THE PRECEDING CENTURY'S INDUSTRIAL REVOLUTION. RAPID TECHNOLOGICAL ADVANCES, WHICH REDUCE THE SIZE AND COST OF INFORMATION PROCESSING EQUIPMENT AND ALLOW FASTER AND BETTER ELECTRONIC

COMMUNICATION OF INFORMATION, CONTINUALLY MAKE THE TECHNOLOGY AVAILABLE TO MORE PEOPLE ON A COST-EFFECTIVE BASIS. THE U.S. PIONEERED THIS TECHNOLOGY AND, FOR MANY YEARS, HAS BEEN A LEADER IN THE INFORMATION PROCESSING AND TELECOMMUNICATIONS MARKET, WITH A FAVORABLE IMPACT ON OUR COUNTRY'S BALANCE OF TRADE AND AN OVERALL INCREASE IN WORLDWIDE BUSINESS PRODUCTIVITY.

THE INFORMATION INDUSTRY IS EXPANDING AT AN EXPLOSIVE RATE. FOR EXAMPLE, OUR COMPANY STARTED FROM ZERO 14 YEARS AGO. TYMSHARE IS NOW ONE OF THE LEADING FIRMS OFFERING REMOTE ACCESS COMPUTER SERVICES THROUGHOUT THE U.S. AND CANADA, AND A NUMBER OF COUNTRIES OVERSEAS. IN THE U.S. TYMSHARE EMPLOYS OVER 3,000 PEOPLE, AND WE HAD REVENUES OF \$193 MILLION IN 1979. OVERSEAS, THROUGH OUR AFFILIATED COMPANIES, TYMSHARE OPERATES IN THE UNITED KINGDOM, FRANCE, WEST GERMANY, BELGIUM, HOLLAND, SWITZERLAND, AND JAPAN. TOGETHER THESE COMPANIES HAD 1979 REVENUES OF \$93 MILLION AND EMPLOYED OVER 1,000 PEOPLE.

THE GROWTH OF THE U.S. INFORMATION INDUSTRY HAS NOT GONE UNNOTICED BY FOREIGN GOVERNMENTS. IN 1973, EUROPEAN AND THIRD WORLD COUNTRIES BEGAN TO INITIATE A WIDE VARIETY OF BARRIERS, OBSTRUCTIONS, AND RESTRICTIONS AGAINST OPEN AND COMPETITIVE BUSINESS OPERATIONS, ESPECIALLY AGAINST U.S. INFORMATION PROCESSING AND EQUIPMENT COMPANIES.

THESE BARRIERS INCLUDE:

- 1) SO CALLED "DATA PROTECTION LEGISLATION" WHICH INVOLVES A GOVERNMENTAL DATA REGULATORY AUTHORITY ESTABLISHED IN EACH COUNTRY TO REVIEW, INSPECT AND APPROVE--IN OTHER WORDS, CONTROL--THE INFORMATION AND INFORMATION FLOWS BOTH WITHIN THE COUNTRY AND THOSE ENTERING OR LEAVING THE COUNTRY. THIS LEGISLATION HAS MOST COMMONLY BEEN INITIATED UNDER THE COVER OF HUMAN RIGHTS AND THE PROTECTION OF PRIVACY OF INDIVIDUALS. HOWEVER, THE CONCEPT OF A CENTRAL GOVERNMENT AUTHORITY WHICH KNOWS AND CONTROLS THE INFORMATION ON ALL CITIZENS AND COMMERCE SEEMS TO CONTRADICT, IN PRACTICE, THE PROTECTION OF HUMAN RIGHTS.
- 2) ARBITRARY REGULATIONS BY EACH OF THE GOVERNMENT OWNED MONOPOLY COMMON CARRIERS INVOLVING ONEROUS RESTRICTIONS ON THE USE OF LEASED TELEPHONE LINES, PROHIBITIVE AND DISCRIMINATORY PRICE RATES, AND HEAVY-HANDED PRESSURES TO USE MARGINAL TYPES OF COMMUNICATION SERVICES. THE USE OF THESE MARGINAL COMMUNICATIONS SERVICES WOULD REDUCE THE COMPETITIVE CAPABILITY OF OUR OWN SERVICES BY DECREASING THE QUALITY AND RELIABILITY OF OUR SERVICE OR BY INCREASING OUR OPERATING COSTS TO LEVELS THAT WOULD PROHIBIT COMPETITIVE PRICING IN THAT COUNTRY.
- 3) A VARIETY OF ADMINISTRATIVE PRACTICES WHICH EITHER PREVENT THE INITIATION OF A BUSINESS IN THAT COUNTRY,

OR WEAKEN THE ONGOING BUSINESS OPERATIONS RELATIVE TO COMPETITION. THE PRACTICES INCLUDE:

- A) OUTRIGHT REFUSAL TO APPROVE THE FORMATION OF A BUSINESS VENTURE.
- B) EITHER A FLAT REFUSAL TO ALLOW FUND TRANSFERS OR UNREALISTIC LIMITATIONS ON THE AMOUNT OF FUNDS PERMITTED IN OR OUT OF THE COUNTRY WITH WHICH TO ESTABLISH OR OPERATE THE BUSINESS ENTITY.
- C) ATTEMPTS TO ACQUIRE U.S. PROPRIETARY TECHNOLOGICAL KNOW-HOW ON A COMMERCIALLY UNREALISTIC BASIS. FOREIGN GOVERNMENTS SOMETIMES REQUIRE AN AMERICAN COMPANY, AS A CONDITION FOR APPROVAL TO ESTABLISH A BUSINESS ENTITY, TO EITHER DIVULGE ITS TECHNOLOGY OR TO AGREE THAT ITS TECHNOLOGY WILL FOREVER BELONG TO THE AFFILIATE COMPANY, ESTABLISHED IN THAT COUNTRY, WITHOUT DIRECT REMUNERATION.
- D) THE POSSIBLE CONSIDERATION OF TARIFFS TO BE IMPOSED ON INFORMATION AND INFORMATION FLOWS AS IF THEY WERE COMMODITIES. THE QUESTION OF ASSESSMENT VALUATIONS BY VARIOUS GOVERNMENTS RAISES GREAT CONCERN BY OUR INDUSTRY.

THESE TRADE BARRIERS, RESTRICTING AMERICAN INFORMATION

PROCESSING AND EQUIPMENT COMPANIES FALL INTO THREE BROAD CATEGORIES OF ISSUES WHICH HAVE BEEN AND PROBABLY WILL BE WITH US FOR A LONG TIME. FIRST, HUMAN RIGHTS WHICH INCLUDES ISSUES SUCH AS PROTECTION OF PRIVACY FOR INDIVIDUALS, AND THE FREEDOM OF ACCESS TO INFORMATION. SECOND, SOVEREIGNTY OF NATION STATES WHICH INCLUDES SUCH ISSUES AS MILITARY SECURITY, CULTURAL INDEPENDENCE AND INTERDEPENDENCE, AND CONTROL OF THE SOCIAL AND POLITICAL ENVIRONMENT. THIRD, INTERNATIONAL TRADE AND ECONOMICS WHICH COVERS SUCH ISSUES AS PRODUCTIVITY, EMPLOYMENT, BALANCE OF TRADE, NON-TARIFF BARRIERS, AND SO ON.

IN EFFECT, FOREIGN GOVERNMENTS HAVE ERECTED BARRIERS WHICH THEY FEEL WILL PROTECT THEIR COUNTRIES' MARKETS FROM U.S. PENETRATION BUT WHICH, WE FEEL, ENDANGERS THE FREE ENTERPRISE SYSTEM FOR OUR INDUSTRY INTERNATIONALLY. WHILE IT IS EXPECTED THAT NATIONS WILL WANT TO PROTECT THEIR SOVEREIGNTY AND THE PRIVACY RIGHTS OF THEIR CITIZENS, WE ARE CONCERNED THAT THE LEGITIMATE ISSUES ALSO MASK A DESIRE TO CREATE PROTECTED, GOVERNMENT-CONTROLLED NATIONAL MARKETS THROUGH NON-TARIFF TRADE BARRIERS AND UNFAIR TRADE PRACTICES IN APPARENT VIOLATION OF GATT TRADE REGULATIONS.

MOST OF THE ADVANCED, DEVELOPED, COUNTRIES HAVE RECOGNIZED THE LONG-TERM BENEFITS OF THE INFORMATION INDUSTRY AND HAVE ORGANIZED AND STRUCTURED GOVERNMENT SUBSIDIZED PROGRAM SUPPORT FOR THEIR INDIGENOUS INDUSTRY AND HAVE ALSO ERECTED BARRIERS.

CONTRARY TO OUR FOREIGN COMPETITORS WHO ARE HELPED BY RATHER WELL ORGANIZED GOVERNMENT MACHINERY WHICH ALSO SERVES TO HAMPER OUR EFFORTS TO CONDUCT BUSINESS IN THAT COUNTRY, WE MUST DEAL WITH A NUMBER OF U.S. GOVERNMENT ENTITIES, EACH OF WHICH HAS VERY LIMITED JURISDICTION OVER THE ENTIRE ISSUE OF INTERNATIONAL INFORMATION FLOW.

IN ESTABLISHING AND OPERATING BUSINESS ACTIVITIES IN FOREIGN COUNTRIES, WE HAVE BEEN FRUSTRATED AND DISAPPOINTED. THE BARRIERS PRESENTED BY SOME FOREIGN GOVERNMENTS HAVE WEAKENED OUR COMPETITIVE ABILITY, DIMINISHED OUR SHARE OF MARKET PENETRATION, AND REDUCED OUR PROFITABILITY.

SPECIFICALLY, FOR EXAMPLE, WE ENCOUNTERED ARBITRARY REGULATIONS BY THE JAPANESE GOVERNMENT WHICH OBSTRUCTED OUR ATTEMPTS TO ESTABLISH COMPUTER SERVICES IN JAPAN. THE IMPLEMENTATION OF BARRIERS BY JAPAN INVOLVED RATHER INSIDIOUS AND ESPECIALLY INTIMIDATING OBSTRUCTIONS. WE AND OUR JAPANESE AFFILIATE WERE INITIALLY ENCOURAGED AND MISLED BY THE JAPANESE GOVERNMENT'S RATHER SWIFT APPROVAL OF BOTH THE FORMATION OF OUR JOINT VENTURE, AND THE PERMISSION TO TRANSFER ADEQUATE FUNDS INTO JAPAN WITH WHICH TO FINANCE THE BUSINESS.

WE HAD EXPECTED DIFFICULTIES IN BOTH OF THESE MATTERS BUT EXPERIENCED NONE. IN THIS ENCOURAGING ENVIRONMENT, OUR AFFILIATE PROCEEDED TO HIRE A STAFF, RENT OFFICE SPACE, AND MAKE ALL THE

FINANCIAL COMMITMENTS FOR THE IMMINENT STARTUP OF A LONG-TERM BUSINESS VENTURE. HOWEVER, WITHIN A FEW MONTHS PRIOR TO OUR ACTUALLY STARTING OPERATIONS, THE JAPANESE INTERNATIONAL TELEPHONE AGENCY, KNOWN AS KDD, INFORMED OUR AFFILIATE THAT THERE WOULD BE SOME PROBLEMS IN THEIR APPROVAL OF THE DEDICATED TRANS-PACIFIC TELEPHONE LINE THAT WE HAD ORDERED FROM THEM.

THIS COMMUNICATIONS LINK IS A VITAL RESOURCE SINCE THE BASIC COMPUTER SERVICE, WHICH THE AFFILIATE WOULD SELL, WAS TO BE PROVIDED FROM U.S. BASED COMPUTERS TO JAPAN, EXCLUSIVELY BY MEANS OF THIS TRANSPACIFIC TELEPHONE LINE. IN EFFECT, WITHOUT THIS LINE, OUR AFFILIATE COULD NOT OPERATE, AND THE JAPANESE KNEW THIS.

DURING THE ENSUING 16 MONTHS, THE JAPANESE INTERNATIONAL TELEPHONE AGENCY (KDD) GAVE US AND OUR AFFILIATE EXCEEDINGLY FRUSTRATING AND UNPLEASANT EXPERIENCES -- IN DELAYS, INTIMIDATIONS AND CONSTANT OBSTRUCTIVE PLOYS WHICH INCLUDED:

- 1) EXTREMELY DETAILED INSPECTIONS OF OUR EQUIPMENT CENTERS AND PROPRIETARY SOFTWARE WHICH GAVE US GRAVE CONCERN WHETHER THEY WERE REALLY APPROPRIATING OUR TECHNICAL KNOW-HOW. NOT INCIDENTALLY, KDD'S SISTER AGENCY WHICH PROVIDES DOMESTIC TELEPHONE SERVICES IN JAPAN, IS ALSO THE LARGEST SUPPLIER OF COMPUTER SERVICES IN THAT COUNTRY.

- 2) A DEMAND FOR SPECIAL MODIFICATIONS TO OUR STANDARD COMPUTER SERVICES. THIS HAD THE EFFECT OF DECREASING THE RANGE OF SERVICES WE COULD OFFER AS WELL AS WEAKENING THE COMPETITIVE CAPABILITY OF OUR PRODUCT LINE, THEREBY REDUCING THE LIKELIHOOD OF OUR SUCCESSFUL PENETRATION OF THE JAPANESE MARKETPLACE.
- 3) ONEROUS TERMS AS A CONDITION OF OUR USE OF THE TELEPHONE LINE. AFTER THE 16-MONTH DELAY, DURING WHICH TIME OUR AFFILIATE CONSUMED VIRTUALLY ALL OF THE INITIAL FUNDING INTENDED FOR THE STARTUP OF BUSINESS OPERATIONS, KDD OFFERED TO PROVIDE THE DEDICATED TRANSPACIFIC PHONE LINE TO OUR AFFILIATE, BUT UNDER A SET OF CONDITIONS WHICH WERE HIGHLY RESTRICTIVE, AND WHICH FURTHER LIMITED OUR CAPABILITIES. THE RESTRICTIONS SEEMED ALMOST INTENDED TO PROVIDE THE MAXIMUM CONFLICT AND INCONVENIENCE POSSIBLE RELATIVE TO HOW WE NORMALLY PROVIDE COMPUTER SERVICES IN THE U.S. AND TO OTHER COUNTRIES. FINDING OURSELVES, AT THAT TIME, IN A VERY DESPERATE SITUATION, WE RELUCTANTLY AGREED, UNDER PROTEST, AND ACCEPTED THE TELEPHONE LINE UNDER THEIR TERMS.
- 4) ONE OF THE CONDITIONS IMPOSED ON OUR USE OF THE TELEPHONE LINE BY KDD WAS THAT THE ONLY SERVICES OUR AFFILIATE COULD OFFER IN JAPAN WERE THOSE PROCESSED ON SPECIFIC COMPUTERS AT THE ONE COMPUTER CENTER ALLOWED TO BE ATTACHED TO THE TRANSPACIFIC TELEPHONE LINE. OUR

AFFILIATE IN JAPAN HAS SINCE BEEN INFORMED BY KDD THAT IF IT SUBSCRIBED TO A BRAND NEW KDD COMMUNICATION SERVICE, INSTEAD OF USING THE PRESENT FIXED COST, DEDICATED TELEPHONE LINE, THAT WE WOULD BE PERMITTED TO OFFER AND SELL OUR FULL RANGE OF SERVICES IN JAPAN. WE ESTIMATE THAT THIS NEW COMMUNICATIONS SERVICE WOULD OVER TIME, COST ABOUT 10 TIMES MORE THAN THE FIXED-COST, DEDICATED TELEPHONE LINE, AND THAT IF WE WERE FORCED TO USE THIS SERVICE, WE WOULD BE UNABLE TO COMPETE ECONOMICALLY IN JAPAN. THIS MATTER STILL IS NOT RESOLVED.

DURING THIS RATHER AGONIZING 16-MONTH PERIOD, WHILE WE WERE KEPT IDLY WAITING AND WHILE OUR AFFILIATE WAS SPENDING ALL THE STARTUP CAPITAL, WE WORKED EXTENSIVELY WITH THE NUMEROUS U.S. GOVERNMENT AGENCIES APPARENTLY INVOLVED IN THE AREA OF INTERNATIONAL INFORMATION FLOW, IN AN ATTEMPT TO GET SOME USEFUL ASSISTANCE. THESE AGENCIES INCLUDE THE DEPARTMENT OF STATE, THE DEPARTMENT OF COMMERCE INCLUDING THE TRADE FACILITATION COMMITTEE AND THE NATIONAL TELECOMMUNICATIONS AND INFORMATION AGENCY, THE F.C.C., THE EXECUTIVE OFFICE OF THE PRESIDENT, AND THE SPECIAL TRADE REPRESENTATIVE.

UNFORTUNATELY, OUR DISAPPOINTMENT AND FRUSTRATION DUE TO THE APPARENT LACK OF INTEREST, ASSISTANCE, AND RESULTS FROM ANY

U.S. GOVERNMENT AGENCY WAS IN SOME WAYS MORE FRUSTRATING THAN THE AGONIES IN DEALING WITH THE JAPANESE. WE REALLY HAD HOPED AND EXPECTED SOME FORM OF SUPPORT AND ASSISTANCE FROM OUR U.S. GOVERNMENT AGENCIES. WE WERE THOROUGHLY DISAPPOINTED BY THEIR RELUCTANCE TO BE INVOLVED AND TO TAKE ANY ACTION BUT WERE MOST FRUSTRATED BY THE REFUSAL OF EACH AGENCY TO ACKNOWLEDGE THAT THEY HAD ANY RESPONSIBILITY OR AUTHORITY TO PROVIDE SUCH ASSISTANCE. THE MOST COMMON COMMENT WE HEARD WAS, "YOUR COMPANY REALLY HAS A TOUGH SITUATION AND A VERY STRONG, WELL-DOCUMENTED CASE, BUT THERE IS NOTHING WE ARE EMPOWERED TO DO."

IF THE QUOTE "INFORMATION IS POWER" IS CORRECT, THEN WE ARE INDEED INVOLVED IN AN INTERNATIONAL ECONOMIC POWER STRUGGLE, A STRUGGLE WHICH WILL ONLY INTENSIFY AS TIME GOES ON. U.S. COMPANIES ENGAGED IN THE BUSINESS OF INTERNATIONAL INFORMATION PROCESSING NEED ONE FOCAL POINT IN THE U.S. GOVERNMENT EMPOWERED TO TAKE EFFECTIVE ACTIONS AND DEAL WITH THE TYPE OF BARRIERS BEING USED AGAINST U.S. COMPANIES IN THE FORM OF INTERNATIONAL INFORMATION FLOW RESTRICTIONS.

WE SUGGEST THAT OUR GOVERNMENT HAVE A DESIGNATED SENIOR OFFICIAL AT SOME SPECIFIC AGENCY IN THE EXECUTIVE BRANCH OF GOVERNMENT WHO HAS THE RESPONSIBILITY TO REPRESENT THE BEST INTEREST OF OUR INDUSTRY AND OUR COUNTRY. WE FEEL IT IS EXTREMELY URGENT THAT THE U.S. GOVERNMENT ACHIEVE A UNIFIED POSTURE ON INTERNATIONAL INFORMATION FLOW AND TELECOMMUNICATIONS AND PLAY AN ACTIVE ROLE IN THIS VERY IMPORTANT INTERNATIONAL ISSUE.

VITAL U.S. INTERESTS APPEAR TO BE DEPENDENT UPON THIS CORRECTIVE ACTION. THE SUSTAINED GROWTH OF OUR ECONOMY, OUR BALANCE OF TRADE PROBLEMS, OUR UNEMPLOYMENT AND OUR PRODUCTIVITY SITUATION, AND OUR TECHNOLOGICAL LEADERSHIP ROLE AMONG NATIONS ARE AT RISK.

MR. CHAIRMAN, IF THERE ARE ANY QUESTIONS FROM THE COMMITTEE I WILL BE PLEASED TO ATTEMPT TO ANSWER THEM.

Questions and Answers

- 1.Q. You mentioned that the Japanese conducted detailed inspections of your equipment and software as a precondition to establishing operations in Japan. Do you feel that foreign governments might use such tactics for acquiring American know-how and gaining access to proprietary information?
- A. Foreign governments might use such tactics to gain access to propriety information; however, I believe that the primary purpose is to exercise control over the operation of outside companies, and thereby constrain or inhibit their effectiveness.
- 2.Q. The Japanese Government indicated to you that when new telecommunications services based on volume-sensitive charging are introduced you will be expected to utilize these lines, as a condition to offering your full range of services in Japan. How might the U.S. Government assist you in negotiating this matter?
- A. The U.S. Government should remain alert to possible abuses in this area, participate actively in existing international fora, and take every action to minimize PTT's abuse of their monopoly position. Specifically, the U.S. Government should insist that fixed cost dedicated lines remain available bearing some reasonable relation to the cost of providing those facilities and insure that the price charged not be arbitrarily increased.
- 3.Q. You suggested that there be some senior official in the executive branch who has primary responsibility for international telecommunications and information policy. Have you had any further thoughts on where such a person might be located and how he might coordinate existing expertise and responsibility within the executive branch on these matters?
- A. Tymshare does not profess any expertise in government organization; therefore, we do not have a specific recommendation as where this official should be located. In view of the broad and significant set of issues involved; such official should be vested with sufficient stature and authority to centrally coordinate across multiple agency lines.

4.Q.In the 1960's, failure to adopt uniform international formatting, transmission, and production standards in color televisions effectively barred American companies from the European market. Do you see a potential for similar standards problems adversely affecting U.S. data processing and communications enterprises?

A.To date standards have not been a problem. There is enough flexibility inherent in the software components that control advanced networks to allow almost any terminal to communicate with any other terminal or with any computer system.

5.Q.What efforts can the U.S. Government make to ensure that new international standards are truly international and uniform and do not adversely affect U.S. enterprises?

A.The Government can participate more actively in standards setting in all international fora by monitoring, reporting, and actively presenting a strong case for the American position. This naturally will also entail an increase in communication with the private sector standards bodies.

6.Q.If some kind of cooperative agreement is not reached soon for the protection of privacy in the OECD, do you anticipate increased difficulties in operating internationally?

A.It appears highly probable that difficulties operating internationally will increase in the near term whether or not the OECD guidelines are adopted, and soon, national governments are continuing to pass their own brand of legislation designed to protecting individual and "legal person" privacy. Therefore, something more than mere adoption of the OECD guidelines merits consideration.

7.Q.Most of the data protection laws in Europe require registration of data bases and various licensing procedures for compliance. What impact does this have on the cost, efficiency, and security of doing business in these countries?

- A.The full impact of these laws is not yet known because, except for Sweden, implementation is just beginning. However, the laws as written already appear to discourage some applications particularly where centralized files are involved. Moreover, where registration is required, the denial of registration would be tantamount to denying the "right of establishment" which strikes at the heart of international business. Other provisions, and their impacts have not yet been sufficiently analyzed.
- 8.Q.In some instances, U.S. enterprises have circumvented barriers by operating through partially owned foreign subsidiaries. What does such an approach mean in terms of the cost and efficiency of doing business abroad and how does it affect your ability to produce goods and provide services directly from the U.S?
- A.As a good corporate citizen, we believe in respecting and following rather than circumventing country's laws. A good joint venture does not adversely affect us nor will it gain any special advantage.
- 9.Q.The British Government is currently tariffing data transmissions and other nations are imposing substantial additional operating costs which have the same effect. Have you estimated what these added costs mean both for you and for the customers you serve?
- A.We are constantly watching these kinds of costs which to date have not been material. Our concern is that once imposed such costs can be easily increased, without any or little opportunity for administrative appeal.
- 10.Q.In your corporation, to what degree have data flow considerations become an element in planning marketing strategy?
- A.Data flow considerations generally are extremely important to our company. The communications network is the backbone of our business. Internationally, it is like any other form of uncertainty; it requires a great deal of flexibility in our planning and to some extent discourages international participation.

11.Q.The State Department has an Advisory Committee on Transborder Data Flows. Do you think this is an effective mechanism for representing private sector interests in government decisionmaking?

A.The State Department Advisory Committee has not been as effective as it could have been. The constraints such as the requirement for open meetings, public notice and the long delay between meetings, the absence in many instances of an advance agenda, render this process less than satisfactory. However, if the committee is expanded, staffed and run on a more regular, serious basis, it is most certainly worth continuing. Needless to say, the private and public sectors need to do everything possible with regard to data flow issues to increase their communications. Such meetings it seems also, provide an opportunity for the several agencies within government itself to communicate with each other, and the private sector. That, incidentally, is one of the reasons for our recommended appointment of a senior official to coordinate all activity on international data flow.

12.Q.The USTR is establishing a private sector advisory committee drawn from the service industries. Do you think this is an effective approach to getting private sector input or is the committee, embracing all service industries, far too broad in scope?

A.We believe that to include information on data flow issues along with services within the USTR is a mixed blessing. Certainly, the data processing industry represents one of the faster growing "service" industries, and data flow issues appear to impact "services" generally with greater force than the traditional agricultural or industrial sectors. However, data flow issues affect all three sectors. More importantly, the "information" industry itself, while not well defined accounts for 20-50% of the GNP according to Commerce Department Reports, and as such merits serious considerations or a separate section within USTR as elsewhere in the executive branch.

Mr. PREYER. Our final witness is Mr. Philip Walker, vice president and general counsel of GTE-Telenet Communications Corp. We are happy to have you with us today.

STATEMENT OF PHILIP WALKER, VICE PRESIDENT AND GENERAL COUNSEL, GTE-TELENET COMMUNICATIONS CORP., VIENNA, VA.

Mr. WALKER. Thank you. I would like to thank you for the opportunity afforded Telenet to participate in these hearings dealing with various aspects of international data flow.

By way of background, Telenet is a data communications common carrier regulated by the Federal Communications Commission, and provides a nationwide packet-switched data communications service. Telenet's packet switching is a computer-based method of communications network management whereby circuits within the network are dynamically assigned, thus providing much greater efficiency and other useful enhancements.

This is the technology which several of the other witnesses have mentioned this morning. We operate a domestic network utilizing this technology which we feel is much more cost effective than

many of the more traditional alternatives, but as I will get into, there are some problems in the international sphere with respect to such services.

Telenet's network is interconnected directly with telecommunications carriers in Canada and Mexico, and is interconnected via the U.S. International Record Carriers with more than 20 overseas countries around the world. In January 1977, Telenet received authorization from the FCC to interconnect on a direct basis with the United Kingdom, and this authorization was affirmed by the U.S. Court of Appeals in the spring of 1979. However, Telenet has been unable to implement its direct service to the United Kingdom because it has found itself unable to obtain an operating agreement with the British Post Office. Another U.S. carrier, Graphnet, Inc., was also authorized to provide direct service to several European countries, and has experienced a similar inability to obtain operating agreements with foreign telecommunications entities.

Based on the experience of Telenet and Graphnet, it appears that one of the major problems affecting international data flow is the structure of the international telecommunications marketplace. That structure is marked by monopoly at the foreign end, and oligopoly at the U.S. end of international services. Typically, telecommunications services in foreign countries are provided by a department of the government itself, known as the Postal and Telegraph Administration, PTT, in combination with its postal service. In the United States, there are four principal International Record Carriers: ITT World Communications, Inc.; RCA Global Communications, Inc.; Western Union International, Inc.—a subsidiary of Xerox Corp.—and TRT Telecommunications Corp.—a subsidiary of United Brands. Historically, these carriers have been largely limited to the provision of so-called record services, as distinguished from voice services. As to the latter, A.T. & T. has been the principal international voice carrier providing service to and from the United States. Recent FCC actions, however, permit A.T. & T. to begin to enter the international data communications marketplace and, at the same time, permit the International Record Carriers to institute limited voice services internationally.

During the past decade the FCC and the courts have opened the domestic telecommunications marketplace to competition, with very beneficial results, and the Commission's policy objective is to follow this course in the international marketplace as well. However, at present, the institution of a new international service requires both an authorization from the FCC and an operating agreement between the U.S. carrier and the foreign PTT. Thus, the unwillingness of foreign administrations to enter into operating agreements with new U.S. entrants authorized by the FCC results in the effective frustration of U.S. policy.

The stated reason for this unwillingness has been that the PTT's prefer not to deal with multiple carriers to the same foreign point where that can be avoided. The unstated reasons are more complex. First, the foreign PTT's are, by their very nature, monopolies, and as such are naturally unreceptive to the concept of competitive suppliers of communications services. Second, such organizations are not totally guided by profit motives; as creatures of their governments, the PTT's are instruments of national policy and may

tend to subordinate the needs of communications users to other perceived national interests. For example, and of particular relevance to the subject matter of this subcommittee's current investigation, a foreign government might perceive of economical international data communications as a deterrent to the development of its own domestic computer industry, and thus refuse to permit its PTT to enter into the necessary contractual arrangements with other overseas carriers necessary to provide new international data communications services.

In large part, there has been no effective price competition with respect to international telecommunications services, and, because of the bottleneck imposed by the foreign administrations, there has been no real service competition. The result has been that the potential consumer of international data services may be totally denied a new service which is technically feasible and domestically available, and the user is generally overcharged for whatever international services may be offered.

In the meantime, the International Record Carriers collectively are earning profits which, were they in the oil business, you would quickly label obscene. The Federal Communications Commission has just recently concluded an audit of the international carriers which showed that their principal service—international telex—earned the four IRC's 31.8 percent after taxes on their net plant investment. Presumably, the foreign administrations experience even higher rates of return, since they are typically free from taxes and realize a number of economies flowing from their integrated structure.

The ability of U.S. domestic carriers to influence the rates for international services with which they may be interconnected is absolutely nil, and the ability of the U.S. international carriers to do so is minimal. While the U.S. International Record Carrier establishes by tariff the rate for outbound services, the rate for inbound services is solely within the control of the foreign administration. Those administrations uniformly refuse to permit reverse charging for international switched data communications service, thus eliminating any potential for leveling of outbound and inbound rates.

To translate the foregoing into monetary terms, when Telenet first applied for international packet-switched service to England, it had tentative agreement on the part of the BPO to offer the service at what would have been an effective rate of approximately \$10 to \$12 per hour of connect time for a low-speed data terminal. Telenet's application set off a storm of activity involving the international carriers and the other foreign administrations in Europe, with the result that the British Post Office reconsidered its position and ultimately entered into agreements with the established international record carriers for interconnection between the United Kingdom and Telenet's domestic U.S. network, at approximately twice the rates which had been initially proposed by Telenet. Other European countries so interconnected currently charge as much as \$50 per hour, more than five times the rates originally proposed for service to the United States, with the result that international switched data services have not appeared to the consumer to be attractively priced, given the user's option of obtaining data proc-

essing or data base retrieval capabilities from local suppliers within his country. A natural U.S. export commodity—data processing and data base services—is thus inhibited artificially.

Telenet has, in the recent past, suggested both regulatory and legislative solutions for the problems which have been identified above. Specifically, Telenet has suggested that, in lieu of the current system whereby each international record carrier separately negotiates with the foreign PTT an operating agreement governing each of the discrete service offerings in which they are jointly engaged, a consortium approach be adopted. Under our approach, a committee would be formed, composed of all U.S. carriers authorized to provide a particular service, plus a representative of either the FCC or the National Telecommunications and Information Administration (NTIA) of the Commerce Department—in order to avoid any potential antitrust problems. The committee would appoint a representative to negotiate with the foreign entity a blanket operating agreement under which any carrier certificated by the FCC to offer that particular service to the foreign country involved would be free to do so on the same terms and conditions available to other carriers offering such service to that country. Such a consortium approach would not only enable the implementation of U.S. policy favoring competitive services and cost-based rates, but it would also strengthen the bargaining position of all U.S. carriers by eliminating the ability of the foreign administration to play off one U.S. carrier against another—the so-called whipsawing complaint which has occasionally been made by the existing international carriers.

There are, of course, alternative solutions to the problem of exclusive, discriminatory dealing by overseas telecommunications administrations. For example, through direct involvement of the U.S. Department of State, the United States might negotiate a policy agreement with the government of a particular foreign country, under which each government would commit itself to recognize and deal on a nondiscriminatory basis with any international telecommunications carriers authorized by the other government. Such State Department involvement would be analogous to the negotiation of overseas landing rights agreements in the commercial aviation field, where the State Department has been quite successful in implementing, overseas, U.S. procompetitive policies.

It is recognized that primary responsibility for legislative matters pertaining to communications lies with other congressional committees, and accordingly I will not burden your record with further details concerning these Telenet proposals, but mention them here only to emphasize that the current problems of international data communications are not without potential solutions.

I thank you for your time, and will be pleased to respond to any questions which you may have.

Mr. PREYER. Thank you very much for a very interesting statement, Mr. Walker. You have outlined your problems in negotiating an agreement with the British Post Office. Do you have any indication how other European nations might view the establishment of such service between the United States and England?

Mr. WALKER. We have talked with a number of administrations in Europe and elsewhere in the world, and we find that the atti-

tude is generally the same. The CEPT, the Association of European Telecommunication Administrations, has, informally at least, adopted a position opposed to the recognition of additional carriers, and so we do not feel that the United Kingdom is an exceptional case by any means.

Mr. PREYER. But you have effectively been denied permission to enter international communication markets. How do you feel the U.S. Government could more effectively assist you in gaining access to these markets?

Mr. WALKER. In the past the negotiation of operating agreements has been the responsibility of the particular carrier involved on the U.S. side. The U.S. Government has not played any significant role in that process, largely because it has been felt that the carrier was able to handle that process by himself without Government assistance, and the process seemed to work reasonably well in an environment where you had a closed cartel, a small number of carriers, and longstanding relationships between those carriers and the overseas administration itself. But, if the United States is going to implement a competitive open-entry policy in international communications, it seems to me that a direct Government role is needed, and there may be, as I indicated in my testimony, several ways to accomplish that.

The consortium approach is one way. State Department negotiation of an agreement or a treaty committing the foreign government to recognition of U.S. policy is another way. It may also be possible that if there were a single focal point for international telecommunications, that such organization could aid and assist individual carriers in the negotiations of agreements under the current structure. However, up to this point in time that practice has not been followed.

Mr. PREYER. Let me recognize Mr. Vizas for further questions.

Mr. VIZAS. Mr. Walker, have you had any difficulty in conforming to inconsistent or nonuniform technical standards that perhaps have caused you problems with interconnection?

Mr. WALKER. Yes, we have. When the services, the overseas packet services, were instituted 3 years ago, the services that permitted Telenet indirect interconnection and enables U.S. network to operate to the various overseas countries, we found that the U.S. record carriers chose to utilize equipment in their gateway switching centers which did not conform to the established international technical interconnection standards and protocols. Therefore, we were denied a means of technically efficient interconnection to those systems, and as a result the quality and performance of service that we were able to offer to our customers was seriously degraded. That process is changing, but only gradually, and only within the last several weeks literally have we been able to begin to achieve interconnection on any kind of a reasonable basis as far as the technical aspects go.

Mr. VIZAS. Do you have any suggestions for how more equitable application of international standards can be pursued?

Mr. WALKER. There are adequate standards in place from the CCITT, the international telecommunications standards body. It has developed a whole series of standards which if uniformly followed will do the job. The problem has been that individual carri-

ers have had the prerogative of following or not following those standards, and where you have a middleman in the picture, an international carrier that sits between the U.S. domestic carrier and the overseas carrier, if that middleman chooses not to follow the standards, which is what happened in the case I just mentioned, then the U.S. domestic carrier can be seriously harmed.

Mr. VIZAS. How do we insure that they follow consistent standards? Is there some mechanism that is available?

Mr. WALKER. The FCC in principle would be able to require that as a condition of authorization. The Commission to my knowledge has not done that to this point.

Mr. VIZAS. You indicated earlier that foreign PTT's have substantial control over final user costs through several different pricing mechanisms. Could you explain those different pricing structures?

Mr. WALKER. There are a couple of things that seem to be at play here. First of all, under the structure of the operating agreements that exist today, this is a traditional means of dividing revenues dating back many decades, each carrier or administration is able to determine the retail price for service offered on his end of the circuit. Thus, a data terminal user, let us say in Europe, wishing to place a call through one of these services to the United States, if he sends the call on what is called a paid basis, the same as you would place a telephone call and pay on your end, must pay the rate established by the PTT. That rate is entirely within the PTT's control and typically is several times higher than the so-called accounting rate between the PTT and the U.S. carrier, which is the rate that they split for division of revenues. That is somewhat complicated, but the point is that the PTT on its end can set a very high rate if it wishes, and has tended to do so.

Now, if the user is permitted to place that call on a collect basis, what is referred to technically as reverse charging, then he will pay the U.S. rate, which is a rate established under tariff by the U.S. carrier, and regulated by the FCC. That rate is typically lower.

What has happened with these new switched data services is that the PTT's have refused to permit reverse charging, and it seems to me that one of the things the U.S. Government could do in asserting itself and taking a leadership position in terms of relationships between the U.S. carriers collectively and their foreign counterparts would be to require as a condition of anyone on the U.S. side being authorized to offer service that reverse charging be absolutely permitted from the outset.

A second thing that the current structure encourages is the accounting rates for service are set between the U.S. international carrier and the PTT without any consultation by the U.S. domestic carrier to whom this service is connected. The IRC's and the PTT's just happen to have a strong incentive to protect certain of their existing services, in particular telex, which is viewed as being susceptible to revenue diversion, and is currently very profitable, so they tend without any other influences to set rates for new service extremely high. As I have indicated, those rates in some cases are up to four times, maybe five times, what we feel would be feasible.

If you had direct interconnection between the U.S. domestic carriers and the overseas administrations, you would have a new factor introduced. You would have a new party in the negotiating process who did not have vested interest to protect, so you would tend to see the rates driven down to somewhere more closely approximating cost.

Mr. VIZAS. One final question. What is the impact of these rates that are substantially higher than the accounting rate on the competitiveness of a firm like Telenet and on the ability of your users to employ data communications and data processing services most economically?

Mr. WALKER. The question really comes down to one of the price elasticity of the users, and how much communications he will demand at what price level. We find that the user in most cases has a choice between doing his data processing locally or using data communications to reach a distant computer center, and if the communications cost is too high compared with the cost of computing, he simply will not communicate. Most of the traffic, by the way, on these services is inbound to the United States from overseas users. We find that if the price is too high, the overseas user will simply utilize an in-country data processing service. He will not come to the United States for his data processing at all, so the result is that we as a carrier simply see a much reduced traffic level, and the U.S. computer and data base service industry finds that due to the high cost of transportation, its ability to effectively export its services is reduced.

Mr. VIZAS. I take back my "one last question" last time. This will be the last question. In a number of instances U.S. companies have circumvented barriers to entry into market and so forth by establishing either partially owned foreign subsidiaries or joint ventures. Is such an approach feasible to you in conducting the sort of international telecommunications business that you are interested in, and what effect does that sort of approach have in terms of cost and efficiency of doing business abroad and the ability to produce goods and services fundamental to this country?

Mr. WALKER. Telecommunications services in virtually every country except the United States are required to be offered only by the government of that country or by its designated agent, so that it is not possible under that structure for a private-enterprise firm, be it U.S.-controlled or otherwise, to operate service in-country. The result in turn of that is that we are forced to work in a cooperative fashion with the overseas designated administration. We cannot go into the country and offer service directly. That, of course, gets us into this problem that I have described of their unwillingness to recognize and deal with us.

Telecommunications in that respect is different from the data processing business. As some of the other witnesses have described, a data processing firm could come into the country and open its own local operation. We simply cannot.

Mr. VIZAS. Thank you, Mr. Walker, Mr. Chairman.

Mr. PREYER. Thank you very much, Mr. Walker and all of the witnesses today. We appreciate your testimony. You have gotten us off to a good start. We would like to leave the record open at this

point for written questions which might occur to us. Your knowledge can be very helpful to us on this. Thank you very much.

The committee stands in recess until 12:30 Thursday.

[Whereupon, the subcommittee adjourned, to reconvene, at 12:30 p.m., Thursday, March 13, 1980.]

INTERNATIONAL DATA FLOW

THURSDAY, MARCH 13, 1980

**HOUSE OF REPRESENTATIVES,
GOVERNMENT INFORMATION
AND INDIVIDUAL RIGHTS SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
*Washington, D.C.***

The subcommittee met, pursuant to notice, at 9:40 a.m., in room 2247, Rayburn House Office Building, Hon. Richardson Preyer (chairman of the subcommittee) presiding.

Present: Representatives Richardson Preyer and M. Caldwell Butler.

Also present: Timothy H. Ingram, staff director; Christopher J. Vizas, counsel; Euphon Metzger, clerk; Thomas G. Morr, minority professional staff, Committee on Government Operations; and Jane Bortnick, analyst, Congressional Research Service, Library of Congress.

Mr. PREYER. The subcommittee will come to order.

We are beginning today our second day of hearings into the problems caused by barriers to the international flow of information. As we do so, the subcommittee has already been made dramatically aware of threats to the vitality—indeed, the very existence—of the American data processing and communications industries in international markets.

We learned on Monday that American businesses face the imposition of substantial and unnecessary costs as the result of a variety of barriers—costs which will result in the loss of legitimate competitive advantages. We found that some of the barriers resulted not only in unnecessary costs but in de facto restrictions on entry into foreign markets. Perhaps most disturbing, we discovered that in a few situations, competitive American businesses have been flatly denied entry into the markets of our international trading partners.

The testimony we received on Monday provided unsettling intimations of a new set of protectionist tools which might be employed as barriers to international data flow. They are unique tools, combining traditional trade barriers, such as tariffs and technical standards requirements, with wholly new barriers, such as those possible through the misapplication of privacy and data protection laws. The use of these tools would be disastrous, both for the United States and our trading partners.

Today we will hear from enterprises which are dependent on data processing and telecommunications technologies for their international operations, as well as from a distinguished panel of

private citizens with substantial experience in both the public and private life of this Nation.

The presence of the witnesses we have today emphasizes the importance and urgency of this issue—the need to take effective steps to insure that international data flows will continue without unnecessary barriers and, of most immediate concern, that the interests of the United States will be effectively represented with foreign governments and before international bodies.

The situation in the United States is in several ways unique as compared to many foreign nations. In this country we maintain a strong commitment to private ownership and operation in the information and communications industries. We are also fortunate to have a strong foundation of law which provides unparalleled protections to both individuals and enterprises within our society. As a result, the effective negotiation of international data flow issues demands that executive agencies vigorously and successfully represent the interests of American business and citizens in a wide variety of international arenas.

Unfortunately, the first day of hearings only confirmed the initial perception of the subcommittee that confusion and lack of coordination—rather than the effective protection of American interests and the development of a national policy—plague the executive agencies whose expertise and experience is crucial to resolving problems in this area.

To the extent Federal departments have become involved and taken positions in this policy area, American efforts have been reactions to agendas set by others, rather than affirmative steps taken from a firm base of national policy.

I hope, and I know that the other members of the subcommittee share my hope, that these hearings will delineate the major components of the international data flow issue and will enable us to determine how the executive arm of our Government should best be organized to address these issues.

Our first witness today is the Honorable Barry Goldwater, Jr., who has been the earliest Member of Congress, I think it is fair to say, to appreciate the importance of this issue.

We are certainly delighted to have you here today, Mr. Goldwater.

STATEMENT OF HON. BARRY M. GOLDWATER, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. GOLDWATER. Thank you very much, Mr. Chairman. I am pleased to be here today to join the subcommittee in undertaking a review of international data flow issues.

Traditionally, the Nation has supported the concept of minimum restrictions on the flow of goods and information, believing as we do that this freedom is vital to the continued socio-economic growth of all people. As a result, the United States has emerged as the world's major information producer. We manufacture more communications gear, computers, and satellites than any other nation. We produce more movies, television programs, news and economic data than anyone else, and we transmit and process all this information on more computer hardware than any other nation.

There is now little question that the information stored in advanced communications and computer technology is the lifeblood of governments and industry. As with any resource of such importance, the potential for abuse is great. The passage of privacy and data protection legislation by many industrialized nations, including the United States, during the past several years has been, to some extent, a reaction to this potential for abuse. Many of these laws were intended to protect the privacy of individuals who might be compromised if personal data was transmitted outside the country in machine-readable form. However, I think we are now seeing the emergence of national privacy legislation which is actually aimed at erecting new trade barriers. Sweden, France, and West Germany in particular, have all enacted laws establishing some form of national "data board" to monitor the use and storage of information. They have discovered the simple fact that to block data flow in the 1980's is to block trade.

As a result, multinational corporations face vast difficulties in transferring necessary data between countries in which they conduct business. This could adversely affect their operations and might unfairly restrict markets for the world information and telecommunications industry which is predominantly U.S. owned. It is little wonder that American business and Government interests have become alarmed.

Perhaps worst of all, the building of information walls around a nation in the name of "privacy" has led to a hodge-podge of differing requirements which are incompatible. While I believe that nations may have the sovereign right to regulate information, I also believe that such national laws must be harmonized in order to strike the proper balance between privacy protections and the free interchange of information.

There has been little or no movement in Government, however, toward forging either a unified national or international information policy. I therefore urge this subcommittee, first of all, to determine which regulatory agency should spearhead U.S. data-flow policy. In this regard, I believe every effort should be made to insure that the National Telecommunications and Information Administration within the Department of Commerce is fully funded in order to adequately represent U.S. interests in this area.

Mr. Chairman, digressing just for one moment, one of the reasons the United States has not been adequately represented in the international community in this discussion is that we have not placed emphasis upon it and, on top of that, we have not provided the necessary funds for the United States to give adequate, informative input into these deliberations.

I believe, too, that it is time to convene an international conference on communications and information. Accordingly, I am going to introduce a resolution which directs the President to convene such a conference by January 1, 1982, and to report to Congress the recommendations it might make.

Mr. Chairman, throughout history all nations have benefited significantly from information exchange of all kinds. The long tradition of free speech in the Western world is the very foundation of international understanding and has been fundamental to the arts, science media, and commerce. I applaud the subcommittee

for taking an interest in this vital issue and look forward to working with you toward resolving the problems involved.

Thank you.

Mr. PREYER. Thank you very much, Mr. Goldwater.

Coming from one of the two House members who served on the Privacy Commission, your remarks carry special weight.

Your recommendations that one executive branch agency be put in charge of things and be adequately funded is a policy that we heard recommended last Monday, and you can be sure that it will certainly receive the serious attention of the subcommittee.

Once again, we want to thank you for being the earliest appreciator of the importance of these problems in Congress.

Mr. Butler, do you have any questions of Mr. Goldwater?

Mr. BUTLER. Greetings and salutations. I know I have missed great words of wisdom, but I want to assure you that I will read them with care and inwardly digest them, and I thank you.

Mr. GOLDWATER. Mr. Butler, I know of your interest in this particular issue, and I think that is very important, especially today when privacy is not necessarily the sexiest subject that Congress is considering but, nevertheless, important. I want to compliment you, Mr. Preyer, and other members of the committee for taking this up and bringing attention to it. It is an important issue. If we get an early start on it now, we may be able to eliminate bigger and more significant problems in the flow of data and the effect it has on the arts, media, commerce, and the economy in general.

Mr. BUTLER. Thank you.

Mr. PREYER. Thank you very much.

Our next witness is Mr. Harry Freeman, senior vice president of the American Express Co.

Mr. Freeman, it is a pleasure to have you with us today.

STATEMENT OF HARRY L. FREEMAN, SENIOR VICE PRESIDENT, AMERICAN EXPRESS CO., ACCOMPANIED BY ALEXANDRIA KARLOW, ASSISTANT, INTERNATIONAL TRADE MATTERS

Mr. FREEMAN. Thank you very much, Mr. Chairman.

I want to go through my statement, but I do not want to repeat too much of what has already been said earlier in the hearings. I did want to say at the outset, however, that I agree with almost everything that Congressman Goldwater said, but I think privacy is and will become more of a "sexy" issue. We are very much in favor of privacy legislation. We tend to think of ourselves as a pro-privacy company, so we would like to see some action taken in that area.

Mr. Chairman, my name is Harry Freeman, and I am a senior vice president of American Express Co. I am accompanied today by Alexandria Karlow who is my assistant for international trade matters.

I am very pleased to appear before you today to discuss a new and complex subject given the impressive title, "transborder data flows," in other words, the passage of information across national boundaries.

You have already heard from representatives of the data processing industry about the problems transborder data flow restrictions pose for the providers of data processing services. This morning, I will address the issue from the point of view of a large user of telecommunications technologies around the world.

The development of new telecommunications technologies has been, and still is, a driving force of change in the United States and other economies. It has made possible the development of the service industries which have become a major sector of the U.S. economy. These vital industries include accounting, banking, insurance, travel, law, engineering and construction, shipping, and communications, to name but a few.

Little has been written about the contribution of services to our economy. While service industries may deal with invisibles and intangibles, they certainly are not dealing in inconsequential. In fact, the statistics show that we have moved from an industrial to a service based economy. U.S. service sector industries employ 7 out of 10 Americans and produce 65 percent of the U.S. gross national product. Further, they represent no less than 25 percent of our exports.

We have a major strength as an exporter of services where we now run a \$23 billion surplus, versus a \$35 million deficit in goods. For the moment, we are the No. 1 exporter of services in the world. But our position is not without challenge. Increasingly, we are encountering antiservices trade barriers which other countries have erected and continue to expand. Restrictions on the flow of data across national boundaries pose such barriers.

A service-based economy is an information-based economy, one which depends on the intelligent collection, storage, and use of information. For centuries trade has been vital to the social and economic development of mankind, and today we are moving into an era in which trade will consist increasingly of information exchanges. Even where international trade involves manufactured goods, that trade will be dependent on information exchanges. Therefore, it is important that we address the issues associated with this trade.

Predictably, rapid growth of automatic data processing is creating an increasing concern among nations for the protection of privacy of individuals. We think there is no problem in that alone. In less than a decade, more than a dozen countries, including the United States, either have passed legislation or are considering bills restricting or regulating the collection, storage, transmission, alteration, disclosure, and accuracy of data files. This is reasonable, and my company has endorsed, in public and in principle, domestic privacy legislation pending before the Congress.

However, in addition to domestic concerns about individual rights, the transfer of data beyond a nation's jurisdiction has received increasing attention. There is a growing tendency in many countries to require data files to remain in the country of origin rather than be transmitted across national boundaries.

Uneasiness about electronic data processing goes beyond privacy issues alone. U.S. predominance in data processing of all varieties accentuates feelings of concern in other nations. Some of these fears rest on notions of national pride, anxieties of losing cultural

identity, and doubts about relying on a foreign-controlled repository of vital or security data.

More troubling national reasons for enacting data flow restrictions are as follows.

One: Computer technology has a great impact on the development and future of a country. Information is power, and economic information is economic power. Therefore, control of its application is desirable.

Two: Information is seen as a national resource. It is a product which has to be protected, priced, and marketed according to established commercial rules. It should not be allowed to leave the country so freely.

Three: Many nations recognize the potential economic advancement in computer technology. These countries are determined to develop their own domestic industry and resent the dominant share of the rich data processing market maintained by American corporations. Consequently, governments in nations where data processing has grown are searching for an effective means of placing controls on the industry. Restricting the flow of data is a very effective way of regulating all industries.

What began as a problem in privacy protection has developed into a potentially serious international economic issue. A major report in spring 1978 by Simon Nora of the French Finance Ministry argued that U.S. satellites transmit much of the data processing that would otherwise be done in France and stated that France's economic balance, social consensus, and national independence rides on a resolution of these issues favorable to French interest. This sentiment exists in other countries too.

A March 1979 report done in Canada for the Minister of Communications stressed the need for the rapid development of a Canadian-owned private data industry before the market became filled with foreign information products. The report recommended that the Canadian Government require that data processing related to Canadian business operations be performed in Canada except where otherwise authorized. National data protection laws applied for those ends pose possible nontariff barriers which might exclude or hinder firms operating in foreign markets by disrupting the reasonably free flow of necessary information.

At American Express we are proud of our privacy record. We recognize that in the daily course of our business we obtain substantial information concerning the private lives of our clients. We perform such services as making personal travel arrangements, processing travelers cheques and records of card charges, and obtaining credit information on new card members and banking customers outside of the United States. Because we realize the sensitive nature of this information, we respect the privacy of our customers by carefully restricting and protecting the information gathered about them.

Several years go, American Express issued and implemented its own internal privacy code of conduct. Last year we extended the code to cover our European operations. We have always believed that privacy is good business and, indeed, have used our privacy code as a marketing tool.

Mr. PREYER. Without objection, it will be included in the record at this point.

[The material follows:]



**AMERICAN EXPRESS COMPANY
PRIVACY CODE OF CONDUCT**

The nature of the services offered by American Express Company necessitates collection and retention of a substantial amount of personal information about the individuals to whom services are provided. We must avoid any unjustifiable intrusion on an individual's right to privacy. We must strive for a reasonable balance between the operational needs of our businesses and the personal needs of individuals. In an effort to attain such a balance we will be guided by the following principles with regard to the collection, custody and distribution of personal information concerning the individuals to whom we provide services.

- (1) Obtain only that personal information which is necessary and relevant to the conduct of our business.
- (2) Use only lawful means to collect information; obtain it directly from the individual to the extent practicable; and make reasonable efforts to assure the reliability of information acquired from others.
- (3) Explain the general uses of personal information to all individuals who question the reasons that they provide such information, and refrain from using the information for other purposes without informing the individual.
- (4) Establish appropriate administrative, technical, and physical safeguards to assure that access to records is limited to those who are authorized and that information is disseminated only by and to those with a legitimate business purpose or regulatory function, or where disclosure is required by subpoena or other legal process.
- (5) Provide personal data records with secure storage and ensure that personnel who are involved with custody or maintenance of such records are aware of their responsibility to preserve their confidentiality.
- (6) Promptly notify the individual in the case where records are subpoenaed, unless specifically prohibited from doing so by court order. Respond according to the law, but wait the full length of time allowed by the subpoena before providing the information in order to allow the individual the opportunity to exercise his or her rights.
- (7) Advise the individual of the Company's policy with respect to mailing lists and provide the individual with the opportunity to have his or her name removed from such lists.
- (8) Respond to all individuals who question the reasons that adverse determinations have been made about them, and advise them of the nature of information acted upon, except for information which relates to the investigation of an insurance claim or of a possible criminal offense.* This will, of course, be subject to ethical considerations and applicable laws.
- (9) Upon request, except with regard to insurance claims investigations, and within a reasonable period of time, advise an individual of factual data (maintained about that person) such as residence, address, place of employment, etc., and give the individual the opportunity to verify this factual data and to provide corrected or amended information where appropriate.
- (10) Review periodically corporate policy regarding the collection, retention, use and protection of individually identifiable data to ensure that this policy is in keeping with the shifting needs of both the business and the individual.

This Code of Conduct applies directly to the Company's relations with its customers. The principles expressed in the Code will also govern the Company's dealings with its employees.

*Medical information relating to an applicant for insurance or an insured individual will be disclosed to a physician designated by the individual rather than to the individual directly.

4/4/78

Mr. FREEMAN. Where the new national data protection laws legitimately protect the privacy of an individual's records, American Express is supportive of national legislation. But, neither American Express nor any other international corporation or person should be amenable to data transmission shutdowns or unreasonable impediments to the processing of data. Arbitrary denials of data processing licenses or other barriers under the emerging laws would constitute a new form of nontariff trade barrier.

The German post office, for example, has threatened to cut off the lines of data processing services whose computers are not in Germany. The Bundespost has told time sharing bureaus that their licenses will not be renewed after December 1981 unless their processing takes place in Germany. However, it is understood that there is no objection to files being held outside Germany, nor to networks on which some processing is done in Germany. Therefore, if a small computer is attached to the German end of the line it may meet the requirements of the Bundespost. This leads operators to believe that this action is motivated by economic concerns rather than privacy concerns.

The subject of nontariff barriers to the export of services abroad is a relatively new one. It was only in the Trade Act of 1975, which laid the groundwork for the now completed Tokyo round of trade negotiations, that "trade" was defined to include both "goods" as well as "services." Neither we nor our major trading partners have been organized to handle complaints concerning, or to negotiate, service sector trade problems. I do not think this has been the fault of the U.S. Government; I think it has basically been the fault of the private sector in the United States which has failed to complain about this in the past. Now they are complaining, and we are starting to get action.

The administration has decided to give a high priority to nontariff barriers to the trade in services, including information flows. Put in trade jargon, to remove "invisible barriers to invisible trade."

The reorganization of the executive branch established a staff in the office of the U.S. trade representative solely to represent service industries. Additional staff resources have been assigned to the Department of Commerce to pursue trade and investment issues in services. In addition to efforts on the domestic scene, the United States has also begun to push for additional efforts by international agencies, such as in the OECD, on the topic of barriers to services trade.

Therefore, if an American user has a data related trade problem in a foreign market, the complaint can be taken to the American Embassy, to the U.S. trade representative, to the Commerce Department, and to the State Department, as may be appropriate. When presented as a trade issue, a data flow dispute will then be handled by officials well versed in trade disputes. They can act on the problem. They are accustomed to handling trade problems, and we prefer to develop already existing methods of handling problems between countries rather than develop completely new regimes. In our view, the use of existing and proven procedures and communications channels is the most effective way to handle the problem of transborder data flow.

Trade has become a big issue, and we think it will be a major issue in the 1980's. I can only refer to the lead article in yesterday's Wall Street Journal entitled, "Trade War Is Feared As Protectionism Wave Surges Around the World." We think we are in for a turbulent 1980's when it comes to trade, and we think this is the time to approach solutions to those kinds of problems.

Perhaps, in the long run, a GATT type organization or forum could be developed for handling data flow problems. However, the national data protection laws are being implemented now. Problems may begin to occur in 1980. We must become aware of the problem now. We want to work with the Congress and our Government officials to plan present remedies for the present problems while we work to create a new international framework for the future.

We do not have any recommendation for legislation by the Congress at this time. However, this position may change. We may want to suggest amendments in the Trade Act; we may want to suggest amendments in the Internal Revenue Code, particularly concerning such matters as DISC. Another area would be Government reorganization if legislation is required, as well as clarification concerning the laws on antidumping and countervailing duties to make sure that the service industry is given the same treatment as other elements of American industry.

Congressional interest in the way this problem is handled by the Departments of State and Commerce and the U.S. trade representative could be very helpful, in fact mandatory. We think that the U.S. mission to the OECD, where guidelines are being developed, has done an excellent job under our U.S. Ambassador to the OECD, Herbert Salzman. These guidelines have been endorsed by the International Chamber of Commerce.

In Washington, we would prefer that the Economics and Business Bureau of the State Department should take jurisdiction of this subject because it is an economic and trade issue; it presently resides in the Oceans and International Environmental and Scientific Affairs Bureau at the State Department where it tends to be treated, predictably, as a scientific issue. We have no disrespect for the men and women in that particular Bureau, but we think the best place for this issue in the State Department is Economics and Business where they handle trade issues. We think the U.S. trade representative is aware of this issue and is prepared to help the legitimate interests of American firms, such as mine, which encounter discriminatory or manifestly unreasonable treatment abroad.

Therefore, we strongly urge that the principal responsibility for transborder/data flow be given to the U.S. trade representative where the power and the people reside to handle it as a trade issue. For, in the final analysis, it is a question of exports and our balance of payments. The other U.S. agencies, NTIA, the State Department, and others, could coordinate with the U.S. trade representative's offices. Hence, I share the views expressed by the gentleman from IBM earlier this week, notwithstanding the fact that IBM is a major supplier and my company is a user.

We really think that, rather than trying to create a new agency, we would prefer to work principally with the trade office. We think

they have or can develop the expertise to handle these matters as trade matters. When you talk trade around the world, people understand more of what you are talking about, about real dollars, real problems. We are the largest free market in the world. Considering this primarily as a trade issue and organizing it in the U.S. Government as a trade issue, we think is the best way to handle the problem, not to exclude the other agencies, but that is where it should go—that is where the power is.

Thank you, Mr. Chairman.

Mr. PREYER. Thank you very much.

You mentioned that the lack of action is not so much the Government's fault but the private sector's for not bringing it to the attention of Government or complaining sufficiently in the past, but that now that is being done, and you are getting some action.

The STR has been establishing a private sector advisory committee drawn from the service industries. Do you think this is an effective approach for obtaining private sector input, or is it too broad in scope to be effective?

Mr. FREEMAN. I think it is extremely effective.

Probably one of the best examples of cooperation among the private sector, the Congress, and the administration was in the Tokyo round of trade negotiations where these industry and Government advisory groups worked closely with the administration, the STR and the Congress. I have never seen a piece of trade legislation pass with but a few dissenting votes. It was a beautifully handled job, and the key to it, from the private sector's point of view was having a policy group.

I understand from the USTR that the advisory committee is about to be announced. I have some insight into the type of people they are recruiting and I understand they are really top people. I think it is an outstanding move.

Unfortunately, the advisory committee on this subject at the State Department, of which I am a member, has been very ineffective however, the trade representative's office knows how to use these particular kinds of committees, and how to consult and work with them very closely and carefully.

Mr. PREYER. As a company whose customers operate in the international arena, what effects do delays or limitations in the transfer of information about customer accounts have on their operations? Is there any way that you can measure that, other than just making some general statement about it?

Mr. FREEMAN. Mr. Chairman, we have not as yet experienced any such delays, and a part of my responsibility is insuring that we do not. I do not think we could put a dollar figure on our various businesses, whether it be our international banking business, international insurance, or credit cards, or travelers cheques. A total shutdown would be a very expensive thing for our company as well as a material inconvenience, not only for our American customers, but a good portion of our clients who are individuals from all over the world.

We are very interested and very active in this problem, trying to minimize the possibility of some kind of arbitrary or discriminatory action by a government that might cause some temporary or indefi-

nite shutdown of one of our operations, or somebody else's operations.

While I do not think we could put a dollar figure on the cost we treat it very, very seriously because the thought of some kind of interruption for any material time in data transmission in any of our businesses is extremely serious.

Mr. PREYER. I suppose the same sort of answer would be given to the question of what effect would it have on you if you could not be assured that the data which you were transferring was secure and unmonitored? Is that a fear that you have?

Mr. FREEMAN. I guess I am not sure what you mean by "secure."

Mr. PREYER. That a foreign country might have access to your information under some law of that country.

Mr. FREEMAN. I think that would be a concern of ours. In our general principles of privacy, we try to limit the access of our employees and all others to personal kinds of information. Again, I do not think I could put a dollar figure on that kind of problem.

But I do want to make another point which I think is relevant here. We are not merely sitting back and hoping that the problem does not occur. For example, in Germany, we have two data banks which have been registered with the German data authority, and I led an audit team last summer to Frankfurt and examined our compliance, to make sure that we were complying with not only the letter but the spirit of the German law. We also had meetings with the German governmental officials on this subject. We plan to do the same thing in France because their law is coming into effect, and other places in Europe.

So, we really think the first thing to do for a private sector company such as ours is to take as much action as possible to make sure to protect oneself, first by complying with the laws and being a good citizen in the countries one resides in.

We commend what your subcommittee is doing in these hearings in encouraging the U.S. Government to organize to handle these kinds of problems as soon as possible. However, we are not going to rely solely on the Government; we are going to take actions to help ourselves.

Mr. PREYER. I have just one other question. The British Government is currently tariffing data transmission. Do you have any estimate of what the additional cost of the British tariffing of information might mean to you?

Mr. FREEMAN. No. Again, I do not know the dollar or pound sterling amount. The kind of concern we would have on tariffing of information would be whether the tariffing is unreasonably high or discriminatory.

We are very concerned about the trend of growing involvement of the European telecommunications authorities in various businesses. That is their prerogative; they are all government-owned. Hence, because they are government-owned, we think it is important that our Government gear up to handle the situation on a government-to-government basis.

Our private sector concern—my company's concern—would be with some kind of arbitrary or discriminatory tariff or confiscatory tariff that hit us or caused some kind of temporary shutdown. But we do not have quantitative amounts on that.

In the case of the United Kingdom, as we have formally presented in a paper to the Privacy Commission of the United Kingdom, we do think that they ought to act soon to develop privacy laws because the rest of Europe is starting to develop the principle of reciprocity. They do not want to send data transmissions from, say, Germany or France to a country that does not have privacy laws roughly comparable. The same is true, incidentally, of the United States. So, we have formally, at the Government of the United Kingdom's request, suggested that they give early attention to privacy Laws in the United Kingdom.

Mr. PREYER. Thank you, Mr. Freeman.

Mr. Butler?

Mr. BUTLER. Thank you.

Following up a little, it seems to me that you have problems, but the same problem—the nontariff barriers—is equally important to the countries in comparable positions, France, England, and elsewhere in the world. How do you see resolving this without each nation developing its own set of principles.

Mr. FREEMAN. I think in Europe the majority of the countries have already adopted their own laws, and I think the guidelines being developed in the OECD in Paris can be very valuable, particularly when dealing with countries outside of Europe, and especially the developing countries.

It is a national problem. There may be, in the ensuing years, harmonization in Europe coming from the Common Market authorities in Brussels. But right now, for better or for worse, it is a national problem for countries as they perceive their commercial interests. Therefore, we have to deal with it primarily as a national problem, country-by-country.

We would prefer to have an international regime where there is reasonable protection for privacy and no unreasonable burdens on transmitting data. To develop that kind of international regime, in my opinion, would take many, many years. Our problem is that we do already have around 10 or so national laws in this subject on the books in Europe being enforced. So we have to deal with it country-by-country on a practical, immediate basis.

Mr. BUTLER. I guess my question really is, where do we begin if harmonization is our objective? Do we have our own house in order sufficiently to move in that direction, or do we have to do more domestic work first?

Mr. FREEMAN. I think we have to do a little more domestic work. I think the first thing is to get the first phase of the OECD guidelines out. I am optimistic they will be finished, and adopted by the Council of Ministers, this spring.

I really think the best thing we could do in the United States, in the government area, would be to make it clear that there is one focal point in the Government to formulate policy. I suggest this should be in the Trade Office, with other agencies coordinating with them, because I think it is a trade problem. I think that is step one, and that, to me, is a very critical step.

Interest in this subject is growing at a geometrical rate. There seems to be a conference every other day now on the subject. As more countries, of the 150 or 160 countries around the world, get interested, one can foresee all kinds of conflicts of laws and con-

flicts of policies, with the emergence of "data havens." So, we would prefer to see some sort of international regime.

The first two steps would be to get the OECD guidelines out and get the U.S. Government very solidly behind their promulgations and their enforcement as a matter of principle in all countries including the United States. And the second thing would be to simultaneously give the power to the USTR and the staff and resources to centralize the issue in the U.S. Government.

Mr. BUTLER. What makes the U.S. Trade Representative particularly attractive to you as the place to establish Agency responsibility?

Mr. FREEMAN. Trade remedies and trade disputes have been around for hundreds of years. The Trade Office in the United States has the experience in dealing in government-to-government disputes over trade issues. I really think we are talking about nontariff trade barriers in communications as another kind of trade issue.

What might be of concern to some would be whether or not the Trade Office has the technical capacity to deal with the information issue. I would suggest that they could staff appropriately with information specialists.

But my main argument, Mr. Butler, is that trade is where the dollars are. We do have a huge market in the United States, the largest open market in the world. We do have remedies that are already on the statute books, we do have people who know how to use those remedies, and we do have the GATT and other forums to argue over trade issues. We can make the resolutions, rather than trying to establish a whole new forum, which might take 5 or 10 years. We are dealing with problems right now, so I would rather go with the people who have the power and experience and clout. We are the largest trading country in the world; let us use our power. That is the way I see it.

Mr. BUTLER. Thank you.

Now, one other subject you mentioned dealt with the Oceans and International Environment and Science Affairs Bureau at State. Have you had any particular problems in dealing with trade-related international data flow problems there?

Mr. FREEMAN. I think we have had problems. I think that there are very good people in that Bureau. But, again, that Bureau, which is relatively new in the State Department operations, is not the appropriate place to handle a major economic and trade issue.

Mr. BUTLER. They are just not trade sensitive?

Mr. FREEMAN. I think that is a fair statement.

Mr. BUTLER. Thank you, Mr. Chairman. I yield back.

Mr. PREYER. Thank you, Mr. Butler.

Mr. Vizas?

Mr. VIZAS. Thank you, Mr. Chairman. I have one brief question.

Mr. Freeman, you currently operate in the United States under the strictures of such laws as the Fair Credit Reporting Act, the Fair Credit Billing Act, and the Uniform Commercial Code, and yet you speak about the potential difficulty in operating under data protection laws in Europe. What exactly, I would like to understand, is your problem with those laws? Is it requirements that individuals have access to their records, requirements that you

advise them of adverse decisions, requirements that you allow them to correct the records, or the restrictions on the disclosure of information outside your organization, or perhaps restrictions on the flow of information within the company?

Mr. FREEMAN. You are right; we operate under a number of similar laws like that in the United States, and we operate profitably that way. We also operate under the various laws as they have been put on the books in Europe. We have no problem in the compliance with a law, say, concerning privacy as you described it. What would concern us would be a country which, having put a law on the books, then enters into a period of economic decline, such as has been forecast, and an era of protectionism, which is being forecast. All of a sudden, those laws which have been put on the books, primarily for the protection of privacy, could then be utilized in an arbitrary or discriminatory way to shutdown operations of all kinds of companies—my own, banking, insurance, or any kind of company—for reasons that were not intended at the time of the enactment of the legislation.

Mr. VIZAS. Then your concern is addressed to the question of placing barriers to your use and transfer of information within your company? ♂

Mr. FREEMAN. No. We have read all the laws that have been passed, and we comply with them. Our concern would be with some kind of interpretation that results in some kind of arbitrary or discriminatory application of those laws for commercial or protectionism reasons rather than, say, privacy or fair credit billing, or comparable things in Europe.

Our fear is that if we enter into a period of major trade problems, which some people feel is coming, those laws could be turned to favor, say, domestically based companies over foreign based companies in a discriminatory way. That is our concern, not the idea of some kind of general regulation of privacy, which, in fact, we favor.

Mr. VIZAS. Thank you.

Thank you, Mr. Chairman.

Mr. PREYER. Thank you very much, Mr. Freeman. We appreciate your being with us.

I would like to ask, in your case, and for all the witnesses today, that the record be kept open. We may wish to ask you some questions that you could answer in writing, for the record. That would be very helpful.

Mr. FREEMAN. We would be pleased to do so.

[Mr. Freeman's prepared statement follows:]

**STATEMENT
of
Harry L. Freeman**

**Senior Vice President of
American Express Company**

**Before the
Subcommittee on Government Information and Individual Rights
of the
House Government Operations Committee**

TRANSBORDER DATA FLOWS



**March 13, 1980
Washington, D.C.**

Mr. Chairman and distinguished members, my name is Harry Freeman and I am a senior vice president of American Express Co. I am pleased to appear before you today to discuss a new and complex subject given the impressive title "transborder data flows"...in other words, the passage of information across national boundaries.

You have already heard from representatives of the data processing industry about the problems transborder data flow restrictions pose for the providers of data processing services. This morning, I will address the issue from the point of view of a large user of telecommunications technologies around the world.

The development of new telecommunications technologies has been, and still is, a driving force of change in the U.S. and other economies. It has made possible the development of the service industries which have become a major sector of the U.S. economy. These vital industries include accounting, banking, insurance, travel, law, engineering and construction, shipping, and communications, to name but a few.

Little has been written about the contribution of services to our economy. In fact, the statistics show that we have moved from an industrial to a service based economy. U.S. service sector industries employ seven out of ten Americans and produce 65% of the U.S. GNP. No less than 25% of total U.S. exports is represented by such invisibles.

We have a major strength as an exporter of services where we now run a \$23 billion surplus -- versus a \$35 billion deficit in goods. For the moment we are the number one exporter of services in the world. However, our position is not without challenge. Increasingly, we are encountering anti-services trade barriers which other countries have erected and continue to expand. Restrictions on the flow of data across national boundaries pose just such a barrier.

A service-based economy is an information-based economy - one which depends on the intelligent collection, storage, and use of information. For centuries trade has been vital to the social and economic development of mankind, and today we are moving into an era in which trade will consist increasingly of information exchanges. Even where international trade involves manufactured goods, that trade will be dependent on information exchanges. Therefore, it is important that we address the issues associated with this trade.

Predictably, rapid growth of automatic data processing is creating an increasing concern among nations for the protection of privacy of individuals. In less than a decade, more than a dozen countries, including the U.S., either have passed legislation or are considering bills restricting or regulating the collection, storage, transmission, alteration, disclosure, and accuracy of data files. This is reasonable, and my company has endorsed, in principle, domestic privacy legislation pending before the Banking Committees.

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However, in addition to domestic concerns about individual rights, the transfer of data beyond a nation's jurisdiction has received increasing attention. There is a growing tendency in many countries to require data files to remain in the country of origin rather than be transmitted across national boundaries.

Uneasiness about electronic data processing goes beyond privacy issues alone. U.S. predominance in data processing of all varieties accentuates feelings of concern in other nations. Some of these fears rest on notions of national pride, anxieties of losing cultural identity, and doubts about relying on a foreign-controlled repository of vital or security data.

More troubling national reasons for enacting data flow restrictions are:

- 1) Computer technology has a great impact on the development and future of a country. Information is power and economic information is economic power. Therefore, control of its application is desirable.
- 2) Information is seen as a national resource. It is a product which has to be protected, priced, and marketed according to established commercial rules. It should not be allowed to leave the country so freely.

- 3) Many nations recognize the potential economic advancement in computer technology. These countries are determined to develop their own domestic industry and resent the dominant share of the rich data processing market maintained by American corporations. Consequently, governments in nations where data processing has grown are searching for an effective means of placing controls on the industry. Restricting the flow of data is a very effective way of regulating all industries.

What began as a problem in privacy protection has developed into a serious potential international economic issue. A major report in spring 1978 by Simon Nora of the French Finance Ministry argued that U.S. satellites transmit much of the data processing that would otherwise be done in France, and stated that France's economic balance, social consensus, and national independence rode on a resolution of these issues favorable to French interest. This sentiment exists in other countries too. A March '79 report done in Canada for the Minister of Communications stressed the need for the rapid development of a Canadian-owned private data industry before the market became filled with foreign information products. The report recommended that the Canadian Government require that data processing related to Canadian Business operations be performed in Canada except where otherwise authorized. National data protection laws applied for these ends pose possible nontariff barriers which might exclude or hinder firms in foreign markets by disrupting the reasonably free flow of necessary information.

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At American Express we are proud of our privacy record. We recognize that in the daily course of our business we obtain substantial information concerning the private lives of our clients. We perform such services as making personal travel arrangements, processing travelers cheques and records of card charges, obtaining credit information on new Cardmembers and banking customers, etc. Because we realize the sensitive nature of this information, we respect the privacy of our customers by carefully restricting and protecting the information gathered about them.

Several years ago, American Express issued and implemented its own internal Privacy Code of Conduct. Last year we extended the code to cover our European operations. We have always believed that privacy is good business and -- indeed -- have used our privacy code as a marketing tool.

Where the new national data protection laws legitimately protect the privacy of an individual's records, American Express is supportive of national legislation. But, neither American Express nor any other international corporation or person should be amenable to data transmission shutdowns or unreasonable impediments to the processing of data. Arbitrary denials of data processing license under the emerging laws would constitute a new form of nontariff trade barrier.

The German Post Office, for example, has threatened to cut off the lines of data processing services whose computers are not in Germany. The Bundespost has told time sharing bureaus that their licences will not be renewed after December 1981 unless their processing takes place in Germany. However, it is understood that there is no objection to files being held outside Germany, nor to networks on which some processing is done in Germany. Therefore, if a small computer is attached to the German end of the line it may meet the requirements of the Bundespost. This leads operators to believe the motives are economic rather than having to do with privacy.

The subject of nontariff barriers to the export of services abroad is a relatively new one. It was only in the Trade Act of 1975, which laid the groundwork for the now completed Tokyo Round of trade negotiations, that "trade" was defined to include both "goods" and "services." Neither we nor our major trading partners have been organized to handle complaints concerning, or to negotiate, service sector trade problems.

Fortunately, the situation is beginning to change. The Administration has decided to give a high priority to nontariff barriers to the trade in services, including information flows. Put in trade jargon, to remove "invisible barriers to invisible trade."

The re-organization of the executive branch established a staff in the office of the U.S. Trade Representatives solely to represent service industries. Additional staff resources have been assigned to the Department of Commerce to pursue trade and investment issues in services. In addition to efforts on the domestic scene, the U.S. has also begun to push for additional efforts by international agencies, such as in the OECD, on the topic of barriers to services.

Therefore, if an American user has a data related trade problem in a foreign market, the complaint can be taken to the Embassy, to the U.S. Trade Representative, to the Commerce Department, and to the State Department, as may be appropriate. When presented as a trade issue, a data flow dispute will then be handled by officials well versed in trade disputes. They can act on the problem. In our view, the use of existing and proven procedures and communications channels is the most effective way to handle the problem of transborder data flow.

Perhaps, in the long run, a GATT type organization or forum could be developed for handling data flow problems. However, the national data protection laws are being implemented now. Problems may begin to occur in 1980. We must become aware of the problem now. We want to work with the Congress and our government officials to plan present remedies for the present problems while we work to create a new international framework for the future.

We do not have any recommendation for legislation by the Congress at this time. This position may change. However, Congressional interest in the way this problem is handled by the Departments of State and Commerce and the US Trade Representative could be very helpful. We think that the U.S. Mission to the OECD, where guidelines are being developed, has done an excellent job under our US Ambassador to the OECD, Herbert Salzman. These guidelines have been endorsed by the ICC. In Washington, we would prefer that the Economics and Business Bureau of the State Department should take jurisdiction of this subject because it is an economic and trade issue; it presently resides in the Oceans and International Environmental and Scientific Affairs at State Bureau where it tends to be treated, predictably, as a scientific issue. We think the United States Trade Representative is aware of this issue and is prepared to help the legitimate interests of American firms, such as mine which encounter discriminatory or manifestly unreasonable treatment abroad.

Therefore we strongly urge that the principle responsibility for this issue be given to the United States Trade Representative where the power and the people reside to handle it as a trade issue; for, in the final analysis, it is a question of exports and our balance of payments. The other U.S. agencies should coordinate with the USTR. Hence, I share the view expressed by the gentleman from IBM earlier this week, notwithstanding the fact that IBM is a major supplier and my company is a user.

Thank you for your attention. I am prepared to try to answer your questions.

Mr. FREEMAN. Mr. Chairman, it has been a pleasure to come here. I think it is a very important subject and appreciate your and your colleagues' interest in it.

Mr. PREYER. Thank you, Mr. Freeman.

Our next witnesses are Mr. Robert Walker, the vice president and associate corporate counsel, and Mr. John Biella, the vice president for international operations, of the Continental Illinois Bank, Chicago, one of the largest international banks in the country.

It is a pleasure to have you with us today.

STATEMENT OF ROBERT E. L. WALKER, VICE PRESIDENT AND COUNSEL, CONTINENTAL ILLINOIS BANK, CHICAGO, ILL.; ACCOMPANIED BY JOHN BIELLA, VICE PRESIDENT FOR INTERNATIONAL OPERATIONS; ANDRIES JANSMA, VICE PRESIDENT, GLOBAL CASH MANAGEMENT SERVICES; AND PHILIP NEWBOLD, SYSTEMS OFFICER

Mr. WALKER. Thank you, Mr. Chairman. We appreciate the free publicity you just gave us and are glad to be here.

Mr. Chairman and members of the subcommittee, my name is Robert E. L. Walker, vice president and associate corporate counsel of Continental Illinois National Bank & Trust Co. of Chicago, Ill. With me is Mr. John E. Biella, vice president of our bank, who is in charge of the international operations in our units located abroad. In addition, we have accompany us Mr. Andries Jansma, vice president in charge of our global cash management services, and Mr. Philip Newbold, second vice president and systems officer, responsible for computer systems supports for our international units in Europe at this time. As the occasion arises, we may consult with these latter two gentlemen in responding to questions which the subcommittee may pose about transborder data flow.

Initially, we would like to commend the subcommittee for showing an interest in the transborder data flow issue and for holding formal hearings to explore the potential threats and present problems which many of the witnesses will discuss with you during your proceedings.

With the permission of the chairman, I would like to present for the record a copy of our formal written testimony and will present an oral summary of that testimony for purposes of the hearings this morning.

Briefly stated, our testimony today covers the need for the uninterrupted free flow of information in the financial industry; an overview of how we flow our international data from point of origin to the United States and back to the point of origin in a foreign country; how international cash management operates and the importance it plays for multinational corporations; the highlights of potential threats and problems we perceive in the transborder data flow issues; and the impact we are feeling today from developments in transborder data flow.

As an international bank, our business is entirely dependent upon the free flow of instantaneous communications. In the course of our banking business, we need to have minute-by-minute intelligence from the money markets across the world. In addition, we need to be able to provide fund-transfer services to our customers

who move large amounts of funds on a day-to-day basis from one country to another. These same customers require immediate information about their account balances in different parts of the world, the state of the world foreign exchange, the interest-arbitrage markets in the major world money centers, and so on.

For our own part, Continental Bank's management philosophy on information and data processing is that it should be centralized as fully as possible to allow management of the bank to have financial information which will allow them to monitor and to manage credit exposures which the bank has by customer, country, and foreign currency. We perceive that this will enhance our customer relationship in international banking and allow us to quickly recognize and meet the needs of our multinational customers for banking and financial services.

At present, Continental has either installed or plans to install computer capabilities throughout the world which will enable us to centrally process all of our account information, credit facilities, and general bank books in Chicago. So far, we have implemented this approach in all of our European units, and I think a brief description of how we are processing data from Europe will best illustrate how we perceive our plans worldwide.

In Europe, our branches enter all of their transactions into intelligence data terminals which transmit this information over leased lines to Continental Bank's communications centers in Brussels, Belgium. The data, after being assembled and verified, is cued for high-speed data transmission to the central processing center in Chicago over international leased lines. The information is processed in Chicago; customer accounts and the bank's general ledgers are updated; management reports are created, customers' statements are produced; and the processed information is then sent back to Europe for use by those units the following business day.

By utilizing the centralized processing approach, we can have available to our account officers, on a worldwide basis, all of the banking activities transacted with the customer for whom they are responsible. We have found that this information is invaluable for providing services to our customers in making decisions concerning the proper management of the bank's assets and liabilities and insuring that we have prudent management of our worldwide loan portfolio.

It is planned to extend this system approach to other units throughout the world as soon as we have refined and completed our systems development in the European market. The full value of a system of this nature can be realized only when all of the units worldwide are included. Any inhibition or restriction in any way of data flow from unit to our head office would compromise and degrade the whole concept of this centralized processing system.

This global approach not only meets our own internal needs but also provides financial services which customers require to manage their international affairs. Customers may use our international cash management facilities to obtain specific information on their deposits and clearing of checks in their accounts in our international branches and, importantly, to know the status of collected and uncollected funds which may be available for their use in managing their business.

Today, a customer may dial directly into our central computer and obtain this type of detailed information, not only on a specified account in an individual office of Continental, but also what activity has occurred in our total system relating to that company.

As an overview, this is how Continental Bank has used multinational data to manage its credit facilities worldwide, to provide bookkeeping and management reports to our banking system, to monitor foreign exchange and market facilities, and to provide financial ancillary services—the international cash management—to our domestic and international customers.

From what we have experienced, and from our perception of the transborder data flow issues, we are seriously concerned that we may be hampered in running our international banking business with efficiency, efficacy, and immediacy, which we believe are essential in the competitive international environments in which we operate.

From those issues, let me quickly highlight some potential threats and problems we see today in the transborder data flow developments.

One: We feel that there is a strong possibility that information flows could actually be blocked by restrictive legislation in foreign countries. If this occurs, Continental Bank's present cross-border processing approach would be seriously compromised at a loss of a very large investment in money, time, and committed resources.

Two: Legislation in this area varies from country to country, which results in a patch quilt of varying and highly technical laws lying across Europe which creates a confusing and burdensome task of trying to stay informed about, to interpret, and to comply with the multiple requirements of the host countries throughout the world.

Three: We are concerned that some countries may attempt to exercise extraterritoriality control over data originating from their countries by mandating that the data carry with them the legal requirements of the laws of that country of their origin. This balkanization of laws could result in a catch-22 for banks in the United States having to meet the variegated requirements of different countries' laws and regulations.

Four: Artificial tariff barriers, through increasing higher charges for foreign communication lines and facilities, may become a critical inhibiting factor or even block the flow of data and centralized international processing.

These highlights that I have just mentioned are not meant to be all-inclusive of the problems which we and others see coming to bear in the immediate future, but to underscore that these highlights are not mere musings or fanciful fears, let me illustrate how transborder data developments to date have impacted our business planning and decisions.

As part of our annual corporate planning, an internal memo was written by one of our officers located in a foreign country concerning our future plans for establishing data processing capability and systems to handle the projected growth in commercial banking activities in his office. Permit me to read a deleted version of that memorandum to give you a sense of how transborder data flow

issues are impacting on our business planning and how a line officer sees it from his vantage point in a foreign country:

As I am sure you are aware, the new Bank Act (which regulates chartered banks) has yet to be approved pending the election. Until such time as a new Government legislates the Bank Act, we will not be absolutely assured of what the act will have to say about the storage of banking record outside. However, the Office of the Inspector General of Banks *** has confirmed to me that our present Government's stance on the issue is as follows: "In order to allow the Inspector General's office the opportunity and authority to conduct a complete management systems audit of a chartered bank's records, the general ledger and the computer itself must be situated in that given country. However, this by no means suggests that systems outside of the country could not be used to do modelling, massaging, and analysis on accounting data generated in (blank)."

Amendments to the existing act currently awaiting approval reflect these sentiments, meaning that the probable impact of the new act, if passed, would be to prohibit CICL from processing.

Naturally, CICL's first consideration—and CICL is a subsidiary of ours—in implementing a computer system would be to take advantage of access to Continental's computer system, a prospect which has its pros and cons. A second alternative would be to make use of a time-sharing system offered by such companies as (blank), one of several firms which have begun to solicit us. Unfortunately, both alternatives would be disqualified by the Bank Act legislation in its pending form.

In reply to an inquiry from the Department of State as to whether we were encountering any unusual problems in handling multi-national data communications, we described what our experience had been under the present law of one of the countries in which we have an international unit. An excerpt from that reply stated:

Some time ago we decided to automate the branch operations we had in a particular foreign country. Our objective was to devise our procedures so that we could centralize our financial data and branch bookkeeping processing back to the United States. This would provide economies of scale which we could not achieve in the host country and which would enable us to better manage our operations. In discussing this proposal with the local authorities, we found them insistent that we had to perform a minimum level of processing and data creation in the host country. To meet their requirements, we were forced to duplicate facilities which we already had in the U.S. This resulted in additional costs which served little or no purpose for us and, in our experience, provided little or no additional controls or benefit to the host country.

The initial cost for meeting these requirements merely for equipment was \$30,000 which, added to our need to develop software programs, annual maintenance costs, et cetera, created a sizable expense for merely duplicating a bookkeeping system which we already had in Chicago.

In summary, we understand quite well and endorse the concept that countries have an obligation to protect the privacy of their individuals; but let this be done in a manner and style that does not hamper the flow of data necessary to carry on modern banking services and modern business affairs.

We are greatly concerned that the creation of unnatural or protectionistic restrictions will only result in retaliatory steps among the various countries, which will not only damage the free flow of information as we have it today, but will seriously impinge on the flow of commerce and trade among the nations.

It is for these reasons that we at Continental Bank are convinced that any regulation, legislation, tariff, or tax which could inhibit the free flow of data will seriously affect not only U.S. banking and business abroad but will stunt the continuing development and maturation of international trade which we need in the

interdependent economic world in which we all find ourselves in this latter part of the 20th century.

That is our summary, Mr. Chairman, and we would be happy to answer any questions which you or the subcommittee might have.

Mr. PREYER. Thank you very much, Mr. Walker.

You have raised some serious questions as far as the international banking aspect of transnational data flow goes.

Let me ask you, has the Federal Reserve, with its critical control of banking functions, addressed these problems raised by international data flow barriers? It seems to me that, either from the point of view of the American banks or from concern for the effectiveness of the international payments system, they ought to be concerned about this. Have they been involved in this at all?

Mr. WALKER. I have talked to the Federal Reserve Board on this; they have a group on the board—not the Governors themselves but staff—who are monitoring these developments.

The problems we are seeing in the banking world, Mr. Chairman, stem from the fact that Continental may be somewhat unusual in the degree to which we have centralized our data processing. There are other banks which, because of the nature of the market penetration in the foreign countries or because of their management philosophy and style, have already begun to put in host countries computer capabilities unrelated to the development of transborder data flow issues; it is just their marketing style.

As an example, one bank has put computer capability inside a host country, and they are using time sharing out of that computer and selling it as another financial service. So their motivation in moving to a centralized processing, as we have, is different. They still have the same problems of flows of data for their management needs; they still have the same problems as far as their international cash management programs are concerned. But it is mainly an issue for the major banks.

Consequently, if you are sitting at the Fed, you see maybe 150 banks affected, as against the 14,000 we have out there. They are monitoring it; they have not moved publicly on the issue, however.

Mr. PREYER. You mentioned some of the restrictions on your ability to process data in foreign countries. A West German bank has recently been authorized to establish operations in this country, I understand. Do you feel that the United States ought to begin to require some kind of reciprocity in the situation where you are restricted in operations in West Germany, and they are relatively unrestricted in operations in this country?

Mr. WALKER. I think that is probably a good, human, Pavlovian reaction—when somebody strikes you, you should strike back. However, I hope, in this day and age, through the experiences we have gained since World War II, that we recognize that retaliation does not really play a role in international trade.

I think we have to try to work these things out, that we have to recognize that there are vested interests there that may have very legitimate reasons as to why they act as they do. I think what we have to do is work to see that those legitimate interests are properly harmonized with the economic effects that they can bring with them. We should move in a line showing leadership, of promoting

free trade and reducing the barriers. Personally, I think we should not retaliate, that we should try to work these things out.

Obviously, if you get to the point where there is no compromise, there is no middle ground on which you can work these things out, then you have to look at more drastic steps.

Mr. PREYER. I think that is a good answer, and we certainly do not want to start this vicious, downward spiral in which you put up a barrier against me and I put up a barrier against you, and it just goes steadily downhill.

I suppose reciprocity is not so much what I am talking about as leverage in negotiations—getting their attention.

Mr. WALKER. Sometimes when you have a mule you do have to hit him between the eyes.

Mr. PREYER. It is very interesting to listen to you about your new services which are made possible by modern data communications. You have come a long way from the days of the old story about the shark. I have forgotten exactly how it went, but somebody in Australia got a newspaper out of a shark's stomach when it was cut open which indicated Britain had gone to war, and he knew there would be a tremendous demand for wool. He immediately went out and cornered the wool market before the news of Britain going to war got to Australia. I do not believe there are going to be many romantic stories of information coming from sharks any more in the future.

Mr. WALKER. We may be using pigeons, though.

Mr. PREYER. One of your services you talked about was the cash management service. I would like to ask you, in three separate scenarios, how your ability to offer cash management services would be affected.

One: How would it be affected by delays or interruptions in the flow of information—a delay maybe of hours, or a delay maybe of days? How would delays affect your cash management services?

Mr. WALKER. Mr. Biella, would you like to address that?

Mr. BIELLA. Mr. Chairman, the essence of our cash management services is to allow and help our customers better manage their cash resources. These days, managing cash resources means knowing what you have every day during the business day so that you can, in fact, utilize those resources; you can transfer those funds, invest those funds, make the best use of them, during that day.

To do that, we need to have a system or series of systems which gather together information from all over the world which is available on that day before the end of the business day so that funds can be moved. So, in fact, any delay in getting that information into our system or into the hands of the customer would waste money; money would be, in a sense, standing idle when it could be invested.

Mr. PREYER. So, however long the delay was, the longer you had money sitting idle somewhere that could be productively put to work, the worse it is.

Mr. BIELLA. Absolutely.

Mr. PREYER. How would your cash management services be affected by requirements that you do your principal data processing in each separate country for operations and transactions in that country? If that was a requirement, how would that affect you?

Mr. BIELLA. It would affect the way in which we give that service to our customer today. Today, because of our centralized processing, a particular customer has access to its accounts with each of our units worldwide in the system. So, it may inquire into the system, by terminal, and find out immediately what its balances may be, for instance in London, in Frankfurt, in New York, or in Milan. These are balances which might be in foreign currency. At that point in time, they can make a decision as to how to move funds, how to convert funds into other currencies—things of that nature.

The same information could be obtained if we, in fact, enabled them to inquire into each of the separate computers across the world. But you can see at once that that means they would have to make separate inquiries using telecommunications lines across the world to various places to find out the same information which today is gathered in one place. So the service is not the same.

Mr. PREYER. So, instead of one call, it is a series of calls.

Mr. WALKER. A series of calls; and, of course, as you would be forced into that type of modularization of your operations because of the restraints by local legislation, it very likely could prevent inquiries even to those computers inside those countries because, under some philosophies, there are barriers at the border that prevent the flow, and that is the problem. Austria and Sweden are two examples. There are problems in that area and these continue to develop.

Mr. PREYER. And then you could not get the information at all from those countries?

Mr. WALKER. I think that is the potential threat. It has not occurred yet, but we are at the threshold of these developments of the laws. Sweden, as an example, is now proposing legislation that would affect corporations on what can be brought out of Sweden. So, we are beginning to see developments and thinking in this area. I expect to see a draft of that legislation either this year or next.

Mr. PREYER. That fire station in Malmo has caused a lot of trouble, has it not?

One final scenario: How would your cash management services be affected by prohibitions or limitations on the flow of information about legal persons, such as those that might be occasioned by legal persons—meaning corporations—being provided the same protection as individuals under national data protection laws? You were, in effect, getting into that on the last question.

Mr. BIELLA. You can envision the scenario where a customer in the United States may be inquiring into his balance, let us say in Switzerland or Austria, and the law could be that in crossing the boundary into the country to look into the computer in that country, the law could then say: "You cannot allow the inquiry to come across the border."

In the same way, the laws of the country might specify that certain information on legal persons could not be stored outside of its own country. This would mean that a lot of information which is valuable when aggregated could not be used. If one knows what a balance in one country is, it has some value; but if one knows of a balance or shortage of balance in another country, something can

be done about it. In other words, the completion of information would be affected, and therefore the smooth movement and best use of funds would be degraded.

Mr. PREYER. You say a law is conceivable that might require you to allow a country to look into the information in the computer in that country?

Mr. BIELLA. A law could prohibit or block that inquiry, except through direct communications with, say, a banker.

Mr. PREYER. The first amendment is not as generally respected, I suppose, around the world or as sacrosanct to other countries as it is to this country.

Mr. Butler?

Mr. BUTLER. Thank you, Mr. Chairman.

I am always overwhelmed when international bankers start telling us about the sophisticated developments in the world. But I do have the feeling that this degree of sophistication is not alone a phenomenon of Chicago, that the same problems that you are confronting must be concerning bankers in Paris and London. Is that a fair statement?

Mr. BIELLA. Yes. I believe the problems of banking—the information one needs to carry on a prudent banking business—are the same worldwide. We are talking about the flow of information by electronic means, but the fact remains that to carry on the business of banking one needs to have as much information on a worldwide basis, particularly when dealing with multinational companies as one can get. So, it is a universal problem.

Mr. WALKER. We probably have 175 foreign banks operating in the United States today. They obviously have to transmit data back to their home offices. Those same banks are perhaps behind U.S. banks in the use of technology—at least we think they might be—in the use of management approaches to the computer, mainly because this country is still the cutting edge of technology development in this area.

Sooner or later, they are going to run into the same developing crescent of silence that is coming down as you sweep across Canada, to Stockholm, to Vienna, to Paris. This crescent of silence will affect all of us in international banking equally, given the amount of time we see ahead. So, they will be affected and harmed in the same way—sooner or later—as we are, or might be.

Mr. BUTLER. You do not see a motivation to neutralize the competitive advantages that your earlier development has? Is that part of the development of this sort of law in other countries?

Mr. WALKER. I think there are many who see the economic "dead hand" driving this legislation forward. I, personally, see equally the sociological concerns that legitimately appear in those countries and those Governments, particularly growing out of the holocaust of Germany—why they would be concerned about privacy, why they would be concerned about protection.

In 1950, Europe created a basic document that spells out very carefully that there is a right to privacy, there is a right to human conduct. And some say that the phenomenon we are seeing now in Europe is growing out of those 1950 documents.

I think it is both; I think there is an economic factor driving this; I think there are also privacy concerns in Europe. The economic

concerns I do not believe are directed toward banking; I think banking is affected as an ancillary part of an economic approach that some may see in Europe and Canada as to how they can protect, perhaps, a developing industry within their own borders and keep out, perhaps, competition abroad, particularly in those areas that have high technological capabilities. But I see it driven by two forces.

Mr. BUTLER. I thank you.

I think we have some more questions which the chairman will ask you to answer for the record later; but if you could, for the moment, given the problem you have given us, be either the President of the United States or the Congress of the United States, and have all the wisdom that both have, plus whatever additional might be needed under the circumstances, what would you suggest we ought to be doing in response to the problems which you have outlined today?

Mr. BUTLER. That is a heady wine you have put before us, Congressman Butler.

I think you have taken a step down the road in holding these hearings and airing publicly the concerns that exist in the business community over the potential threats and existing problems that are going on in this issue.

I think one of the things that has occurred is this. There have been a lot of conferences and a lot of flapping around. There has been a lot of intellectual hand wringing. But not much has really surfaced to where people could look at the issues. We have not stood up and said, "These are the problems we are having." It has been done in the State Department in a meeting which a lot of people attend, but you never hear much about what goes on. I think the airing of the problems, putting the issues under the anvil of public scrutiny and having them hammered out, utilizing the trade representatives, which has been suggested, and going at this thing on a formal basis—that, I think, is the approach we would see as a healthy development—seeing Congress put a shoulder behind the wheel.

One of the problems that we have heard from people at the State Department is budget: they do not have sufficient funds, perhaps. And this is terrible hearsay, I must say, that they do not have sufficient funds.

Mr. BUTLER. It is not an original observation.

Mr. WALKER. No—on several counts. They do not have sufficient funds, perhaps, on a budgetary line item to go at this area like they should. I think Congress can give them leadership; Congress can push them; and Congress, in your oversight, can see that they are behaving to the standards and needs that we have in this business community of the United States.

So I think you are taking the right step in holding these hearings and continuing oversight on the developments.

Mr. BIELLA. May I add a little more to that? I agree absolutely, of course. But I feel that one of the objectives of the U.S. Government should be to become very concerned at the international level.

What we are talking about is the prospect of different roles having different effects throughout the world. What the United States has always been interested in is free trade. I believe the free

flow of information, the free availability of market information across the world, the freedom to utilize whatever means possible to help the trade of the world, is important for the world, and I believe the United States, at the Government level and at the international level, should discuss how to reduce these sorts of barriers to a minimum.

Mr. BUTLER. Thank you.

I yield back, Mr. Chairman.

Mr. PREYER. Thank you, Mr. Butler.

Incidentally, I might clarify my comment of a few moments ago, which I am sure confused you, about the first amendment. I was thinking of terms of the newspaper being involved, if this access to information in the computer in the foreign country is allowed. That would be, in our view in this country, a gross violation of the first amendment; but it does not seem to bother other countries so much. I guess it is the fourth amendment which would be involved in access to banking information—violating the privacy side of things.

Mr. Vizas, did you have a question?

Mr. VIZAS. I have one question. Thank you, Mr. Chairman.

Mr. Walker, the administration, as you are well aware, recently sent up a package of proposals on privacy legislation to the Congress. One of the arguments they have made for passage of this legislation has been that we need to do it because of the creation of the data protection laws in Europe.

Do you think that, particularly in comparison with European privacy laws, there is a need for the proposals in the administration's privacy bills?

Mr. WALKER. The problem I have—and these are personal observations—with the movement of legislation in the privacy area is that there has not been, in my estimation, a clear showing of legislative fact: that there are vices, ills, or problems extant in this country requiring the burgeoning 159 pages of legislation which have been proposed on this subject.

I think that if we rush in, in an area as complicated as privacy, without legislative fact supporting it, we are going to find ourselves having created a lot of harm.

I think we are still in the throes of reacting to the *United States v. Miller* case which came down in 1976, as I recall, and I think that we consequently have not paid attention to what is going on in the State courts. In the State courts, as I read the cases, they are picking up the cudgel; they are recognizing that there is common law in this country that does protect individual privacy; they are recognizing that in 20-some States there is ample legislation in place that protects the individual's rights; and I think there is a serious question of whether or not we need Federal legislation at this time in view of what has been put on the table as far as concerns the broad populace.

I do not think it is legitimate to say that because Europe is legislating in this area we need to legislate as well. Europe probably needs to legislate in this area; they historically have had a tradition of great governmental involvement and interference in the daily citizens' life. That goes back to the communes of Paris; it is not new. And perhaps they are getting up to where we have been

in this country since the Revolution. We have always had privacy, and we will continue to have it. And I think the State courts are moving in the direction that will give it to us with wisdom, with pragmatism, and without the need of social engineering in this privacy field.

Mr. VIZAS. I have just one followup question to that. You talked about existing protections, and I think you focused on the banking area. Would you say the same was true for credit reporting and insurance, in terms of common law protection or constitutional protection?

Mr. WALKER. Yes, for credit reporting. England, as an example, did not have a case in privacy until 1924, and yet English banking was as sacrosanct as anything as it relates to confidentiality and privacy of a relationship between a banker and his customer. We did not have an actual case in this country until about 1948, which I think begs the question: Where is the problem? It took us to 1948 to get a case in the courts; so it does not show there is a great, driving, vile problem in this area; credit reporting is being protected.

A lot of the privacy legislation is not privacy legislation; it is behavioral legislation; it is recordkeeping standard legislation; it is how people say we should maintain our records. That is fine, but let us not call it privacy; let us call it recordkeeping, and let us look at it without the emotion of privacy being tacked on to it.

Mr. VIZAS. Thank you.

Thank you, Mr. Chairman.

Mr. PREYER. Thank you very much. We appreciate your testimony, Mr. Walker and Mr. Biella. And we would like to submit some additional questions to you in writing, which would be very useful for the subcommittee.

Mr. WALKER. Thank you, Mr. Chairman and Mr. Butler.

[Mr. Walker's prepared statement follows:]

Testimony of

Robert E. L. Walker

Vice President and Associate Corporate Counsel

Continental Illinois National Bank and Trust Company of Chicago

before the

Subcommittee on Government Information and Individual Rights

Committee on Government Operations

United States House of Representatives

Washington, D. C.

March 13, 1980

Statement by
Robert E. L. Walker
Vice President and Associate
Corporate Counsel
Continental Illinois National
Bank and Trust Company

BEFORE THE SUBCOMMITTEE ON GOVERNMENT INFORMATION
AND INDIVIDUAL RIGHTS
COMMITTEE ON GOVERNMENT OPERATIONS

Mr. Chairman, and members of the Committee, my name is Robert E. L. Walker, Vice President and Associate Corporate Counsel of Continental Illinois National Bank and Trust Company of Chicago, Illinois. With me is Mr. John E. Biella, Vice President of our bank who is in charge of the international operations in our units located abroad. In addition, we have accompanying us Mr. Andries Jansma, Vice President in charge of our Global Cash Management Services, and Mr. Philip Newbold, Systems Officer, responsible for computer systems supports for our international units. As the occasion arises, we may consult with these latter two gentlemen in responding to questions which the Committee may pose about transborder data flow.

We would like to commend the Committee for showing an interest in the transborder data flow issue and for holding formal hearings to explore the potential threats and present problems which many of the witnesses will discuss with you during your proceedings.

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As an international bank, our business is entirely dependent upon the free flow of instantaneous communication. In the course of our banking business, we need to have minute-by-minute intelligence from the money markets across the world. In addition, we need to be able to provide fund transfer services to our customers who move large amounts of funds on a day-to-day basis from one country to another. These same customers require immediate information about their account balances in different parts of the world, the state of the world foreign exchange, and the interest arbitrage markets in the major world money centers, and so on.

Although modern banking today is a warehouse of different financial services, our key function is still the lending of money. To enable us to do this with a minimum amount of exposure we need to have the ability to gather information about the various aspects of our loan portfolio on a worldwide basis. We need to know before making a financial decision the total exposure of our bank to a particular customer, or to a particular group, or to a particular country, or in a particular currency, or to a particular industry. All this information is necessary to enable us to prudently conduct the normal lending business of international banking. We also engage in short-term financing to assist the movement of goods throughout the world. For this purpose we need to have quick access to all types of information about the political and economic bases of the various

trading areas of the world. In short, to enable us to carry on successfully and prudently the business of international banking, we need to have a guarantee of free flow of information and access to that information throughout the world on a very timely basis.

Continental is established in the major money market centers of the world with either branches or fully-owned subsidiaries providing full-service banking services to our customers. In order to manage efficiently the operations of those units, we utilize a standard computerized system which is based upon a centralized data processing center in Chicago. In Europe our branches enter their daily computerized transaction detail through an intelligent data entry device for subsequent transmission. When the day's transactions are completed, the stored data is transmitted over a leased line to Continental's communication center in Brussels, Belgium. The data, when correctly received in Brussels, is queued for high-speed data transmission to the central processing center in Chicago, Illinois, over international leased lines. This data is processed in Chicago and each unit's detailed records by customer and transaction type are updated. In other words, the books and records are maintained in properly secured computer files at the data center in Chicago. The daily up-dated reports are produced by the computer and transmitted over the communication system to each branch where the reports are printed. These reports include accounting re-

ports such as journals, trial balances and financial statements; management reports such as reports of customer facilities and usage of facilities, foreign exchange positions, and various operating reports which are necessary in order to run the banking business at the local level. It also includes the formatting and printing of customer statements and advices such as confirmation of foreign exchange transactions.

The first and obvious aspect of this centralized processing system is that complete standardization is obtained in running our overseas units and that our processing is accomplished on large-scale sophisticated equipment which can be used to an optimum capacity.

Secondly, by virtue of this centralized processing, we can have available to our account officer on a worldwide basis all of the banking activities transacted with the customer. This enables him to extract information on a consolidated basis concerning a particular customer, group of customers, country, or region of the world, or any aspect of a group of customers by type of organization, by industry, by size of organization, etc. This information we consider to be of inestimable value in making decisions concerning the proper management of our bank's assets and liabilities and in particular the prudent management of our worldwide loan portfolio.

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We are also able at a comparatively low cost to produce the many regulatory reports that are required in the host country and the United States with a minimum of manual intervention. The proper establishment of customer biographical files and appropriate descriptive coding of transactions enables us to produce reports of a varied nature and in particular enables us to respond relatively quickly to changes in regulatory reporting requirements.

The system I have described is in place in our European units and in two Edge Act units in the United States. It is planned to extend this system to other units globally as soon as we have completed some further modules of the system in Europe. The full value of a system of this nature is only realized when each one of the units throughout the world is included. The inhibition or restriction in any way of data flow from one unit to the head office would degrade the whole concept of this centralized processing system.

The centralized system depends upon a network communications system which for the most part is handled on dedicated leased circuits. Each unit which is on the system can access on a need-to-know basis the account activity of his customer. The units can make use of

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simple programming techniques to obtain consolidated information drawing from the central file information based upon certain attributes as required.

In addition to our own internal need and use of this data, we also provide international cash management services to customers who need their account information to manage their international financial affairs. Customers may dial into our central computer and obtain information about their account balances in an individual office or their total balances system-wide. This service includes the detailing of specific debits and credit in their accounts during the previous day and the balances of both collected and uncollected funds which are currently available to them. This basic cash management service was originally a domestic facility by which a customer through use of a telephone, telex, or TWX would receive reports during the day which enabled him to know the balances he held in his accounts in various parts of the country. As U. S. corporations in 1960 began to expand abroad, it became quickly apparent that they had to obtain information and establish controls over their cash balances which were building up in foreign locations. At that time, the U. S. dollar had the dominant position as an international settlement currency and the information U. S. companies required was on dollar balances they were holding in various banks and branches in the countries in which they were doing business. Horror stories abounded at the time of corporate treasurers who

failed to realize the substantial amounts of funds they were holding in their various foreign accounts because of the limited facilities available to find out and monitor their account balances. Beginning in the latter part of the 60's, U. S. business began to develop better information flows to effectively manage their foreign accounts; and the flow of bank balance information and of account instructions began to cross country borders.

During the 1970's, the demand for this information was driven by the increasing volatility of the exchange rates in the various markets around the world. Coupled with this volatility was an increase in the volume of financial transactions, which in turn, created a large demand to computerize data so as to more effectively capture and manage the burgeoning financial structure of American corporations abroad. In the latter part of the 1970's, we began seeing in domestic banking the use of computer terminals in customer offices which enabled them to directly access a bank's computers for restricted information on their companies' banking activities. As this technology became more common, it was only a small step to begin offering similar terminal connections overseas. Initially, the direct terminal access was for foreign correspondent banks to allow them to better manage their dollar accounts here in the United States. As everyone became experienced and operationally more comfortable with this new facility, U. S. banks began to expand this service to non-bank customers as well.

The present state of this new art is such that customers worldwide can receive information on their accounts with their bankers, initiate transactions and utilize their computer terminals for a host of other related cash management services such as settlement of intra-company receivables in different currencies, cash flow report, and information on foreign exchange and money market rates. Continental Bank, through its CONFIRM package, offers these kinds of cash management services. The methodology employed is based on our centralized computer system in Chicago into which all of our automated units report: our European branches, our New York and Miami Edge Acts, and our branch in Nassau. The data from these various units are stored in our timesharing computers from which our customers worldwide, both banks and corporations, can extract the information that they require. Again, the main service is to provide current balance information as well as detailed reporting of transactions that have gone through the account. In other words, we virtually produce a statement of account which is available directly from the computer through a terminal that is connected with the computer through data grade lines supplied by Telenet, a subsidiary of General Telephone and Electronics. The customer also has the ability to instruct the bank's units to effect transfers of funds to his accounts anywhere in the world as well as utilize the many different computerized services available to him.

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From this brief sketch of the development of cash management, it becomes obvious that United States banks, including Continental, have been in the forefront of developing cash management techniques for use by both domestic and international customers. We have been observing for some time an increasing interest among non-U.S. banks to provide cash management services and it will only be a matter of time before competition in this field becomes truly international. It would appear, therefore, that a free information flow is as important to banks of other nationalities as it is to American banks or for that matter to multinational corporations worldwide.

As a general overview, this is how Continental Bank uses multi-national data to manage its credit facilities worldwide, to provide bookkeeping and management reports to our banking system, to monitor our foreign exchange activities and money market activities and to provide financial ancillary services such as international cash management to our domestic and international customers. Based upon our experiences and what we know of the issues which are gathering great momentum abroad, we, and others as well, may be seriously hampered in running our offices and businesses with the efficiency, efficacy, and immediacy which we believe are essential in the competitive international environments in which we exist.

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Moving from this overview, I would like to highlight for the Committee some potential threats and problems we see today in the transborder data flow developments:

- * Banking institutions and corporations are threatened with the possibility that information flows could be blocked by restrictive legislation. Continental Bank's present cross-border centralized data processing approach could be seriously compromised or prevented at a loss of a large investment in money, time, and committed resources.
- * Transborder data flow legislation varies from country to country and as a result we are seeing a patch-quilt of varying and highly technical laws lying across Europe which will create a confusing and burdensome task of trying to stay informed about, to interpret, and to comply with the multiple requirements of the host countries throughout the world.
- * Some countries may attempt to exercise extraterritoriality control over data originating from their countries by requiring the applicability of their laws regardless of where the data is located. This balkanization

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of laws could result in a Catch-22 for banks in the United States having to meet the variegated requirements of multiple country laws.

- * Restrictions on the free flow of data will erode centralized decision-making, hamper global management, and curtail the creation of new financial services.
- * Access in a data-receiving country by officers, auditors, bank examiners, etc., can create serious confidentiality questions under existing and proposed laws which can subject expatriate employees to stringent fines and penal punishment.
- * Artificial tariff barriers through increasing higher charges for foreign communications lines and facilities may become a critical inhibiting factor or block to data flow and centralized international processing.
- * The United States' free data flow philosophy as contrasted with foreign restriction-based philosophies, may render United States banks and corporations at an informational disadvantage relative to their foreign competitors.

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These highlights are by no means all-inclusive of the problems we and others see coming to bear in the immediate future. To underscore that these highlights are not mere musing or fanciful fears, let me illustrate how the transborder data flow developments in foreign countries are impacting today our business decisions and operations.

Presently, there is pending before the legislature of a major foreign country very restrictive and burdensome transborder data flow legislation. Due to the great likelihood that this legislation will pass, the agencies of that government already have begun limiting the ability of banks to transmit and process operational data outside of their country.

I would like to cite from an internal Continental Bank memo which was written in February of this year concerning advance planning difficulties and problems we are experiencing in establishing data processing systems due to our projected growth in commercial banking activities.

"As I am sure you are aware, the new Bank Act (which regulates Chartered Banks . . .) has yet to be approved pending the election . Until such time as a new Government legislates the Bank Act . . ., we will not be absolutely assured of what the Act will have to say

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about the storage of Banking records outside of

However, in the Office of the Inspector General of Banks, has confirmed to me that our present Government's stance on the issue is as follows.

'in order to allow the Inspector General's Office the opportunity and authority to conduct a complete management/systems audit of a Chartered Bank's records the General Ledger and the computer itself must be situated in However, this by no means suggests that systems outside of the country could not be used to do modelling, massaging and analysis on accounting data generated in'

Amendments to the existing Act currently awaiting approval reflect these sentiments - meaning that the probable impact of the new Act, if passed, would be to prohibit CICL from processing outside of

Naturally, CICL's first consideration in implementing a computer system would be to take advantage of access to CINB's computer system, a prospect which has its pros and cons. A second alternative would be to make use of a 'time-sharing' system offered by such companies as , one of several firms which have begun to solicit us. Unfortunately, both alternatives would be disqualified by the Bank Act legislation in its pending form."

In 1978, Continental received an inquiry from the Department of

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State as to whether we were encountering any unusual problems in handling multi-national data communications. We responded to that inquiry and in the course of discussing our experiences, we pointed out what had occurred under one country's laws. Let me quote from that letter.

"Some time ago we decided to automate the branch operations we had in a particular foreign country. Our objective was to devise our procedures so that we could centralize our financial data and branch bookkeeping processing back to the United States. This would provide economies of scale which we could not achieve in the host country and which would enable us to better manage our operations. In discussing this proposal with the local authorities, we found them insistent that we had to perform a minimum level of processing and data creation in the host country. To meet their requirements, we were forced to duplicate facilities which we already had in the U. S. This resulted in additional costs which served little or no purpose for us and, in our experience, provided little or no additional controls or benefit to the host country."

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The initial cost for meeting these requirements merely for equipment alone was \$30,000 which, added to our need to develop software programs, annual maintenance costs, etc., created a sizable expense for duplicating our bookkeeping system in that host country.

It is our view that any restrictive policy on the flow of banking data across national borders could have a great impact on American banking's ability to provide the type of information (and transaction information) which a bank or a corporate money manager requires. If we only look at the current Banker's Prime Rate level, which as of Monday (3-10-80) was 17 3/4%, it is obvious that a good money manager needs to optimize his cash resources in order not to be heavily burdened by high interest charges or conversely miss opportunities to utilize any excess money that he may have for the benefit of his organization.

We understand quite well and endorse the concept that countries have an obligation to protect the privacy of their individuals. But let this be done in a manner and style that does not hamper the flow of data necessary to carry on modern banking services and modern business affairs. We are greatly concerned that the creation of unnatural or protectionistic restrictions will only result in retaliatory steps among the various countries, which will not only damage the free flow of information as we have it today, but will seriously impinge on the flow of commerce and

trade among the nations. It is for these reasons that we at Continental Bank are convinced that any regulation, legislation, tariff, or tax which could inhibit the free flow of data will seriously affect not only U. S. banking and business abroad, but will stunt the continuing development and maturation of international trade, which we need in the interdependent economic world in which we all find ourselves in this latter part of the Twentieth Century.

Mr. PREYER. Our next witness is Mr. Earle Kendle, vice president for information systems of the Eaton Corp.

Mr. Kendle, it is good to have you with us today.

**STATEMENT OF EARL KENDLE, VICE PRESIDENT FOR
INFORMATION SYSTEMS, EATON CORP., CLEVELAND, OHIO**

Mr. KENDLE. Thank you very much, Mr. Chairman and members of the subcommittee.

My name is Earl Kendle. I am vice president of information systems for the Eaton Corp. of Cleveland, Ohio. I appreciate this opportunity to present my comments and the views of the company I represent on the increasingly controversial subject of individual privacy and international data flow.

For reference purposes, the Eaton Corp. is an American company operating on a worldwide basis. We have over 165 manufacturing plants and sales and administrative offices in more than 25 countries on 6 continents. We provide steady employment for about 60,000 people, over 16,000 of them outside of the United States. Our products which range from simple components to complex electronic systems are widely used in industries basic to the world economy—land and marine transportation; residential, commercial, and industrial construction; air control and guidance systems; and communications, among others. Our people and our products generated about \$3.5 billion worth of trade last year.

We believe that this issue, fostered by a small group of Europeans genuinely interested in assuring the rights of individuals to their personal privacy, is being escalated far beyond its original intent. There are growing signs that this broader based consideration contains within it the potential for significant impact detrimental to the growth of world trade and economic cooperation. We believe that in a period of history calling for extraordinary measures to improve productivity we are witnessing national actions which have the potential to discourage innovation, slow down the transfer of technology, and to introduce further confusion and uncertainty into an already complex international business scene.

I am here today because I am concerned that our ability to continue to serve our worldwide market economically and effective-

ly is beginning to be impeded by national legislation, particularly in Europe, and because these are signs on the horizon that what is currently an erosion of effectiveness could very well become a landslide.

It is our opinion that international data flow issues are being discussed and addressed by many different national and international agencies and jurisdictions today without adequate consideration being given to the economic impact of their deliberations.

Early and direct impact of laws already passed is being felt by the providers of computer and communications hardware and software and by the vendors of services such as data processing services bureaus and worldwide timesharing networks.

Regulations hastily conceived and inappropriately applied will stifle their innovative use of new technology which, in turn and in time, will reduce the amount of capital and effort devoted to new technology itself. As a user of the services and products offered by these companies, I am disturbed to see their research and development efforts impeded. Since we use and pay for the services and products they provide, that cost becomes part of our product pricing. Ultimately, our customer, the end user, pays more.

There is now reason for concern that the lot of these service industries will become even more difficult in the not too distant future. There is growing evidence that various European governments, through their postal/telegraph administrations—the PTT's—are working hard toward the elimination of private communications networks. This would have the effect of requiring all communications—all data—to be transmitted over Government owned and operated PTT lines which would provide each of them the ability to institute volume sensitive pricing among other things. If this eventually came to pass, it would also affect us and many if not all other multinational companies since we too use internal communications networks based on a full-time basis from the various PTT's.

Based on what we know today of PTT tariffs and operations, I estimate that our European communications cost would escalate to, conservatively, at least twice the current amount, the level of service would be no better, and our data flows would become increasingly vulnerable to scrutiny by host governments.

Let me, in a little more detail, relate this issue specifically to our company. Since November of 1974, we have been busily engaged in consolidating and improving our data gathering and data processing activities in Europe. We have been moving gradually from an organizational structure which required stand-alone computing facilities in each of our plants to a networking structure which ties England, German, Italy, France, and Monaco into a European system. We are maximizing our investment in system development work by making it possible to transport systems from one manufacturing location to another.

We now have systems designed in Italy by Italians which are installed in English plants and French plants. We have French-designed systems working in the United Kingdom and in Germany. And we have all of them feeding data into a corporate activity located in England which, in turn, is capable of two-way on-line interchange with a similar network here in the United States. We

have been able to save administrative costs, reduce our investment in computer hardware, and, to the satisfaction of our plant and product managers, we have been able to improve their operating capability, lower their costs, help provide better customer service, and, in short, provide them with tools that otherwise would have cost them considerably more.

Another very important benefit we have derived is the spirit of cooperation, a common purpose, and climate of closeness and identification with Eaton, as a worldwide company, that this has given everyone regardless of what country they are located in. In large measure, this has occurred because there have been no barriers to people-to-people communications and a free flow of business oriented data.

Today, however, with the advent of more and more complex and sometimes conflicting new laws governing data files and the confusion that is developing, we are experiencing delays in system design. Planning is becoming increasingly difficult, and administrative costs are starting to increase. We now have our German personnel people concerned that personnel files in the United States are not safe, even though for more than 10 years they and other have reaped the benefits of a career planning system that has never to our knowledge violated or compromised individual rights or privacy. We are now being asked to sign contracts at a central location that certain files will be treated in a way acceptable to the laws of a particular land.

Can you visualize the confusion if the 25 countries in which we operate insist on their own separate measures, if they each insist on licenses, if they each insist on a data inspection board? If this were to happen, and there is ample evidence that it very well could, it is conceivable that we would be forced to revert to processing our data within each country of operation at a cost, considering today's prices of hardware and labor, of about 30 percent more per year than we now spend—and that is only the beginning of the cost. Our base cost, incidentally, today in Europe for these services is about \$5 million, so I am talking of a minimum of \$1.5 million a year additional costs.

The increased difficulty of managing the company, increased delays in reporting vital operating data, reduced market information, less effective means of evaluating personnel for promotion—all will be far more disruptive to productivity and effective operation than the added out-of-pocket cost.

Another critical area in which I can foresee difficulty relates to the strategic and market planning process. A significant amount of our planning is accomplished at a central location either in the United States or, in some cases, in Great Britain. In either case, the value of the planning depends upon the ready availability of detailed information concerning present customers, current suppliers, potential customers, and possible future vendors. Equally important to planning validity are other market factors such as total market size, extent and capability of competitive firms, and the makeup and availability of the labor force.

If, as has been urged in some countries and is already the case in Austria, corporations are included as "legal persons" in the national laws regarding privacy, we would be required to provide all

customers, potential customers, vendors, and competitors with access to all information held about them on our files, even though that information has all been gleaned from documents of public record. The combination of this wider definition of personal data coupled with transborder provisions, which appear in most current laws and legislative proposals, gives powers to governmental agencies to control the flow of much commercial information and raises serious and fundamental problems for competitive business enterprise.

It has been intimated by some sources—even openly expressed—that the real reasons behind the laws which have been passed and which are hastily being readied for passage are protectionism, nationalism, and even the destruction of the multinational company. I do not know whether I believe this is true or not, but I do believe that the basic facts of free trade and its benefits, the impact of regulation on costs, and the impact of costs on society have simply been essentially overlooked or dismissed as being unimportant to the deliberations.

In closing this statement, I wish to assure the subcommittee that Eaton is a company which places great emphasis on being a good corporate citizen in every community and every country in which we operate. We believe strongly in the rights of people—in the need to protect their individuality and their privacy—as well as in their freedom of choice and their desire for a fuller and more productive life.

We believe that in this volatile issue having to do with international data flow some elements of freedom are in danger, and we take this threat very seriously. The intentions of the Nora-Minc Report, of the Swedish vulnerability study, the IBI Resolution, and others clearly represent an attack on U.S. economic leadership where we are strongest—in high technology. Because this attack is against our strength, it cannot succeed except on protectionist strategies and restrictive tactics. It would, in our view, be a tragic mistake for the world to try to reduce efficient management of economic enterprise in the interest of nationalism. And it would be a tragic mistake for the United States not to recognize its stake in and its vulnerability to this trend.

We urge the U.S. Government to take increased cognizance of the problem and to take action in the GATT, OECD, UNESCO, and wherever else necessary to blunt the initiative which has so clearly been seized by European nations and is rapidly being joined by emerging countries. This is a time when the overseas investments of our country must be made more productive, not hamstrung by regulations.

I repeat my earlier observation, that this issue is becoming far more significant to the future of international trade than to the protection of individual privacy. I believe, therefore, that U.S. agencies involved with trade issues should coordinate and guide our continuing efforts.

Thank you.

Mr. PREYER. Thank you very much for a very excellent statement.

You make the interesting—and I think very true—observation that an attack on high technology is an attack on U.S. strength.

And you note in your statement that where manufacturers of high technology are faced with higher costs resulting from excessive regulations, they will be unable to maintain a high level of investment in research and development.

What sort of impact do you feel this limitation on investment in research and development might have on innovation in the information and communication industry?

Mr. KENDLE. I believe it will have a significant impact. Innovation, of course, involves risk taking, and I think that if American businesses, whether they are our type of business or a business such as the manufacture of computers, see that the value of taking risks to introduce innovative products is not worth the research and development dollars that are needed, I do not believe they will be spent. I think this could have a long-lasting impact.

A specific example, in our case, of the use of innovation is this. We look to the communications and computer industry to develop techniques which we can use. One of the hopes we have for the future is the availability of worldwide teleconferencing. We believe the use of worldwide teleconferencing would enable us to use our executive and management talent more productively by eliminating unnecessary travel yet accomplishing necessary business activity through teleconferencing.

If these laws restrict that kind of communications capability, I think the innovative development of that kind of capability will suffer, and we, of course, could not use it.

Mr. PREYER. And if innovation suffers, this could have a substantial impact, I suppose, on our leadership in this field.

Mr. KENDLE. I believe it certainly would have an impact on our leadership, but I think also it would have the ultimate result of reducing the world technology to the level of the least proficient, and I think that is a headlong rush into mediocrity which I do not like to see.

Mr. PREYER. You also make the interesting point about these additional costs which might possibly return us to nonautomated procedures and less sophisticated technology. I guess some might say it might lead us to the greening of the computers, and some might welcome that. But what sort of ramifications do you think that would have on the future growth of your company and, generally, on the competitive position of the United States in foreign markets—if we go to nonautomated procedures, as least?

Mr. KENDLE. I think it would have some beneficial results because I believe—even though I am a career information systems manager—we have a lot of systems in our company and in other companies that are automated which should not be, and I think that maybe it would begin to rationalize some of those. However, in the long run, I believe the advance of business, the advances of volumes of business, the advance of volumes of information and data necessary to conduct business, would suffer drastically if the development of computerized technology could not continue to be utilized.

Again, I repeat, I do not subscribe to the total utilization of electronic activity where it is not necessary.

Mr. PREYER. Thank you.

Mr. Butler?

Mr. BUTLER. I will ask you the same question I have asked other witnesses. Basically, what steps do you think we should be taking at this moment in response to the problems which are being outlined for us?

Mr. KENDLE. Mr. Congressman, I think one of the steps which needs to be taken is being taken by virtue of this hearing. Certainly, I do not pretend to be an expert in international or government relations. But one of the concerns I have heard expressed in Europe on many occasions is that the Europeans who are concerned with this issue do not know with whom to deal in the United States Government. I think we should take whatever steps can be taken to at least delineate the coordinating responsibility for this subject within an organization in the Government. I support the comments that have been made previously, that it should be in an area which is involved in international trade.

Mr. BUTLER. I have the impression from your testimony that foreign governments are simply not considering the economic impact of their nontariff restrictions. How can our Government best assure the foreign government agencies or international organizations consider the economic impact of nontariff restrictions they may have under consideration?

Mr. KENDLE. Sir, as I said, I am not—and I admit that I am not—familiar enough with the total organization of the Government and the various agencies—I wish I were.

Mr. BUTLER. That man does not exist.

Mr. KENDLE. I suspect. However, I believe, again repeating what I said in answer to the previous question, that those agencies which are involved in trade negotiations should work with their counterparts in the various countries that are considering this legislation.

I do not believe we can do a thing about the legislation that has been passed, except to abide by it.

Mr. BUTLER. Just learn to live with it?

Mr. KENDLE. Yes, sir; but I do think that we need to influence that which is currently being talked about and introduce the vital concern for economic consideration into these discussions at the OECD. And I certainly hope we do not run up against rules and regulations which are passed by countries of the EEC in which we have very little influence at this point.

Mr. BUTLER. I thank the gentleman.

Mr. Chairman, I have no further questions.

Mr. PREYER. Thank you very much. We appreciate your testimony today.

We will have some more questions also for you, in writing, if you do not mind.

Mr. KENDLE. Not at all. Thank you very much.

Mr. PREYER. Without objection, they will be included in the record at this point.

[Mr. Kendle's response to the subcommittee's written questions follows:]

Mr. Earle Kendie
April 14, 1980

1. You indicated in your statement that you consider this primarily a trade issue which should be handled by groups in the government which have expertise in negotiating trade problems. If the U.S. Trade Representative had the primary responsibility for negotiating international information and communications issues, do you think that the policymaking function should reside there as well?
2. What recommendations might you have for better coordinating and utilizing the existing expertise and responsibilities for international information and communications issues within the executive branch?
3. The State Department has an Advisory Committee on Transborder Data Flows. Do you think this is an effective mechanism for representing private sector interests in government decisionmaking?
4. The USTR is establishing a private sector advisory committee drawn from the service industries. Do you think this is an effective approach to getting private sector input or is the committee, embracing all service industries, far too broad in scope?
5. If some kind of cooperation agreement for the protection of privacy is not reached soon in the OECD, do you anticipate increased difficulties in operating internationally?
6. The British Government is currently tariffing data transmissions and other nations are imposing substantial additional operating costs which have the same effect. Have you estimated what these added costs mean for you?
7. In your corporation, to what extent have data flow considerations become an element in planning marketing strategy?
8. The trend in data protection laws to include "legal persons" as well as individuals in the provisions has several implications as you noted. In addition to the concern regarding access to proprietary information by competitors, what are your thoughts concerning individual foreign governments having access to and control over corporate information?
9. Most of the data protection laws in Europe require registration of data bases and various licensing procedures for compliance. What impact does this have on the cost, efficiency, and security of doing business in these countries?
10. Some nations, such as West Germany, are beginning to require the processing of data within that country prior to transmitting over public networks. How will this increase your costs and lower efficiency of operations?
11. If you were unable to transmit personal data from certain countries into others what implications would this have for penetrating certain markets or remaining competitive in them?
12. If individual nations establish differing standards of protocols for the transmission of data, what impact will this have on your ability to maintain an efficient international data communications network?

EATON: Earl Kindle
April 30, 1980
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1. While I do believe this issue to be increasingly concerned with international trade and one to be of interest to the U. S. Trade Representative, it also involves, rightly so, other agencies of the government. I don't feel that I am adequately informed of government organization to suggest the department or agency which should be charged with policy making.
2. I believe the expansion of the State Department Advisory Committee and its repositioning is appropriate. I believe that improved coordination between the various agencies addressing the question is required to insure appropriate balance between the technical, political, legal, and economic aspects of the problem.
3. If the State Department ultimately is assigned policy making responsibility—then yes.
4. I believe the advisory committee, if formed only of representatives of the service industries, is too narrow in scope. There must, in my opinion, be representation of other industry since the problem is viewed from a somewhat different perspective by them.
5. Yes.
6. We know factually that our communication costs (current system) will increase by 85% in the U. K. We do not have substantive estimates for the rest of Europe.
7. They are beginning to become an increasingly important part of our planning considerations, not only from a marketing strategy viewpoint, but from a facility location standpoint as well. I expect information flow considerations to be of even greater concern in the future.
8. I think it extremely inappropriate for any government to have blanket access to or control over corporate information—or personal information for that matter.
9. There is not yet adequate experience to provide quantitative answers. The requirement for additional clerical effort has added some cost and delays caused by additional approval requirements will have an impact on efficiency.
10. I am as yet uncertain of the extent of processing which will be required in a host country prior to transmission of data out of that country. In fact, for companies who operate completely autonomously in each country in which they are represented this should cause no problem. In our case, since we have operated in a more centrally coordinated mode, there will be a degree of increased costs, increased redundancy, and consequent reduction in efficiency. The magnitude of impact will be dependent on stringency of the requirements.
11. The inability to transmit personal data would have little impact on our ability to penetrate or remain competitive in various markets. However, if we include "legal" persons (businesses) in the coverage of personal data, we will then experience significant changes in our way of market analysis, planning, billing, credit extension and management.
12. Such action would make it very difficult. There would be additional requirement for internal technical support to provide adequate interface, undoubtedly the necessity for additional hardware, and increased potential for error, all of which lead to reduced efficiency.

Mr. PREYER. Our next two witnesses are on a panel; they are: Mr. William Colby, the former head of the CIA—it is a pleasure to have you with us today, Mr. Colby—and Mr. John Eger who was the head of the Office of Telecommunications Policy in the Ford White House, a recognized authority in this field. We are certainly delighted to have you here.

Mr. EGER. It is nice to be here, sir.

Mr. PREYER. Our panel was to have a third member, Mr. John Diebold, chairman of the Diebold group. I understand that he is ill today and that you have talked with his office, Mr. Eger?

Mr. EGER. I have, Mr. Chairman. I was not able to talk with Mr. Diebold; he is home. I did meet with him yesterday; he was most anxious to testify. As the subcommittee knows, he has submitted, in accordance with the rules, his testimony, and his office asked permission to have it submitted for the record, if possible. And, further, if there were questions which could be directed to him, he would be most pleased—or his office would—to respond to those questions.

Mr. PREYER. Without objection, his statement will be made a part of the record at this point.

[Mr. Diebold's prepared statement follows:]

**Testimony by
John Diebold**

Chairman, The Diebold Group, Inc.

Transborder Data Flows Raise Need for National Policy

**U. S. House of Representatives
Government Information and Individual Rights Subcommittee
of the
Committee on Government Operations**

March 13, 1980

Introduction

Good morning. Let me begin by establishing some context for my appearance today. My views are those of a businessman concerned with public policy issues who has been involved in a number of technology-based industries, most importantly computers, automation, and communications.

Through my firm we have been involved in a broad range of studies concerned with helping governments and business managements to develop a global perspective on the risks and opportunities in today's information environment, and to discern and respond to existing and emerging user needs. Additionally at The Diebold Institute for Public Policy Studies, we have on-going efforts devoted to researching and analyzing the political and economic imperatives for United States technology and information policies as elements of an overall purposeful industrial policy...and a project aimed at understanding the nature of public policy issues relating to computers and communications in various venues around the world.

My intent today is to respond to the subcommittee invitation by sharing our present views and experience base on issues relating to international data flows, including:

- The range and complexity of problems which may affect various enterprises.
- Examples of how businesses have perceived and dealt with such issues.
- Possible ways United States Government can represent American interests and help business.

Summary

Next, I would like to outline and summarize the main points I want to cover:

- I. There are at least three interrelated problem areas, linked more by their potential effects on business than by their points of origin, which it is important to be aware of:
 - . Data protection concerns, crystallized in many countries as privacy legislation initiatives.
 - . Various basically protectionist policies, particularly the general determination of the national telecommunications monopolies to protect and expand revenues.
 - . Clusters of diverse and sometimes conflicting sets of objectives among various participants on the world stage.

- II. Over time, companies have been learning to manage around restrictions by different blends of technical and political substance and charades.
- With a few exceptions companies have tended to de-centralize data processing operations by country.
 - Where movement of data over borders is necessary company behavior has ranged from obeying the letter of the law to petitioning for exceptions to various shades of charade or subterfuge.
- III. Although we recognize that it is important for Government to forcefully lobby for the free flow of information in international forums, and to support that objective with bi-lateral and multi-lateral efforts...we feel that to be dealt with successfully from the standpoint of American and American business interests, the questions of international data flows must be thought of in the wider context of information policy as a component of an overall industrial policy.
- Because of the "global reach" and the virtually endless "custom capabilities" which are coming into being via the technology-driven convergence of communications and information systems...in an increasingly competitive world where nationalism is a powerful force...business risk and opportunity issues are becoming more important on a global than on a national level.
 - At the same time that innovation and leadership in electronic and modern information systems are the strong suit of the U. S. economy and comparative advantage, our leadership has catalyzed major competitive initiatives and has raised a strong wave of fear in much of the rest of the world of U. S. economic and cultural domination.
 - Therefore, although the free flow of information may be very important to the economics of managing an enterprise, a more central question which must be addressed..is whether that U. S. leadership can be sustained in the present uncoordinated, pluralistic, market-driven U. S. business environment, in the face of a broad front of purposeful government-directed efforts to challenge that leadership?
- IV. Thoughts and recommendations must begin with a global view.

I. Problem Areas**Data Protection**

Data protection initiatives, primarily in the form of privacy legislation, may be inspired by various mixes of factors ranging from genuine concerns for protection of privacy to national security considerations to economic nationalism.

Most of the efforts thus far to protect data have certain basic principles in common (20 or so countries have enacted or are on the verge of enacting such legislation):

- Computerized data bases containing personal data must be registered and authorized by a state body such as a "Data Protection Board."
- Personal data can only be collected, processed and stored with the permission of each individual on whom records are kept, and individuals have the right to see and contest their particular records.
- Personal data can only be used for the purpose for which it was collected.
- Amalgamation of separate files of personal data is not allowed, except with specific authorization of the state data protection body.
- The creator of an authorized file of personal data is liable for all damages caused by misuse of the data, whether or not there was negligence on his part.

Clearly, emerging legislation along the above lines may have important implications for communications services in general. The movement of information required for optimal management—from personnel data and medical data to sales records, and so on—can all be affected. Encryption techniques and other security measures are becoming more important, as is close control on further use of collected data. Difficult questions are arising as to where responsibility lies for data protection.

In addition, fears have emerged that national data protection laws could be circumvented by transmitting data to countries where the legislation is less restrictive. This has led to the concept of "data havens," i.e. places where data can be stored and used in a way impervious to the laws of the country of origin. Even off-shore "computer ships" utilizing satellite communications have been postulated. The result of such fears is that, as observed in a U. S. Department of Commerce report in 1977, "there is a growing tendency in many countries to require data files to remain in the country of origin rather than be transmitted across national boundaries."

Some of the potential implications of the emerging legislation at the enterprise level might be:

- Compulsory registration and licensing to transfer data out of a country, including disclosure of company-sensitive data.
- Security problems, through compulsory disclosure of encryption methods and other such techniques.
- Slow-down in marketing new data base services through governmental control procedures (country by country).
- Organizational need to maintain a high level of expertise in this area to monitor closely emerging legislation in order to assess impact on the corporation.

Protectionism and National Telecommunications Policies

In addition to somewhat more obvious national policies aimed at nourishing indigenous electronic, data processing, and data communications industries (such as duties or taxes on imported equipment, data processing services from abroad, or international data flows)...the telecommunications monopolies, which by and large generate their own revenues, have been responsible for some major impediments to the free flow of data.

Plagued by the "fast-moving technology: obsolescent plant" syndrome, concerned about the explosive growth of private networks, and fearful that allowing extra-national data processing is tantamount to throwing away jobs, these public monopolies seem to have a tendency toward a pattern of discriminatory tariffs with significant usage restrictions.

Some of the potential consequences which might flow from such policies at the enterprise level are:

- Border taxes to compensate for local job losses when data is processed outside the country of origin.
- Loss of flexibility in network reconfiguring and data processing planning.
- Generally negative influence on the growth of electronic mail and electronic funds transfer.

Diverse Objectives and Perspectives

Circumstances and perspectives are different in different parts of the world. The thrust of the following examples of perspectives and objectives is generally restrictive (further along I'll offer some competitive perspectives):

- In Japan, initiatives may tend to be more baldly protectionist than privacy-oriented (for example, one major United States-based multinational diversified electronics and communications enterprise was allowed to transfer data on an on-line basis in 1976, and then last year found itself restricted to batch transfer). In Europe, although companies are concerned about any brand of non-tariff barriers--especially companies whose products and services (and whose growth) may be intrinsically linked to passing information from company location to company location such as financial services, communications, or publishing enterprises--most legislative initiatives have taken the form of privacy legislation.
- Although the European privacy initiatives may very well be inspired by genuine concerns about personal privacy/data protection and standards...these initiatives, spawned against a background of societies not characterized by basic adversary relationships between business and government, can also have other kinds of effects...such as protecting sovereign prerogatives, assuring some participation in the high growth information industries, and defending against fears about the potential but unknown consequences of continuation or expansion of the United States semi-monopoly in data bases and networks. (It should be recognized that at this stage, it is simply not clear what international information flows imply for security, employment, and general economic conditions.)
- Soviet objectives appear to be to obtain and/or develop electronic and information systems capabilities primarily for security purposes..and to influence the world body politic to endorse total state control of information flows in and out. For example, SALT depends on information technology, and the military importance of "killer satellites" cannot be underestimated. And all governments well-understand that control of information is a cornerstone of power.
- Generally the LDCs want to protect sovereignty and maintain cultural and linguistic autonomy by controlling information in and out (often a very emotional issue), to build a tapestry of indigenous information industries--which are increasingly being regarded as preconditions to and not consequences of industrial and social development, and to protect "national rights" to what are regarded as limited natural resources such as the electronic spectrum and "parking slots" in space. Presently there appears to be a trend toward an increase in various forms of censorship, a pattern of indications that indigenous electronic and information hardware capability will be the successor to the steel mill/airline type of national status symbol, and an inclination to satisfy at least partly emotional needs by bloc voting in international forums to protect "national rights" such as those mentioned above.

II. Managing Around Restrictions on International Data Flows

Implications of De-centralized Processing

Probably in large measure due to sensitivity to the trends toward privacy legislation and user restrictions being imposed by the national telecommunications monopolies...data processing and communications planners have tended to distribute data processing operations by country and to find the most expedient means available where it has been necessary to move data across borders.

The central questions which need to be answered concerning managing around artificial and uneconomic restrictions are what are the real additional costs, lost profits and lost opportunity to the enterprise...and what are the costs and lost benefits to economies and society as a whole?

Examples: Substance and Charades

In talking to some of our Firm's clients and friends in preparation for giving this testimony, when asking about examples of international data flow issues leading to changed behavior of management, comments like "Everybody is looking for examples" or "It's still mostly anticipatory, in the 'what if?' stage" kept coming up. On the other hand, many companies are reluctant to talk about their experiences even in an abstracted fashion because they don't want to set precedents in this arena. Examples of a few "real world" stories follows:

- A major publishing enterprise whose "Swedish experience with large name-address-census data lists" has often been cited as an important example of the major impact of legislation on the conduct of business..informed us that their experience has been incorrectly reported, that it was not an international data flow issue but an internal Swedish privacy issue involving the building of an internal Swedish marketing prospect list (Interestingly, this company's experience has been that the Swedish government itself subsequently took over such list-compilation and has supplied up-dated versions to the company rather . cost-effectively.) However, some of the decisions of the Swedish Data Inspection authorities are illustrative of the kind of direction practices could take:
 - A catalogue containing the name, title, address, and tax assessment information on all citizens with an income over a certain amount (tax information is public in Sweden) has been published annually for several years. The catalogue had been printed by a firm in the United Kingdom on the basis of a tape sent from Sweden (no Swedish firm could cope with the desired deadlines). The authorities denied export.

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- A German multinational has established in Sweden a central personnel information system for administration and planning, containing information on the family, nationality, skills, and so on of the employee. The authorities denied export.
- A financial enterprise is factoring an extreme case scenario of constrained international data flows into its strategic plans.
- A consumer products company, generally self-contained within each country it operates in, was able to negotiate agreements to support operations in three EEC countries remotely from Germany because German standards are equal to or in excess of standards in those three countries.
- A diversified electronics and communications company has had no major problems as yet but is incurring significant additional costs for keeping records, and for other administrative, back-up, and security requirements. This company also closely monitors impending specific initiatives such as those in Austria to look at a corporation as a "person," and systematically reviews the general world-wide situation to minimize risk to present operations and to understand the status of information service business opportunities.
- An electronics company also has been incurring significant costs for record-keeping and the like in Europe and Taiwan, and is systematically monitoring information service business opportunities. In addition, this company has been frustrated by other non-tariff barriers such as the Brazilian requirements for Brazilian terminals in communications networks.
- A medical products company which has effectively decentralized its world-wide processing operations has found that most records and summaries are not required on an immediate on-line basis, and that mailing records protects secrecy as well as obeys the letter of the law.
- A diversified consumer products company rented a house which straddled the border of two European countries to maintain the option of having computer tapes in the venue most expedient to management purposes.
- A high official of a world-wide bank found it expedient to smuggle computer tapes out of an African country, and never did learn for certain if the resistance to moving those tapes across the border was general government policy or if it originated at Customs in that nation.

III. Continued U. S. Leadership Requires Thinking About International Data Flow in a Broader Context

Technology Has Blurred Old Policy Segmentations

Fast-evolving information technologies are setting the stage for quantum leaps in the possibilities for global human interaction. Microprocessors, fiber optics, and satellites have made the historical policy focuses of broadcasting, telecommunications and East-West trade all but irrelevant. As advanced audio-visual systems with full transaction capabilities become more available and mandate a more global awareness, viable policy frameworks will become increasingly critical. The central questions for developing such frameworks relate to how to develop a more profound understanding of user requirements, behavior paradigms, and biological imperatives.

U. S. Leadership may be Seriously Threatened

The thrust of the present U. S. information policy framework--paralleling our largely implicit overall industrial policy framework--seems to be to encourage pluralistic market-driven forces, including allowing competition in telecommunications on the domestic front, and to support the free flow of information internationally.

Historically, technological advances have been the major cause of United States advances in productivity and economic growth, and thus of our international strength. And our comparative advantage has been manifested in international trade with our pattern of trading newly-pioneered and agricultural products for older products and raw materials. At present the United States still holds leadership positions in electronic information systems, but that leadership is not unchallenged.

Earlier, I outlined a pattern of "negative" restrictive activities which could adversely affect U. S. position. Perhaps even more important are the efforts to directly challenge our leadership.

Other nations—notably Japan and members of the EEC—who appear to believe that the electronic and information industries are vital to their security and to the growth of their economies, intend to compete and are taking coordinated and purposeful steps to challenge United States leadership. For example, Japan—which seeks to build strength by targeting support for high-technology industries with income-elastic high-value products and supports innovation with policies like accelerated depreciation, no capital gains tax, and a broad range of support and incentives—has focused on electronic systems and information systems in a major and fundamental way (while the United States protects its weak industries and is trying to dismantle IBM and ATT.)

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Potential Consequences of Inaction

At the nation-state political and economic levels, some of the consequences which could result if the United States policy objective of free unrestricted flow of information were pursued with benign neglect, and if moves were not initiated to counter the policy thrusts of allies, adversaries and non-aligned nations alike are:

- Dramatic reductions in the rapidly growing information sectors of the United States economy and increased costs and poorer service to all international users.
- The expensive necessity of replacing or reconfiguring equipment engineered to pre-empted segments of the electronic spectrum.
- Overseas operations of United States-based multinationals becoming increasingly uneconomic due to requirements for establishing local subsidiaries, decentralizing information networks, etc.
- Higher costs for long-haul and overseas communications.
- Serious reduction of information available in the United States about the rest of the world, and of the broadcasting ability to communicate with much of the rest of the world.

IV. Thoughts and Recommendations for Policy Consideration

Our belief is that there is a clear and present world-wide trend toward economic war in the information industries. Competition and restrictions affecting United States-based enterprise are increasing. Our national security, which today rests on a strong economic base and on the capability to maintain leading surveillance technology, and clear growth paths in our strong suits of electronic systems and information systems are at stake.

Dialogue must put on the national agenda. The world-wide regulatory tapestry should be assessed and thereafter carefully monitored. Serious immediate efforts seeking to compel an overall examination of our explicit and implicit policy structure may be of value if only to illuminate the consequences of not acting quickly in a purposeful and coordinated way. It may not be too late for the United States to re-define some of the major issues in international forums. This could work on the technical plane as well as on the political and economic planes...for example, some United States engineers would argue that the electronic spectrum is not a diminishing resource, that among other possibilities it can be used far more efficiently, and that it may in fact effectively be an expanding resource.

It's important to think from a global perspective. One very important insight for dealing with information technologies which are giving individuals global reach is the importance of understanding the international implications of all policies, and the domestic effects for the United States of the policies of other nations. For example, assuming no wrongdoing, is a domestically-oriented market power argument in antitrust relevant when IBM is competing globally and in the United States with Japan, Inc?...and what would the consequences for the United States economy be if the LDC's successfully preempt major segments of the electronic spectrum?

With respect to our allies-competitors in Japan and the EEC, nationalism being the force that it is, encouraging innovation on a policy level would appear the most important thing to do; technical leadership both stimulates our competition to the benefit of all, and gives us leverage in negotiations about standards., In the LDCs, the most highly-leveraged opportunities probably relate to consciously and purposefully looking for situations where creative and innovative technology transfer contracts--focused on software and systems--can be experimented with.

Thank you.

Mr. PREYER. I am sorry Mr. Diebold is not able to be with us today.

Would one of you like to lead off?

**STATEMENT OF WILLIAM COLBY, ESQ., REID & PRIEST,
WASHINGTON, D.C.**

Mr. COLBY. Mr. Chairman, it is a pleasure for me to participate in this subcommittee's consideration of transnational data flow problems. I also believe it highly appropriate to do so since my career as an intelligence officer, despite some romanticized versions to the contrary, essentially involved trying to improve the transmission of accurate information across national and cultural lines. I look forward to a world in which increasing amounts of information are exchanged among nations through quite proper and open means, as I believe that increased knowledge across national barriers will lead to better understanding and enable us to solve our differences by better means than conflict.

The advent of automated information and communication offers a quantum jump to this process. The volume, the precision, and the speed of transmission of information made available by technology today produces a different world than the one in which we were living a very few years ago. Experts in a variety of locations can consult and utilize the same extended data base rather than each seeing only a narrow aspect of the problem visible from his particular location. More accurate, more comprehensive, and more refined information is available as a base upon which thoughtful students, responsible Government officials, and productive entrepreneurs can make the decisions necessary to improve the economies, reduce the

political frictions, and harmonize the cultures of an increasingly interdependent world society.

But a substantial threat is growing to this prospect. It stems from the conjuncture of several understandable principles and concerns. One is the fear of the technology itself and its implications. As any reference to nuclear energy evokes the image of a mushroom cloud, so any discussion of automated data evokes George Orwell's "1984." A second is the concern for national sovereignty, as the technology permits data and their resulting power to escape the control of individual governments and the constitutional organs which reflect the values of the citizens.

Third is a concern for the moral and political importance of human privacy and the danger that this can be attributed by the workings of technology. Fourth is a somewhat less laudable but nonetheless understandable inclination toward protectionism, seeking to retain economic functions and employment within a home area which technology permits to be handled afar.

These concerns are already imposing limits on the potential contribution of this industry. You are aware of the sacrifices of economy of scale required by controls on the export of data, compelling expensive and unnecessary duplication of facilities within countries which could be handled from a single center. Controls on data banks, and particularly on the export of individual data, limit the potential of international services which might otherwise be provided, such as international credit and business references and services without repetition in each separate nation. The tendency toward national centers for such data stresses the national perspective at the expense of the international potential which otherwise could develop and encourages competitive and antagonistic attitudes rather than cooperation toward common goals. These will limit the growth not only of this industry but of its possible contributions to the development of others. This should be a matter of concern to the less developed countries of the world, whose real hope lies in the growth that free information movement can make possible, profiting from the information bases available in the developed world.

This does not, of course, mean that this industry should be free of any controls. Free trade has been demonstrated to be a more satisfactory technique of international economic relationships than mercantilism or simple, old fashioned imperial acquisition. But free trade does not mean total license or the absence of reasonable rules and regulations against dangerous products, against unfair labor practices, or against predatory business practices. It does mean, however, that each restraint to be applied to the free movement of goods and services should be justified by a very special rationale acceptable in the international marketplace rather than merely by narrow, selfish reasons. The same philosophy should govern controls on the movement of international information.

In analogous situations wherein technological advance has altered the basis for established economic arrangements, international negotiations have sought new rules and procedures to govern the conflicting interests produced by the technological changes, reflecting the necessities of the new technology, the hopes of economic growth, and fairness to the different groups and nations concerned.

The Law of the Sea negotiations, treaties on Antarctica and space, and such international entities as the International Civil Air Organization, the International Telecommunications Union, and the International Atomic Energy Organization are examples of these.

In the information world, the international community is well behind the momentum of technology. To meet the concerns it raises, local legislation has been growing in Europe and other areas on transnational data flow, some rather extreme Third World positions have been asserted in the recent World Administrative Radio Conference and UNESCO, and some quieter but responsible efforts are underway to develop guidelines and principles applicable to this field, such as within the OECD.

The United States must assume the leadership in this process that its leading role in information technology assigns it. Just as international civil aviation must be organized on a global rather than a national basis, so the information industry can only reach to full potential for growth and service if it is approached on an international scale. To accomplish this, the U.S. Government must first develop an interdepartmental center for policy formulation, for negotiation among the different interests involved, and for projection of sensible solutions into the forefront of international concern. We need to organize the supporting staffs, form alliances among potential beneficiaries in academia, the information industry and its customers, and focus governments on using this new tool for maximum betterment of all.

Mr. Chairman, I might add here that the Law of the Sea negotiations make an interesting comparison. Here again, technology changed the basis for established relationships, and we appointed a senior negotiator, Ambassador Elliot Richardson, who has a magnificent background. He has been spending the last 3 to 4 years working on nothing but this, at a very high level.

I do agree with the ideas of some of the witnesses before me, that this should be approached primarily as a trade problem, because I think a lot of the factors involved are familiar to trade negotiators. This is the approach that should be adopted in this particular world.

I do not believe that George Orwell's version of "1984" will arrive by that date, but I do think we will lose a great deal of potential for the expansion of human knowledge, international cooperation, and exchange of true intelligence by that date unless we move rapidly and forcefully now.

Thank you, Mr. Chairman.

Mr. PREYER. Thank you, Mr. Colby, for an excellent statement.

Mr. COLBY. Thank you.

Mr. PREYER. Before we go into questions with Mr. Colby, I suggest we hear from you, Mr. Eger, at this time.

STATEMENT OF JOHN EGER, ESQ., WASHINGTON, D.C.

Mr. EGER. Thank you, Mr. Chairman.

I would certainly like to concur at the outset with Mr. Colby's very fine statement and say that it is somewhat anomalous that we should be talking about a technology which promises so much but is strangely seen as motivation for protectionism by some and awakens ancient fears in others. It reminded me of what Thomas

Edison said when the technology was first born, when he invented the telephone, "What hath God wrought?" Little did we realize that that might be more prophetic than exclamative.

As you have heard on Monday and this morning, there are, it seems, storm clouds that appear to be gathering all over the world in a sort of counterrevolution to this merger of computers and communications, this evolution or some would say revolution. While that might be a bit strong and hyperbolic—and I must confess to certain guilt in this regard myself—I noted this month in the Washington Journalism Review a story called "The War Over Information" by journalist Peter Hirshberg in which I, fortunately or otherwise, am quoted as saying:

The Europeans compare the United States and our dominance in information and information technology with the way we look at OPEC. We are the OPEC of information. The only trouble is, we don't know it.

I did say that, I guess because it was good copy, and I knew that, and so did Peter Hirshberg, but it fails to take into account two other facts, Mr. Chairman. One is that, unlike our struggles over oil—and I should say that there are some parallels over what I think will be struggles over information—this is not yet the moral equivalent of war. Furthermore, information, unlike oil, does not deplete with use but, rather, increases. While almost all oil is valuable, all information is not. It falls into two kinds: Useful or intelligent information, which Mr. Colby can certainly testify to, and useless information. I think those of us who operate in the capitals of the world know there is a fair share of that.

On that note, Mr. Chairman, and without your accepting it as an admission against interest, I would like to have my statement submitted for the record rather than contribute to the tower of information babel, and try to make as concisely as I can four brief points or observations.

As you already know, there is, for better or worse, rightly or wrongly, a perverse view in the world that information itself is power and that information technology—computers and communications—is essential underpinning for the growth and health of every national economy.

As a consequence of this view, out of narrow self-interest, as I have already indicated, on the part of our developed country allies, Europe, Canada, Japan, and elsewhere, or out of fear of abuse, as is probably the case in most lesser developed countries, around the world we see the development of information laws, laws which govern the collection, use, processing, and storage of information. In Europe there are emerging the so-called data protection laws. We are seeing develop taxes and tariffs on information flow; we are seeing develop so-called national informatics plans, or national strategies to control everything from the flow of information to its use, dissemination, and so on.

Secondly, these strategies, even if innocently or narrowly interpreted and enforced, are so diverse and in such abundance that they stand for at least international trade, international commerce, and international communications of all kinds, for scientific and cultural exchanges as well, like a picket fence, inhibiting if not blocking the flow of information around the world. And the sad thing about it is that there is no international body or internation-

al forum that has really come to grips with what this might mean for the world economy and world stability.

I need not tell you how highly politicized most of our international forums are and how little we can rely on them for certainty in the world.

Let me make a third observation. This issue, unfortunately, has caught on as a transborder data flow issue. It is a trendy, catchy phrase that really does not mean anything. We have always moved data or information across borders in one form or another. Why all the fuss? Why suddenly is transborder data flow such an evil thing? I suspect that there is a basic tension in the world that accompanies the change in the structure of the economy to a post-industrial information-based economy. The economies of the world are wrenching against each other, which will increase as inflation and unemployment increase, and as the trade debate escalates.

With that will come more shibboleths for regulation of all kinds. I think we need to look not only to transborder data flow but to the World Administrative Radio Conference discussions, the debates in UNESCO over the mass media, the call for a free but balanced flow of information, the call implicitly for Government regulation of information collection; we need to look at the debates in the U.N. on direct broadcasting satellites; we need to look at the debates over technology transfer, with the have-nots saying, "We want ours, and we want it now." I think we have to look at all these things, and if we do, we will see that there is a major confrontation coming.

While we in the developed world fail to harmonize existing laws and business practice, the developing countries are watching with great anticipation of joining in that debate themselves. The North-South confrontation, if you will—and I hope you will forgive me for characterizing it that broadly, because there are obviously an awful lot of people in the North and an awful lot of those countries in the South—taken together, the issue is far larger than simply trade, although I share the opinion of those who testified before; trade is an important issue, and one we can rally around; it is one in which the private and the public sector can get together.

But here is something far more important here, and it is economic and personal freedom and political stability and the continuance of a democracy such as the United States. I think we need to talk about that much more than we have.

This brings me to my last observation. Not only is there a tremendous diversity; not only is this issue multifaceted with such tremendous convolutions, but our potential response is equally diverse, and we, the United States, appear to be the most vulnerable because we have a very healthy, robust private sector, unlike any other in the world. We have a private sector that does what it is doing best: it is innovating, it is inventing, it is bringing its products to the marketplace, it is making money, it is contributing to the gross national product, it is providing jobs; it is not watching the development of informatics or national strategies designed to blunt U.S. technology, to control international and multinational business.

Unfortunately, our Government is equally diverse in this area, is equally uncoordinated, and has not come to grips with the full

implications of this issue, and there has been—despite some of the promising testimony I think you will hear on the 27th and 28th of this month from the Government sector—the kind of coordinated development of the issue and understanding of the issues, and some first attempts at dealing with them in a meaningful way to put to rest some of the confusion, to inject some more certainty and stability into the process.

I am fearful that if we do not come to grips with this private/public sector Achilles' heel of our system, we will go from confusion to chaos as more and more laws are laid on top of one another, resulting in the most restrictive regime of all information activity in the world, but we will have, as a nation, lost a large chunk of what has made us different, and that is our economic and personal freedom.

Thank you, Mr. Chairman.

Mr. PREYER. Thank you.

You have both given us interesting and important statements. You have both given us the vision of what free information flow and new technology can mean for the world. Mr. Colby says it can reduce the political frictions and harmonize the cultures of an increasingly interdependent world society.

Along with the dream, you have also pointed out the problems connected with it, one of them being this unreasoning fear of anything new. It is like recombinant DNA, in which enormous benefits can flow from it but all these dangers can come from it too. Milton said in *Areopagitica* it is one of those situations where there is certainty of good and also certainty of evil, and what do you do? He said you plow ahead and pursue the certainty of good.

Mr. BUTLER. Hold a hearing. [Laughter.]

Mr. PREYER. Or appoint a commission.

Also, Mr. Eger pointed out that no international body has come to grips with this problem very effectively as yet and that we cannot rely on most of those bodies. Mr. Butler and I are going to be meeting with one of those bodies this Easter, and this is a subject we thought we might want to take up with them.

If the OECD deliberations on voluntary guidelines for the protection of privacy stall—and it looks like they have stalled recently. Would you agree with that?

Mr. COLBY. I think they have moved a little, Mr. Chairman; I would not say they are totally stalled; I think they are working out some compromises. They are never going to end up as ideal. But I do think we need to put more horsepower to it.

Mr. PREYER. Like the Law of the Sea situation?

Mr. COLBY. Yes.

Mr. PREYER. If we do not reach some kind of cooperative agreement, soon—and I would agree with you, no cooperative agreement is going to be ideal—what would you foresee would be the difficulties that American enterprise might be facing internationally? Is there going to be a great step-up in the difficulties that they face? How important is it that we push ahead for some sort of cooperative agreement right now?

Mr. EGER. Mr. Chairman, there are a lot of things I want to say about the guidelines, if I might, as a predicate for directly answer-

ing your question. I hope you will forgive me for a slight diversion.

First of all, the guidelines are nonbinding; they are entered into in good faith by all members of the OECD countries, and the OECD forum is one that does not develop treaties and is not subject to ratification. I say that because, even though I think we have successfully negotiated guidelines on privacy among other OECD countries, much to our credit and much to the credit of our negotiators in that session, I do not know what they will mean because individual nations are still going ahead, passing their own privacy laws, and those privacy laws still create a central authority with extensive monetary powers, still require registration or licensing of data bases, still require prior consent before data can leave the country; the trend seems to be more and more requiring protection of legal as well as individual persons. That is No. 1.

No. 2, I do not know, when push comes to shove, whether the ministers of industry and trade—when they begin reaching out for new, invisible weapons in this game of invisible trade—now that we have lowered certain barriers in GAP but have now raised other opportunities for nontariff trade barriers, whether those laws will be reached to or looked to by national administrations as an economic weapon, and what effect the guidelines will have on that nationalist protectionist effort.

However, having said that, I think our effort to try to sever privacy out and that it separately is important, and I thoroughly endorse the U.S. Government's effort to do that. Privacy is our claim to fame. We have a constitutional system unlike many in Europe, and we should be proud of protecting the human rights and individual rights of our citizens. I cannot say we have entered the negotiations with that attitude. Nevertheless, we should not be whipsawed over privacy; we should deal with it decisively, aggressively, and try and lay it to rest.

Hopefully, if we do have the guidelines, we will at least have some small weapon in our arsenal with which to negotiate barriers, if and when they do arise. But I think it would be wrong for us to expect the guidelines to amount to more than some people might expect. Some people expect they will accomplish a lot more than that, and I think they will.

Mr. COLBY. Mr. Chariman, I would like to relate this subject to the broader problems that we see growing: the tendency toward protectionism in this country as well as in other countries around the world. Despite the good words of the Tokyo round, the success of that congressional action was a credit to the excellent political abilities of Mr. Strauss and the fact that he paid off a certain number of obligations before the vote took place. But that cost something, as against the ideas of the lowered tariff barriers and the lowered nontariff barriers.

We are seeing protectionist tendencies in a lot of other developed countries and in our own. And this is an example of that that we are seeing here. In Europe, there are protectionist tendencies in automobiles, and in agriculture certainly, and various other areas.

Second, there is a tendency to politicize the difference between the less developed world and our own. We saw this recent tragic collapse of the U.N. Industrial Development Organization meeting

in Delhi where, rather irresponsibly, they just demanded that \$300 billion be left at the corner of the table for the less developed countries to dispose of as they would. The developed countries said, "No; that is irresponsible. We are ready to go with a smaller fund and a sensible approach but not this." But the potential for demagogic and the actual demagogic is growing in this area.

In this area, therefore, either we take a vigorous effort to negotiate out in good faith the real problems that other countries have with transnational data flow—the real dangers to privacy, the real concerns they have as to their economic advance, and technology transfer, and so forth—or we just let this fight grow. We have the opportunity here to take a very forward position toward a sensible solution, as I think we tried to do in the Law of the Sea, and we have had a tough time there, too. We have had to stick very hard on some rather fundamental principles in that and fight off the demagogues in the process. But I think we are succeeding.

I think each of these areas that we can find a positive solution to is one more step to construction of a better world, rather than letting things deteriorate into fragmentation and hostilities.

Mr. PREYER. Thank you very much.

We have a vote on, which is a motion to recommit the windfall profits tax; if this is defeated we will have a final passage vote right after that. So, we are probably talking about a 15- or 20-minute recess.

Will you be able to return at that time, Mr. Butler?

Mr. BUTLER. Yes, I will, if our witnesses can stay.

Mr. PREYER. Will you gentlemen be able to stay with us?

Mr. COLBY. Yes, sir.

Mr. EGER. Absolutely.

Mr. PREYER. Then we will stand in recess for about 15 minutes.
[Recess taken.]

Mr. PREYER. The subcommittee will resume its session. The Chair will recognize Mr. Butler.

Mr. BUTLER. Thank you, Mr. Chairman.

I really have no further questions of these witnesses. I think they have pretty well outlined everything. My concern is about where we ought to be moving, and I judge it is just to pretty much beef up the whole operation and be more aware of the problem and see what develops from there. But if you have some specific suggestions about where we ought to be moving to in the legislative area with reference to these problems, I would appreciate that.

Mr. EGER. I guess I would say, in all candor, that there are a number of things that can and should be done, but we certainly should await further hearings to hear from the Government. There have been instances, as you heard on Monday, where companies have gone to agency A, B, C, and D, and all of them said, "You have got a heck of a problem," shrugged their shoulders and said, "but we don't see where we fit." That simply cannot be.

Sometimes it takes a hearing so that one or the other can say, "I will be counted on to respond the next time."

But beyond that, I share, as I indicated, Mr. Butler, the desire to see STR under its reorganization look really seriously and hard at these kinds of problems, not only for the service sector but, more broadly, for the manufacturers, the industrial sector as well. But as

I indicated, I think there is still something more. I favor STR, one, because it is a point at which industry can rally.

Industry understands trade; industry does not really understand or have a great deal of sympathy for politics. And really what we are talking about now is the politicization of technology.

That being the case, and recognizing—at least from my own point of view—that STR will not and cannot perform that broad a political role, I think there is a role somewhere else.

The second reason I like STR is that it is at least close to the top of the pyramid, and I think problems like this could cut across bureaucratic lines of thought and bureaucratic lines of organization and require a decision from the top and then something to trickle down.

I do not see any other agency, other than STR, at the present time that can come to grips with the broad range of issues that lie just beneath the surface of this discussion over transborder data flows, and I would like to see at some point that kind of central focus that could really give this whole area a macroview—would take a macroview of this whole area and begin then parceling out individual policies against a broader policy framework that will protect the complex number of U.S. interests other than or in addition to trade.

Mr. COLBY. My reaction would be very much along those lines, except I would think that you might appoint a senior individual with political impact and not merely limit him to the transborder data flow subject but, rather, expand his charge to a larger look at the new information economy, new information world that we are living in, and look broadly across the Government at all the pieces that could be put in and used and have to be put together to get the best possible solution.

In other words, certainly data flow is one problem, but the whole business of how we utilize our information, how we exchange it, how it should be encouraged to grow in different areas—I think this is the kind of charter that could attract a fairly senior political figure and then put him in the USTR as a special assistant or special adviser for this area. Then you would get the benefit of the political personality at that level, and you also would get the familiarity with the negotiating process that you get in the USTR.

Mr. BUTLER. Thank you.

We do not have any problem recognizing the advantages to this country of the free flow. But what effect does the free flow of data internationally have on the development of the lesser developed countries? Is it to their interest that the information flow freely, and why?

Mr. COLBY. I believe it is in their interest because, as the world economy grows, as the effectiveness of the economy improves, they are going to be beneficiaries.

You look at the most striking comparisons in recent years of the growth of the countries in the eastern part of Asia: South Korea, Taiwan, Japan, and Singapore, all of which have adopted a free-investment philosophy with a free flow of a great deal of their information. Compare them with the efforts in controlled economies just opposite them: North Korea, the mainland of China, which has been up and down and all over the place, and a country

like Burma—absolutely stagnant, with a controlled economy and a disciplined society. Look at the striking comparison between the free approach and the controlled approach in the areas in economic growth and in the improvement in the lives of their people. The free nations have an enormous advantage which I think the Third World is now beginning to perceive. That is why you are having a breakout between these different groups within the Third World. You began to see it in Havana last year, with the separation of a number of them from identification with Socialist approaches.

So there is, I think, a very new development going on in the Third World as a result. And that applies to information particularly, because if you encourage the free exchange of information and the kind of economy that comes out of the free flow, then you are going to get progress. And if you try to control everything, you are going to hold it back.

Mr. BUTLER. I thank you.

Mr. PREYER. I have one question I would like to put to both of you gentlemen on the controls on export from the United States of unclassified technical data. The Secretary of Commerce recently sent the Congress a report on exports of technical data by publication or other means of public dissemination.

In that report were cited figures from the National Technical Information Service, that each year 1.5 million unduplicated scientific and technical reports are published in this country. Each year, about 100,000 reports are presented at scientific meetings. Also, another 160,000 documents involving patents and current research projects should be considered as sources of technical data. Some of these relate to subjects of national security interests, for example, the export of microcomputers, bubble memory devices, and related unpublished sophisticated technical data. So that is closely controlled for national security purposes.

Yet, in an article in the September 1977 issue of Scientific American, information was provided on how to manufacture microcomputers. We currently have some controls of scientific and technical information through the Invention Secrecy Act and the ITAR. I am finally getting to my question. To what extent, if at all, should we control the flow of such data? Should these controls be legislatively clear and unambiguous, or are current controls improperly disruptive of transnational data flow in the sense of the foreign controls being discussed here?

Mr. COLBY. I think, first, Mr. Chairman, we have to admit that we have a pretty tough time even controlling the flow of classified data. That is a reflection of the society we are in and the stage of our society; there it is; it is just a fact of life. I think there need to be some improvements on the control of classified information, and the Congress is considering some improvements on some of the classified information.

Second, however, with respect to the unclassified, let us face it, if something is presented in Scientific American or various other places, it is almost impossible to consider barring its export, because of the way that things are published in all sorts of journals, and obscure technical magazines, and everything else. I think it would be very difficult to impose any embargo on the export of Scientific American, for instance, or any of the other technical

journals. They are just full of tremendously valuable information—do not get me wrong. We read technical journals from all over the world for exactly that reason—we learn from them.

I think, however, that you can take one further step. There is a difference between that kind of general paper and the kind of a direct relationship that a company would have with a foreign company that it is helping, that it is selling some product to. That is a direct contribution of knowledge in the process of either design assistance, or technical advice, or actual formulas and things of that nature.

If it is a direct, 1-to-1 commercial relationship, I think you can control it. It is possible to put some limits there. Then you consider, well, what limits do you want to put? I think you can say there, will give substantial military advantage to some foreign country? And if it does, and if it can be demonstrated that it really will, even though the information itself is unclassified, then it is reasonable that you try to restrain it.

The problem now is that our export controls essentially apply only to the Communist countries. At the very time that you are not allowed to export information to the Soviet Union, you can go ahead and sell it to Brazil without any license or anything else. And, of course, it just takes a few months before it gets over from Brazil to the Soviet Union in the real world that we live in.

So, if you are going to try to control the export of certain kinds of sensitive information that would be of advantage for military purposes, I think you have to talk about export, not export to the Soviet Union; you have to get a license for any export. And then, second, you have to have a judgment made in the Government as to whether a restraint of that particular license application will be effective in stopping that particular information from going, or whether it has been amply covered in published material, in which case, let it go.

Then, I think you have to make a judgment, is this in the realm of something that the Germans, the Japanese, and the Brazilians are just about as far along on as we are in terms of the expertise, so that if we prohibit it going to another country, that country could buy it from a foreign country?

We have tried with the COCOM arrangements to make some cooperative deals among our allies to hold back with respect to shipments to the Soviet Union, and these have not been conspicuously successful, to put it mildly. Maybe it is hopeless that we get that kind of unity among all our allies to be able to do that.

In conclusion, I would say that, yes, there are certain things you might want to hold from export, but hold them for all export; but do not try to control the published versions—they are hopeless.

You may want, for political purposes, such as reaction to Afghanistan, just to hold up on perfectly innocuous things to the Soviet Union specifically. We have done that with respect to something as innocuous as grain; there is nothing very secretive about that; we just made a point. Fine, we can do that for that particular kind of a case.

Mr. PREYER. Thank you.

Could you add anything to that, Mr. Eger?

Mr. EGER. I really could not add a great deal to Bill Colby's comments, Mr. Chairman. I think his expertise is well known, and his statement is eloquent.

I must say that I share an ambivalence about export controls generally, not because of any firsthand knowledge of the decisions that have been made and disputed over the sale of computers, or any other technology, or grain, but because there is really a redefinition of national security that is going on and ought to go on—a determination made as to what is in the national interest, and is it information, is it grain, or is it computers? That is such a complex decision because it has to be made on a country-by-country basis against the actions of other countries.

If the Communists do not get their technology from Brazil, they will certainly get it from France sooner or later. Those things have to be weighed in the balance. It is certainly a legitimate and very important area of inquiry, however.

Mr. PREYER. Thank you very much.

Mr. VIZAS, did you have a question?

Mr. VIZAS. Yes, thank you, Mr. Chairman. It is largely directed to Mr. Eger because of his followup on the suggestion by a few members of the subcommittee on Monday who asked if we should recreate OTP. That, I hope, was partially in jest.

The question to the witness is really focused on two things: one which you have already discussed, and one which has not yet been discussed. The first of those was, can we really have an effective, central place in the Government with final policy authority in this area, if it is simply an equal among equals? Do you need an official, perhaps, at the senior level in USTR or some other office in the Executive Office of the President or the White House to really insure that policy formulation is carried on in an effective way, particularly with the politicization of the issues that you discussed?

And, second, what has been done in the 3 years since the demise of OTP and the reorganization and consequent transfer of functions to NTIA, the State Department and other organizations?

Could you answer that briefly?

Mr. EGER. That is certainly an interesting inquiry. I am not about to make any apologies for OTP or make any recommendation that it be reestablished. I think OTP was the right agency at the right time in the right place. It simply was not used very well. It became very politicized, as you know, because of the Nixon administration's interest in media and structural relationships involving the media.

Subsequent involvement in common carrier information technology and international issues, while I think were well done, were not very exciting. I think if you operate at that level, sometimes unexciting issues do not get very well handled.

So, to move that function, as the Carter administration did, at least in theory, to a place where it could have more resources because of its location in an existing Cabinet department, and where it could perform certain policy analysis without the heat or the light of a White House environment, was certainly appropriate.

Having said that, I do think, however, that structural changes should be made as the times change, and it is time to rethink the

organization of telecommunications and information policy in this country.

I think also, if you are going to have an effective policy mechanism—and I say that deliberately and with an underscoring because the policy process is not one that works well in the United States: we solve problems, we do not deal well with policy—it has got to start at the top for it to be effective. That means something within the Executive Office of the President is entirely appropriate. Whether it is STR initially or not does not trouble me. I think STR is a very appropriate starting point because it is there and it will serve as a catalyst to bridge the private/public sector gap which exists on most major international issues.

However, I think, over the long run, we need something much broader, and it ought to exist in the Executive Office of the President.

What has been done in the last 3 or 4 years—going through my own files preparatory to these hearings—I took note that there were at least 12 to 20 major issues that had been started early in the Nixon administration, that seem to have been lost, that have fallen between the cracks in the change of administrations; this may happen in this arena or any similar arena with a change in administrations. It is too bad; it is unfortunate that corporate memory and corporate initiative seem to be pushed aside and put on the back burner and oftentimes even lost. But it does seem as though there has not been anywhere near as much movement as there could have been or should have been. I do not mean that necessarily in a critical way, and I am saying that recognizing that I am looking at it from the outside, too.

Mr. VIZAS. Thank you.

Mr. PREYER. Thank you very much, Mr. Eger and Mr. Colby. Your testimony has been not only very helpful but very interesting, and I hope that we will be able to call on your expertise as we delve deeper into these subjects. Thank you very much for being with us.

Mr. COLBY. Thank you, Mr. Chairman.

Mr. EGER. Thank you.

[The prepared statement of Mr. Eger and submissions to additional subcommittee questions by Mr. Colby, follow:]

UNITED STATES

HOUSE OF REPRESENTATIVES

GOVERNMENT INFORMATION AND INDIVIDUAL RIGHTS

SUBCOMMITTEE OF THE COMMITTEE ON GOVERNMENT OPERATIONS

Testimony of

JOHN EGER, Esquire

Washington, D.C.

March 13, 1980

Mr. Chairman, members of the Subcommittee, I am delighted to appear before you today to discuss what I believe to be one of the most vital issues confronting the U.S. economic and political system--certainly in the decade ahead--if not in the history of this nation. The term international or transborder data flow--unfortunately like so many catch-all, trendy phrases--fails to convey the underlying struggles emerging everywhere in the world as our nation, like others in an interdependent world economy, undergoes a significant evolutionary shift to a post-industrial information based economy. Many nations--either sensing a new opportunity for protectionism or fearing the need to further protect themselves--are beginning to develop and hone national strategies which in the aggregate present developed and developing nations alike with yet another challenge in choosing between a free and unregulated flow of news and information, and a regulated but "balanced" flow; and significantly, between protectionism and free trade in international information exchanges. As you have heard, privacy and data protection laws, taxes on information, and increased tariffs and restrictions on telecommunications facilities are already emerging in Europe,

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Canada, and Japan; more direct control of international information flows everywhere appears likely as tensions rise over trade, unemployment, and inflation.

Coupled with the barriers to the free flow of information already erected by the Soviet Union and many lesser developed countries, the U.S. and all nations dependent upon global information flows confront what may be, as I have suggested, one of the most complicated, convoluted issues of this century. Censorship laws, data protection laws, tariffs, standards, information taxes, nationalization, theft by computer-satellite link, information sabotage by "hunter-killer" satellites, are all part of this global arena where nations are awakening to one of the world's oldest but most important resources: Information. These developments present an imminent threat to the world economy and all nations dependent upon the free flow of information across national borders.

Less clear is what these barriers portend for the future of our "information industry." Information no longer refers to conventional bodies of statistics, academic knowledge, or daily news, but includes anything from the electronically sensed and computer-analyzed human heartbeat to the electronic transference of funds to and from a bank account. We are increasingly dependent on this broadly defined "information" for the functioning and growth of our economy and quality of our

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lives. Simply, information has become a marketable, exportable commodity with which more of us are engaged every day. Information means national and individual income--money and profit to producers, jobs to workers.

EMERGING NON-TARIFF TRADE BARRIERS

It is difficult to fight the visible and invisible barriers to the trade of shoes or steel; those difficulties may become unmanageable when the search for "invisible barriers to invisible trade" begins. A corollary concern is the increasing differential in information goods, services, and technology between the developed and lesser developed nations. With encouragement from the Soviet Union, an LDC threat of total regulation and control of all information flows--whether news, entertainment, or multinational voice or data communications--is entirely plausible. Protectionist actions of developed nations, such as Canada's proposed deletion of television commercials on United States programming on cultural grounds, or France's prohibition of data processing outside France for reasons of national sovereignty, may be echoed by the less developed nations as justification for their own restrictive regimes.

Luxembourg, Norway, Denmark, and Austria have laws allegedly protecting "corporate privacy" which allow

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access to the files of one corporation by another, or by the government. Similar to laws already in force in Sweden, France, and Germany, they also provide that data files be registered or licensed before any processing commences and that no data be exported for processing without prior authorization by a central data protection authority. Sanctions, including imprisonment are provided.

The impact and interpretation of the new laws being enacted and discussed elsewhere are still uncertain. West Germany's new Federal Data Protection Act requires German data processors to stop the improper input, access, communication, transport, and manipulation of stored data, whatever that requires. Belgium and France are making it a criminal offense even to record or transmit some data. In France, violators could pay up to \$400,000.00 in fines and serve prison terms of up to five years for recording or transmitting data defined only as "sensitive." The Swiss, who offer what many consider to be attractive numbered bank accounts, are considering laws to strictly regulate all electronic trade and business data transmission across their borders.

Spain requires money to be deposited in an escrow account before data files can be transmitted electronically or manually out of the country. Canada has

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warned U.S. industry of its concern over the one-way flow of information to the United States. In addition, certain Canadian provinces have enacted their own regulations blocking data movement at the provincial level. The warnings, nevertheless, have had effect: one medical information bureau owned by a U.S. insurance company has already set up a Toronto subsidiary just for Canadian data. Some also see a potential major threat in Britain, where existing law requires that the British Post Office be able to read any transmitted message--a rule which, if applied to electronic data would force firms to share their confidential cryptographic codes and data compression formulas with a government body. Although this analysis of laws ostensibly dealing with privacy, security, or "data protection" merely touches the surface, it nevertheless illustrates the economic and regulatory underpinnings of emerging legislation. The obstacles to building and using global networks with minimum, if any, restrictions, however, and the obstacles to world trade, are not limited to national privacy or data protection laws alone.

In the United Nations and the International Telecommunications Union (ITU) the questions of information flow, orbital slots, and frequency allocations have been exploited by the Soviet Union and Third World Countries. European Ministries of Posts, Telephones, and Telegraphs

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(PTTs), the government-controlled telephone and postal monopolies, now price their facilities at rates and schedules that are prohibitive for the development of private or user-controlled data networks. To encourage use of their newly developed public data-networks, new proposals have been put forth which threaten elimination of private lines altogether, and protocols (or standards) have been suggested which likewise threaten to wrest control of international data processing away from the user completely, at the same time as national PTTs together, indeed the whole European Community, take action to blunt the use of non-European technology.

Louis Pouzin, one of Europe's leading system designers, argues that tariffs are more effective and proven tactics for preventing the exchange of anything. He cites several examples, including the cost per mile of a lease telephone line in Europe which is three to five times higher for international links than for domestic ones. According to Pouzin, a persisting policy of the European PTTs is to discourage international communications. He told those attending Interface '78, an annual computer conference in the United States:

Monopolies have little incentive to offer better and cheaper services. International services split revenues and create additional burdens. But this cannot be the whole explanation.

I would guess that several European countries, including France, will attempt

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to control the development of American networks. By keeping international tariffs high enough, it will become more economical to install processing centers in Europe. The problem of protecting data will be simplified.

Perhaps this is why the Italian government suggested an end to flat-rate charges for transparent, leased circuits. The Italian proposal that lines be priced according to the volume of messages sent gained support from several European countries and from the Japanese government during the May 1977 CCITT meetings.

General Electric's top communications expert once suggested that foreign administrations may try a "two-step" move to volume-sensitive pricing for private lines. The first step would be to price lines according to speeds and then volume. Subsequent steps would involve eliminating the flexibility of use of private lines by gradually making the use more expensive compared with the rates for volume- or speed-sensitive transmissions.

Curbing or blocking information flows--directly by laws, or indirectly by tariffs, taxes or non-tariff barriers--will vary depending upon the intent or urgency of the nations imposing the restrictions.

In the developing world, nationalization of high-technology industries has been considered. However, their national concerns over information have not, as yet, centered on its value as a commodity or source of inherent wealth. Rather their primary concern has been

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one of cultural inundation, frustration with imbalanced foreign press reporting, and an inability to convince the developed world to share their information products--technology particularly--according to their or the Third World's formula. However, according to Fermin Bernasconi, Director General of the Intergovernmental Bureau of Informatics (IBI), "well over 50 countries have adopted...comprehensive national informatics plans."

THE U.S. IS HIGHLY VULNERABLE

Taken together, these developments present an imminent threat to the world economy and all nations increasingly dependent upon the free flow of information across national borders. In the United States, where the communications revolution is most advanced, the threat looms large indeed.

The actual volume of data flowing across national borders has not yet been determined, but its importance is well understood. Robert R. White, executive vice-president of Citibank, spoke to this issue in his testimony before the Senate Foreign Relations Subcommittee on International Operations:

There is no easy way to describe to you the magnitude of the money transactions that banks transmit around the world every day. Perhaps it is sufficient to say that we are living in an increasingly interdependent world and the growth in international trade testifies to that. Global exports in 1976 were \$980 billion, which is 12.6% higher than the year before. A large part of that total was financed through trade credits

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arranged by banks, and all of it triggered some kind of international financial transaction which depended on the world's communications media.

What does it mean to say that we are now living in an increasingly interdependent world or in a global society? It means that the flight reservation systems of four different Eastern European airlines, the loading and routing of Norwegian steamships, the shipment of Arabian oil from the Persian Gulf, the rates of production and shipment of Canadian auto parts, and a host of other routine activities around the world are all determined or greatly assisted by private inter- or intra-company communication networks, or private computer services located in what is for many of those customer nations a foreign country.

What is true for international banking is true for almost every other international activity today. The need for computer services, communications lines, and other services in the United States and other countries with advanced telecommunications technologies is obvious throughout the entire spectrum of human activity: news, health services, education, agriculture, manufacturing, transportation, marketing, credit, banking and finance, accounting, insurance, and law enforcement. Every government function from security and national defense to weather prediction and disaster relief is increasingly dependent on computer and telecommunications technology. It is, therefore, clear

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that taxes, tariffs, laws, regulations, and other barriers to the free flow of information adversely affect not only our multi-nationals but all others transacting business and exchanging scientific or cultural information across national borders.

While no exact accounting of our "information products" is available, we do know from a recent study released by the U.S. Department of Commerce that our service sector (which depends in large part upon the production, use, storage, and transfer of information, and is itself better defined by recorded statistics) accounts for two-thirds of our labor force. The same study found that one-fifth of our exports were "services" as opposed to "goods" from either farms or factories. According to a more recent study, approximately 46 percent of the American work force is comprised of "information workers," men and women employed not on farms or in factories but in our growing information industry. In the next few years, by other estimates, 70 percent of our labor income will be from such "information activity."

IBM, one of the largest information producers and multi-national enterprises, described this growing industry in a recent advertisement: "Information: there's growing agreement that it's the name of the age we live in." The advertisement goes on to say that we have indeed "entered a new era, a post-industrial stage of development in which the ability to put information

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to use has become critical, not only to the essential production of goods, but to efforts to provide a better life for the individual, as well." Data, no matter how it is stored or recorded, whether in books, magazines, instruction manuals, movies, television, on film, paper, magnetic tapes, or in electronic computer memories, is part of our growing information industry.

It is also true that we are increasingly dependent on this broadly defined "information" for the growth and health of our economy, the smooth functioning of our institutions, and the quality of our individual lives. This, surely, is for most Americans, the true meaning of the "communications revolution."

THE NEED FOR A U.S. COMMUNICATIONS AND INFORMATION POLICY

Although there seems to be a growing awareness of this phenomenon within the public and private sectors, and you may hear some promising, forward-thinking testimony from the government March 27 and 28, I think it is fair to say that politicians, policymakers and the body politic in the United States have not yet fully grasped the significance of emerging transborder data barriers and their potential impact upon the use, production, storage and distribution of information throughout the world and what that means to the U.S. in a rapidly changing world economic setting. Thus, the United States has focused little attention on the need for a comprehensive national communications and information

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policy. Instead, responsibility for the development of U.S. policies in this field has been delegated to a number of governmental bodies without sufficient coordination or cooperation among them.

The Office of Telecommunications Policy (OTP) was established during the Nixon Administration as an out-growth of the earlier White House Office of Telecommunications Management. Although endowed with a broad mandate, the OTP was short on both resources and commitment. The OTP was abolished, as you know, in favor of a Department of Commerce agency, the National Telecommunications and Information Administration (NTIA), which now has additional resources. Despite its title, one may question whether NTIA has the status, authority or commitment to effectively develop a national communications and information policy.

Authority for international information policy appears to be divided between the State Department's International Office of Telecommunications Policy and the Office of Environmental and Scientific Affairs (OES). Authority on these matters is also shared by the National Security Council, the CIA, the newly formed International Communications Agency, and the Departments of State, Commerce, Treasury and Defense.

In spite of the lack of coordination among governmental bodies, significant steps had been taken recently to structure discussion and seek alternative recommendations

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on U.S. communications and information policies. The State Department, for example, had broadened its Advisory Committee on Transnational Enterprises to include a sub-committee on transborder data flows. The White House Domestic Policy staff had undertaken preparation of several presidential review memoranda concerning privacy laws developing both in the United States and (albeit almost as an afterthought) abroad, and the relationship of those laws to other vital concerns of national security. A Cabinet-level Export Policy Task Force was established to identify problems and develop broad strategy, and Rep. Clement Zablocki initiated legislative measures to coordinate private and public technology initiatives with U.S. foreign policy goals. These actions, however, have failed to yield any tangible results.

OUTLINE OF A NATIONAL POLICY

A comprehensive national communications and information policy must be developed. At a minimum it must include the following elements: (1) an examination of regulatory practices that inhibit open competition in the domestic market for information products and services; (2) a review of copyright and relevant property laws to maintain appropriate incentives for innovation; (3) the clarification of the role of the public and private sectors in the development of computerized data bases and

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other information products and services, thus aiding in the refinement of the related laws of ownership, access, and privacy; and (4) the establishment of minimum standards to encourage the effective interchange of information on all societal levels.

The tasks of integrating U.S. national communications and information policies with domestic policies regarding competition, copyright, and privacy, and then interweaving those policies with U.S. foreign aid, foreign affairs, and international economic policies, present a formidable challenge to U.S. policymakers, but that task of harmonizing domestic and international policy is central to development of a U.S. economic strategy.

In the free enterprise system the allocation of resources is dictated by forces of the market, or the dynamics between consumer and supplier. The United States consequently must rely on indirect controls and less precise policy instruments than non-market-economy countries for developing strategies for economic growth in the changing world economy. Unfortunately, the United States government has failed to develop any significant long-range economic strategy while government intervention in the economies of other countries now threatens to inhibit information across national borders. As nation after nation attempts to control information processing, storage, transfer, and use, the U.S. government seems

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unaware of the enormous impact both these barriers and its own process may present to our capacity to respond.

The Copyrights Act of October 19, 1976, has failed to resolve the question of whether a computer "software" program should be protected by patent, copyright, trade secret or perhaps a new form of protection. In the regulatory arena, nearly 10 years after the Federal Communications Commission allowed interconnection of all terminal devices that cause no technical harm to the network, consumers were until recently still forced to lease expensive interface devices from the Bell System before they could use equipment they obtained from Bell's competitors.

At the same time, there are signs that the U.S. growth in high technology industries may be slowing down due to a relative decline in U.S. research and development. Estimates indicate that the world market for telecommunications in 1987 will be \$65 billion and in the United States, by another estimate, the market for both equipment and services will rise to \$88 billion in terms of adjusted "real" growth in the next 10 years. The market for information products is not yet clear, although one form of product, the telephone or telex call for which a time-based fee is charged, is rapidly increasing over the Atlantic every year.

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Throughout this discussion of U.S. communications and information policy, are the recurring and central issues related to the U.S. world trade position and the corollary issue of technology transfer. But on both trade and technology transfer the United States has failed to articulate a coordinated national policy. It is essential that U.S. leaders and representatives enter into every discussion and debate in which the information war is now being waged, with a clearly defined national policy, for in these fora now meeting, the world's future information policy will be shaped and thus the economic future of the United States decided.

It would be presumptuous to attempt to prescribe solutions to the varied problems arising from the emerging transborder data barriers. What follows briefly, however, are some preliminary observations and specific suggestions with respect to approaching the developing countries; confronting current U.S. concerns with Europe, Canada and Japan; and reassessing U.S. efforts at information protection.

Approaching the Developing Countries

The developing countries are interested in gaining greater access to modern communications technology without risking cultural inundation or economic domination by developed countries. In the recent past the United States has attempted to share its technological wealth, such as its advanced technology satellites (ATS) in addition to

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or in conjunction with existing aid and assistance programs. This was recently done in India through the loan of a satellite system already tested in the Rocky Mountains, Appalachia and elsewhere in the United States. This system, for which India supplied the programming, enabled the government to beam entertainment, medical and educational information into villages that lagged far behind in the societal advances found elsewhere in the world. This project demonstrated at once the tremendous potential and the uncertain hazards of establishing advanced communication systems in the developing countries.

For a number of years the United Nations has debated the issues raised by broadcasting satellites. Some countries are concerned with preserving the sanctity of national airwaves; others fear the impact on their own distinctive culture and national sovereignty. Legitimate concerns have been voiced regarding control over the content of educational programs; assurance that news broadcasts are factual and accurate; and appropriate restrictions on commercial advertising. Introduction of a new technology always raises fear and apprehension as well as hope and expectation. The direct broadcast satellite technology, with its capacity to reach millions of people, can serve their interests in education, public

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health, entertainment and a host of other areas or it can be used for propaganda, indoctrinization or other purposes detrimental to those interests.

International discussion on these matters keeps returning to three principal issues. The first issue is the free flow of information versus the right to prior consent. The issue concerns the right of people to receive information versus the nation's authority to regulate the flow of information. A second issue is the integrity of cultural heritage. The search for international unity and harmony must recognize and respect cultural and national differences. A third issue is self-determination--the nation's right to determine for itself what is best for its people.

While the debate grinds on in the United Nations, technology has continued to advance. The Canadian government, in cooperation with the United States, is already utilizing its Communications Technology Satellite (CTS). Its 200-watt traveling wave tube will be able to transmit the highest power to date from outer space. Over twenty-two earth stations are planned with antennas ranging in size from 27 feet to under 3 feet in diameter. Japan is having a Domestic Broadcast Satellite built in the United States which will serve its four main islands. The Federal Republic of Germany is actively planning a similar system. The Soviet Union has announced the launching of STATSIONAR T, a Direct Broadcast Satellite to serve its national

needs. It seems clear that there is a growing interest in the use of direct broadcast satellites despite the unresolved questions which they pose. The United States should not stand still in the wake of all this activity.

Although each nation presumably can choose for itself the applications of direct broadcast satellite technology that will best fulfill the needs of its people, a consortium of nations using a common facility should be seriously advanced. Since consensus will probably never be reached in an international context on the appropriate applications of this technology for all countries concerned, a more important and relevant concern is the problem of ensuring fair access to communications technologies and resources for developing countries. If, however, many nations join together to use a common facility, it could provide such access; it could also alleviate the congestion over the theoretically limited number of orbital slots (or parking places) for satellites in the sky. The consortium might be structured to allow ownership and participation to reflect investment and use irrespective of a nation's ability to finance either. This form of subsidy would encourage participation and benefit all users. This proposal is not very different from that of INTELSAT (International Telecommunications Satellite Organization), in which over ninety nations, large and small, work together to provide public communications service to

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world citizens through a quasi-commercial consortium of governments and private entities responsible for international communications.

Other consortia, joint ventures, grants in aid, experiments or assistance programs of a similar nature can be developed. To date, U.S. foreign aid and foreign policy efforts have inadequately supported exports of telecommunications technology and equipment and have adversely affected U.S. capacity to use its preeminence in this field as a mechanism for the realization of international economic goals. A preliminary overview of this vastly complex area indicates that there is room for considerable reassessment of existing policy in a number of areas.

Since 1970, the U.S. foreign aid program has emphasized multilateral assistance in agricultural, educational, and health-related areas. Aid in support of telecommunications programs is small and decreasing. It would seem appropriate, in view of this situation, to investigate the possibility of providing low-cost telecommunications technology to developing countries on a broad basis.

In order to initiate this activity, the United States must develop a fundamental appreciation of the needs and capabilities of developing nations which can best be obtained through frequent contact. Radio frequency management appears to offer an appropriate

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focus for the initiation of such contacts; all nations are users of the spectrum and a succession of international telecommunications conferences following the 1979 WARC are now being scheduled.

In 1975, the Columbian Minister of Telecommunications asked the United States for information on the organizations and techniques they have employed to manage the radio frequency spectrum. In coordination with the Federal Communications Commission and the State Department, the then-existing Office of Telecommunications Policy responded by sending a briefing team to Columbia. This dialogue in South America on frequency management should be extended to other areas of the world where the United States has not been well understood or where its international proposals have in fact been in conflict with those of developing countries.

Unlike other sectors of the economy (e.g., agriculture), there is no concerted effort to combine the resources of private industry and government to identify markets for telecommunications equipment and technology and to stimulate the demand for advanced communications systems. In this regard, the United States should consider the possibility of forming joint government-industry task forces to visit developing countries, at their invitation, in order to discuss their overall communication needs.

Confronting Our Concerns with Europe,
Canada and Japan

The United States must bargain for the free flow of information and information products through multi-national trade negotiations and bilateral agreements with Europe, Canada, Japan and other developed nations.

Until recently not much thought was given to the problems of trade in "services" as opposed to agricultural or industrial "goods." The 1974 Trade Act, however, specifically provided that negotiating "services" was within the President's authority. This prompted the first comprehensive analysis of the problems of the U.S. service industries in international commerce.

That analysis concluded:

Service sector participation in international markets is large and growing. But its potential significance and its international problems have not received adequate government attention.

Although provision of negotiating authority for services in the Trade Act may be suggested the contrary, service sector participation in international markets is predominantly associated with investment rather than with trade. About 86 percent of estimated U.S. service sector sales overseas result from investment in foreign affiliates; exports account for only 14 percent.

(To a considerable extent this is inherent in the characteristics of "services." Most, by their nature, cannot be feasibly shipped.)

Service sector affiliate sales abroad are estimated at approximately \$43 billion for 1974--nearly one-fifth of all U.S. non-petroleum affiliate sales overseas. . . It is a reasonable hypothesis that, although generally similar in kind, the "mix" of

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service industry investment concerns differs from that of manufacturing industries-- suggesting the need for more comprehensive analysis of U.S. negotiating objectives to assure maximum possible contribution to overall U.S. interests.

While it is the case that service industry trade-related problems have not been addressed in previous trade negotiations, the wholesale introduction of services into the MTN (Multinational Trade Negotiations) is to be avoided. Substantively, it would not be appropriate; and practically, it would likely be counterproductive.

How should the United States resolve the problems of trade in services and information products with Europe, Canada, Japan and other developed countries? It is still uncertain whether information barriers should be negotiated by the Special Trade Representative (STR) in the context of the Multinational Trade Negotiations. Arguably, there has been enough difficulty negotiating on behalf of the more traditional industries. The General Agreement on Tariffs and Trade (GATT), moreover, uses a more comprehensive approach to solving trade problems and best negotiates cases where there is a clear instance of "governmental action," i.e., duty, tax, tariff or custom which constitutes the barrier. The barriers to information trade, however, fit neither criterion. They neither conform to any pattern nor are they uniformly enforced. Perhaps because of their newness, they do not lend themselves to precise articulation, which further compounds the already difficult negotiating process. That the more traditional sectors

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of the economy are unionized and are capable of exerting greater influence with the STR also merits consideration. It may be more suitable to have separate bilateral and regional negotiations under the auspices of some government agency other than the STR. The recently inaugurated U.S./Japan Trade Facilitation Committee (TFC) may provide one such alternative.

Tymshare, the California-based computer service organization mentioned earlier as having difficulty getting a long-distance telephone line from the Japanese international carrier, chose not to use the TFC, in part because the TFC deals with Japan's Ministry of Trade, whereas problems such as Tymshare's are normally handled by the Ministry of Posts and Telecommunications. Tymshare was privately advised that their problem might well get caught between two large Japanese bureaucracies, possibly resulting in an indefinite waiting period.

Specific cases brought to the TFC have met with mixed results. The TFC is avoided by most conservative businessmen, perhaps because it represents itself merely as a facilitator rather than a negotiator.

Many facets of this information trade problem perhaps can be addressed in the OECD, where efforts at harmonization on several matters, such as guidelines for multinational enterprises, have been reasonably successful. The United States can encourage this

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process in dealing with information trade issues by supporting the effort within the OECD to develop international principles for the protection of individual privacy. We need also to move quickly, however, to develop, within the reorganized trade entities (STR and Commerce) a capability to respond to these emerging barriers with conviction wherever they occur and augment a broader strategy which clearly and forcefully preserves our complex range of interests. Activities undertaken in all fora should likewise reflect such cohesive, national thinking.

Dealing with the Privacy Issue

Permit me to turn to another subsidiary but important matter. Although privacy and data protection law have been the most visible concern in this debate over information regulation, I do not believe privacy law per se should be our focus, as I hope I have indicated. Nevertheless there exists considerable difference between the U.S. and others on this subject. It must be dealt with, and decisively, lest it continue to exacerbate the more critical economic debates.

The U.S. approach to privacy protection has been pragmatic, as contrasted to Europe's more ideological approach. The first effort by the United States to address the issue of privacy protection grew out of hearings on abuses of credit information and resulted in the Fair Credit Reporting Act of 1970. It was not until an HEW task force report on automated data systems

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was completed in 1973 that concerns with technology and individual rights converged to produce the Privacy Act of 1974.

The landmark Privacy Act of 1974 applied only to the governmental or public sector. It was this Act, however, which created the Privacy Protection Study Commission. The Commission was established to review the effectiveness of protections afforded under the Act, and specifically to examine the record-keeping practices of the private sector "in order to determine the standards and procedures in force for the protection of personal information," and to recommend which principles or requirements of the Act should apply to the private sector. The Commission completed its report in 1977 and submitted it to Congress and the President, where it underwent review by several inter-agency task forces.

Unlike most European countries, the United States chose not to use an "omnibus" legislative approach. The European approach adopts a broader view of the data to be protected and seeks to protect persons from both public and private abuses. The approach employed by the United States, however, recognizes the essential differences in relationships between the individual and the public and private sectors. In particular, the Privacy Protection Study Commission analyzed specific private sector interests, such as consumer credit,

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savings, insurance and employment which require differing treatment depending upon the relative ability of individuals to protect their personal information in each category. Combined with the considerable variations between the U.S. and European approach, the need for rethinking U.S. domestic efforts in light of world developments is obvious. Rapidly developing international electronic mail, funds transfer and other communications systems intensify the need to settle the international privacy issues promptly.

At the same time, we need not be overly defensive or reactive. Our constitutional system and statutory process have already yielded a considerable body of law protecting personal privacy rights. Thus, while we must seek some harmony between our approach to interpretation and enforcement with that in Europe, we should be jealous of our system and the values it represents.

The OECD has nearly completed developing a consensus from its 24 member nations on a set of privacy guidelines, and seems to have secured the cooperation of the Council of Europe, where the harmonization of European laws is also underway. Ambivalence about this process can no longer be tolerated; an aggressive posture must be assumed since the process of developing national laws will continue. However, at least five objectives should be continuously pursued by U.S.

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negotiators, as outlined briefly below, in the OECD, COE and on a national level if appropriate and politically feasible.

First, the privacy laws should apply only to individuals, not juristic persons; otherwise any company could gain access to another company's records, competitor or not. Second, regulations governing security should be kept to a minimum. It would be impossible to regulate for all circumstances given the range of hardware and software systems that are currently employed in diverse environments with varying levels of risk of penetration. Rigid standards might also have the effect of actually reducing security and inhibiting the development of new techniques.

The third objective is to distinguish clearly between those laws applicable to the private and public sectors, especially given the degree of government ownership in countries other than the United States. The United States allows the market system to govern relations between the individual and the private sector, but with regard to the citizens' relationship to the government (where information is often supplied out of necessity or requirement of law) protection is demanded.

The fourth objective is to ensure that any international agreement or convention prohibit new laws in contravention of the expressed intent of the convention,

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or provide that the convention becomes supreme to all other national laws such that an aggrieved party would have enforcement protection in the national courts.

Finally, with a view toward building bridges to the developing countries, the convention, code or agreement should be accomplished with the counsel and assistance of as many non-OECD members as practical. The concern over human rights and the protection of individual privacy is an ideal vehicle for North-South participation, and perhaps a unique entry point for a larger discussion of computers, communications and information policy.

In this regard, I note that the intergovernmental Bureau of Informatics (IBI), has plans to pursue such an effort in its World Conference on Transborder Data Flows in Rome, Italy this June. We are not a member of the IBI. I think we should consider changing that but certainly, I believe we must play an active role in this effort and other IBI activities, and encourage other developed nations as well. We simply cannot expect to develop any international law which will have permanence and create stability if it is not relevant to the concerns of all nations.

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SUMMARY

There is an enormous agenda to be developed if the U.S. is to be an active participant in the new world communications debate, and if we are to successfully play a hand in determining our own future. There are, of course, numerous issues which only the international community can solve--these are social, cultural, economic, and indeed, very political. Not that they are so neatly divisible but the economic questions--those that pose the greatest likelihood of adversely impacting our private sector--are the issues we need to emphasize at this time! For at least under our system, the private sector must come to an understanding of the stakes involved as a condition precedent to private/public sector consensus and cooperation; and this in turn is what the country needs if it is to be effective in its own efforts to redefine national priorities, establish a national communications and information policy, and, hopefully, play an active, if not leadership, role in international affairs.

While the U.S. still has a healthy share of the world's agricultural and farm products market, and a relatively strong position in the high technology industrial sector, an even larger information or service sector of our economy is emerging. But this is

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occurring at a time when the trade issues and trade debates have become top priority on the world's agenda. Disputes over steel, shoes, textiles, television sets, and in the agricultural sector, mushrooms and cookies, seem commonplace.

These struggles will likely continue for at least the next decade, and increase in intensity and complexity. Although as predicted, the Tokyo Round of trade negotiations resulted in a cut of tariffs by 35 to 40 percent from previous levels, noted financial analysts have observed that we are on our way to taking one of the more backward steps toward trade restriction and protectionism in recent history. "In the U.S. and Europe, actual tariff barriers average only 8 or 9 percent," Hobart Rowen of the Washington Post observes. "The real and growing trade obstacles are now non-tariff barriers (NTBs), the various artificial devices that governments use to thwart the real competitive forces in the world. We have seen multiple examples of them in the past two years spawned by world-wide recession."

The most profound impact of this new trade war of non-tariff barriers is that the U.S., because it is rapidly undergoing a fundamental change in its economy, seems highly vulnerable, in part because we are ill-prepared. The U.S. government has yet to ascertain the nature of the change in trade, let alone begin negotiating solutions.

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The question of who and with what restrictions information will be transmitted, if at all, is multi-layered. There is the issue of cultural homogenization or even destruction--an understandable concern of the less developed countries; the issue of national sovereignty and survival; the issue of privacy of data; the issue of potentially lucrative tax revenues and other economic advantages to be gained by regulation and control.

These developments may not always be viewed as tactics in an "information war" whose strategy is to weaken the United States and cut back our prominence in the world economy. However, it does not matter whether the acts be sovereign acts in concert with the shortsighted policies of individual nations merely seeking preference in the market place or protection from a perceived threat. The result will be the same.

Time is of the essence. For at the heart of this evolution from an industrial to a post-industrial information society is the computer--the symbol of the information age. Like the cotton gin, that mechanized the farm--sending people from farms to factories in cities, manufacturing other products with other machines, changing not only the nature of work but the very patterns of life, the computer now married with the equally pervasive technology of telecommunications is also changing the nature of work, attitudes and ideas and is having a profound effect on us; but it is

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and will continue to do so at an unparalleled rate in the history of mankind such that the term revolution is not misplaced to describe the likely impact on established law and social policy. That we should observe these phenomena but take no action to build a new legal framework or harmonize existing and emerging national and international law is unthinkable.

Yet, outside the present activity in the House and Senate Subcommittees on Communications, the FCC to a lesser extent and others generally confined to the inbred communications club, there is little action, and even less notice of the dramatic changes our information, computer and communications technology is having on the basic infrastructure on all private and public sector organizations and all political and cultural thought.

I hope this subcommittee's hearings will help change that perspective.

Thank you.

W.E. Colby

Responses to Congressman Preyer's Questions

1. Other nations have raised some legitimate concerns regarding their lack of control over vital information being stored in computer centers outside their countries. What steps can this government take to allay these fears and to ensure that national sovereignty concerns not be used as a basis for implementing protectionist policies?

This problem can be solved by negotiation, and I sincerely believe that almost all of it can be. Various degrees of joint control over such information by the nation affected as well as by the host nation could be established. Specific regulations and laws could be agreed to insure confidence by an outside nation that its information will not be exposed by a host. It might even be possible to assure an extra degree of confidentiality through specific agreement that certain material only be accessible through code words known only by the depositing nation. None of these would be absolutes in terms of guaranteeing against some loss of control, but between nations which can develop mutual confidence and respect, these would solve a good part of the problem, and they might even be vehicles to encourage such confidence.

2. You mention in your statement that information and communications technology issues are truly international issues which must be addressed on a global basis. What can the

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United States do to foster this spirit of internationalism, particularly with the less developed nations?

A vigorous forward policy by the United States, stressing the contribution which information and communications technology can make to the development process of less developed countries, should be undertaken. Development of library access, training programs, economic assistance directed toward improving the capability of less developed countries to exploit such technology and special repositories of relevant knowledge available to others all could link the United States with less developed countries. This would not only overcome suspicions and concerns about this technology and the United States role in it, it would produce a positive attraction to a closer cooperative relationship through such technology.

3. You made an interesting suggestion concerning how this country might be best represented in international fora debating information and communications issues. If a senior negotiator were to be appointed in this area, (a) do you think he also should be responsible for coordinating policy and (b) how might he coordinate and utilize existing expertise and responsibility for international information and communications issues in the executive branch?

If he were to be senior negotiator, he certainly should be responsible for coordinating policy. The alternative would

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be a division of responsibility which could create problems. His charter should call for him to have a small staff, but to have authority to reach out and task executive branch agencies for assistance and to coordinate their activity with respect to international information and communications issues. This would not necessarily operate without friction, but it is the only way to get an overall strategy imposed on the different elements of the executive branch, each involved in its own portion of the problem.

4. Given the complexity of this issue, -- including trade, technological, political, and social concerns, -- do you think that someone located in the USTR would have a broad enough mandate to address all aspects of these information and communications problems?

The USTR would be an excellant base for this issue. The USTR is accustomed to handling the most complex of issues, tariffs, non-tariff barriers, etc.. It is accustomed to thinking in terms of the broader economic and social effects of its negotiations. Its location directly under the President gives it the essential political overview. While the technology is certainly complex, the policy problems do not require a high degree of technical expertise. Knowledge of the functioning of the systems and how they interrelate

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can be clarified for a high level negotiator in the same fashion that similar details are clarified for negotiators on other problems.

5. You indicated that the demands of the third world nations are becoming more vocal in the area of international data flow. How can the U.S. effectively address the legitimate appeals for assistance from the less developed nations, while maintaining our commitment to such things as copyright and the rights of private enterprises to control proprietary information?

The United States can respond to legitimate appeals for assistance by offering to provide some of the royalty support necessary for use of private properties such as copyrighted and other proprietary information, as an element of our overall aid program. This could make the material available, clearly indicate the United States sponsorship of it, but not produce the reaction that reverse charges might involve. This obviously would have to be worked out on an individual cases basis, but I do not think this would necessarily be a barrier to the program.

6. You have noted that modern technology is viewed as a threat by some foreign nations. Do you have any recommendations on how this country can foster the concept that the free flow of information and the proper employment of information and communications technology will benefit the economic development of all nations?

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A single center of policy responsibility could focus attention on the potential offered by such information exchange. If the current approach is continued of struggling incrementally against various protectionist moves, the United States position will seem to be antagonistic and the threat will receive the most prominence. The appointment of a negotiator positively to promote this area and its contributions could reverse the impression of what we are trying to do in this field.

7. Several witnesses have indicated that many of our West European trading partners are enacting legislation and instituting other barriers to data flows outside their country. Are there any indications that the European community may begin to act more cohesively in this matter; for example, by adopting unique common European standards and protocols?

The Europeans are getting together on this problem in the Council of Europe, the European Community, and in the OECD. These discussions obviously will largely reflect the point of view of the European countries, and can miss the dimension of the overall benefits to the Third World and a global economy that a more positive and broader program might produce.

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8. We have received significant testimony on the impact of the "information and communications revolution". If barriers to the free flow of information substantially diminish the progress of these technological developments, what result do you see for the economic growth of this nation and the world? What are the implications for political and cultural interaction?

Barriers to the free flow of information can only constitute a rear guard action in the growth of the global community in economic, social and cultural terms. This does not necessarily mean the end of the nation state, but it does say that growth and development will be encouraged by larger units, and limited by separate small, self-contained and isolated centers. Increased information, communication and understanding can only be beneficial to all concerned, both in the developed and less developed world, and reduce conflict among nations and groups caused by ignorance and misunderstanding.

9. What impact do you think new satellite technology will have on the ability of nations and private enterprises to bypass constraints imposed by individual countries?

From a technological point of view, the satellites will have the ability to give nations and even private enterprises an ability to get around national constraints. This can be raised to the international level by the affected nations

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and become an issue in international forums. Thus in the absence of some clear policy, we are apt to see substantial conflicts arise between the desires and interests of the individual countries and the sponsors of the industry and the industry itself. The Columbian claim to authority over the geostationary area 23,000 miles above its equator location is an example of this. The obvious next step is a demand by other less developed countries not only for control over their own section of space but also control of all information relating to their country wherever acquired. The capability of the technology must not be sacrificed to selfish interests.

10. The State Department has an Advisory Committee on Trans-border Data Flows. Do you think this is an effective mechanism for representing private sector interests in government decisionmaking?

The State Department's advisory committees are useful or not depending upon their activity and their access to policymaking and program development. In this case there is an inadequate amount of the latter so that the activity has been less than would otherwise be required.

11. The USTR is establishing a private sector advisory committee drawn from the service industries. Do you think this is an effective approach to getting private sector input or is the committee, embracing all service industries, far too broad in scope?

Without knowing the details of this suggestion, I am not able to say anything very wise. Obviously there is a problem if a advisory committee's responsibility is too wide, and certainly "service industries" sounds like such a case. Perhaps subcommittees within this broad context could develop a life of their own, however, particularly one in the information and communications technology area.

Mr. PREYER. Our next hearing on this issue is scheduled for Thursday, March 27. Mr. Walker and Mr. Butler today entered into a discussion concerning the problem of getting the State Department to focus on this issue, and part of the subcommittee's focus, as I outlined at the beginning of the hearing, has been to gather information on the extent of the problem and what each nation's laws in this area are.

At our next meeting on Thursday, March 27, the State Department will testify, and I think it would be very useful to ask the Department to have each of its country desks prepare a one-page summary of the data flow laws and problems in each foreign country. I think this would be very useful to the subcommittee and to the agencies that are looking at this problem, so we can see just what is involved in it.

At this time, the subcommittee will stand in recess until Thursday, March 27.

[Whereupon, at 12:50 p.m., the subcommittee adjourned, to reconvene, Thursday, March 27, 1980.]

INTERNATIONAL DATA FLOW

THURSDAY, MARCH 27, 1980

**HOUSE OF REPRESENTATIVES,
GOVERNMENT INFORMATION
AND INDIVIDUAL RIGHTS SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
*Washington, D.C.***

The subcommittee met, pursuant to notice, at 9:35 a.m., in room 2154, Rayburn House Office Building, Hon. Richardson Preyer (chairman of the subcommittee) presiding.

Present: Representatives Richardson Preyer, Robert F. Drinan, David W. Evans, and M. Caldwell Butler.

Also present: Timothy H. Ingram, staff director; Christopher J. Vizas, counsel; Euphon Metzger, clerk; Thomas G. Morr, minority professional staff, Committee on Government Operations; and Jane Bortnick, analyst, Congressional Research Service, Library of Congress.

Mr. PREYER. The subcommittee will come to order. We will have some more members here shortly, but we would like to begin at this time.

In our initial days of hearings, the subcommittee discovered some substantial problems with barriers to international data flow and the threat of even greater problems on the horizon. While the problems affect the enterprises and interests of all nations, the damage to American business naturally narrows our focus to the question of how our Government can best represent the concerns of the United States.

The witnesses in the first 2 days suggested that the agencies of the executive branch were not doing the job. They found agency efforts to be uncoordinated and unresponsive. We were told that the executive agencies simply have not accepted responsibility for the formulation, enunciation, implementation, or enforcement of U.S. policy in this area, to the detriment of U.S. interests. One witness pointed out that because such a vacuum exists, foreign nations are encouraged to exploit it. Whatever our past mistakes, however, we as a government must organize ourselves—both in the Congress and the executive branch—and commit the resources to insure effective representation of American interests in the future.

Today's hearing continues the investigation of problems in international data flow, providing the opportunity for executive branch officials to respond to private sector criticism, to share their thoughts with us on the nature and severity of the problems facing us, and to assist the subcommittee in determining how the United States should address those problems.

Our first witness this morning will be Mr. Matthew Nimetz, Under Secretary of State for Security Assistance, Science, and Technology.

Mr. Nimetz, I welcome you here this morning and appreciate your being here. It is the practice of the Government Operations Committee to swear its witnesses at these hearings, so if you or any of your associates who might be answering questions or testifying would stand at this time, we will swear you in.

Do you solemnly swear the testimony you are about to give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. NIMETZ. I do.

Mr. PREYER. Thank you, Mr. Nimetz.

You may proceed in any way you see fit.

STATEMENT OF MATTHEW NIMETZ, UNDER SECRETARY FOR SECURITY ASSISTANCE, SCIENCE, AND TECHNOLOGY, DEPARTMENT OF STATE

Mr. NIMETZ. Thank you very much, Mr. Chairman.

I welcome the opportunity to testify before the Subcommittee on Government Information and Individual Rights on behalf of the Department of State. The growing importance and complexity of international communications and information issues are recognized by the Department. Deputy Secretary Christopher, with overall responsibility for this field, has asked me to assume day-to-day policy supervision of the Department's work in this vast and rapidly expanding field.

We work closely with other executive branch agencies involved in these issues, including the Department of Commerce and its National Telecommunications and Information Administration, the Department of Defense, the Federal Communications Commission, and the National Security Council. Interagency and intraagency coordination are essential to deal effectively with significant international activities and the international implications of domestic activities in this field. As advances in technology move this field at an accelerated pace, we must be alert to insure that the maximum long-term benefits of these technological advances are made available to the American public.

The international communications and information activities of today have been shaped in important respects by recent dramatic advances in microelectronics technology. Satellite communication, computer technology, increases in the utilization of the electromagnetic spectrum have been advanced through American science, technology, and entrepreneurial talent. While we rightly see ourselves as the leaders in these fields, we must keep in mind that no nation has a monopoly on scientific or entrepreneurial skills. To insure that the American people obtain maximum benefit from these new technologies, we must continue to promote international cooperation. The access of all societies to the latest technologies and to their efficient use will promote international harmony and, in light of our strong capabilities, strengthen a key sector of the U.S. economy.

International communication and information activities encompass a wide field. The common thread is that information is trans-

mitted from one point to another; such transmission between and among nations makes this activity one of international and inter-governmental concern. There are differences in the types of information transmitted and in the importance and effects of that information on the sending and receiving country. The international management of the electromagnetic spectrum—radio frequencies—carried out through the International Telecommunications Union—ITU—is changing from a strictly technical function to one involving greater international political and economic considerations. The growing interdependence of nations, especially in the economic sphere, and the resulting increase in the volume and importance of international news have lent new urgency to the task of protecting the free flow of ideas and information. These were factors in the development of the UNESCO Mass Media Declaration adopted at its 1978 General Conference. The capability to create artificial Earth satellites has opened promising new opportunities for communications and information including direct broadcasting from satellites. Increased use of computers in almost all aspects of our lives and advances in telecommunications technology have resulted in extensive international transfers of data.

This subcommittee is devoting attention particularly to this latter issue, transborder data flow. Lower costs of computer services, new technologies in telecommunications transmissions, and integrated networks have served to create a successful and growing U.S. data services industry. American leadership in this field is recognized and respected.

Mr. Chairman, this is a field where the United States has a strong, competitive advantage, one where we should concentrate our efforts if we hope to see our economy adjust smoothly to changes in the world. It is by advances in employment and investment in fields such as this that we can justify a policy of resisting protectionism for older industries where the United States no longer holds an advantage. When our workers and investors can take advantage of opportunities for expanding jobs and investments in industries with huge future potential, there is less justification for protection of industries where we are less competitive.

The growth of transborder data flow and the prominence of transnational corporations in that growth has concerned some foreign governments. In part, this is a genuine interest—which we share—in the potential consequences of foreign storage of, and access to, data affecting personal privacy and national security. We must be careful to distinguish, however, between the interest in protection of personal privacy—which we share—and attempts to use restrictions on the free flow of information to impede the development of international business and promote local business—which we oppose.

Reactions to the rapid growth in international data flow have appeared in several fora—the Organization for Economic Cooperation and Development—OECD—has addressed trade and legal aspects; the ITU has considered some of its technical implications; trade negotiations in the framework of the General Agreement on Tariffs and Trade—GATT have concentrated heavily on tariff and nontariff barriers to the movement of hardware; and developing countries have raised their concerns in other international organi-

zations and meetings, such as UNESCO, the U.N. Conference on Science and Technology for Development, and the U.N. Conference on Trade and Development.

Our responses in these fora must reflect as well as contribute to our overall communications and information policies and practices. Because the ramifications of these problems and issues are large and disparate, we will be addressing them in many places, on a bilateral basis as well as a multilateral basis. We believe we have dealt successfully with several of these issues, especially those dealing with the protection of personal privacy. However, significant challenges still lie ahead.

In the Department of State, we have recently taken steps to improve the focus and responsiveness of our own organization. Our new organizational arrangement is designed to deal effectively with the impact on American business of restrictions on trans-border data flow. These restrictions affect our business community in at least three different ways.

First, they affect the ability of U.S. companies to export their goods.

Second, they affect the ability of U.S. transnational firms to obtain the information they need from their foreign operations.

Third, they affect the ability of U.S. data firms to do business in foreign countries.

The first of these effects—which impinges on the ability of U.S. companies to export their goods—is clearly a classical trade problem and is thus the subject of ongoing trade negotiations and discussions by the representatives of our Government having responsibility for the promotion of U.S. trade.

The second and third categories of effects—restrictions on information flow to transnational firms and limitations on the ability of our data firms to do business abroad—occur both in overt and subtle ways. Data flow can be impeded by the improper application of technical regulation and standards as well as through broad economic policy decisions. The continued free flow of data requires cooperation between Government and business both to recognize potential impediments and to deal with them before they occur.

I would like to stress to the subcommittee that while we have been dealing with these issues as they have arisen, we are also taking steps to insure that our policy addresses long range, as well as immediate, problems. One of the goals of the Department's current effort is to improve communication with the American businesses involved so that we can better understand their legitimate concerns and can move promptly and aggressively to deal with those concerns in the appropriate forum.

I would like now to turn to some specific issues and describe our past responses and our future plans.

The first of these issues relates to nonpersonal data. Use of new data services, now increasingly available for home and industrial use, raises a new set of international problems. For example, should governments institute controls that do not differentiate between corporate production, financial or inventory records, video-text, facsimile, or news analysis offered for subscription sale, the implications would be serious. It is likely that handling of

nonpersonal data may well become an increasing source of international controversy in the coming decade.

This is suggested by the discussions taking place in parliaments, government offices, and international meetings. Should data be treated as a product? Should they be taxed and made subject to duties like other goods and services that are sold in international commerce? Should a nation regulate and control their foreign expenditures and earnings on data flow and manipulate this field for balance-of-payments reasons? Should unemployment be alleviated by restricting international data flows so there will be more local jobs in data processing? Should national investment and capacity in data communications and related industries be favored by restricting data trade for outside processing? Should foreign corporations be restricted from processing data in their headquarters? To what extent should the Ministries of Posts and Telegraphs—PTT's—dominate the data communications industry? How much participation should private data communication be allowed?

The questions posed here are not hypothetical. Conflict over service rates between the foreign PTT's and the American private data bank suppliers is becoming common. New and more sensitive issues are already on the horizon. To cite one example, as cable television with consumer data services comes into the market, governments must consider the conditions under which foreign suppliers will be permitted to function.

Clearly, nonpersonnel data are not a homogenous subject that can be covered in a simple arrangement. Scientific data and corporate data, for example, are qualitatively different and require different methods of investigation and analysis, as well as different methods of treatment.

The types of information required by a modern firm are various and include financial and credit information, employee payments and benefits, and inventory control. Decisions require swift and accurate transmission and compilation of a vast array of extensive information.

An important area of controversy is data-computer networks and network policy. The merging of computer and telecommunications technologies has set off the same legal and economic controversy abroad that the FCC and the Federal courts have been coping with in the United States. Every industrially advanced nation is seeking a workable formula for dealing with the coordination of a new unregulated private industry and, what is for most countries, a regulated public industry. There is no doubt that the growth of private data networks offering international services is viewed as a threat by PTT's in Europe and Japan.

We would like to see detailed factfinding studies carried out by the OECD and other competent international organizations on these matters as well as the question of technical requirements and tariffs for data communications as barriers to international trade.

The information, computer, and communication policy working group of the OECD is meeting this week to consider its work program for the coming years. Our delegation will stress the need for careful delineation of issues and identification of the requisite background information before additional steps at consensus-building are contemplated. We will be emphasizing the need to deal

seriously with the threat of increasing restrictions and barriers to international trade and investment in this area.

We view the OECD as a major forum for consultation and study with the industrialized Western World. It has proved to be an effective mechanism for discussion and agreement. However, we are equally active in a number of other organizations which deal with matters relevant to international data flow on a broader or global basis.

We are aware, however, that many U.S. business enterprises are looking for a faster response than can be expected from OECD studies. We wish to explore with these companies the nature of their concerns and the usefulness of discussing these matters in fora with a somewhat narrower focus; for example, the May bilateral consultations with the European Community or forthcoming high level bilateral meetings.

While most of our activity in this area has been with the industrialized countries, we believe it is important to assist developing countries in improving their access to information about Western technology and in strengthening their own capabilities in computer communication. Through the Agency for International Development and the National Technical Information Service, we have provided modest, but useful, assistance to a number of developing countries in this area.

Mr. Chairman, the Department enjoys the assistance of two advisory committees which act as conduits for the expertise and concerns of the data community: the Working Group on Transborder Data Flows of the Advisory Committee on International Investment Technology and Development, and the U.S. Organizations for the International Telegraph and Telephone Consultative Committee—CCITT.

It is clear that the range of issues in this field and their importance to the U.S. economy mean that we must improve communications on these subjects between U.S. industry and the U.S. Government. We need the help of U.S. industry in identifying problems early and addressing them adequately in our negotiations with other countries. Our conversations with firms and preparation of my testimony before this committee have convinced me that the situation needs improvement. We will make better use of Government-industry liaison by strengthening the Advisory Working Group on Transborder Data Flows. It should permit the level of industry-Government cooperation necessary to address the broader issues I have described. As a first step, we have scheduled a meeting next month to discuss the need to expand the working group's size, improve its agenda, and strengthen departmental support. We will welcome a constructive dialog with the participants representing U.S. industry.

An example of the type of government-private sector collaboration we wish to foster is provided by our participation in the International Telecommunication Union's Telephone and Telegraph Consultative Committee—CCITT. The CCITT recommendations enjoy broad international acceptance, and we attach importance to maintaining a lead role in their development. Recently some controversial issues affecting U.S. data processing firms have arisen. The most important have been, first, a proposal to study the

possibility of replacing flat rates for leased circuits with volume sensitive rates; and, second, consideration being given to integrating private leased networks with the public data network. These proposals, which received the support of several European telecommunications administrations, stemmed from the fear of revenue losses owing to the foreign expansion of U.S. time-sharing companies.

The Department and the FCC worked closely with the affected U.S. carriers and users in preparing counter positions and in developing support from countries outside of Europe for preserving the option of flat-rate leased circuits for international transmissions. Owing to the consensus nature of CCITT study group decisions, we have been able to avoid the adoption of any recommendation which would preclude lease of dedicated circuits at flat rates.

This outcome reflects the fact that the USG has had access to a wide range of private sector expertise and has carefully balanced the views of suppliers and users of telecommunications services.

The issues and problems in international communications and information involve several different elements of the Department of State, including bureaus with responsibilities for trade, investment, legal, and technical matters. Within the Department, as Under Secretary for Security Assistance, Science, and Technology, I have responsibility for insuring a comprehensive U.S. international communications policy and insuring close collaboration with other interested agencies. I am convinced that the United States has an enormous economic stake in these issues. Consequently, we are transferring to the Bureau of Economic and Business Affairs the principal responsibility for transborder data flow problems as they affect the interests of U.S. firms. Also, I am asking that bureau to maintain consultation with U.S. industry and to take the lead in bringing its concerns in these matters to the attention of the rest of the Department and other appropriate agencies. Other bureaus in our Department will, of course, retain their lead roles in such matters as advanced technology, legal matters, and management of U.S. participation in international organizations.

Mr. Chairman, let me now turn to the area of personal data flows. During the last decade, for a variety of reasons, the United States and various European countries began to give more attention to the need for greater protections to assure the privacy of individuals. In the United States, the initial area of concern was the vast amount of information about individuals in U.S. Government files. This concern is reflected in the Privacy Act of 1974, which mandates recordkeeping practices for the Federal Government to assure the privacy of individuals and the integrity of the data about them held by the Government. Other U.S. laws were enacted covering some credit and financial records in the private sector. In addition, legislatures in about one-half of the States have passed some 400 privacy bills.

In Europe, as in the United States, there has been a genuine concern for personal privacy. Public opinion surveys in Europe have demonstrated a significant level of public anxiety over the increasing computerization and transmission of personal information. Many Europeans believe that computerization of personal information represents a threat to personal privacy. Questions

have also been raised regarding possible implications for national sovereignty and security resulting from the storage abroad of extensive data on a country's citizens.

The European approach to protecting privacy in the age of the computer was first manifested in the Swedish Data Act of 1973, which legislated privacy protections for personal data in automatic processing systems in both the public and private sectors. The Swedish act established a governmental board with broad regulatory and licensing authority. The Swedish act has since been followed by data protection acts in other European countries, among them France, Germany, and Austria. While there are differences in the European laws, generally they legislate in an omnibus fashion, that is, cover all processing of personal data in both the public and private sectors, and all establish governmental regulatory bodies.

While the Europeans were passing their legislation, the United States was active also. The Privacy Protection Study Commission investigated the need for protections in the private sector. This administration, acting on the commission's findings and recommendations, has sent to the Congress additional legislative proposals for extending privacy protection to the private sector on a sectoral basis.

Because so much European data travel abroad for processing, some of the European legislation contains specific provisions for transborder data flows to assure that privacy principles and proper recordkeeping practices apply to the data. The European laws affect important U.S. commercial and financial interests, particularly those that supply computer-communications services as well as other multinational enterprises. They apply in some measure to most multinational operations: Credit cards, hotels and airline reservations, personal loans and banking transactions, medical records, insurance records, employee transfers, job applications, and many other business and commercial transactions.

Because of the large international flows of personal data, both we and other countries are concerned about the international consequences of the national legislation. One concern is that personally sensitive data may be sent where data protections are weak or nonexistent, thus nullifying the intent of domestic protections. This possibility has to date been of relatively less concern in the United States since large volumes of European personal data, but little American data, are processed in foreign countries.

A second concern is that the legislation could be used for protectionist ends. We recognize, as several private sector witnesses have underscored, that domestic pressures could cause some governments to push privacy legislation beyond its legitimate role in order to serve protectionist ends. We remain alert to this danger and will continue to consult closely with other governments and U.S. industry to share views on the scope of the problem and possible solutions. Let me make it clear, Mr. Chairman, that while we consider privacy a proper, even desirable, interest of governments, we do not believe personal privacy should be used as a disguise for economic protection.

A third concern is that a proliferation of differing privacy protection standards and different regulatory requirements, each justifiable in its own right, would place unnecessary impediments to

multinational enterprises attempting to carry out business efficiently in several countries.

Seeing these laws emerge, several countries urged, in the Council of Europe and the OECD, the adoption of binding international agreements to harmonize national legislative acts already in existence or being contemplated. The United States considers that national and international experience with computer-communication issues is too brief to warrant a binding international treaty, even one limited to personal data protection. A binding treaty inevitably would contain language that could inhibit research and development and applications in this fast advancing technology. Moreover, it appears that differences in procedural requirements and enforcement mechanisms in national laws on personal data protection are too great to permit effective reconciliation in one document. While major differences in regulatory schemes exist even among the European data protection statutes, the gulf between the United States and European approach to enforcement is exceedingly broad and perhaps insurmountable because we do not have, and do not contemplate having, regulatory authorities. U.S. legislation encourages vigilance on the part of the individual and grants him access to the judicial process to enforce the laws when violations occur.

While we have not favored a binding treaty, we have, nevertheless, recognized a need to address the problems created by the new legislation. After the OECD Symposium on Transborder Data Flow Issues in late 1977, we proposed that OECD develop nonbinding guidelines on transborder flow of personal data.

Because of the fundamental differences between our and European legislation on enforcement mechanisms, we proposed that the OECD emphasize the commonly shared principles of privacy protection rather than the procedures adopted to assure adherence to the principles. The proposed OECD guidelines on transborder data flows are compatible with our privacy legislation. The guidelines define general standards of personal data protection and call upon OECD members to take steps to assure that personal data from other countries are handled in accordance with these standards. Both Government and private organizations are called upon to adopt security and operating procedures to assure full adherence with these standards. The guidelines also provide that an OECD-member government will facilitate redress whenever personal data from another country have been improperly handled and an individual's privacy rights infringed.

We expect the OECD to approve these guidelines. Some minor reservations entered earlier are being lifted. There are, however, two outstanding issues that are holding up agreement. The first, essentially technical, is a difference between the Nordic countries and the Federal Republic of Germany and has its roots in differences in the respective data protection laws. We expect that this difference will be resolved through technical discussions.

The second issue involves several French reservations, most of which go to the scope and effect of the guidelines. The French Government, we are told, is in the process of examining its entire approach to communications policy issues. We understand that the French decision with respect to the guidelines will be deferred until their study of communications policy issues has been complet-

ed. We have discussed this matter bilaterally with the French as well as in the OECD. The guidelines should go to the OECD Council within a matter of days. Elevation of the remaining issues to Council level will stimulate negotiation and, we hope, promote agreement.

The Council of Europe, which has taken up the European call for a binding instrument, has not yet reached agreement on a draft convention. This draft has been under difficult negotiation for about 4 years. So far as the United States is concerned, the most important part in the draft convention is article 12 which covers transborder data flows.

This article specifies that signatories will not impose special requirements, such as licenses on personal data flows, on one another, but leaves individual countries free to decide whether or not to impose such requirements on nonsignatories. However, some members have wanted to impose special requirements on data flow to nonsignatories. This point has not yet been finally settled in the Council. We are watching these negotiations closely through our missions in Europe.

In closing, Mr. Chairman, I would like to emphasize that the principles which guide U.S. international communications policy are rooted in our Constitution, our basic values as a free society, and our interest in rapid advances in this field based on free competition.

First: We are deeply committed to the free flow of information and will actively support and promote this principle bilaterally and in the United States, in the OECD, and in other forums.

Second: Trade and investment in information goods and services should be free of artificial constraints created by restrictive economic policies, nontariff barriers, or unrealistic technical standards.

Third: Telecommunication facilities and services should be constructed and priced on the basis of sound technical, economic, and operational planning, and designed to be of maximum usefulness to society.

Fourth: Information resources should be made available to developing countries in order to strengthen their capability to meet their national development objectives.

Fifth: Differences that arise among nations in making common use of information resources must be resolved in an atmosphere of mutual respect and without disrupting established international practices.

Mr. Chairman, my colleagues and I will be pleased to answer your questions and work with this subcommittee in its study of this important issue. Thank you very much.

Mr. PREYER. Thank you very much, Mr. Nimetz.

Let me ask you first, when was the reorganization of responsibility for international data flow that you announced in your testimony decided on?

Mr. NIMETZ. About 1 week ago, sir.

Mr. PREYER. When did you begin to actively consider this reorganization?

Mr. NIMETZ. I first got involved in this about 1 month or so ago when I became Under Secretary. I became Under Secretary at the

end of January. The subject had previously interested me when I was counselor, but I had no responsibility for it. When I was asked by Deputy Secretary Christopher to assume responsibility here, I had several meetings, studied the issue, talked to the people involved, and came to the conclusion that what was originally a technical issue—an issue dealing with privacy and appropriately in our Bureau dealing with scientific and technical matters—had come to be, really, an economic issue. The privacy question had been solved—at least solved in an intellectual sense—and what we were facing now was a threat to our businesses in the manner I have described in my testimony, that is, in terms of exports, data transmission of transnational companies, and in terms of the ability of our data services companies to operate abroad.

And since this was now primarily an economic issue, it would better be handled in our Economic and Business Bureau, so we decided on the transfer.

Mr. PREYER. You indicated that the reorganization plan was agreed on about 1 week ago and that you first became involved in the issue about 1 month ago. What efforts were made within the Department to coordinate the various offices and elements of responsibility for these questions prior to that time?

Mr. NIMERZ. I think there was a working group, and there still is a working group, of all those offices involved in the subject. It is a considerable number. Our legal adviser's office is heavily involved because this concerns legal questions. Our International Organization Bureau has been involved in the area of free expression—the UNESCO area—of promoting our philosophic position that there be no impediment to free movement of ideas and speech. And our Bureau of Oceans and International Environmental and Scientific Affairs had the lead role.

That was a working group that I believe worked quite well in preparing guidelines and working with other agencies. But I do think the Department's approach is now somewhat better organized.

Mr. PREYER. We are glad to see your new efforts at reorganization.

You have listed a number of offices there. How many offices within the State Department have some responsibility for questions in this area?

Mr. NIMERZ. I think there are a number; let me try to list them: My office, which gives supervision; the Economic and Business Bureau, which has responsibility both for telecommunications and for trade and investment; the Bureau of Oceans and International Environmental and Scientific Affairs which has responsibility for scientific matters, such as outer space, direct broadcast satellites, and similar issues; our legal adviser's office gets involved in these matters, as does our International Organization Bureau when something comes up at the U.N. or UNESCO; finally, the policy planning staff is actively involved in this area.

Also, Mr. Chairman, our Bureau of Administration in the State Department has its own communications concerns. We operate one of the largest international communications systems. In our budget this year, we have more than \$8 million in payments for leased lines by the State Department; we have about 350 leased lines

around the world for our own communications systems and other Government agencies. We are not only interested in the policy sense, but we are interested in a hardware/dollar-and-cents way also. Any increase in the price will increase our budget.

So, there are a number of bureaus involved here. Obviously, it depends on the issue. If it is a legal question of guidelines, that is one group; if it is a question of new satellite technology, other people get involved, and there are national security implications on some types of issues, and we have other considerations.

But I think that there is a net benefit in having this number of offices involved. You do have here a problem that cuts across a lot of different interests, and our need in government is to pull all these pieces together in a coherent way. I think we are on that road, sir.

Mr. PREYER. To whom do all of these individual offices and elements that you have listed report? In other words, what official at what level has the day-to-day responsibility for international data flow?

Mr. NIMETZ. I, as Under Secretary of State, have the day-to-day policy responsibility on any issue that requires a decision. Obviously, on implementation and negotiation, people are assigned to do that, and they do their job.

We have right now in Paris, at the OECD, a delegation attending a meeting—I talked to them this morning—on this question. Also we do have missions; and they do have negotiations. But I will have the responsibility, sir.

Mr. PREYER. When were you given this responsibility?

Mr. NIMETZ. When I moved into my new position—it was February when I was sworn in—Deputy Secretary Christopher asked me to take charge of this matter.

Mr. PREYER. I would like to turn now to some of the specific issues.

Has the Office of Telecommunications or any other element of the Department looked at these growing restrictions that have been imposed by European PTT's or other foreign regulators on use of telecommunications facilities in terms of existing treaty obligations or trade agreements?

Mr. NIMETZ. As I noted, there are some questions under the GATT and in other areas if they are discriminatory applications.

We are doing a study now of whether there are any particular treaties or agreements which may be affected. To date, these actions by the PTT's have not, to my knowledge, violated any agreements. But, Mr. Chairman, we have an ongoing review of this, and I will be glad to submit to your subcommittee any findings that we have.

Mr. PREYER. We would be glad to get that. Without objection, it will be included in the record.

[The material follows:]

Treaty Obligations As They Relate to Data Flow Barriers

The term "transborder data flows" refers generally to transmission of data from computer to computer, using telecommunications circuits across national borders. Just as transborder data flows can have many different forms, regulation or restriction of these flows can be adopted for a variety of reasons and directed at a number of social, economic and security objectives. Such restrictions may affect the U.S. business community in many ways. They may, for example, affect the ability of U.S. companies to export their goods or the ability of transnational firms to obtain the information they need from their foreign operations. They might also affect the ability of U.S. data firms to do business in foreign countries.

The United States is not a party to either a bilateral or multilateral treaty dealing specifically with transborder data flows or with any specific kind of flows, such as flows of personal data. There are, however, several international agreements, discussed below, which might be relevant to certain types of transborder data flows and barriers. Obviously, given the wide range of variables in this area, application of such treaties can only be considered in a very general way. Specific judgments would, of course, depend on an analysis of the particular type of data flow in question, the nature of the restriction and its effect on the U.S. companies in light of the particular agreement or agreements in question.

The General Agreement on Tariffs and Trade (GATT)

The General Agreement on Tariffs and Trade deals with both tariff and non-tariff barriers to trade. It is, however, an instrument primarily concerned with products, and, in practice, transborder data flows and similar services have not been included within its protections. It is possible that certain barriers to transborder data flows might impair the ability of U.S. companies to export their products in which case the GATT and possibly one or more of the recently concluded agreements on non-tariff barriers to trade may be applicable. If, for example, technical standards adversely affecting the importation of computers were promulgated by a party to the agreement on Technical Barriers to Trade, the United States could seek relief under the provisions of that code. The agreement on Government Procurement may also apply to the extent that data flow services are incidental to procurement of products which are covered by the code. It might be useful in certain borderline situations to at least raise these issues for consultation within the GATT.

Treaties of Friendship, Commerce and Navigation (FCN)

The United States has bilateral FCN treaties with many countries. The FCN is designed to establish an agreed framework within which mutually beneficial economic relations can take place. The FCNs contain general provisions on "equitable treatment" for "persons, property, enterprises and other interests

of nationals and companies of the other party" and prohibiting the application of "unreasonable or discriminatory measures" that would "impair legally acquired rights or interests within its territories of nationals and companies of the other party in the enterprises which they have established, in their capital, or in... technology which they have supplied." A central provision of most FCNs relates to the establishment and operation of companies. Typically, the treaties apply a standard of "most-favored-nation" or "national treatment", whichever is better, with respect to the right of nationals and companies of either party to "establish, acquire interests in, or operate enterprises in the territory of the other party".

It is possible that one or more of these provisions might be argued to apply to imposition of a given barrier to trans-border data flows. It should be noted, however, that most FCNs contain a general exception for essential security interests, and also a specific exception reserving the right of the Parties to limit the extent to which aliens may establish, acquire interests in, or carry on enterprises engaged within their territories in certain traditionally sensitive sectors, including "communications". These exceptions, where applicable, would limit the U.S. ability to invoke FCNs in transborder data flow cases.

Telecommunication Convention and Final Protocol
(Malaga-Torremolinos, 1973)

The Telecommunication Convention contains general provisions intended to safeguard the interests of parties in the fair and efficient utilization of international telecommunication facilities. Article 18, for example, provides that "the services, the charges and the safeguards [for the public's use of the international service of public correspondence] shall be the same for all users in each category of correspondence without any priority or preference".

In addition, the Telecommunication Convention also provides for the International Consultative Committees, whose advice and recommendations on a broad range of technical issues receive broad international acceptance. The United States, through close collaboration between the Government and the private sector, has traditionally played a lead role in the development of these recommendations, including the Telephone and Telegraph Consultative Committee's (CCITT) recent consideration of replacing flat rates for leased circuits with volume sensitive rates.

Depending upon the circumstances and the country involved, other international agreements and certain international codes and understandings of a non-binding nature,* might relate to some aspects of restrictions on transborder data flows. The Department will be working closely with affected U.S. companies to assess developments in this area and to determine on a case-by-case basis the legal considerations relating to data flow barriers.

* e.g., the proposed OECD Guidelines on Transborder Data Flows of Personal Data

Mr. PREYER. So far, as I understand it, you have seen no violation of treaties?

Mr. NIMETZ. I would rather say that it is a rapidly evolving field; a lot of these laws are very new, and we will be vigilant to see whether any developments do constitute a breach of any agreement or international understanding.

Mr. PREYER. I am glad that you have that study underway. When did you begin that study?

Mr. NIMETZ. When we moved this to the Economic Bureau, one of our decisions was made to see how data flow questions fit with other economic issues. So we asked our Economic Bureau to integrate this with other economic issues and see whether, in an economic sense, these restrictions can be analyzed, not from a scientific point of view but from a hard trade point of view. I hope to have some results shortly.

Mr. PREYER. Can you give us an exact date for when that began?

Mr. NIMETZ. I would say in the last week or so when we moved it over the the Economic Bureau.

Mr. PREYER. Has any element of the Department looked at these growing restrictions imposed by foreign regulators as part of a pattern of conduct in Europe and Japan?

Mr. NIMETZ. Yes; I think there is a pattern. Let me say that this is a rapidly evolving field, and it has evolved very favorably from our point of view over the last decade. When things evolve favorably and American business does well, other countries start copying us, and there is no doubt that the PTT's—as I have mentioned in my prepared statement—have taken the view that some of these new advances might be a threat to their dominance.

There is a tendency, not only in Europe and Japan, but in Third World countries, to want to keep as much control as possible in this area. I mentioned a couple of the reasons. One is personal privacy. We consider that a legitimate interest. We do not think that should impede this industry moving ahead; we think that can be worked out quite adequately through guidelines.

Second, there is the sovereignty question. Some people feel that unless they control their information, somehow their sovereignty is infringed. In the modern world, I think we recognize that there is no way to keep information within national boundaries. Even the most totalitarian countries are unsuccessful in doing that. But there is that concept of sovereignty.

Third is the economic aspects that I think is very important. American business is doing very well in this area, and there is no question that European and Japanese industries want to compete. We have no problem with compensation. But to use protective measures to make it harder for our companies to compete will be vigorously opposed by us.

I think there is a pattern of recognition that the information communication area is a growing one and has a tremendous potential, and lots of countries want to have as much control and as much economic benefit from it as possible.

Mr. PREYER. Thank you. I think that is a key point to be studied.

Several of our earlier witnesses testified that they sought assistance from the Department of State in resolving their data flow problems. Can you tell us what your direct response was to the

problems that were brought to your attention by, first, Control Data Corp.; then, Tymeshare; GTE-Telenet; and Continental Illinois Bank? The first was Control Data.

Mr. NIMETZ. Control Data's problems primarily were with Japan, I recollect. You recognize, Mr. Chairman, these were before my involvement. The Japanese have imposed certain technical restrictions that, in effect, make it virtually impossible for American companies to operate data services into Japan from the United States.

I believe we worked quite vigorously in the United States-Japanese Trade Facilitation Committee to work something out, and we were not successful in that. Control Data, as I understand it, has developed an operation in Japan, which means some loss of American jobs and potential exports.

I believe that even though this issue of Control Data may be behind us, it is, to me, a rather serious matter, and we would like to pursue it with the Japanese because other companies may be affected as well. I think that type of restriction is certainly not in the long-term interest of any country because it puts national boundaries in the way of data flow.

I believe we will continue to work on that problem with Japan in every way we can.

Mr. Chairman, I would rather submit for the record a comment for each of those companies' questions because I am not very familiar with all of them although I do know a bit about them. None of them has come to me personally, and I would be glad to meet with any corporation that has a particular problem which they feel we have not been as helpful as we could with.

Mr. DRINAN [presiding]. The chairman has to be absent for a few minutes.

Without objection, that testimony will be included in the record at this point.

[The material follows:]

A. Control Data Corporation

In his testimony, before your subcommittee on March 10, Mr. Philip Onstad outlined the problems encountered by Control Data as a result of restrictions imposed by the Japanese foreign telecommunications carrier, KDD, on the switching of data transmitted over its facilities. To protect their revenues, most PTTs prohibit message switching abroad. Where the KDD appears to differ from normal practice is in insisting that data switching, which consists of the transmission of unprocessed or partially processed data for further processing, constitutes message switching. U.S. regulations permit the transmission of unprocessed data when it is integral to the provision of data services. The applicable CCITT recommendations also permit such transmission.

The effect of the KDD restrictions was to limit severely the range of services which Control Data could offer to the Japanese market.

The Department assisted the Commerce Department in developing a case to take before the US-Japan Trade Facilitation Committee (TFC), an instrumentality established to resolve trade relations concerns. Although the case was taken up by the TFC and was the subject of repeated discussions between our Embassy in Tokyo and the Japanese Ministry of Posts and Telecommunications, the Japanese have clung to their interpretation of message switching.

The outcome, as Mr. Onstad explained, has been Control Data's corporate decision to establish processing facilities in Japan, a development which will decrease US exports of data services to Japan.

Although Control Data has decided to locate equipment in Japan, the Department is not prepared to let the matter drop since other US firms are actually and potentially affected by these restrictions.

The Department will continue to consult with the industry to determine the most useful way to negotiate with the Japanese.

B. Tymshare

In June 1977 Tymshare, through its Japanese affiliate, filed an application for a remote data processing service with the Japanese international telecommunications carrier, Kokusai Denshin Denwa (KDD). In September of 1977, our Embassy officials met with representatives of the Ministry of Posts and Telecommunications (MPT) seeking information on the status of Tymshare's application and requesting approval as quickly as possible. Also in September of that year a KDD team inspected Tymshare's Cupertino, California computer facility. Tymshare had invited the inspection team in order to allay Japanese suspicions that messages from Japan could be switched from the Cupertino facility on to Tymnet, Tymshare's U.S. network, in violation of Japanese law. During the inspection, the KDD team discovered a "mail drop" operation which would permit such message switching. This discovery resulted in KDD halting the normal processing of the application. We were informed by Tymshare in early October 1977 that this problem had been corrected. On November 3, 1977, we were further informed that normal processing of the application had resumed.

In mid-November, 1977, the Embassy again discussed this case with the MPT. At that time, KDD had not yet completed its review but had been requested by the MPT to expedite the handling of the application. A similar request had also been made of Nippon Telegraph and Telephone (NTT), the Japanese domestic telephone company, which must also approve the application.

(more)

On March 17, 1978, the MPT announced that it had given final policy level approval for Tymshare to begin its services. The Japanese Government's action capped a 21-month effort by the U.S. Government and our Embassy at Tokyo to assist Tymshare to enter the Japanese computer time-sharing market. During this period, the U.S. Embassy made several demarches on various levels of the Japanese Government. The Embassy's reporting was extensive and coverage of the Japanese press, which adopted an extremely protectionist tone, indicated the domestic pressures operating on the MPT.

Although Tymshare became operational in Japan in April, 1978 it operates in what it characterizes as a very limited way due to regulations applied to its use of the transpacific telephone line by Japan. Japanese restrictions on Tymshare's services are similar to those operating for Control Data, although Tymshare had informed the Department that it intended to conduct all processing operations at only its Cupertino, California installation. These restrictions were the subject of further U.S.-Japanese discussions but the problem is not yet resolved.

In April, 1978, Tymshare wrote to the Department to express thanks for its assistance, as well as that of Commerce, STR and FCC. It concluded, however, that the USG was ineffective inasmuch as it had required sixteen months to obtain authority to transmit. Tymshare has not been in touch with the Department since then.

C. GTE - Telenet

Telenet, which has been classed as an international carrier by the FCC, has been unsuccessful in negotiating operating agreements with foreign telecommunications administrations, particularly with the U.K., France and Germany. The latter have explained to us that they believe data services and networks are sufficient to provide data services and that existing correspondence relationships are broad enough to allow provision of any services for which there is a demonstrated market.

In his testimony of March 10 (p. 6) Mr. Philip Walker, Vice President and General Counsel for Telenet, suggested that the Department negotiate a series of policy agreements with foreign governments entailing a reciprocal commitment to recognize and deal on a non-discriminatory basis with the carriers authorized by the other government.

The Department, of course, favors non-discrimination in the treatment of US carriers and will explore ways to support this preference. In testimony before the House Subcommittee on Communications, concerning H.R. 3333, the Department went on record as favoring the establishment of an Executive Branch/International Carriers Task Force for international facilities planning with foreign governments. Such a task force, we believe, would attenuate the threat of whipsawing in the negotiation of operating agreements between US private carriers and foreign administrations. In subsequent rewrites of the communication bill, the international portion has been deleted. We believe this concept is worth resurrecting.

In the meantime, the Department has begun discussions with representatives of Telenet and will explore with them ways in which we might be of assistance.

D. Continental Illinois Bank

The testimony of Continental Illinois Bank referred to a letter to the Department of State setting forth certain problems it faced in an unnamed European country. During the testimony the European country was identified as the Federal Republic of Germany, and it was stated that the problems stemmed from a new German telecommunications act.

We have been able to locate only one letter from Continental Illinois Bank to the Department. The letter is dated May 4, 1978, and was sent to us in response to a letter of March 1978 to the Bank asking for its opinion about the meaning for its operations of controls on data flows, particularly the passage or imminent passage of privacy protection legislation.

The Bank's response cited an example where it was required to duplicate facilities which already existed in the U.S. in order to fully automate its operations to centralize financial data and branch bookkeeping processing in the U.S. The Bank's letter stated that the additional costs incurred did not alter the Bank's plans or its ability to transmit data out of the country. The Bank's letter did not reference the particular law or regulation which mandated the duplication of facilities, nor did it name the country where the problem occurred. The letter did not ask for U.S. Government assistance.

The Department responded to the Bank by letter of June 6, 1978, requesting any further thoughts or analysis of problems that the Bank might care to provide. We received no further correspondence from the Bank.

After learning, during the hearings, that the Bank was referring to an alleged FRG telecommunications act, we asked our Embassy in Bonn to report on any German laws which created hindrances to data flows. Our Embassy has reported that Germany has not enacted legislation in this field. Instead, the FRG Ministry of Posts and Telecommunications (BPM), acting under authority of a 1953 law, issued new regulations on December 27, 1978, regarding the transmission of data. These regulations were revised on April 2, 1979, and are still being amended in light of discussions the Ministry has had with firms that will be affected by them. Our Embassy reported that one U.S. time-sharing subsidiary has advised the Embassy of its discussions with the Ministry. To our knowledge, Continental Illinois Bank has never discussed its problem with the Embassy, or with anyone in the Department.

Mr. DRINAN. I thank you, and I yield to Mr. Butler.

Mr. BUTLER. Thank you.

In response to that question, in addition to identifying these particular items, will you go ahead and follow up with what continuing assistance was provided to them in resolving their problems and tell us also whether you were able to coordinate your efforts with those of other agencies which have responsibility in this area?

Mr. NIMETZ. Yes; we will do that. I would say that there is a relationship with the Federal Communications Commission, an independent agency which is not quite in the same category with the other executive agencies. We do have liaison with the Federal Communications Commissions; but, obviously, they make their decisions in an independent way under their legislative authority.

Mr. BUTLER. I thank you.

And I appreciate your yielding to me now, Mr. Chairman, for questions.

Mr. DRINAN. The gentleman is recognized.

Mr. BUTLER. Thank you.

And I apologize to the witness for being a little late, but he was kind enough to provide us with his testimony in advance, and I did have a chance to review it.

I always look forward to testimony from the State Department because I go away with the feeling that there is some subliminal message that I am supposed to get that you are not fully giving me in the words that pour out, and, for that reason I did. I do have the impression that there is a "born again" awareness in the State Department of the problems associated with international data flow. Would that be a fair summary?

Mr. NIMETZ. It is your characterization, Mr. Butler. I will not contradict you.

Mr. BUTLER. Is there some event that has brought this about?

Mr. NIMETZ. Let me be frank with you, Mr. Butler—

Mr. BUTLER. You do that at your own peril. [Laughter.]

I recognize what you have to report back to the Department, but please be as frank as you can.

Mr. NIMETZ. American business does not usually come to the Government when they are successful. I think this has been a tremendously successful field of American enterprise in the last decade or so. They have not needed our help, except for once or twice, because they have been so successful abroad. Our trade balance in this field is very, very positive. After agriculture, it is

our largest net positive sector of the economy for exports. The technical skill of these companies in doing what they are doing has been, I think, extraordinary.

It has only been in the last few years—with the spread of privacy legislation in Europe—beginning with the 1973 Swedish Act—that the threat of protectionism caused the companies to recognize that they may need Government help.

I would not say “born again,” but it is certainly a growing realization on our part that this is going to be a very serious issue and that it touches both American philosophical ideals as well as hard business ideals.

On the philosophical side, we are committed to free flow of ideas, language, newspapers, and radio. In CSCE, when we talk to the Eastern Europeans, we make a point that magazines and messages by radio have to go across boundaries freely—this is our philosophy.

On the business side, we also believe American businesses should have access to Europe, Japan, and the Third World, to sell our services on an equal basis.

There is another aspect, and that is the transnational corporations with their own data. Take a bank that has branches all around the world. It has to send its data in to the central computer. When I practiced law, I used to work with many of these types of companies and I know that you have a financial statement by a certain time; you have to file an SEC report at a certain time; you have to have all your data. There is no way a modern company can control its inventory, can control its personnel, can control its finances, without having them integrated into one data system.

Therefore, these restrictions that may be coming along are quite ominous if they move forward. I think we are now at a time when the Government has to act with a lot more attention to this issue.

I am not trying to indicate that 4 years ago, or 3 years ago, or even 2 years ago there was a crying need that was not met; I think it is something that has developed in the last 2 years. We have been alerted by the business community, and we are doing our best to meet their concerns.

Mr. BUTLER. I thank you.

Without endeavoring to characterize your comments, it seems to me, however, that there is some urgency in developing a U.S. policy in this area. And, of course, it is always excusable when the problems do not develop until very recently. But I do appreciate at least the growing awareness of the State Department of this problem.

Several of the industry witnesses who testified about international data flow have recommended that the Special Trade Representative be given lead authority within the Government to coordinate our policy on these data flow issues. Do you see this largely as a trade issue? Or would we weaken our bargaining position if we respond to this as though that were our principal concern? I guess I want your comment on what should be the role of the Special Trade Representative and the NTIA as well.

Mr. NIMETZ. I think there is certainly a role for the Trade Representative. We have to see how this issue develops. To the

extent it develops in a trade negotiation, certainly they will play a major role.

For example, right now, we are working with NTIA on these guidelines in the OECD on privacy legislation; on other communications problems in UNESCO; and on technical discussions that we have on a bilateral basis with the Japanese NTIA also has the major coordinating role in the Government on telecommunications policy generally. We are very dependent on them for their advice and leadership in many of these areas.

I do not believe at this stage, frankly, Mr. Butler, it is wise to say this agency will take complete control over this issue because it is still in a formative stage. We have seen something that started our talking about privacy of individuals turn into an economic issue. We should spend our time at this stage working closely together within the Federal Government and not worry so much about any one agency taking it over entirely; it is just too big for that.

I should mention one other agency that is rather important—the Federal Communications Commission. They have authority to do things in the United States involving foreign activities that do have an effect on foreign policy. We try to coordinate with them, to the degree it is acceptable to them and to the degree it is permissible under the law. But that is another agency that has to be drawn into the net.

But I would say the trade representative does have a role to play, but I would not say the lead role right now.

Mr. BUTLER. We have a coordination problem. Do you have any suggestion to make? Any Government organizational changes may be presently needed to create a proper focal point for these issues.

Mr. NIMETZ. I think we are still working it out. On the working level, the coordination, in my experience, works rather well. The experts in all the agencies know what their counterparts are doing. I will give you an example. On the work which is not on data flow but on electromagnetic spectra, the coordination, I think, was quite excellent.

The problem comes more on the policy side. I think the National Security Council and the President's Office of Science and Technology Policy have an important role to play in drawing these pieces together. There is an NSC-led working group that brings us all together and discusses some of these issues. I think that is a useful mechanism.

I think other groups, either under State or in NTIA, would be useful. But I do not think there is an easy method of having a structured approach that puts everything under one hat. We have tried that in the past. You know, there was a White House office, but that was not successful either.

Mr. BUTLER. Is that the OTP?

Mr. NIMETZ. The OTP—yes, sir.

Mr. BUTLER. I do not know what that means.

Mr. NIMETZ. The Office of Telecommunication Policy, I believe.

Mr. BUTLER. I thank you. But in terms of concrete responses to the immediate problems, I judge it is your view that we just—and I hate to use the expression—muddle through, but I think we are just going to have to see how it develops. It is your view that it is a

little early to make firm decisions as to exactly how we are going to try to pull it all together?

Mr. NIMETZ. I would not say "muddling through." I think everyone who is involved in the issue is now focusing on the issue—the economic people, the scientific people, and the legal people. The structure in the State Department is—you used the word "subliminal" a few minutes ago. There are a lot of interests involved, and there are other interests, for example, the bilateral interests. That is, when you deal with a problem with Japan, you have to bring in the people who work with Japan; when you deal with the OECD, or with France, for example, you have to bring in the relevant experts on the country; it is not a matter of one or two people sitting down and making all the decisions; it is going to be a very long and complicated thing.

I think industry will be best served if they recognize that the entire Government is involved in this, and not seek to have just one office in the Government devoted purely to this subject, because the risk is that, if only one office is involved in it, that means that none of the other offices are paying any attention; and the issue is just too big for any one person to handle in this type of bureaucratic setup.

Mr. BUTLER. I thank you very much, and I yield back the balance of my time.

Mr. DRINAN. I commend the witness for his farsightedness, and I commend the State Department.

I come from a State that is very heavy in its industry in computer and telecommunications. I am very familiar with Digital, particularly; that is the second or third largest employer in my district and in Massachusetts.

And I commend also Mr. Henry Geller whose testimony I have read.

I wonder, sir, if you would have any comment on what Mr. Geller proposes on page 10; namely, that we begin to have a new office to do various things that he outlines? But before we get to that, would there be any reaction or resistance by the industry—an industry like Digital and the other computer and telecommunications corporations—to what is going on? I must say that I have been very impressed by the testimony; it seems that the State Department and the Commerce Department and the European Community are aware and are trying to resolve these problems.

What resistance or reaction might the industry have?

Mr. NIMETZ. Resistance to what—to Mr. Geller's—

Mr. DRINAN. No; to the development in the State and Commerce Departments. Would they be in accord, generally speaking, with what is happening?

Mr. NIMETZ. I think there has been some concern in industry that our bureau dealing primarily with economic and business affairs has not been playing as prominent a role as it should. I think giving the Economic Bureau the lead responsibility will be favorably responded to by industry; but, obviously, that is for industry to decide.

I think we will certainly be open to any industry representatives who want to meet with us. We have our consultative group; we will be having a meeting in April of our transnational data flow work-

ing group to seek to expand that advisory committee. So, I think industry will find us quite responsive. I am not saying we will be able to solve all of their problems right away; we have some fundamental problems in Europe, in Japan, and in the Third World; and it will be a major effort in the next few years to try to see this industry or this area remain open.

I am very concerned, Father Drinan, that these restrictions will not only hurt our industry but also hurt people around the world because a very vibrant technical development will be impeded.

We have a situation where data can move around the world without any impediments within seconds. If you have a situation where countries will take a national border and say, "These data have to stop at the national border," it is just inconsistent with the whole technological development of the world. We have seen people try to do this in a political sense; we have seen Communist countries—totalitarian countries in general—say that you cannot bring any newspapers in; you cannot bring any magazines in; you cannot have any radio broadcasts coming in—or try to say that. But to have the Western World try to impede data that can move now within seconds is a rather frightening prospect. I do not think it is in any way going to be successful; I think the advances that have been made scientifically are so impressive that no country is going to be able to restrict it. But even making it less economical will have the effect of hurting consumers and delaying progress that we can have through these developments.

It is going to be a major issue—I have no doubt.

Mr. DRINAN. All right. Once again, I commend you for your testimony.

I know the subcommittee is going to stay on top of this topic as it emerges.

I am happy to yield to the gentleman from Indiana, Mr. Evans.

Mr. EVANS. I appreciate your yielding. However, I have no questions at this time; thank you.

Mr. DRINAN. Thank you.

Have you any additional questions, Mr. Butler?

Mr. BUTLER. If I may. There is one other question that I do not think we got to.

Do you see a need for a new international forum to consider transborder data flow issues, or not?

Mr. NIMETZ. I know that has been suggested. I do not right now. In fact, I think one might say there are too many fora.

Our approach to international fora has been to try to limit them to what they can do best. For example, the ITU is a very professional organization. It deals with the spectrum, and it does it very well; it should not get into political issues.

UNESCO is a U.N. agency that can deal with more conceptual ideas. I think the OECD is an excellent organization to deal with the industrialized world, to try to work these things out. It is an organization where the Europeans, Japanese, Australians, ourselves, and others can talk about these questions from an industrial nation's point of view.

I think we have a good group of organizations right now, and I would be very reluctant to set anything else up. These international organizations—once set up, you can never close them down

again. They become a forum, occasionally, for people to raise extraneous political issues that are not at all in our interest. So I would certainly go slow in setting up new international organizations, sir.

Mr. BUTLER. Which of the fora you mentioned is best presently suited for resolving this?

Mr. NIMERZ. I think the OECD is the best forum for us to work out the guidelines on privacy so the privacy issue is set aside, and no one can make an excuse that restrictions should be made because of personal privacy. The OECD can then go on and talk about barriers to trade.

I could inform you that the OECD working group that is meeting right now in Paris has determined to have a high level conference on this in October—October 6 and 7 of this year—to which industry and business will be invited to participate, along with governments.

So, the OECD is a forum where the industrialized world can work out these problems, and the problems we are talking about are really problems right now in the industrialized world.

The north-south questions should be in a forum such as UNESCO or other U.N. forums. But I do not think it would be a good idea to confuse some of the north-south questions—which are important in their own right—with these industrialized world questions that are primarily potential barriers.

Mr. BUTLER. Turning now to one more, to wrap it up in my own mind, first of all, we are dealing with a complex issue and an emerging problem but in the area of international data flow, what are your priorities? What key problems do you think should be addressed on a priority basis?

Mr. NIMERZ. I think the first thing, as I mentioned before, is to get the guidelines out of the way so that the whole privacy issue becomes a nonissue. The second priority is the economic barrier question—to make it a major priority of this Government that barriers to movement of data are an unacceptable form of trade. This should affect not only exports of goods but restrictions on services or any restriction that would affect transnational corporations from moving their own business information back and forth within their own system.

I think those two are the major issues. A third one is considering whether the U.S. Government should work more closely with industry in dealing with the problem of PTT's abroad that might be operating in a discriminatory manner. That is something we want to look into and consult with U.S. industry about.

I, myself, having seen some of the evidence, am concerned about this problem.

A fourth area is working with the developing countries somewhat more so that they feel that they are participating in the international communications system in a way that promotes the free flow of information and does not create any barriers to free flow.

I think those are the four major areas.

Mr. BUTLER. I thank you very much. I think you have got yourself a pretty substantial workload there.

Mr. Chairman, in your absence we have had some very fine answers from the witness, but we have dealt pretty generously in

the future tense, so I would like to be assured that we will have an opportunity to review the progress with another hearing sometime in the future.

Mr. PREYER. Thank you. I think that is a good suggestion, and we will follow up on that.

I think staff may have one or two questions.

Mr. INGRAM. Yes; thank you, Mr. Chairman.

On page 17, you state that the United States considers that national and international experience with computer communications issues is too brief to warrant a binding international treaty, even one limited to personal data protection. I am not quarreling with the conclusion reached, but I would like to clarify how this policy position on behalf of the United States was reached.

Mr. NIMERZ. The European approach to privacy is very different from ours. Our approach to privacy is to have certain basic laws and then leave it to individuals to assert their rights, either through the courts or otherwise, and also to differentiate between Government information and private information. Our Government privacy law is rather strict on the Government, but we do not impose that same type of regime on the private sector. The European approach is entirely different. They have an omnibus approach: Information is information, whether it is in the State Department, the FBI, or in the local bank. Then they set up a regulatory commission that makes you go to the regulatory commission to move any data.

Since that tends to be the European approach, we felt that we were too far apart in our approach to have a binding treaty, and therefore we would oppose it on those grounds.

Second, we also believe this field is moving just so rapidly that to sit down and try to draft a treaty now would just be premature. Our approach to treaties is that you do a treaty when you really have something that you want to lock into concrete and then go to the Senate and try to get a two-thirds vote.

I do not think, in this stage of technology and this stage of evolution of public attitudes, it is ripe for a treaty.

Mr. INGRAM. As I said, I am not quarreling with the conclusion, but I was curious how and by whom the decision was reached that this was U.S. policy. Could you provide any detail as to when the sentence I quoted to you—when that decision was reached?

Mr. NIMERZ. It was reached before 1977 when we started on the road to develop a guideline approach in the OECD and when we said to the Europeans and Japanese, "Let us not have a treaty; but let us develop guidelines that we can all follow." I think the policy dates at least a few years back; I do not know the exact date; I was not involved in it, myself.

Mr. INGRAM. If there are additional details, you might supply them for the record.

Mr. NIMERZ. I will look into it and be glad to let you know.

Mr. INGRAM. Thank you.

Mr. PREYER. Without objection, that information will be included in the record at this point.

[The material follows:]

Background on US Decision Not to Support a Binding International Treaty on Personal Data Flows.

State Department actions to consult and coordinate with federal agencies involved in communications and information policy issues date back several years. In late 1976 activities and decision in a major Committee of the OECD, the Committee for Science and Technology Policy (CSTP) indicated an elevation in importance of issues in communications policy within the OECD. One of the issues being raised in the OECD was transborder data flow. At that time the Council of Europe had already approved resolutions calling for harmonization of national legislation on transborder data flows and was considering a draft convention. The idea of an OECD convention was also being voiced by some.

In December 1976 a Deputy Assistant Secretary in the Department's Bureau of Oceans and International Environmental and Scientific Affairs sent out letters to federal agencies involved in communications policy issues informing them that the Department was creating an ad hoc task force to consider the issues that were emerging and to develop US policies and positions.

One of the first priorities for the task force was consideration of US positions to be taken at a major OECD Symposium scheduled for September 1977 in Vienna. The Symposium was devoted entirely to transborder data flow issues, and one of the issues was whether the OECD should follow the path of the Council of Europe and develop a binding convention.

The United States sent a large delegation to the Symposium, including representatives from both the public and private sectors. Members of Congress were invited to be part of the delegation. It was the consensus of the ad hoc task force and the U.S. Delegation to the Symposium that the time was not ripe for a binding convention. Both groups felt that more study was needed of the issues and that the U.S. should support further study rather than negotiation of a binding convention. At the end of the Symposium there was a short meeting of the OECD's Data Bank Panel, a subsidiary of the Working Group on Information, Computer and Communication Policy (ICCP), which is in turn under the aegis of the CSTP, to consider the results of the Symposium and to frame proposals for consideration by higher OECD bodies - the ICCP and the CSTP - for future work on transborder data flow issues. The U.S. Delegates to the Data Bank Panel meeting, following the wishes of the ad hoc task force and the U.S. Delegation to the Symposium, put forth several proposals for consideration by the ICCP and the CSTP consistent with the desires of both groups to see further study of the issues before commitment to a binding convention.

The proposals decided upon by the Data Bank Panel were the following:

- (a) to dissolve the Data Bank Panel and constitute a new and broader group to consider the legal, economic, and social issues in data processing;

(b) to give first priority to finding suitable arrangements for harmonizing conflicting national privacy legislation; and

(c) to consider in the next year the formulation of international guidelines for harmonization of national privacy legislation.

In the months before the Vienna Symposium, the ad hoc task force prepared an issues paper on transborder data flow for the Secretary of State. The paper recommended that the ad hoc group be formally established with explicit responsibilities. The issues paper also presented options for approaching the OECD and the Council of Europe. The paper reflected the view of the task force that further investigation of the issues was desirable before negotiation of a binding international agreement could be entertained by the United States.

The Secretary concurred in the recommendation of creation of a formal task force and proposed it to the National Security Council. The Inter-Agency Task Force was formally created by

directive of the NSC on September 13, 1977. The NSC directed that the task force be chaired by the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs.

Also in the months before the Symposium, the Department moved to include transborder data flow issues within the purview of the then-named Advisory Committee on Transnational Enterprises to assure consultation with and advice from the private sector. A Working Group on Transborder Data Flows was established within the Advisory Committee. Immediately after the Symposium the Advisory Committee was briefed on the Symposium and was informed of the recommendations for future action made by the Data Bank Panel. The Advisory Committee was supportive of the US positions taken at the Symposium and the recommendations of the Data Bank Panel.

The Inter-Agency Task Force also met shortly after the Symposium. On November 16, 1977, the task force agreed to support in the OECD, as a first priority, efforts to develop suitable arrangements for harmonizing national legislation and consideration of the formulation of guidelines for harmonization. This position was followed by U.S. delegates to a December 1977 meeting of the ICCP.

The ICCP agreed to the creation of a new group to replace the Data Bank Panel, and agreed that Guidelines should be developed. At a meeting of the CSTP in February 1978 the United States again supported the recommendations of the Data Bank Panel, and the CSTP thereupon established the Experts Group on Transborder Data Barriers and the Protection of Privacy and gave it its two-part mandate:

- "(i) develop guidelines on basic rules governing the transborder flow and the protection of personal data and privacy, in order to facilitate a harmonization of national legislations, without this precluding at a later date the establishment of an international Convention;
- (ii) investigate the legal and economic problems relating to the transborder flow of non-personal data, in order to provide a basis for the development of guidelines in this area which should take into account the principle of free flow of information."

The process of consultation and coordination I have described above continued during the negotiation of the Guidelines, which began with a meeting of a drafting group in Stockholm in July 1978 and continued through the last meeting of the full experts group in November 1979. The Department tried to schedule meetings of both the inter-agency task force and the Advisory Committee sufficiently in advance of the meetings at the OECD to permit participants and members to review the status of the negotiations and give the delegation instructions or advice on issues expected to arise. The Advisory Committee was always kept fully informed of contentious issues of importance to the private sector, such as whether the Guidelines should include reference to "legal persons."

On those instances during the negotiations when unanticipated issues arose the US delegation made clear that any position it took was subject to consultation with and concurrence of authorities in Washington. An example was the first drafting session in July 1978 when the U.S. delegation was requested by the Chairman of the experts group to produce a draft of a US approach to the Guidelines. The US delegation drafted a document for discussion purposes only. A refined draft was submitted to the OECD as an official document after consultation with both the inter-agency task force and the Advisory Committee.

Mr. PREYER. Mr. Vizas?

Mr. VIZAS. Thank you.

Mr. NIMETZ, there was a great deal of discussion about coordination earlier today. I would like to ask you a few questions that go to that and then a few that go to the reorganization within the Department.

Recently the FCC reached a decision regarding the entry of foreign telecommunications and teleprocessing services into the United States as well as a decision regarding the entry of additional U.S. communications carriers into international markets.

My first question has two elements. How, in general, has State coordinated with the FCC on such matters—where the FCC is actually making a decision and it affects the foreign policy of the United States—and, in particular, in the specific case of the approval of entry of new services from Japan, what comments, assistance, or advice did the State Department provide to the FCC formally or informally?

Mr. NIMETZ. We have liaison with the FCC in our various working groups; they have representatives. So we try to keep in touch with them.

I have met with the Chairman of the FCC and talked about improving this type of coordination.

To a large extent, we are dependent on whether they want our input.

In connection with this Japanese case you mentioned, we offered to give them a formal briefing on our experience. Again, this is before I was involved, but it is my understanding that they did not avail themselves of our briefing.

This is not unique to the FCC. We have a system in this Government of independent agencies which, by their authority, can take actions that do have foreign policy implications. We have dealt with them differently in the nuclear regulatory area and the CAB where, in international areas, there is a role for the President. In the FCC we do not have that, and there is no question that some of these decisions do have a trade impact.

We gave a situation where we want to be open to the Japanese; we want our consumers to benefit by the lowest prices and the most efficient service. On the other hand, it is a source of concern to us when the Japanese authorities are not similarly open to us.

So there are areas where the FCC jurisdiction does have a foreign policy role. I would say there is liaison; there is informal discussion back and forth; but not a very prominent official relationship.

Mr. VIZAS. You mentioned that you had offered to give a formal briefing to the FCC. Did you make that offer in a letter to them or in some other commentary to them? Did you provide them with any written comments?

Mr. NIMETZ. My understanding is that there was a letter sent by NTIA which plays a lead role in that particular case.

Mr. VIZAS. There were no other written comments from the Department of State?

Mr. NIMETZ. I can look; I do not think so; I would have to check.

Mr. PREYER. Without objection, the answer will be included in the record at this point.

[Response from Department of State follows:]

The Department did not unilaterally supply any information to the FCC. As indicated above, the Office of International Communications Policy, within the Bureau of Economic and Business Affairs, concurred in a written offer from NTIA to provide a briefing for the FCC.

Mr. VIZAS. To your knowledge or that of your associates, who I imagine might know, have there been any other cases which raise similar questions of reciprocity to those regarding the Japanese entry into our market in this area? And, in addition, whether or not there have been any particular cases in reciprocity in the communications and information area, what is the State Department's attitude toward treating things in a reciprocal fashion?

Mr. NIMETZ. I think this is a field that should be as wide open as possible. That is our basic philosophy; and that is in accord with our basic economic philosophy. Also, when you deal with information, you have a philosophical basis for wanting everything to move as freely as possible. So, I think both philosophically and in terms of economic interests, we would want a wide-open world system. Reciprocity is a basic theme in economic relations.

I cannot say that in every area we always insist on reciprocity—one for one in every field. The whole multilateral trade negotiation is based on offsetting one thing here for another thing there, and the world is just too complex, and countries are just too different to be able to do everything in an absolutely symmetrical, mirror-image manner.

Nevertheless, I think this is an area where I would be very disappointed if we did not have a very high degree of reciprocity in the information communication field.

Mr. VIZAS. Are you aware of any other problem?

Mr. NIMETZ. I am not.

Mr. VIZAS. Could you go back to the Department and find out if there were?

Mr. NIMETZ. I would be glad to give you a supplementary statement on that.

Mr. VIZAS. Thank you.

Mr. PREYER. Without objection, it will be included in the record at this point.

[The material follows:]

su A

A recent example of U.S. Government action with respect to reciprocity in the field of communications is found in the consideration of the application of the FTC Communications, Inc. (FTCC) to increase the number of U.S. gateways for its international traffic. FTCC is indirectly owned by the French PTT. In 1954, the French Government decided to assume all telecommunications operations in France and began negotiating the termination of the telecommunications activities of all foreign carriers, including U.S. carriers. In April 1979, citing reciprocity and the French denial of operating offices to U.S. carriers, the Federal Communications Commission denied the additional gateways to FTCC.

FTCC took the matter to the United States Court of Appeals for the Second Circuit, contending that the denial is inconsistent with the Convention of Establishment between the United States and France. The Commission requested the Department's interpretation of the Convention and its applicability, particularly with respect to FTCC's "grandfather" rights and the undertaking by the Parties in Article V not to intensify limitations upon enterprises which are owned or controlled by other party's nationals and companies and which were engaged in communications at the time the treaty was concluded. The Department said the Convention protects then-existing operations or activities of such enterprises but not future ones, and did not accord full national treatment with respect to expansion of such enterprises.

In November 1979, the FCC approved the new gateways for FTCC subject to the transfer of 75% ownership of FTCC from the French PTT to American nationals. This had the effect of mootling the case before the Court of Appeals. The grounds in this case are narrower than those encountered in many instances of actual or potential barriers to data flows, but illustrate that there are elements of reciprocity in existing public policy.

Mr. VIZAS. When you were discussing the organization and the responsibilities of the Department, I was not quite sure from your comments about NTIA and the FCC and the other agencies whether you believed that the State Department generally has the responsibility for establishing international telecommunications and information policy or whether it lies in some amorphous interconnection between these two agencies.

Mr. NIMETZ. There is an Executive order of the President which gives the Secretary of State authority in the area:

With respect to telecommunications, the Secretary of State shall exercise primary authority for the conduct of foreign policy, including the determination of U.S. positions and the conduct of U.S. participation in negotiations with foreign governments and international bodies. In exercising this responsibility, the Secretary of State shall coordinate with other agencies as appropriate and, in particular, give full consideration to the Federal Communications Commission, et cetera.

However, NTIA is certainly the lead agency in international communication issues.

In another section, it says:

The Secretary of Commerce shall develop and set forth in coordination with the Secretary of State and other interested agencies plans, policies, and programs which relate to international telecommunications issues, conferences, and negotiations. The Secretary of Commerce shall provide for the coordination of telecommunications activities in the executive branch, et cetera.

So, I see two focuses. One is that we have primary responsibility for foreign affairs, and in negotiations the Secretary of Commerce—under whose authority NTIA falls—is the primary policymaker in the communications area. And we certainly defer to their authority and their expertise. It is not the simplest area to describe. You have to go through that Executive order rather carefully to parcel it out.

I mentioned also the NSC and the White House staff that plays a coordinating role by the very nature of the White House and the NSC structure.

I do not know if that answers your questions; maybe it confuses you more.

Mr. VIZAS. The only addition I would have is that I would like to know the number of the Executive order, but you can submit that.

Mr. PREYER. Without objection, it will be included in the record at this point.

[The material follows:]

THE PRESIDENT

13349

[3195-01]

Executive Order 12046

March 27, 1978

Relating to the Transfer of Telecommunications Functions

By virtue of the authority vested in me by the Constitution and laws of the United States of America, including Section 7 of Reorganization Plan No. 1 of 1977 (42 FR 56101 (October 21, 1977)), the authority and control vested in the President by Section 2 of Executive Order No. 11556, as amended, Section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c), and Section 301 of Title 3 of the United States Code, and as President of the United States of America, in order to provide for the transfer of certain telecommunications functions, it is hereby ordered as follows:

**SECTION I
REORGANIZATION PLAN****1-1. Implementation of Reorganization Plan.**

1-101. The transfer of all the functions of the Office of Telecommunications Policy and of its Director, as provided by Section 5B of Reorganization Plan No. 1 of 1977 (42 FR 56101), is hereby effective.

1-102. The abolition of the Office of Telecommunications Policy, as provided by Section 3C of Reorganization Plan No. 1 of 1977, is hereby effective.

1-103. The establishment of an Assistant Secretary for Communications and Information, Department of Commerce, as provided by Section 4 of Reorganization Plan No. 1 of 1977, is hereby effective.

1-2. Telecommunications Function.

1-201. Prior to the effective date of Reorganization Plan No. 1 of 1977, the Office of Telecommunications Policy and its Director had the functions set forth or referenced by: (1) Section 1 of Reorganization Plan No. 1 of 1970 (5 U.S.C. App. II), (2) Executive Order No. 11556 of September 4, 1970, as amended (47 U.S.C. 305 note), (3) Executive Order No. 11191 of January 4, 1965, as amended (47 U.S.C. 721 note), (4) Executive Order No. 10705 of April 17, 1957, as amended (47 U.S.C. 606 note), and (5) Presidential Memorandum of August 21, 1963, as amended by Executive Order No. 11556 and entitled "Establishment of the National Communications System."

1-202. So much of those functions which relate to the preparation of Presidential telecommunications policy options or to the disposition of appeals from assignments of radio frequencies to stations of the United States Government were transferred to the President. These functions may be delegated within the Executive Office of the President and the delegations are set forth in this Order at Sections 3-1 through 4-3.

THE PRESIDENT

1-203. Those telecommunications functions which were not transferred to the President were transferred to the Secretary of Commerce. Functions transferred to the Secretary are set forth in this Order at Sections 2-1 through 2-5.

SECTION 2
FUNCTIONS TRANSFERRED TO COMMERCE

2-1. Radio Frequencies.

2-101. The authority of the President to assign frequencies to radio stations or to classes of radio stations belonging to and operated by the United States, including the authority to amend, modify, or revoke such assignments, was transferred to the Secretary of Commerce.

2-102. This authority, which was originally vested in the President by Section 305(a) of the Communications Act of 1934, as amended (47 U.S.C. 305(a)), was transferred and assigned to the Director of the Office of Telecommunications Policy by Section 1 of Reorganization Plan No. 4 of 1970 and Section 3 of Executive Order No. 11556.

2-103. The authority to assign frequencies to radio stations is subject to the authority to dispose of appeals from frequency assignments as set forth in Section 3-2 of this Order.

2-2. Construction of Radio Stations.

2-201. The authority to authorize a foreign government to construct and operate a radio station at the seat of government of the United States was transferred to the Secretary of Commerce. Authorization for the construction and operation of a radio station pursuant to this authority and the assignment of a frequency for its use can be made only upon recommendation of the Secretary of State and after consultation with the Attorney General and the Chairman of the Federal Communications Commission.

2-202. This authority, which was originally vested in the President by Section 305(d) of the Communications Act of 1934, as amended (47 U.S.C. 305), was delegated to the Director of the Office of Telecommunications Policy by Section 5 of Executive Order No. 11556.

2-3. Communications Satellite System.

2-301. Certain functions relating to the communications satellite system were transferred to the Secretary of Commerce. Those functions were delegated or assigned to the Director of the Office of Telecommunications Policy by Executive Order No. 11191, as amended by Executive Order No. 11556. The functions include authority vested in the President by Section 201(a) of the Communications Satellite Act of 1962 (76 Stat. 421, 47 U.S.C. 721(a)). These functions are specifically set forth in the following provisions of this Section.

(a) Aid in the planning and development of the commercial communications satellite system and aid in the execution of a national program for the operation of such a system.

(b) Conduct a continuous review of all phases of the development and operation of such system, including the activities of the Corporation.

(c) Coordinate, in consultation with the Secretary of State, the activities of governmental agencies with responsibilities in the field of telecommunications, so as to insure that there is full and effective compliance at all times with the policies set forth in the Act.

(d) Make recommendations to the President and others as appropriate, with respect to all steps necessary to insure the availability and appropriate utilization of the communications satellite system for general government purposes in consonance with Section 201(a)(6) of the Act.

THE PRESIDENT

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(e) Help attain coordinated and efficient use of the electromagnetic spectrum and the technical compatibility of the communications satellite system with existing communications facilities both in the United States and abroad.

(f) Assist in the preparation of Presidential action documents for consideration by the President as may be appropriate under Section 201(a) of the Act, make necessary recommendations to the President in connection therewith, and keep the President currently informed with respect to the carrying out of the Act.

(g) Serve as the chief point of liaison between the President and the Corporation.

(h) The Secretary of Commerce shall timely submit to the President each year the report (including evaluations and recommendations) provided for in Section 404(a) of the Act (47 U.S.C. 744(a)).

(i) The Secretary of Commerce shall coordinate the performance of these functions with the Secretary of State. The Corporation and other concerned Executive agencies shall provide the Secretary of Commerce with such assistance, documents, and other cooperation as will enable the Secretary to carry out these functions.

2-4. Other Telecommunications Functions.

Certain functions assigned, subject to the authority and control of the President to the Director of the Office of Telecommunications Policy by Section 2 of Executive Order No. 11556 were transferred to the Secretary of Commerce. These functions, subject to the authority and control of the President, are set forth in the following subsections.

2-401. The Secretary of Commerce shall serve as the President's principal adviser on telecommunications policies pertaining to the Nation's economic and technological advancement and to the regulation of the telecommunications industry.

2-402. The Secretary of Commerce shall advise the Director of the Office of Management and Budget on the development of policies relating to the procurement and management of Federal telecommunications systems.

2-403. The Secretary of Commerce shall conduct studies and evaluations concerning telecommunications research and development, and concerning the initiation, improvement, expansion, testing, operation, and use of Federal telecommunications systems. The Secretary shall advise appropriate agencies, including the Office of Management and Budget, of the recommendations which result from such studies and evaluations.

2-404. The Secretary of Commerce shall develop and set forth, in coordination with the Secretary of State and other interested agencies, plans, policies, and programs which relate to international telecommunications issues, conferences, and negotiations. The Secretary of Commerce shall coordinate economic, technical, operational and related preparations for United States participation in international telecommunications conferences and negotiations. The Secretary shall provide advice and assistance to the Secretary of State on international telecommunications policies to strengthen the position and serve the best interests of the United States, in support of the Secretary of State's responsibility for the conduct of foreign affairs.

2-405. The Secretary of Commerce shall provide for the coordination of the telecommunications activities of the Executive Branch, and shall assist in the formulation of policies and standards for those activities, including but not limited to considerations of interoperability, privacy, security, spectrum use and emergency readiness.

THE PRESIDENT

2-406. The Secretary of Commerce shall develop and set forth telecommunications policies pertaining to the Nation's economic and technological advancement and to the regulation of the telecommunications industry.

2-407. The Secretary of Commerce shall ensure that the Executive Branch views on telecommunications matters are effectively presented to the Federal Communications Commission and, in coordination with the Director of the Office of Management and Budget, to the Congress.

2-408. The Secretary of Commerce shall establish policies concerning spectrum assignments and use by radio stations belonging to and operated by the United States. Agencies shall consult with the Secretary of Commerce to ensure that their conduct of telecommunications activities is consistent with those policies.

2-409. The Secretary of Commerce shall develop, in cooperation with the Federal Communications Commission, a comprehensive long-range plan for improved management of all electromagnetic spectrum resources.

2-410. The Secretary of Commerce shall conduct studies and make recommendations concerning the impact of the convergence of computer and communications technology.

2-411. The Secretary of Commerce shall coordinate Federal telecommunications assistance to State and local governments.

2-412. The Secretary of Commerce shall conduct and coordinate economic and technical analyses of telecommunications policies, activities, and opportunities in support of assigned responsibilities.

2-413. The Secretary of Commerce shall contract for studies and reports related to any aspect of assigned responsibilities.

2-414. The Secretary of Commerce shall participate with the National Security Council and the Director of the Office of Science and Technology Policy in carrying out their functions under Sections 4-1, 4-2, and 4-3 of this Order, and may perform specific staff services for them as requested.

2-5. Consultation Responsibilities.

2-501. The authority to establish coordinating committees, as assigned to the Director of the Office of Telecommunications Policy by Section 10 of Executive Order No. 11556, was transferred to the Secretary of Commerce.

2-502. As permitted by law, the Secretary of Commerce shall establish such interagency committees and working groups composed of representatives of interested agencies, and shall consult with such departments and agencies as may be necessary for the most effective performance of his functions. To the extent he deems it necessary to continue the Interdepartment Radio Advisory Committee, that Committee shall serve in an advisory capacity to the Secretary. As permitted by law, the Secretary also shall establish one or more telecommunications advisory committees composed of experts in the telecommunications area outside the Government.

SECTION 3

FUNCTIONS ASSIGNED TO THE OFFICE OF MANAGEMENT AND BUDGET

3-1. Telecommunications Procurement and Management.

3-101. The responsibility for serving as the President's principal adviser on procurement and management of Federal telecommunications systems and the responsibility for developing and establishing policies for procurement and management of such systems, which responsibilities were assigned to the

Director of the Office of Telecommunications Policy subject to the authority and control of the President by Section 2(b) of Executive Order No. 11556, were transferred to the President.

3-102. These functions are delegated to the Director of the Office of Management and Budget.

3-2. Radio Frequency Appeals.

3-201. The authority to make final disposition of appeals from frequency assignments by the Secretary of Commerce for radio stations belonging to and operated by the United States, which authority was vested in the President by Section 305(a) of the Communications Act of 1934 (47 U.S.C. 305(a)) and transferred to the Director of the Office of Telecommunications Policy by Reorganization Plan No. 1 of 1970 (5 U.S.C. App. II), was transferred to the President.

3-202. This function is delegated to the Director of the Office of Management and Budget.

SECTION 4

FUNCTIONS ASSIGNED TO THE NATIONAL SECURITY COUNCIL AND THE OFFICE OF SCIENCE AND TECHNOLOGY POLICY

4-1. Emergency Functions.

4-101. The war power functions of the President under Section 606 of the Communications Act of 1934, as amended (47 U.S.C. 606), which were delegated to the Director of the Office of Telecommunications Policy by the Provisions of Section 4 of Executive Order No. 10705, were transferred to the President.

4-102. The Director of the Office of Science and Technology Policy shall prepare to direct the exercise of these functions, and the National Security Council shall prepare to exercise appropriate policy direction, should the President so instruct. These instructions would be given in accordance with the National Emergencies Act (90 Stat. 1255, 50 U.S.C. 1601).

4-103. The Director of the Office of Science and Technology Policy shall prepare Presidential policy options with respect to the evaluation by appropriate means, including suitable tests, of the capability of existing and planned communications systems to meet national security and emergency preparedness requirements, and report the results and any recommended remedial actions to the President and the National Security Council.

4-2. National Communications System.

4-201. The responsibility for policy direction of the development and operation of a National Communications System, which was assigned to the Director of the Office of Telecommunications Policy by the Presidential Memorandum of August 21, 1963, as amended by Executive Order No. 11556, was transferred to the President.

4-202. The function is more particularly identified, and is delegated to the National Security Council, in the amendments made by Section 6-101 of this Order to the President's Memorandum of August 21, 1963.

4-3. Planning Functions.

4-301. The function of coordinating the development of policy, plans, programs, and standards for the mobilization and use of the Nation's telecommunications resources in any emergency, which function was assigned to the

THE PRESIDENT

Director of the Office of Telecommunications Policy subject to the authority and control of the President by Section 2(h) of the Executive Order No. 11556, was transferred to the President.

4-302. The National Security Council shall assist the President in the performance of this function.

SECTION 5**RELATED TELECOMMUNICATIONS FUNCTIONS***5-1. The Department of Commerce.*

5-101. The Secretary of Commerce shall continue to perform the following functions previously assigned by Section 13 of Executive Order No. 11556:

(a) Perform analysis, engineering, and administrative functions, including the maintenance of necessary files and data bases, as necessary in the performance of assigned responsibilities for the management of electromagnetic spectrum.

(b) Conduct research and analysis of electromagnetic propagation, radio systems characteristics, and operating techniques affecting the utilization of the electromagnetic spectrum in coordination with specialized, related research and analysis performed by other Federal agencies in their areas of responsibility;

(c) Conduct research and analysis in the general field of telecommunications sciences in support of assigned functions and in support of other Government agencies.

5-102. The Secretary of Commerce shall participate, as appropriate, in evaluating the capability of telecommunications resources, in recommending remedial actions, and in developing policy options.

5-2. Department of State.

5-201. With respect to telecommunications, the Secretary of State shall exercise primary authority for the conduct of foreign policy, including the determination of United States positions and the conduct of United States participation in negotiations with foreign governments and international bodies. In exercising this responsibility the Secretary of State shall coordinate with other agencies as appropriate, and, in particular, shall give full consideration to the Federal Communications Commission's regulatory and policy responsibility in this area.

5-202. The Secretary of State shall continue to perform the following functions previously assigned by Executive Order No. 11191, as amended:

(a) Exercise the supervision provided for in Section 201(a)(4) of the Communications Satellite Act of 1962, as amended (47 U.S.C. 721 (a)(4)); be responsible, although the Secretary of Commerce is the chief point of liaison, for instructing the Communications Satellite Corporation in its role as the designated United States representative to the International Telecommunications Satellite Organization; and direct the foreign relations of the United States with respect to actions under the Communications Satellite Act of 1962, as amended.

(b) Coordinate, in accordance with the applicable interagency agreements, the performance of these functions with the Secretary of Commerce, the Federal Communications Commission, other concerned Executive agencies, and the Communications Satellite Corporation (see 47 U.S.C. 731-735). The Corporation and other concerned Executive agencies shall provide the Secre-

tary of State with such assistance, documents, and other cooperation as will enable the Secretary to carry out these functions.

5-3. General Services Administration. The Administrator of General Services shall coordinate with the Secretary of Commerce, the Director of the Office of Science and Technology Policy, and the National Security Council the development of policies, plans, programs, and standards for the emergency use of telecommunications.

SECTION 6

GENERAL PROVISIONS

6-1. Transfer Provisions.

6-101. In order to reflect the transfer and assignment made by Section 5B of Reorganization Plan No. 1 of 1977 and Section 13 of this Order, the President's Memorandum of August 21, 1963, entitled "Establishment of the National Communications System" (28 FR 9413, 3 CFR 1959-1963 Compilation) as amended by Section 8 of Executive Order No. 11556, is further amended as follows:

(a) Delete the first paragraph after the heading "Executive Office Responsibilities" and substitute therefor:

"The National Security Council shall be responsible for Presidential policy options concerning the development and operation of the National Communications System (NCS) and shall:".

(b) Delete the last two paragraphs in that part of the memo headed "Executive Office Responsibilities" and substitute therefor:

"In performing these functions, the National Security Council will consult with the Secretary of Commerce, the Director of the Office of Management and Budget, the Director of the Office of Science and Technology Policy, and the Administrator of General Services, as appropriate; will establish arrangements for interagency consultation to ensure that the NSC will meet essential needs of all government agencies; and will be responsible for carrying on the work formerly done by the Subcommittee on Communications of the Executive Committee of the National Security Council. In addition to staff regularly assigned, the National Security Council and the Director of the Office of Science and Technology Policy may arrange for the detail or temporary assignment of communications and other specialists from any agency.

"The Director of the Office of Management and Budget, in consultation with the National Security Council, the Secretary of Commerce, the Administrator of General Services, and the Executive Agent of the NCS, will prescribe general guidelines and procedures for reviewing the financing of the NCS within the budgetary process and for preparation of budget estimates by participating agencies."

(c) In the paragraph after the heading "Agency Responsibilities", delete "Director of the Office of Telecommunications Policy" and substitute therefor "National Security Council."

6-102. The primary responsibility for performing all administrative support and service functions that are related to functions transferred from the Office of Telecommunications Policy and its Director to the President, including those functions delegated or assigned within the Executive Office of the President, are transferred to the Office of Administration. The Domestic

THE PRESIDENT

Policy Staff shall perform such functions related to the preparation of Presidential telecommunications policy options as the President may from time to time direct.

6-103. The records, property, personnel, and unexpended balances of appropriations, available or to be made available, which relate to the functions transferred, assigned, or delegated as provided in this Order are hereby transferred as appropriate.

6-104. The Director of the Office of Management and Budget shall make such determinations, issue such orders, and take all actions necessary or appropriate to effectuate the transfers or reassignments provided in this Order, including the transfer of funds, records, property, and personnel.

6-2. Amendments. In order to reflect the transfers provided by this Order, the following conforming amendments and revocations are ordered:

6-201. Section 306 of Executive Order No. 11051, as amended, is further amended to read:

"**Sec. 306. Emergency telecommunications.** The Administrator of General Services shall be responsible for coordinating with the National Security Council in planning for the mobilization of the Nation's telecommunications resources in time of national emergency.".

6-202. Executive Order No. 11490, as amended is further amended by:

(1) substituting "National Security Council" for "Office of Telecommunications Policy (35 FR 6421)" in Section 401(27), and

(2) substituting the number of this Order for "11556" and deleting references to Executive Order No. 10705 in Sections 1802 and 2002(3).

6-203. Executive Order No. 11725, as amended, is further amended by substituting the number and date of this Order for the reference to Executive Order No. 11556 of September 4, 1970 in Section 3(16).

6-204. Executive Orders No. 10705, as amended, No. 11191, as amended, and No. 11556, as amended, are revoked.

6-3. General.

6-301. All Executive agencies to which functions are assigned pursuant to this Order shall issue such rules and regulations as may be necessary to carry them out.

6-302. All Executive agencies are authorized and directed to cooperate with the departments and agencies to which functions are assigned pursuant to this Order and to furnish them such information, support and assistance, not inconsistent with law, as they may require in the performance of those functions.

6-303. (a) Nothing in this Order reassigns any function assigned any agency under the Federal Property and Administrative Services Act of 1949, as amended, nor does anything in this Order impair the existing authority of the Administrator of General Services to provide and operate telecommunications services and to prescribe policies and methods of procurement, or impair the policy and oversight roles of the Office of Management and Budget.

THE PRESIDENT

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(b) In carrying out the functions in this Order, the Secretary of Commerce shall coordinate activities as appropriate with the Federal Communications Commission and make appropriate recommendations to it as the regulator of the private sector. Nothing in this Order reassigns any function vested by law in the Federal Communications Commission.

6-304. This Order shall be effective March 26, 1978.

A handwritten signature in black ink, appearing to read "Jimmy Carter".

THE WHITE HOUSE,
March 27, 1978.

{FIR Doc. 78-8494 Filed 3-28-78; 1:12 pm}

Mr. VIZAS. My final question has to do with a problem and a criticism that the Department may encounter. You have shifted some responsibilities to the Economic Bureau; you have left some responsibilities where they are. Clearly, your concern and involvement raises the issues to a somewhat higher level than they have been before in the Department. But all of this is open to the criticism that you are just shuffling the chips, that things have not really changed.

What particular initiatives is your office going to take to insure that the responsibility that you claim lies in the State Department and the responsibilities and coordination that are going to be affected within the Department will occur? In other words—and I would appreciate it if you would be as specific as possible—what particular subject areas are you going to examine; what are your priorities in pursuing this, both in terms of process and in terms of substance; and what proportion of your resources are you going to devote to it—you and your immediate staff?

Mr. NIMETZ. That is a good question, but I think you will understand me if I do not give you a full answer because, in a sense, it is not totally a fair question.

Reorganization is always shuffling chips; it is not a policy decision; it is to see how things can be made more efficient given existing resources.

And, as I mentioned, since I think the locus of this now has moved from a scientific issue to an economic issue, we get a better result putting the locus of activity in an economic bureau.

In response to Mr. Butler, I gave some of my priorities, namely, finishing up the guidelines to get the privacy issue out of the way, to insure that economic protectionism does not enter this field, to look into the question of whether any further Government-industry coordination ought to be worked out in response to actions by the PTT's, and giving further attention to making sure that the dialog between the North and the South does not spill over in a way that is detrimental to our interests.

How much time I personally spend or others spend really depends on the pace of negotiations, depends on circumstances, and if you have a hearing 6 months from now I can give you a report, but I do not think I want to predict how much or how little, just to be fair to you; it depends on how these things go.

Frankly, I find that if things go very well, sometime it needs less time than when things go poorly. Therefore, I would be much happier—and I think you would get better results—if I spent less time than if I spent fulltime on these issues.

Mr. VIZAS. Thank you, Mr. Nimetz.

Thank you, Mr. Chairman.

Mr. PREYER. Mr. Morr?

Mr. MORR. Thank you, Mr. Chairman.

You mentioned in your statement two advisory committees that you have the advantage of obtaining assistance from. Could you give us some idea if there is any difference in terms of jurisdictional scope of those committees?

Mr. NIMETZ. There is the working group on data flows. That has been an industry-Government group that has focused primarily on the guidelines. My understanding is that, in that respect, it has

worked very well; we have gotten a lot of input from the private sector on the guidelines; it has helped to shape our negotiating positions.

It seems to me that with respect to that committee there is a need to expand it so that it gets away from focusing just on the guidelines, which has been the primary focus of attention in the last year or so, and into some of these broader issues. And, as I said, we scheduled a meeting for April in which we would discuss expanding the membership of the group and its functions.

The other group is the U.S. organization for the CCITT. That is a more established group and has a broader mandate on all computer issues relating to the telecommunications—beyond computer issues, just telecommunications issues, and has, I think, a private sector chairman. It meets frequently. Members of industry are members of our delegations to the CCITT. I gather that organization has worked rather well. It is not primarily a data-flow group; it is more a telecommunications group.

Mr. MORR. To what extent do the members of the advisory committees have an opportunity to give assistance in the development of the agenda?

Mr. NIMETZ. I gather the chairman, who is a private sector member, has the primary responsibility for the agenda; although I believe under the regulations relating to advisory groups, the Government has to have a role in that too.

Mr. MORR. Does that apply to both committees?

Mr. NIMETZ. I think so.

Mr. MORR. Let me just ask you one more question. You mention on page 6 of your statement that the Department would like to improve its communications with business. How do you plan to do that?

Mr. NIMETZ. As I mentioned, we have scheduled a meeting in April of the working group and will discuss expanding the membership of the group and discuss what issues it could best deal with now.

Second, I met with a group—and I would be willing to meet with any other groups—who feel that they have something to say and have not gotten a fair hearing anywhere else.

Third, having moved the responsibility to our Economic and Business Bureau which, by its nature, has longstanding ties with the business community, they will be actively pursuing this in the next few months.

Mr. MORR. Thank you.

Thank you, Mr. Chairman.

Mr. PREYER. Thank you, Mr. Nimetz, for your testimony. I do want to remind you that we will ask you to submit additional information for the record and would appreciate your response.

Mr. NIMETZ. Certainly.

Mr. PREYER. Without objection, it will be included in the record at this point.

[The material follows:]

UNDER SECRETARY OF STATE
FOR SECURITY ASSISTANCE, SCIENCE AND TECHNOLOGY
WASHINGTON

April 28, 1980

Dear Mr. Chairman:

In my letter of March 24 I agreed to provide information, for the record of your Subcommittee hearings, on the actions and views of other countries, and our interactions with these countries, on barriers to data flow across borders. I am pleased to provide this information at this time.

As has been indicated by the testimony before your Subcommittee, the incidence of actual problems brought to our attention is low; concern is mostly over the potential of existing and anticipated foreign legislation and policies to result in barriers. Accordingly, as was agreed between our respective staffs, the relevant information has been provided under functional, rather than country headings. We have added a simple matrix to aid in locating those countries most closely related to specific issues, but I should caution that this does not necessarily mean that the countries so identified have as yet taken any action which has caused problems for U.S. public or private entities.

I am taking this same occasion to provide information in response to certain questions which came up in connection with my testimony before the Subcommittee. I understand that further queries may be forthcoming, and I shall be pleased to respond to these as well.

Sincerely,



Matthew Nimetz

The Honorable
Richardson Preyer,
Chairman,
Government Information and
Individual Rights Subcommittee
of the Committee on
Government Operations,
House of Representatives.

I. Information on Barriers to International Data Flow**A. Barriers related to privacy considerations**

Since 1973, legislation at the national or federal level to protect personal data has been adopted in 10 countries. The laws are the following:

Austria: Federal Act on the Protection of Personal Data (October 1978)

Canada: Human Rights Act (June 1977)

Denmark: Public Authorities' Registers Act (June 1978)
Private Register Act (June 1978)

Federal Republic of Germany: Federal Data Protection Act (January 1977)

France: Act on Data Processing, Data Files and Individual Liberties (January 1978)

Luxembourg: Law Governing the Use of Name-Linked Data in Data Registers (March 1979)

New Zealand: Wanaganui Computer Centre Act (September 1976, amended December 1977)

Norway: Act Relating to Personal Data Registers (June 1978)

Sweden: Data Act (May 1973, amended January 1977)

United States: Privacy Act (1974)
Fair Credit Reporting Act (1970)
Family Educational Rights and Privacy Act (1974)

In addition, another 10 countries have indicated intention to enact privacy or data legislation -- Australia, Belgium, Finland, Iceland, Italy, The Netherlands, Portugal, Spain, Switzerland and the United Kingdom.

Fears have been expressed that the European legislation may be implemented in ways that create barriers to international data flows. The main provisions of the seven European data protection laws are set forth below:

Sweden: The Swedish Act, which was enacted in 1973, has set a model, the basic philosophy of which has been followed by the other European countries which have enacted data protection legislation. The Swedish Act controls automatic processing of personal data in both the public and the private sectors, and establishes a governmental regulatory authority -- the Swedish Data Inspection Board -- to implement and interpret

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the data act. The Swedish Act places no controls or protections on manual files of personal information. The Act grants an individual access to his data, the right to correct incorrect data, and the right to seek compensation if he is damaged because a personal data system contains incorrect data. The four facets of the law -- a statement of privacy principles, application of the law only to automatically processed data, application in an omnibus fashion to both the public and private sector, and establishment of a governmental regulatory authority -- are common to almost all European data protection legislation.

The Swedish Act, in addition, requires permission from the Data Inspection Board before any entity can start or operate a personal data system, and requires a license from the Board before personal information in a data processing system can be transferred abroad.

Federal Republic of Germany (January 1977): The German Federal Data Protection Act covers both the public and the private sectors. Since Germany is a federation, the coverage of the law in the public sector extends only to federal files. The Lander will have to pass their own laws to cover their public sector files. The German law, unlike the other European laws, covers manual and automated record systems, although non-automated processing of an internal nature is subject only to requirements of "data security".

In the private sector, every private entity that conducts data processing on personal data must appoint a data protection officer when at least five persons are employed in data processing or when the entity employs at least 20 people in non-automated systems which involve automated punch card systems. The German law provides for a Federal Data Commissioner who will maintain a register of automated data banks in the Federal sector. The German law does not place registration or licensing requirements on transfer of private sector data abroad for processing.

France (January 1978): The French law mandates protection for personal information in data processing systems in the public and private sectors. The law establishes the National Data Processing and Liberties Commission to implement the law. The law requires licensing of any entity carrying out the automatic processing of personal data. Applications for a license must indicate whether the processing is intended for the dispatch of personal data between France and another country. Section 24 of the law provides authority for control or prior authorization of automated data being transmitted from France to another country. Certain provisions of the French law, most notably those related to the collection, storage, and dissemination of sensitive data (racial origins, political, philosophical or religious opinions or union membership) also apply to manual files.

Norway (June 1978): The Norwegian law covers personal data registers in the public and private sectors. In the private sector, it covers only information which is in automated data processing systems; in the public sector it also covers certain information which is not stored or

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processed by means of electronic aids. The act establishes a Data Surveillance Service, which has the power to grant a "concession," which is required for the establishment of personal data registers which "are to utilize electronic aids." Paragraph 36 of the Act provides that personal data systems for which concessions are required must not be transferred outside Norway without the permission of the King, with any exceptions being established by regulation. The term "personal information" is defined as "information and assessments which are, directly or indirectly, traceable to identifiable individuals, associations or foundations". This act, therefore extends privacy protections to "legal persons".

Denmark (June 1978): Denmark has two laws -- one covering the public sector and one covering the private sector.

Public Authorities' Registers Act (1978): The Act applies to electronic data processing registers that are operated by governmental authorities and that contain personal data. "Personal data" is defined as data referable to any "identifiable individual". The Data Surveillance Authority established in the Private Registers' Act exercises surveillance over all public registers.

Private Registers Act (1978): This Act applies to data in systems where electronic data processing is used and applies to private or financial data on "any individual, institution, association or business enterprise". All automated data systems must be registered and licensed and a license must be obtained from the Data Surveillance Authority to transfer data outside Denmark. In order to receive a license, the DSA must be satisfied that transmitting the data to a third party outside Denmark will not cause material weakening of the protections the data enjoys in Denmark.

Austria (October 1978): The Austrian law covers automatically processed data in both the public and private sectors. The "persons" affected are natural and legal persons and associations of persons under commercial law. Entities wishing to carry out data processing must apply for registration in the Data Processing Register. Part 4 of the Act, entitled "International Data Transmission" sets forth the conditions under which data will be permitted to be sent out of Austria for processing. Any foreign processing requires the approval of the Data Protection Commission, one of two regulatory bodies set up in the Act.

The Austrians are currently in the process of implementing this law with appropriate regulations, ordinances and standards. January, 1982 is their target date for full enforcement of all aspects of the law.

Luxembourg (March 1979): We do not yet have an authoritative English translation of this Act. We have been informed, however, that the law covers automatically processed data in the public and private sectors and establishes a data protection board to implement its provisions. The law also provides for protections for "legal persons".

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We have no evidence at this time to indicate that any of the European data protection laws have been invoked to restrict data flows. We are alert to this possibility, however, and will continue to monitor the implementation of the laws, particularly those which levy licensing requirements for international transmission.

We hope that adoption of the OECD Guidelines on personal data flows, and U.S. adherence to the Guidelines through passage of the legislation currently pending before Congress and through adoption by the private sector of appropriate codes of conduct, will convince European data protection authorities that adequate protection for personal data exists in the United States. If the United States is perceived to be in compliance with the Guidelines we would hope that no data protection authority would invoke privacy considerations to create barriers to data flow to the United States.

B. Barriers related to tariff charging principles

The only issue in this field which has been brought to the attention of the Department was a 1977 proposal to the ITU's International Telegraph and Telephone Consultative Committee (CCITT) to study the advisability of abolishing flat-rate leases of circuits for data transmission and to substitute volume-sensitive rates. This would have the effect of eroding the competitive advantages which accrue to US data processors as a result of their high volume of traffic. The proposal was made by the Italian Telecommunications Administration but received the general support of the members of the European Conference of Postal and Telecommunications Administrations (CEPT).

Following the submission of this proposal, the Department collaborated closely with representatives of the industry and with the Federal Communications Commission to develop our CCITT position and to gain the support of other countries. We have successfully forestalled the adoption of any recommendations which would preclude either the provision of dedicated facilities for data networks or flat-rate pricing. This is important inasmuch as CCITT recommendations are given very considerable weight by individual governments when establishing standards applicable to their telecommunications services. We believe we can continue to argue successfully that it is to our mutual interest to provide business services on an attractive basis.

By way of background, the Department is responsible for the management of a public advisory committee which advises the Department on positions to be taken at CCITT meetings. The Committee has met frequently; has proffered sound advice; and we have accredited delegations drawn substantially from the Committee's membership of carriers and users. The Federal Communications Commission, which has regulatory authority in this area, normally leads delegations considering these questions.

C. Barriers related to technical standards.

Up to the present, technical standards of two types have affected US data firms. The first type, restrictions on services, is best exemplified by the Japanese KDD's restrictions on the Control Data Corporation's switching of data. This is discussed at greater length elsewhere.

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The second type concerns the protocols established by various administrations which cover the bit sequence of the introductory portion of digital messages. This is technically important because the introduction permits a computer to "recognize" a given terminal and vice versa. We are informed by some US firms that the choice of sequences for some countries impairs the efficiency of their equipment.

We plan to discuss the protocols at greater length with the data industry to determine their economic effects and to determine whether they contain an element of discrimination against US equipment. We will also discuss the question of whether these are better addressed bilaterally or within the ITU framework.

D. Barriers related to North-South issues

Information flow has been treated by Third World countries as an essential element in the creation of a New International Economic Order. Their fears about imbalance and one-sidedness reflect not only their concern over "cultural imperialism" but also the recognition that information has economic value, and that the ability to store and process certain types of data may well give one country political and technological advantages over others. In respect to this issue, it is becoming increasingly difficult to draw a clear distinction between data flows and information flow as, through digitalization, it is becoming possible to transmit mass media material via computers and the other technology normally associated with data transmission.

Although there have been no cases brought to the Department's attention of specific barriers to data flow, other than an instance in which Brazil denied a U.S. company's proposal to use a satellite data link to govern production control in a Brazilian manufacturing subsidiary from its U.S. headquarters, and insisted instead that an on-site minicomputer be installed, impediments are anticipated as more of the Third World countries establish national information policies and pass legislation concerning these matters. Their concerns will be the same as those already well articulated in many of the OECD countries - individual privacy; possible economic loss, or technological imbalance or unemployment when data are stored or processed abroad, or when vital economic information is exported; and societal vulnerability as important records are processed and maintained abroad. Additionally, it can be anticipated that there will be an even greater concern over possible loss of cultural identity and social sovereignty, as the dividing line between data and information becomes more diffuse.

Third World interests in this area have been shown most clearly in the resolutions of the Intergovernmental Bureau for Informatics (IBI), an organization of 28 Member states, mostly

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developing countries. The Third Conference of Latin America Informatics Authorities, meeting in October, 1979 under the aegis of the IBI, passed the following recommendation on Transborder Data Flows which can be taken as indicative of current thinking. It can be anticipated that the IBI World Conference of Transborder Data Flow Policies, scheduled for June, 1980 in Rome, will stimulate further national and regional actions.

"Recommendation No. 12

CONSIDERING THAT the technological progress made by Informatics in recent years in particular, and its convergence with telecommunications, both earth-based and satellite-based, has led to a new phenomenon whereby data may be captured, transmitted, processed and stored across national borders, it is vitally important to study this matter since it can affect national security and sovereignty and the rights of the people;

CONSIDERING it is recognized that data is a resource with a real value, it is evident that transborder data flows are necessary in a world which is growing increasingly interdependent, and hence these data transfers increasingly involve national and international political, economic, social, cultural and legal interests;

TAKING INTO ACCOUNT THAT international data transmission networks comprise a number of functions for the handling of data, communications circuits and facilities to meet the particular requirements of given data teleprocessing applications of one or more users;

CONSIDERING THAT the use of such networks introduces questions such as the following:

- reliability: meaning a low degree of probability that technical faults may occur in the network;
- capacity to provide responses: relating to the short time-lag between the moment in which the user requests information and the moment in which it is provided;
- traffic capacity: the volume and traffic of data which the network is capable of carrying;
- cost: the utilization of the network which should be less distant from and preferably independent of the distances separating the look-up terminals and the source of information;

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SINCE THERE EXISTS a classification of data into national and international data;

CONSIDERING THAT by their very nature data may be personal, on organizations or special and can be collected in data bases, data banks and data libraries;

AND THAT IT IS NECESSARY to recognize the notion of privacy of personal data as a human right, to prevent personal data from being compiled, stored and/or processed without soundly-motivated official authority;

RECOGNIZING that the individual has the right to demand that errors in his personal data be corrected;

THAT the notion of confidentiality must also be recognized as being closely linked to the privacy of personal data, thereby limiting the dissemination of such data to certain fixed conditions and circumstances;

THAT these notions and the statutory provisions enacted by governments owning national networks should be extended to apply to other international data transmission networks, to ensure that the flow of data across national borders should not affect national security and sovereignty nor the rights of the people;

THAT this question has been studied by various international organizations which see the main questions governing transborder data flows to be the following:

- that automated data stores containing special data and information remain in the country of origin;
- that data affecting national sovereignty, cultural identity and technological progress must be protected against processing in foreign countries;
- that national and international authorities and procedures be set up to regulate transborder data flows;
- that legal provisions be enacted to guarantee individuals' right of access to personal data, so that they may examine the contents and where necessary correct them;

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THAT, now that national borders and geographical limits, as traditional protective barriers, have lost this characteristic in view of the imbalance in international data flows, many countries are endeavouring to restore their security by enacting national data protection laws;

THAT, in the international order, legal measures should be taken to restore the balance that has been lost and to avoid the bottlenecks caused by the flow and concentration of data in international networks;

CONVINCED THAT it is necessary that each country analyze its possibilities and requirements to use transborder data transfer technologies, and to evaluate the alternatives to such technologies according to their own resources and needs;

THAT so far no internationally binding legal provisions have been enacted for the specific purpose of regulating transborder data transfer, even though there are international regulations in specific fields which affect this flow and national legislation that has to be rendered compatible;

AND THAT it is advisable to maintain a certain degree of voluntary interdependence between countries in order to avoid technological dependence, which presupposes uniformity between the facilities for transferring and processing data.

THE THIRD CONFERENCE OF LATIN-AMERICAN INFORMATICS AUTHORITIES HEREBY RESOLVES:

- 1 TO INVITE THE GOVERNMENTS OF THE LATIN-AMERICAN COMMUNITY TO EXPRESS THEIR POINTS OF VIEW IN ORDER TO TAKE A SINGLE REGIONAL APPROACH TO THE TRANSFER OF DATA ACROSS NATIONAL BORDERS AT THE IBI WORLD CONFERENCE ON TRANSBORDER DATA FLOW POLICIES;
- 2 TO SET UP A WORKING GROUP TO MEET IN THE FIRST QUARTER OF 1980 COMPRISING NOT MORE THAN 7 MEMBERS ELECTED FROM THE PARTICIPANTS AT THIS CONFERENCE AND OTHER LATIN-AMERICAN MEMBER COUNTRIES OF IBI. THIS WORKING GROUP SHALL SUBMIT ITS REPORT WITHIN ONE MONTH OF SITTING;
- 3 TO REQUEST IBI TO PROVIDE TECHNICAL AND FINANCIAL SUPPORT TO ENSURE THE SUCCESSFUL OUTCOME OF THE WORKING GROUP.

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II. Treaty Obligations As They Relate to Data Flow Barriers

The term "transborder data flows" refers generally to the transmission of data from computer to computer, using telecommunications circuits across national borders. Just as transborder data flows can have many different forms, regulation or restriction of these flows can be adopted for a variety of reasons and directed at a number of social, economic and security objectives. Such restrictions, as Mr. Nimetz pointed out in his March 27 testimony, may affect the U.S. business community in many ways. They may, for example, affect the ability of U.S. companies to export their goods or the ability of transnational firms to obtain the information they need from their foreign operations. They might also affect the ability of U.S. data firms to do business in foreign countries.

The United States is not a party to either a bilateral or multilateral treaty dealing specifically with transborder data flows or with any specific kind of flows, such as flows of personal data. There are, however, several international agreements, discussed below, which might be relevant to certain types of transborder data flows and barriers. Obviously, given the wide range of variables in this area, application of such treaties can only be considered in a very general way. Specific judgments would, of course, depend on an analysis of the particular type of data flow in question, the nature of the restriction and its effect on the U.S. companies in light of the particular agreement or agreements in question.

The General Agreement on Tariffs and Trade (GATT)

The General Agreement on Tariffs and Trade deals with both tariff and non-tariff barriers to trade. It is, however, an instrument primarily concerned with products, and, in practice, transborder data flows and similar services have not been included within its protections. It is possible that certain barriers to transborder data flows might impair the ability of U.S. companies to export their products in which case the GATT and possibly one or more of the recently concluded agreements on non-tariff barriers to trade may be applicable. If, for example, technical standards adversely affecting the importation of computers were promulgated by a party to the agreement on Technical Barriers to Trade, the United States could seek relief under the provisions of that code. The agreement on Government Procurement may also apply to the extent that data flow services are incidental to procurement of products which are covered by the code. It might be useful in certain borderline situations to at least raise these issues for consultation within the GATT.

Treaties of Friendship, Commerce and Navigation (FCN)

The United States has bilateral FCN treaties with many countries. The FCN is designed to establish an agreed

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framework within which mutually beneficial economic relations can take place. The FCNs contain general provisions on "equitable treatment" for "persons, property, enterprises and other interests of nationals and companies of the other party" and prohibiting the application of "unreasonable or discriminatory measures" that would "impair legally acquired rights or interests within its territories of nationals and companies of the other party in the enterprises which they have established, in their capital, or in ... technology which they have supplied." A central provision of most FCNs relates to the establishment and operation of companies. Typically, the treaties apply a standard of "most-favored-nation" or "national treatment", whichever is better, with respect to the right of nationals and companies of either party to "establish, acquire interests in, or operate enterprises in the territory of the other party".

It is possible that one or more of these provisions might be argued to apply to imposition of a given barrier to transborder data flows. It should be noted, however, that most FCNs contain a general exception for essential security interests, and also a specific exception reserving the right of the Parties to limit the extent to which aliens may establish, acquire interests in, or carry on enterprises engaged within their territories in certain traditionally sensitive sectors, including "communications". These exceptions, where applicable, would limit the U.S. ability to invoke FCNs in transborder data flow cases.

Telecommunication Convention and Final Protocol
(Malaga-Torremolinos, 1973)

The Telecommunication Convention contains general provisions intended to safeguard the interests of parties in the fair and efficient utilization of international telecommunication facilities. Article 18, for example, provides that "the services, the charges and the safeguards [for the public's use of the international service of public correspondence] shall be the same for all users in each category of correspondence without any priority or preference".

In addition, the Telecommunication Convention also provides for the International Consultative Committees, whose advice and recommendations on a broad range of technical issues receive broad international acceptance. As noted in Under Secretary Nimetz' recent testimony, the United States, through close collaboration between the Government and the private sector, has traditionally played a lead role in the development of these recommendations, including the Telephone and Telegraph Consultative Committee's (CCITT) recent consideration of replacing flat rates for leased circuits with volume sensitive rates.

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Depending upon the circumstances and the country involved, other international agreements and certain international codes and understandings of a non-binding nature,* might relate to some aspects of restrictions on transborder data flows. The Department will be working closely with affected U.S. companies to assess developments in this area and to determine on a case-by-case basis the legal considerations relating to data flow barriers.

* e.g., the proposed OECD Guidelines on Transborder Data Flows of Personal Data

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III. Department's Response in Connection with Specific Complaints

A. Control Data Corporation

In his testimony, before your subcommittee on March 10, Mr. Philip Onstad outlined the problems encountered by Control Data as a result of restrictions imposed by the Japanese foreign telecommunications carrier, KDD, on the switching of data transmitted over its facilities. To protect their revenues, most PTTs prohibit message switching abroad. Where the KDD appears to differ from normal practice is in insisting that data switching, which consists of the transmission of unprocessed or partially processed data for further processing, constitutes message switching. U.S. regulations permit the transmission of unprocessed data when it is integral to the provision of data services. The applicable CCITT recommendations also permit such transmission.

The effect of the KDD restrictions was to limit severely the range of services which Control Data could offer to the Japanese market.

The Department assisted the Commerce Department in developing a case to take before the US-Japan Trade Facilitation Committee (TFC), an instrumentality established to resolve trade relations concerns. Although the case was taken up by the TFC and was the subject of repeated discussions between our Embassy in Tokyo and the Japanese Ministry of Posts and Telecommunications, the Japanese have clung to their interpretation of message switching.

The outcome, as Mr. Onstad explained, has been Control Data's corporate decision to establish processing facilities in Japan, a development which will decrease US exports of data services to Japan.

Although Control Data has decided to locate equipment in Japan, the Department is not prepared to let the matter drop since other US firms are actually and potentially affected by these restrictions.

The Department will continue to consult with the industry to determine the most useful way to negotiate with the Japanese.

B. GTE - Telenet

Telenet, which has been classed as an international carrier by the FCC, has been unsuccessful in negotiating operating agreements with foreign telecommunications administrations, particularly with the U.K., France and Germany. The latter have explained to us that they believe data services and networks are sufficient to provide data services and that existing correspondence relationships are broad enough to allow provision of any services for which there is a demonstrated market.

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In his testimony of March 10 (p. 6) Mr. Philip Walker, Vice President and General Counsel for Telenet, suggested that the Department negotiate a series of policy agreements with foreign governments entailing a reciprocal commitment to recognize and deal on a non-discriminatory basis with the carriers authorized by the other government.

The Department, of course, favors non-discrimination in the treatment of US carriers and will explore ways to support this preference. In testimony before the House Subcommittee on Communications, concerning H.R. 3333, the Department went on record as favoring the establishment of an Executive Branch/International Carriers Task Force for international facilities planning with foreign governments. Such a task force, we believe, would attenuate the threat of whipsawing in the negotiation of operating agreements between US private carriers and foreign administrations. In subsequent rewrites of the communication bill, the international portion has been deleted. We believe this concept is worth resurrecting.

In the meantime, the Department has begun discussions with representatives of Telenet and will explore with them ways in which we might be of assistance.

C. Tymshare

In June 1977 Tymshare, through its Japanese affiliate, filed an application for a remote data processing service with the Japanese international telecommunications carrier, Kokusai Denshin Denwa (KDD). In September of 1977, our Embassy officials met with representatives of the Ministry of Posts and Telecommunications (MPT) seeking information on the status of Tymshare's application and requesting approval as quickly as possible. Also in September of that year a KDD team inspected Tymshare's Cupertino, California computer facility. Tymshare had invited the inspection team in order to allay Japanese suspicions that messages from Japan could be switched from the Cupertino facility on to Tymnet, Tymshare's U.S. network, in violation of Japanese law. During the inspection, the KDD team discovered a "mail drop" operation which would permit such message switching. This discovery resulted in KDD halting the normal processing of the application. We were informed by Tymshare in early October 1977 that this problem had been corrected. On November 3, 1977, we were further informed that normal processing of the application had resumed.

In mid-November, 1977, the Embassy again discussed this case with the MPT. At that time, KDD had not yet completed its review but had been requested by the MPT to expedite the handling of the application. A similar request had also been made of Nippon Telegraph and Telephone (NTT), the Japanese domestic telephone company, which must also approve the application.

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On March 17, 1978, the MPT announced that it had given final policy level approval for Tymshare to begin its services. The Japanese Government's action capped a 21-month effort by the U.S. Government and our Embassy at Tokyo to assist Tymshare to enter the Japanese computer time-sharing market. During this period, the U.S. Embassy made several demarches on various levels of the Japanese Government. The Embassy's reporting was extensive and coverage of the Japanese press, which adopted an extremely protectionist tone, indicated the domestic pressures operating as the MPT.

Although Tymshare became operational in Japan in April, 1978 it operates in what it characterizes as a very limited way due to regulations applied to its use of the transpacific telephone line by Japan. Japanese restrictions on Tymshare's services are similar to those obtaining for Control Data, although Tymshare had informed the Department that it intended to conduct all processing operations at only its Cupertino, California installation. These restrictions were the subject of further U.S.-Japanese discussions but the problem is not yet resolved.

In April, 1978, Tymshare wrote to the Department to express thanks for its assistance, as well as that of Commerce, STR, and FCC. It concluded, however, that the USG was ineffective inasmuch as it had required sixteen months to obtain authority to transmit. Tymshare has not been in touch with the Department since then.

D. Continental Illinois Bank

The testimony of Continental Illinois Bank referred to a letter to the Department of State setting forth certain problems it faced in an unnamed European country. During the testimony the European country was identified as the Federal Republic of Germany, and it was stated that the problems stemmed from a new German telecommunications act.

We have been able to locate only one letter from Continental Illinois Bank to the Department. The letter is dated May 4, 1978, and was sent to us in response to a letter of March 1978 to the Bank asking for its opinion about the meaning for its operations of controls on data flows, particularly the passage or imminent passage of privacy protection legislation.

The Bank's response cited an example where it was required to duplicate facilities which already existed in the U.S. in order to fully automate its operations to centralize financial data and branch bookkeeping processing

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in the U.S. The Bank's letter stated that the additional costs incurred did not alter the Bank's plans or its ability to transmit data out of the country. The Bank's letter did not reference the particular law or regulation which mandated the duplication of facilities, nor did it name the country where the problem occurred. The letter did not ask for U.S. Government assistance.

The Department responded to the Bank by letter of June 6, 1978, requesting any further thoughts or analysis of problems that the Bank might care to provide. We received no further correspondence from the Bank.

After learning, during the hearings, that the Bank was referring to an alleged FRG telecommunications act, we asked our Embassy in Bonn to report on any German laws which created hindrances to data flows. Our Embassy has reported that Germany has not enacted legislation in this field. Instead, the FRG Ministry of Posts and Telecommunications (BPM), acting under authority of a 1953 law, issued new regulations on December 27, 1978, regarding the transmission of data. These regulations were revised on April 2, 1979, and are still being amended in light of discussions the Ministry has had with firms that will be affected by them. Our Embassy reported that one U.S. time-sharing subsidiary has advised the Embassy of its discussions with the Ministry. To our knowledge, Continental Illinois Bank has never discussed its problem with the Embassy, or with anyone in the Department.

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IV. Background on US Decision Not to Support a Binding International Treaty on Personal Data Flows

State Department actions to consult and coordinate with federal agencies involved in communications and information policy issues date back several years. In late 1976 activities and decision in a major Committee of the OECD, the Committee for Science and Technology Policy (CSTP) indicated an elevation in importance of issues in communications policy within the OECD. One of the issues being raised in the OECD was transborder data flow. At that time the Council of Europe had already approved resolutions calling for harmonization of national legislation on transborder data flows and was considering a draft convention. The idea of an OECD convention was also being voiced by some.

In December 1976 a Deputy Assistant Secretary in the Department's Bureau of Oceans and International Environmental and Scientific Affairs sent out letters to federal agencies involved in communications policy issues informing them that the Department was creating an ad hoc task force to consider the issues that were emerging and to develop US policies and positions.

One of the first priorities for the task force was consideration of US positions to be taken at a major OECD Symposium scheduled for September 1977 in Vienna. The Symposium was devoted entirely to transborder data flow issues, and one of the issues was whether the OECD should follow the path of the Council of Europe and develop a binding convention.

The United States sent a large delegation to the Symposium, including representatives from both the public and private sectors. Members of Congress were invited to be part of the delegation. It was the consensus of the ad hoc task force and the U.S. Delegation to the Symposium that the time was not ripe for a binding convention. Both groups felt that more study was needed of the issues and that the U.S. should support further study rather than negotiation of a binding convention. At the end of the Symposium there was a short meeting of the OECD's Data Bank Panel, a subsidiary of the Working Group on Information, Computer and Communication Policy (ICCP), which is in turn under the aegis of the CSTP, to consider the results of the Symposium and to frame proposals for consideration by higher OECD bodies - the ICCP and the CSTP - for future work on transborder data flow issues. The U.S. Delegates to the Data Bank Panel meeting, following the wishes of the ad hoc task force and the U.S. Delegation to the Symposium, put forth several proposals for consideration by the ICCP and the CSTP consistent with the desires of both groups to see further study of the issues before commitment to a bonding convention.

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The proposals decided upon by the Data Bank Panel were the following:

- (a) to dissolve the Data Bank Panel and constitute a new and broader group to consider the legal, economic, and social issues in data processing;
- (b) to give first priority to finding suitable arrangements for harmonizing conflicting national privacy legislation; and
- (c) to consider in the next year the formulation of international guidelines for harmonization of national privacy legislation.

In the months before the Vienna Symposium, the ad hoc task force prepared an issues paper on transborder data flow for the Secretary of State. The paper recommended that the ad hoc group be formally established with explicit responsibilities. The issues paper also presented options for approaching the OECD and the Council of Europe. The paper reflected the view of the task force that further investigation of the issues was desirable before negotiation of a binding international agreement could be entertained by the United States.

The Secretary concurred in the recommendation of creation of a formal task force and proposed it to the National Security Council. The Inter-Agency Task Force was formally created by directive of the NSC on September 13, 1977. The NSC directed that the task force be chaired by the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs.

Also in the months before the Symposium, the Department moved to include transborder data flow issues within the purview of the then-named Advisory Committee on Transnational Enterprises to assure consultation with and advice from the private sector. A Working Group on Transborder Data Flows was established within the Advisory Committee. Immediately after the Symposium the Advisory Committee was briefed on the Symposium and was informed of the recommendations for future action made by the Data Bank Panel. The Advisory Committee was supportive of the US positions taken at the Symposium and the recommendations of the Data Bank Panel.

The Inter-Agency Task Force also met shortly after the Symposium. On November 16, 1977, the task force agreed to support in the OECD, as a first priority, efforts to develop suitable arrangements for harmonizing national legislation and consideration of the formulation of guidelines for harmonization. This position was followed by U.S. delegates to a December 1977 meeting of the ICCP.

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The ICCP agreed to the creation of a new group to replace the Data Bank Panel, and agreed that Guidelines should be developed. At a meeting of the CSTP in February 1978 the United States again supported the recommendations of the Data Bank Panel, and the CSTP thereupon established the Experts Group on Transborder Data Barriers and the Protection of Privacy and gave it its two-part mandate:

- "(i) develop guidelines on basic rules governing the transborder flow and the protection of personal data and privacy, in order to facilitate a harmonization of national legislations, without this precluding at a later date the establishment of an international Convention;
- (ii) investigate the legal and economic problems relating to the transborder flow of non-personal data, in order to provide a basis for the development of guidelines in this area which should take into account the principle of free flow of information."

SUPPLEMENTARY INFORMATION ON
TRANS BORDER DATA FLOW PROBLEMS

submitted to

**House Committee on Government Operations,
Subcommittee on Government Information and
Individual Rights**

**U.S. Department of State
June 13, 1980**

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A. INTERAGENCY TASK FORCE ON INFORMATION,
COMPUTERS, & COMMUNICATIONS POLICY

The Interagency Task Force was called into being on December 6, 1976, by the Deputy Assistant Secretary for Advanced and Applied Technology Affairs, OES. In addition to OES, eleven representatives from the National Science Foundation, Office of Telecommunications Policy, National Bureau of Standards (Commerce), Office of Telecommunications (Commerce), Office of Science and Technology Policy, and Department of State (Bureau of European Affairs and Office of Legal Advisor) participated.

The purpose for establishing the Task Force, as explained by the Chairman, we to provide guidance on US participation in the new OECD structures - i.e., the Working Party on Information, Computers and Communications Policy (ICCP).

It was agreed that:

- the Task Force would meet approximately monthly, at the Executive level when necessary and at staff level where practicable;
- records of decision would be in the form of letters from the Chairman following each meeting;
- OMB and the FCC should be added to the Task Force, and other agencies should participate when specific issues arise that were germane to them;
- question of Congressional staff and private sector participation would be held in abeyance;
- the U.S. representative to the new OECD working party should come from an agency with active involvement in the ICCP field.
- with respect to the Transborder Data Flow (TBDF) issues, the question of markets was emerging as the more critical issue rather than privacy.

The second meeting, held on January 12, 1977, included 16 participants, with new representation from OMB and FCC. Discussions focussed primarily on ICCP representation, the need for channels to U.S. private sector views, and refinement of the key question to, "what diplomatic action should the U.S. take in response to the issue posed by (1) the growing legislative restraints in Europe on the international flow of electronic data and (2) the decision of the Council of Europe to formulate an international convention governing privacy in transborder data flows". Plans were laid to complete preparatory work on (a) issue-definition and fact-finding; (b) option available to the U.S.; (c) presentation of an issues and options memorandum to higher authorities for decision.

The Task Force held nine meetings in 1977. It produced an Issues paper which provided preliminary analysis of the question surrounding

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privacy protection in international data processions. Other activities dealt largely with various elements of the inauguration and program of the OECD/ICCP Working Party, and the planned Vienna Symposium on TBDF. At its March meeting participation was expanded to include representation from the Department's Office of International Communications Policy and Congressional staff.

In May the Task Force agreed to approach the Department's existing Advisory Committee on Transnational Enterprises with the suggestion that it include TBDF in its consideration, through establishment of a special working group on this subject. Such a group was established and held its first meeting on January 18, 1978.

In September the National Security Council acted upon a recommendation from the Department, based upon the above-noted Issues paper, and formally constituted the Inter-agency Task Force with assigned responsibility for reviewing issues and developing option for U.S. Government positions on privacy protection in international data processing. The first meeting on the formalized Task Force was held under the Chairmanship of the Assistant Secretary, CES, on October 26, 1977.

In 1978 the Task Force met nine times. It contributed to the White House review of Privacy Policy, by taking responsibility for the "International Information Issues" area, and also served as a coordinating body for contribution to the Presidential Review Memorandum on International Communication Issues.

The Task Force met at least eight times in 1979, in addition to several ad hoc drafting sessions. Major activities included follow-up on issues raised in the PRM, continuing guidance to U.S. representation in OECD Guidelines preparations and the High-Level Conference scheduled by the ICCP Working Group. The Task Force considered the policy issues included in the report to the Congress on International Communications Policy (submitted in response to Section 601 of P.L. 95-426) and outlined the definitive report it hoped to make in response to this requirement. Agency responsibilities were assigned a questionnaire which was circulated to the private sector entities, and a timetable established. However, several agencies later advised that insufficient information existed to accomplish the necessary research and analysis: the few private sector responses did not provide adequate relevant information; and the urgency of the Guidelines issue pre-empted further efforts in this regard.

In 1980, the Task Force has met formally on January 18, February 5, March 19, April 15 and May 1. OES passed the chairmanship to EB after the March meeting. Agenda topics have included ICCP working Party program, preparation for the rescheduled ICCP High-Level Conference and consideration of USG observers at the June Intergovernmental Bureau for Informatics (IBI) meeting on TBDF.

The Task Force has been variously chaired at the Assistant Secretary, Deputy Assistant Secretary, Office Director, Deputy Office Director level, depending on the agenda and timing. Membership as directed by the National Security Council included State, Commerce, OMB, OSTP, NSF, FCC, NSC. Additionally, representatives of DOD, Justice, FRB, DOE, GSA and Labor have participated. Attendance over the last three and one half years has numbered between 15 and 20 people, with considerable continuity of representation.

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B. STATE DEPARTMENT ADVISORY COMMITTEE ON INTERNATIONAL INVESTMENT,
TECHNOLOGY AND DEVELOPMENT -- ADVISORY GROUP ON INTERNATIONAL DATA
FLOWS.

The Advisory Group was formed in January, 1978 as a sub-committee of the Advisory Committee on Transnational Enterprises. It has met nine times. Summary minutes for seven meetings are attached.

Agendas for meetings of the Department's Advisory Committee on Transborder Data Flow are set by Mr. Richard Kauzlarich, Executive Secretary of the Committee, working with the responsible officer in the Bureau of Economic and Business Affairs and the Office of the Legal Adviser, the Bureau of Oceans and International Environmental and Scientific Affairs and others, in consultation with Mr. Hugh Donaghue, Chairman of the committee. The issues selected for the agendas generally are those on which the U.S. government seeks the views of the private sector in order to prepare for upcoming negotiations or discussions in international fora. Anyone who wishes an issue to appear on the agenda for a Committee meeting may contact Mr. Kauzlarich or Mr. Donaghue at any time. In addition, there is time set aside at every committee meeting for other business during which anyone present at the meeting may raise any issue for discussion. All Advisory Committee meetings are publicly announced in the Federal Register and are open to all interested persons. We believe that the Committee meetings together with opportunities to approach the Department directly, give the private sector ample chance to have its views taken into account as policy positions are formulated by the U.S. Government.

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C. U.S. PRESENTATION OF BACKGROUND OR POSITION PAPERS ON INTERNATIONAL DATA FLOW PROBLEMS AT INTERNATIONAL CONFERENCES IN THE REMAINDER OF 1982.

The U.S. plans to submit two "national papers" as background for the OECD High Level Conference on ICCP Issues scheduled for October, 1980. One will deal with the Foundation of U.S. Information Policy, and the second with Trade in Information Goods and Services. Both are being drafted in NTIA, and will be reviewed by the Inter-Agency Task Force before submission to the OECD. The Delegation to this Conference will be an official delegation of the United States, and will be under instructions prepared by the Department of State. Such instructions will be developed in consultation with the Inter-Agency Task Force, and the Working Party on International Data Flows of the Department's Advisory Committee on Transnational Enterprises.

D. THE 1979 WARC

1. Assessment of the accomplishments of the 1979 World Administrative Radio Conference:

A complete assessment of the decisions of the 1979 WARC will not be complete until early 1981. The process of assessing the results of the 1979 Conference has already begun, primarily within the FCC and NTIA mechanisms as they prepare to implement the WARC decisions in their respective domestic regulations, but also independently by the various Government agencies and private interests most concerned with the use of the radio spectrum. For example, the FCC mechanism will utilize notices of proposed rulemaking to obtain the comments of industry, private and public interests as to their views of the impact and appropriateness of WARC decisions. These views will be submitted to the Commission in the form of formal comments and will be taken into account in the final assessment of the FCC. Within the Executive Branch, the NTIA is working with Government agencies to develop similar views looking toward modification as appropriate of the U.S. Government frequency management regulations. The Department expects to receive the views of FCC and NTIA late this year. These views will be used by the Department in formulating our final assessment of the Conference decisions and accomplishments in preparing our recommendation to the President with respect to ratification of the Final Acts of the 1979 World Administrative Radio Conference.

Our preliminary assessment remains the same as it was at the end of the Radio Conference. We believe that WARC was successful in carrying out its objectives. While difficulties, both technical and political, were foreseen at the outset, we were impressed by the general absence of the latter and the ultimate satisfactory resolution of most of the former. Whatever concerns we may have about a few particular decisions taken by the Conference, we believe that the modified regulations and allocations table will provide a sound technical and regulatory framework for the expansion of communication facilities in the U.S. and abroad in the coming years, while maintaining a significant degree of order in allocating the spectrum among services. Almost all of the U.S. objectives were obtained either in whole or in substantial part. There will be no immediate changes in the structure or operation of U.S. telecommunications systems as a result of Conference decisions. Most changes mandated by the Conference will be phased in over a long period of time.

A major U.S. objective -- support of the ITU as the international agency capable of providing a useful forum for discussing global telecommunications needs and problems and of carrying out the complex decisions of the Conference -- was fully achieved. Conference decisions affirmed the importance of close cooperation in this important area of international relations working through the ITU mechanism. We have reason to be well satisfied by the way in which the Conference business was conducted, which was on a consensus basis in most instances. We think the effectiveness of the ITU as a

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specialized agency devoted to constructive international cooperation has not been compromised.

The U.S. submitted reservations on a small number of Conference decisions where we felt that decisions taken could adversely affect an important national communications requirement. A reservation in this case is a formal statement that we will not be bound by a particular Conference decision. In each case, the decision was made on the basis of protecting an important U.S. interest. However, too much should not be made of these reservations. It will be some time yet before the United States must decide if it will be necessary to follow through with the various reservations, if any. What is noteworthy is that of the hundreds of particular decisions, many of them very significant, only a small handful were unacceptable to us.

The Conference recommended that a number of ITU specialized conferences should be held during the coming years in which more detailed attention can be given to certain services or issues which, in the Conference's opinion, could be better handled in these forums. The United States supports the concept of carrying out the work of ITU at specialized conferences. However, we would have strongly preferred that two of the proposed conferences be scheduled for a later date. The first concerns the conference for shortwave broadcasting. This conference is potentially a very difficult one and a strong possibility exists for the introduction of political issues and decisions that could adversely affect our current and future international broadcast operations. The second conference of concern will treat planning for the space services. This conference will be the most difficult ever held by the ITU and will threaten the existing regulatory procedures favored by the U.S. and most developed countries. Since the conclusion of the 1979 WARC, a preliminary examination by concerned Government agencies and other satellite interests has resulted in an opinion that the space services conference could have an adverse impact on U.S. interests.

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2. Amount of dollar and man-year resources spent preparing for WARC:

The Department estimates that we expended slightly more than \$1 million in preparation for and participation in the 1979 WARC. This sum includes the cost of salaries for 15 man-years dating back to about mid-1973 when the agenda and date for the Conference were first identified by the ITU Plenipotentiary Conference held that year. It must be understood that the figures include only the direct costs and man-years taken from State Department's resources. In most items described below, other government agencies and/or private and industry organizations expended similar resources for their part in the 1979 WARC.

The total of 15 man-years (12 professional and 3 administrative) may be divided into three parts within the Department. The initial involvement in WARC preparation, as well as the overall responsibility for participation in and implementation of all ITU activities, rests in the Office of International Communications Policy (EB/TT/TD). This Office had part-time involvement in WARC until March 1977, when a senior officer was added to the staff for full-time responsibilities relating to WARC activities. EB/TD staff contributed 3.6 man-years to the total of 15. The major contribution came from the WARC Staff, formed in early 1978 shortly after the Chairman of the U.S. Delegation was named. This Staff reached a level of seven professionals and two secretaries at one point just before the Conference and accounted for 10.4 man-years of effort. Finally, it is estimated that the rest of the Department expended a total of one man-year on the Conference. About half of this involved the Office of International Conferences, which handled WARC preparation and participation relating to budgeting, administrative support, delegation facilities in Geneva, travel and per diem of delegates, etc.

The estimated dollar cost to the Department, through December 1979, is \$1,050,324. More than half of this amount (\$523,000) was directly related to actual participation at the Conference in Geneva, during the period September-December 1979. Major expenses in this category were travel and per diem for part of the U.S. Delegation and for Department support staff (\$240,000) and the rental of space for delegation offices and head of delegation quarters (\$135,000). Other items of interest were communications circuits between Geneva and Washington (\$20,000) and representational funds (\$12,500); these are approximately half of total cost since the Department of Defense provided matching funds for these two items.

The next largest dollar cost was for the staff salaries of the 15 man-years mentioned above, which came to nearly \$400,000. Another substantial cost was for pre-conference travel and per diem expenses. An important part of the U.S. preparation for WARC was to engage in a large number of bilateral and multilateral discussions with officials of

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foreign countries. International travel for this purpose amounted to \$70,000. Domestic travel in support of WARC activities was \$8000. A final item of real significance to the Department's involvement in WARC was the expenditure of approximately \$32,000 of Biden Amendment funds that were used to pay expenses for public sector representatives' participation in the Department's Advisory Committee and as members of the Delegation in Geneva.

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3. Process followed in developing U.S. positions to be presented at WARC; and Interagency coordination efforts in preparing for the Conference:

The process of developing the major elements of the U.S. positions at WARC -- formal proposals, fallback positions and negotiating strategy -- involved a lengthy, complex and widely coordinated effort. The Department of State has always relied heavily on the two principal agencies concerned with telecommunications management to develop their views and recommend to State specific positions for ITU Radio Conferences. A brief description of their activities is as follows:

— The National Telecommunications and Information Administration (NTIA) (and its predecessor, the Office of Telecommunications Policy), as manager of the Federal Government sector in this field, formally began its preparation in January 1974 when its Interdepartment Radio Advisory Committee (IRAC) established Ad Hoc Group 144. All federal agencies with major radio interests are members of IRAC and participated actively in the work of the ad hoc group. Its terms of reference were: "To develop recommended U.S. proposals for the 1979 WARC, comments on the proposals of other administrations and position papers for the U.S. delegation to the Conference, and to plan for the eventual national implementation of the Final Acts of the Conference." The result of this effort was NTIA's submission of recommended U.S. proposals to the Department of State in December 1978.

— The Federal Communications Commission (FCC), as regulator of the private sector, initiated formal public proceedings on WARC preparations in January 1975 with the release of the First Notice of Inquiry. An internal steering committee consisting of members from each of the FCC's bureaus and offices was established to provide overall coordination of the Commission's efforts. A formal Industry Advisory Committee and 22 service working groups dealing with specific issues were set up to provide direct input to the FCC staff. The Commission issued a total of nine Notices of Inquiry on various aspects of the WARC agenda, to which private, industry and consumer interests replied with their views. After considering thousands of comments filed in this proceeding, the FCC completed its Inquiry and released a Report and Order in December 1978 containing their recommended U.S. proposals, which were submitted to the Department of State.

The Department of State, itself a member of IRAC, worked closely with NTIA and FCC on the development of national proposals from the beginning in 1974. In addition, the Department began in 1975 to consider other aspects of the preparatory effort, such as funding for U.S. delegation participation, selection of the Head of Delegation and other members, and a program of foreign consultations. This effort was formalized in September 1976 with the creation of a high-level Policy Group comprised of the Director of OTP, the FCC Chairman, the Department's Deputy Assistant Secretary responsible for telecommunications, and senior officials of other key agencies "as required". The group provided an important overall policy review of the state of preparations and the emerging U.S. positions and strategy.

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In early 1977 the Department initiated a world wide effort through its overseas posts to obtain foreign views and other details regarding preparation for the 1979 WARC. Replies from Embassies provided an invaluable source of information on foreign positions. Beginning in mid-1977 the U.S. initiated an extensive program of international consultations on WARC with the objective of explaining U.S. views on the Conference and obtaining information on foreign positions. Substantial effort was given to and emphasis placed on visits by small teams of U.S. experts to foreign capitals to carry out face-to-face, one-on-one discussions with appropriate telecommunications officials and organizations. While not able to visit all countries desired, officials with WARC responsibilities visited 48 countries for bilateral talks, with a good balance between developed and developing nations.

In addition to bilateral discussions described above, the U.S. participated in multilateral forums such as NATO's Allied Radio Frequency Agency, CEPT (Conference of European Postal and Telecommunications Administrations), and CITEL (Inter-American Telecommunications Conference), an arm of the OAS. The U.S. also attended the three ITU Regional Preparatory Seminars for WARC, held in Nairobi, Panama and Sydney. In each multilateral event, U.S. attendees endeavored to establish bilateral contacts with as many foreign participants as possible, and in particular with persons from countries not visited.

Team members for all international discussions were selected from many government agencies as well as private industry on the basis of probable participation on the U.S. Delegation and the ability to apply the experience and knowledge gained to the sound development of the U.S. positions. Results of foreign meetings were provided to the FCC, NTIA and other government interests, and to the extent permitted by security classification, to public and private sector interest groups and individuals involved in WARC preparation.

In January 1978 the Department named the Chairman of the U.S. Delegation to the WARC, who was responsible directly to the Deputy Secretary of State. He was assisted by a specially established staff which eventually included six high - and mid-level officers. The Department designated an Initial Delegation Group (IDG) of twenty persons in April 1978 with membership drawn from federal government agencies active in WARC preparations. One month later, the Department established a 38-member public advisory committee comprised of a balanced membership drawn from industry and the general public. The general purpose of both groups was to advise the Department and specifically the Chairman of the U.S. Delegation on all WARC matters, and to develop positions and negotiating strategies for the Conference.

The Department received recommended proposals from the FCC and NTIA in December 1978, which were melded into a unified set of U.S. proposals by a small group of IDG members for transmittal to the

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Department. At this point, there were two issues in which the FCC and NTIA had submitted differing recommendations to the Department. The issues were resolved satisfactorily at a meeting of the Chairman of the U.S. Delegation with the heads of the FCC and NTIA. All but one part of our proposals were sent to Geneva in January 1979. A major difference of opinion developed regarding the U.S. proposals for international shortwave broadcasting. On one side of the issue were NTIA, FCC and DOD, while the other side, who were seeking greater increases for broadcasting in our proposals, consisted of Voice of America, Board for International Broadcasting and RFE/RL. The Department took a decision on the matter following a series of high-level meetings and extensive analysis of the competing requirements. The remainder of the U.S. proposals, which took into account the decision taken, were forwarded to the ITU in April.

In May 1979 the Department accredited a delegation of 64 persons and named a Geneva support team of 34 persons. From this group a small team was designated to prepare the final position papers that would contain specific fallback positions and negotiating strategies. A total of 43 technical and 27 political papers, consisting of 2000 pages, were developed and coordinated with the major government agencies, interested members of the accredited delegation, and others concerned within the Department. The papers provided detailed guidance for the delegation's use at WARC.

The United States participated in the 1979 WARC with a final delegation of 69 members, including two Congressional advisers. This was the second largest delegation at the Conference, after the French (87 delegates). For purposes of comparison, nine countries participated with delegation of 30 or more members. Key members and spokesman of the delegation met daily to review the status of the negotiations and coordinate any changes necessary in the U.S. position. The U.S. Delegation was supported in Geneva by a group of 41 persons consisting of technical, computer and administrative personnel. The Delegation was also supported by a home team in Washington headed by a senior officer of the State Department and comprised of representatives from each of the interested government agencies. The purpose of the home team was to closely monitor the Conference proceedings as reported from Geneva, to develop and coordinate any major changes in the Delegation's positions, and to advise the Department on matters relating to WARC.

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4. Private sector input to the policy-making and negotiating process:

The primary source of private sector input to our national preparatory effort for the 1979 WARC came in the form of thousands of individual comments filed with the FCC in reply to their Notice of Inquiry proceeding. The comments related to technical, operational, economic and policy aspects of the WARC agenda. To a very major extent, therefore, the FCC's Report and Order containing their recommended U.S. proposals to WARC reflects the private sector views of the United States.

In May 1978 the Department created a direct channel for private and public sector input to the policy-making and negotiating process when we established a public advisory committee. The committee consisted of thirty-eight members drawn from all major areas of the telecommunications community including radio user groups, industry, consumer and minority groups, and academia. The purpose of the committee was to assist in the formulation of U.S. Government positions and strategy for the Conference. Five working groups were established within the committee which reported regularly and directly to the Chairman of the U.S. Delegation. Their reports were incorporated as appropriate in the U.S. proposals submitted to the ITU Conference and in the negotiating position papers developed for use in Geneva.

Membership in the committee was designed to provide a well-balanced mix of individuals and interests, with particular attention being given to potential membership on the U.S. Delegation. In fact, approximately half of the Advisory Committee members were accredited in the final delegation, participating to various degree in the final development of U.S. position papers, conference strategy and the actual conduct of negotiations in Geneva.

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5. Description of the Department's actions in preparation for the several regional and specialized conferences designated at WARC to be held during the next five years:

An important part of the decisions taken by the 1979 WARC involves several resolutions and recommendations that propose to the ITU Administrative Council and to the Plenipotentiary Conference a program for the convening of future administrative radio conferences to deal with specific services. The U.S. strongly supported some of the conferences and opposed others during the 1979 WARC negotiations. In the end, we agreed to all the resolutions and recommendations laying out the conference schedule. Each world conference and regional conference involving ITU Region 2 (Western Hemisphere) will treat radio matters of at least substantial -- and sometimes vital -- interest to the United States. Active participation in all ITU radio conferences whether desired or not is essential for the U.S. in order to serve and protect our national interests and because of our strong commitment to international agreement and harmony in the use of the frequency spectrum and the geostationary orbit.

It is the U.S. view that the program of future conferences recommended by the WARC is overly ambitious and probably impossible to follow in practice. It places a very heavy preparatory burden on all administrations, particularly on developing countries. It will be impossible to carry out adequate and complete technical preparations by the International Radio Consultative Committee (CCIR) and the International Frequency Registration Board (IFRB) (organs of the ITU) which have already been heavily tasked by 1979 WARC decisions. Personnel and budget resources in both the ITU and individual administrations are either insufficient to meet the proposed schedule, or, at best, will be severely strained.

National preparations for the future conferences have already begun within the concerned agencies. For example, the NTIA has established special ad hoc groups to look at each of the key conferences foreseen in the next five years. The FCC is undertaking similar preparatory steps that will include public and industry participation. The primary involvement of the Department at this time has been to prepare the national position for this year's session (May) of the Administrative Council. It must be emphasized that the specific schedules including date and agenda must be decided by the Administrative Council at its annual sessions or at the scheduled 1982 Plenipotentiary Conference. The Department will continue to evaluate its position on this matter, in close coordination with FCC, NTIA and other interests to achieve our objectives with respect to an overall program of future conferences.

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In the meantime, the Department is working closely with NTIA and FCC in their respective preparatory activities which are beginning to prepare definitive U.S. proposals and positions for the conferences. At the appropriate time, the Department will examine the requirements for the head of delegation and other members of the delegation, the requirement for foreign consultations, and the development of specific U.S. proposals to be forwarded to the ITU in Geneva. It is also foreseen that the Department will establish an appropriate level group to oversee the preparations and to assist the Department in the development of specific proposals, negotiating positions and overall conference strategy. Further, the Department will consider on a case-by-case basis whether there is a need to establish a public advisory committee, similar to that established for the 1979 WARC, to assist in this process.

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E. U.S. GOVERNMENT PARTICIPATION IN INTERNATIONAL FORUMS IN WHICH TRANSBORDER DATA FLOWS HAVE BEEN DISCUSSED

1. OECD

Within the OECD, discussion of data flows has arisen in two series of meetings sponsored by the Directorate for Science, Technology and Industry. Within the Working Group on Information, Computers and Communications Policy, discussion has tended to focus upon network policy and the societal impacts of information technology, whereas the expert group has concentrated upon privacy protection.

a. Meetings of the ICCP Working Group:

<u>Date</u>	<u>U.S. Delegates and Affiliation</u>
March 1-3, 1977	J. Richardson, Commerce/OT W. L. Fishman, EOP/OTP C. Wait, USOECD
Dec. 12-13, 1977	J. Richardson, Commerce/OT W. L. Fishman, EOP/OTP
April 18-20, 1978	J. Richardson, Commerce, NTIA M. H. Crawford, State/OES
Nov. 8-10, 1978	J. Richardson, Commerce/NTIA M. H. Crawford, State/OES
April 3-5, 1979	J. Richardson, Commerce/NTIA M. H. Crawford, State/OES L. Radel, State/UN Conference Sc & Tech
October 7-10, 1979	M. H. Crawford, State/OES W. Fishman, Commerce/ NTIA A. Bushkin, Commerce/NTIA
March 26-28, 1980	E. G. Kovach, State/OES A. Bushkin, Commerce, NTIA
May 12-13, 1980	R. H. Howarth, State/EB A. Bushkin, Commerce/NTIA
June 9-10, 1980	W. Edgar, State/EB L. Hummer, State/L A. Bushkin, Commerce/NTIA K. Leeson, Commerce/NTIA J. Zycherman, Commerce/TIA

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b. MEETINGS OF THE EXPERT GROUP ON TRANSBORDER DATA BARRIERS AND PROTECTION OF PRIVACY

April 3-4, 1978	W. Fishman, OTP, Exec. Off. of the Pres. L. Hummer, State/L
Dec. 5-6, 1978	W. Fishman, Commerce/NTIA L. Hummer, State/L
March 12-13, 1979	L. Hummer, State/L W. L. Fishman, Commerce/NTIA A. Bushkin, Commerce/ NTIA
May 28-31, 1979	L. Hummer, State/L W. L. Fishman, Commerce/NTIA
Sept. 12-14, 1979	L. Hummer, State/L W. L. Fishman, Commerce, NTIA V. Assevero, Commerce/NTIA
Nov. 19-20, 1979	L. Hummer, State/L W. L. Fishman, Commerce/NTIA

2. ITU

The organ of the ITU which considers matters affecting data flows is the International Consultative Committee for Telephony and Telegraphy (CCITT). Within the CCITT, four international Study Groups develop recommendations affecting data flows:

1. SG I Telegraph Operation and Quality of Service (including new services).
2. SG III General Tariff Principles
3. SG VII New Networks for Data Transmission
4. SG XVII Data Transmission

Appended to this letter is a list of questions which have been allocated to CCITT Study Groups during the current plenary period (1977-80).

Within the U.S. Organization for the CCITT, two domestic study groups consider questions under study by the four international study groups listed above.

1. Study Group A - U.S. Government Regulatory Policies
2. Study Group D - Data Transmission

A copy of the current charter for the U.S. Organization is attached to this letter. U.S. Study Group A prepares U.S. positions

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and approves U.S. contributions to CCITT Study Groups I and III. U.S. Study Group D serves the same functions with respect to CCITT Study Groups VII and XVII. U.S. delegations to CCITT Study Groups meetings are drawn from the active participants in U.S. study groups. There is extensive private sector participation to reflect the structure of the U.S. communications industry and to respond to the differing needs of carriers, industrial organizations, and users.

US GOVERNMENT REPRESENTATIVES AT CCITT MEETINGS RELATED TO INTERNATIONAL DATA FLOWS.

SG I

<u>Date</u>	<u>U.S. Delegates and Affiliation</u>
June 20-24, 1977	E.S. Barbely, FCC
May 1-4, 1978	E.S. Barbely, FCC
May 15-19, 1978*	E.S. Barbely, FCC
June 13-21, 1978	E.S. Barbely, FCC
October 17-20, 1978*	E.S. Barbely, FCC G.D. Rosch, FCC
January 10-15, 1979*	E.S. Barbely, FCC G.D. Rosch, FCC
January 16-19, 1979**	E.S. Barbely, FCC
May 17-25, 1979	D.V. Davis, FCC D. Anderson, State/EB
July 10-11, 1979**	G.D. Rosch, FCC
September 27-Oct. 3, 1979 **	G.D. Rosch, FCC
October 16-18, 1979*	E.S. Barbely, FCC G.D. Rosch, FCC
November 6-8, 1979**	E.S. Barbely, FCC
February 5-7, 1980**	E.S. Barbely, FCC
June 13-20, 1980	E.S. Barbely, FCC

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SG III

April 27-May 4, 1977	E.S. Barbely, FCC R.B. Wheatley, State/EB
February 6-10, 1978*	E.S. Barbely, FCC
April 24-28, 1978*	E.S. Barbely, FCC
May 1-3, 1978*	E.S. Barbely, FCC R.H. Phillips, State/EB
December 4-12, 1978	E.S. Barbely, FCC
March 19-23, 1979*	E.S. Barbely, FCC D.V. Davis, FCC
April 30-May 3, 1979*	E.S. Barbely, FCC
May 7-11, 1979*	E.S. Barbely, FCC R.H. Howarth, State/EB
December 4-7, 1979	E.S. Barbely, FCC
April 18-24, 1980	E.S. Barbely, FCC L. Taylor, NTIA

* Working Party

** Rapporteurs' Group

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SG VII

April 19-27, 1977	T. de Haas, NTIA J. Jenkins, OTP H.C. Folts, NCS
April 3-25, 1978	T. de Haas, NTIA H.C. Folts, NCS
April 19-May 2, 1979	T. de Haas, NTIA H.C. Folts, NCS
October 9-12, 1979**	T. de Haas, NTIA
February 7-15, 1980	T. de Haas, NTIA H.C. Folts, NCS W. Lowell, State, EB

SG XVII

December 12-16, 1977*	T. de Haas, NTIA
November 21-29, 1978	T. de Haas, NTIA
September 11-19, 1979	T. de Haas, NTIA R.H. Howarth, State, EB
April 25-May 1, 1980	T. de Haas, NTIA

It should be noted that Mr. Barbely and Mr. de Haas are the respective chairmen of U.S. Study Groups A and D.

3. C IBI

The proposed observer delegation for the June IBI meeting includes the following USG officials:

W. Edgar, State, EB
A.L. Fishman, NTIA
A. Bushkin, NTIA
R. Homet, ICA

F. STUDIES PREPARED BY OTHER COUNTRIES

Several industrialized countries have sponsored special reviews of issues affecting their policies regarding information, communications, "computerization", and trans-border data flows. For example, French President Giscard d'Estaing commissioned preparation of a major study in December 1976; the resulting report "On the Computerization of Society" (referred to as the Nora-Minc report after its principal authors) was completed in January 1978. In November 1978, the Canadian government established a Consultative Committee on the Implications of Telecommunications for Canadian Sovereignty (called the Clyne Committee after the name of its chairman); this committee submitted its report in April 1979.*

Certain important points have been raised in such studies:

1. There is an underlying concern about the way in which sovereignty might be affected if certain types of data (not always specifically defined) are processed and stored abroad. Dependence on other countries for performance of these tasks is regarded as a potential source of vulnerability stemming from "loss of control" of data.
2. Concern about commercial interests accompanies concern about effects on sovereignty and privacy.
3. The processing and storage of data abroad are viewed as contributing to unemployment.
4. The United States is viewed as the leader and strongest competitor in these fields.
5. Proposed remedies include varying degrees of governmental intervention on behalf of domestic firms and governmental regulation of trans-border data flows.

Advisory reports along the foregoing lines do not necessarily reflect the views of the sponsoring governments, and they are not invariably accepted as affording blueprints for subsequent government actions. They do, however, offer insights into the thinking of well-informed persons in other countries, and their recommendations may be adopted in part, if not in whole.

The Department of State and other Executive Branch departments and agencies consider these reports in recommending U.S. policies.

*The governments of Sweden and Japan have also sponsored studies related to trans-border data flows.

COUNTRY/ISSUE MATRIX

<u>COUNTRY</u>	<u>OECD MEMBERSHIP</u>	<u>VENUS CASE</u>	<u>CONT. TLL. BANK CASE</u>	<u>TIMSHARE CASE</u>	<u>GTE-TELNET CASE</u>	<u>CDC CASE</u>
ALGERIA						
ARGENTINA			X			
AUSTRALIA			X			X
AUSTRIA	X	X				X
BELGIUM		X X				X
BOLIVIA				X		
BRAZIL				X		
CAMEROON				X		
CANADA	X					X
CHILE				X		
CONGO				X		
CUBA				X		
CYPRUS			X			
DENMARK	X	X				X
ECUADOR				X		
FINLAND		X X				X
FRANCE	X	X X			X	X
GABON				X		
GERMANY	X	X			X	X
GHANA				X		
GREECE			X			X
ICELAND		X X				X
IRAN				X		
IRAQ				X		
IRELAND			X			X
ISRAEL				X		

COUNTRY

	OECD MEMBERSHIP						
	VENUS CASE						
	CONT. ILL. BANK CASE						
ITALY		X	X	X			X
IVORY COAST				X			
JAPAN				X	X	X	X
JORDAN				X			
LEBANON				X			
LICHTENSTEIN			X				
LUXEMBOURG	X		X				X
MADAGASCAR				X			
MALTA			X				
MEXICO				X			
MONACO			X				
MOROCCO				X			
NETHERLANDS		X	X				X
NEW ZEALAND	X						X
NIGERIA				X			
NORWAY	X		X				X
PORTUGAL		X	X				X
SAN MARINO			X				
SENEGAL				X			
SPAIN		X	X	X			X
SWAZILAND				X			
SWEDEN	X		X				X
SWITZERLAND		X	X				X
TUNISIA				X			

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<u>COUNTRY</u>	<u>OECID MEMBERSHIP</u>	<u>VENUS CASE</u>	<u>CONT. ILL. BANK CASE</u>	<u>TYNSHARE CASE</u>	<u>GTE-TPLNET CASE</u>	<u>CDC CASE</u>	<u>FBI MEMBERSHIP</u>	<u>CEPT MEMBERSHIP</u>	<u>PRIVACY LAWS IN PREPARATION</u>	<u>PRIVACY LAWS IN EFFECT</u>
<u>TURKEY</u>										
<u>UNITED KINGDOM</u>		X	X			X				
<u>UNITED STATES</u>	X	X				X	X	X	X	X
<u>VATICAN CITY</u>			X							
<u>YUGOSLAVIA</u>			X							
<u>ZAIRE</u>				X						

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V. Venus Application

Venus is the name of a public data network owned and operated by the Nippon Telephone and Telegraph Public Corporation (NTT), which operates under the supervision of the Ministry of Posts and Telecommunications. Venus began international service in 1979; Western Union International, Inc., RCA Global Communications, Inc., and ITT World Communications, Inc. applied to the FCC to provide circuits for Venus to waiting US customers.

In April 1979, Control Data Corporation (CDC) filed a petition to deny, citing the restrictions placed on CDC's operations in Japan. In June 1979, the National Telecommunications and Information Administration (NTIA), with the concurrence of the Department, sent a letter to the FCC calling attention to the current consideration of Japanese restrictions on CDC's services within the US-Japan Trade Facilitation Committee and offering to brief the Commission on the status of the case. The letter was not answered. The Commission subsequently granted the applications but is currently reviewing its decision.

This case raised the question of priorities within communications policy and the type of advice the Department can properly proffer to the Commission. Traditionally US Telecommunications policy has been customer-oriented - i.e. it has promoted the widest range of services at the lowest cost. Reciprocity has been invoked on occasion, such as in the case of the French Telegraph Cable Company, but not normally in cases where desired services would be interrupted or precluded. Because, in sheer dollar terms, the export of US data services is such a large component of our invisible account, the Department is reviewing its policy regarding international services with special emphasis on the proper weight to be given to reciprocity.

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G. FURTHER COMMENTARY ON LAWS:

It is my understanding that your Subcommittee is soliciting comment from the Department on laws other than data protection or privacy laws which might create barriers to international data flows. We have already mentioned (in our response to a question about a letter to the Department from Continental Illinois Bank,) regulations issued by the FRG Ministry of Posts and Telecommunications regarding the transmission of data. We noted that the regulations are subject to revision in light of on-going discussions between the Ministry and affected parties. The regulations were issued pursuant to the Ministry's authorities under the German law, referred to as the Basic Law, which established the German Post Office and granted it a monopoly over posts and telecommunications. The situation in the Federal Republic of Germany is not unique. In most countries of the world, the post, telephone and telecommunications functions are carried out by a government-owned entity, generally referred to as a PTT. The PTT is generally granted a monopoly. The stated purpose of the proposed FRG regulations is to carry out the Basic Law by assuring that functions vested by the law in the PTT are not carried out by private parties.

We are also aware that some have expressed concern over the effect on transborder data flows of foreign banking laws. Several banking laws, notably those in Switzerland and the FRG, have been brought to our attention. We are also aware of proposals to amend the Canadian Bank Act. In my testimony on the data protection laws, I drew a distinction between the purposes underlying passage or proposal of the laws and the actual implementation of the laws by the regulatory agencies set up under them and by the courts, and I noted in response to a question that we will be vigilant about implementation of the laws. The same is true of other laws such as banking laws.

In the case of the FRG, the Banking Law, which sets forth a bank's bookkeeping requirements, has been in force since 1961. The law gives national treatment to branches of foreign banks operating in the FRG, and uses the legal fiction that foreign bank branches are independent entities. In this connection, they have long been required to keep separate books for their German operations. The banking supervisory authorities some years ago took the position that this meant that the books had to be kept in Germany. Thus, the fact that an American bank with a branch in Germany cannot rely exclusively on automated data processing by its parent is not a position influenced by the technology, and is consistent with long-standing German policy.

Similarly, the changes in Swiss banking laws to prohibit processing of bank data abroad are consistent with, and flow from Swiss banking laws of long standing. The Swiss Penal Code prohibits the release of financial, commercial and personal data by Swiss residents without the permission of the persons or entities effected.

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The proposed Canadian Bank Act revision, which was introduced for the first time a few years ago, and which is expected to be reintroduced in the current Parliament, is not designed to create barriers per se to transborder flows of automatically processed data, although this may result. The Bank Act provisions are designed to ensure that all data necessary for inspection and regulation of banks by Canadian authorities is actually in Canada.

Mr. PREYER. I am delighted that this subject now has your attention. We will be following your progress with interest and will look forward to continuing to stay in touch with you.

Mr. NIMETZ. Thank you very much, Mr. Chairman, for your courtesy. I would like to say I found your hearings here very helpful to me as I have gotten into this, so I am appreciative for that. Thank you.

Mr. PREYER. Thank you and good luck.

Our next witness is Henry Geller, the Assistant Secretary of Commerce for Communications and Information. He is the head of the National Telecommunications and Information Administration, and we look forward to having his views.

Mr. Geller, in accordance with our practice, I would ask you to stand and be sworn.

Do you swear that the testimony you are about to give this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. GELLER. I do.

Mr. PREYER. Thank you.

You may proceed as you see fit.

STATEMENT OF HENRY GELLER, ASSISTANT SECRETARY OF COMMERCE FOR COMMUNICATIONS AND INFORMATION, DEPARTMENT OF COMMERCE

Mr. GELLER. Thank you, Mr. Chairman.

Mr. PREYER. We appreciate your statement and its enclosures; it is a very complete statement. Without objection, it will be made a part of the record.

Mr. GELLER. I appreciate the opportunity to be here to testify on this important issue. Since the statement is part of the record, I will just go over it and give some highlights, particularly in view of the fact that Secretary Nimetz has already covered a great deal of the territory that is in the statement.

As you know, under Executive Order 12046, NTIA does have a considerable role in the area of concern here to the subcommittee—international telecommunications and information flow. We have been active, as you have heard, in OECD, in the CCITT and CCIR work, and ITU, and also in dealing with the telecommunications facility planning processes.

We have followed a number of principles here. Secretary Nimetz has touched on them: free flow of information; free trade: telecommunication networks and services should be constructed and operated according to legitimate customer needs and an economically

sound basis; assistance to the LDC's entering the information age; and support for legitimate privacy protection.

He has also touched on the importance of this sector. It is one of enormous value to our Nation. As our figures show, in 1977 the total U.S. exports in telecommunications and information goods was in excess of \$12 billion.

If you look at services, the overseas telephone service alone is close to \$1 billion, and that does not take into account many other services in this area.

As he said also, it is the lifeblood of international trade; it is the nervous system now for the way trade is operated.

We have been successful because of our technological superiority and because of the large domestic market, but that is now under challenge. We have set forth on page 6 a table showing the changing relationship in computers and related equipment between the United States and Japan.

The Japanese Government and industry partnership, Japan, Inc., as it is called, has led to the creation of a significant export industry in this sector, and the European nations are also beginning to adopt similar policies. The foreign challenge, we believe, has several key elements.

There can be national procurement preferences for Government or private sector institutions to encourage and protect national industry. A number of countries do this—Japan and the French are examples. There can be direct subsidies for R. & D. for the national industry. Again, Japan is an example. There is the availability of preferential financing for international procurement. An example here is the recent \$1.8 billion Egyptian telecommunications procurement contract. It went to European competitors largely because they successfully arranged significant concessionary financing.

There can be regulatory barriers to the introduction or expansion of the U.S. telecommunications and information service industry, national standards that discriminate against U.S. goods. You have already touched on them in the testimony this morning—the Japanese example involving NTT, the example of Control Data Corp.; there are others that could be cited.

The point of all this is that the United States here is vulnerable to erosion in its position unless we respond by focusing our attention on this very important sector. We believe that that attention should be focused now before the effects of foreign actions have so impacted our industries that we reach a critical point, and a slide begins, and we cannot recover.

We therefore believe that there is a need for aggressive and coordinated action, and we have listed the areas where we believe we can be most effective. They are: in strong analytical support in the multilateral trade negotiations, targeting this area for special attention in future negotiations, strengthening our participation in international organizations that deal with the issue, and insuring that we have very close coordination so that we have a consistent policy.

In the standards area, there must be the development of standards for interconnection of telecommunications and information

equipment, thus insuring of technical compatibility as a necessary part of any export effort.

We think there should be more aggressive promotion and vigorous representation of U.S. interests in bidding for contracts abroad. An example here, very successfully, was the effort on the part of the Government in the recent Korean telecommunications procurement.

In the area of financing, plans should be developed to give priority to investment in this sector as a means of developing new markets.

In the introduction of new services in the international telecommunications market, an effort must be made particularly to include a greater range of interactive computer-to-computer communications.

Reference is made to assisting developing new countries in this sector, to strengthening information gathering, and finally we have mentioned getting our house together in the U.S. domestic sector. That is not the focus of this hearing, and I will not therefore dwell on it.

But however important the international efforts we make here are, Mr. Chairman, I think the most important thing we can do is to pass telecommunications reform domestically—the bill that is pending before the House Subcommittee on Communications with which you are familiar because of your membership on the Commerce Committee.

If we subject the domestic industry to delays—to long administrative delays—before it can introduce services and products, if we regulate rates of return in competitive areas, if we do not allow competition to have full sway, we will be hurting ourselves very badly, and that will hurt us in competition against foreign industry in the United States and competition overseas.

We therefore think that a very important part of this entire picture is the passage of the Presidential program domestically in telecommunications reform. As I said, I will not again mention it because it is obviously not the focus of these hearings.

We have urged that the telecommunications and information industry be identified as a key industry for promotion and expansion. As you know, Commerce has been given heightened responsibilities in this area. Under the Trade Reorganization Act of 1979. We take those responsibilities very seriously. The main agency involved is the ITA, but we also are involved, and we do have focus on the special sector; this, we believe, to be one of those sectors.

The program that we ought to include here is the identification and removal of nontariff trade barriers. Obviously, the USTR has begun this effort. We have been helpful to them. This must be strengthened and pursued.

Investigations of financing opportunities have been mentioned. Commerce, Treasury, State, AID, and the Export-Import Bank must evaluate what can be done for arranging financing for these projects.

Promotion of trade opportunities—the training of Commerce attachés in this field so that they are aware of what developments are and can be helpful to this industry.

We further mention the support of international negotiations. The leadership here, we think, lies with several agencies: USTR, State, Commerce, Treasury, and a number of other agencies are involved.

That is the first and main thrust of my testimony this morning. The second deals with the transborder data flow issue upon which you have heard so much. Since Secretary Nimetz has already described it—and very well—I will be even briefer here.

We fully support the notion of personal privacy, both domestically and internationally. At the same time, as the Secretary said, we do not want this to be used as a device to block the free flow of information and free trade. We have therefore been working very actively in the OECD in the last few years—and I believe successfully. We did not want a binding agreement, for the reasons the Under Secretary said; we thought guidelines would be far preferable here. The guidelines had been worked out in order to prevent the situation from becoming chaotic and unmanageable.

The Under Secretary mentioned the differences between the Europeans and us. They are, I think, very fundamental. But the guidelines that have been worked out do substantially meet our goals; they are reasonable and sound, and they allow for considerable latitude for the member countries to approach privacy protection in their own way to implement these principles through a variety of mechanisms—legislative, administrative, and private sector initiatives.

These guidelines accomplish several important purposes. They establish, on an international basis, certain substantive core principles agreed upon by the member countries; they recognize the need to balance the competing considerations—legitimate privacy protection and the free flow of information—and they call on Governments to avoid measures which would unduly interfere with the free flow of information in the name of privacy protection. These are all very important to us.

As the Secretary said, there has been some delay, but we remain confident that the final adoption will take place in the months ahead.

We regard these guidelines while nonbinding, as a moral commitment; we are moving to carry them out through Federal legislation that, again, Mr. Chairman, you are familiar with since you have held hearings on the part of the administration program. We are also encouraging the private sector to support the guidelines through voluntary steps of various kinds. They are addressed to the narrow personal privacy aspect of transborder data flow.

The OECD will be considering, on a high priority, the nonpersonal aspects of this issue, and this could, as the Under Secretary made clear, have far greater economic significance to us.

We support analytical studies in the years ahead, and we will participate very heavily. We regard this as a grave danger to free trade and free information flows and intend to participate very heavily in the process.

We also believe that international data network transmission must be given a great deal of attention. The issues of access, interfaces, standards, protocols, tariffs, and charging principles are all becoming matters of great policy significance.

I think the bottom line here is that we have been successful in the personal privacy area; we believe we will have to focus on more important and more significant issues in the years ahead in the nonpersonal area; and we do face a rather ironic situation that as we move toward a deregulated domestic telecommunication industry in which competition is increasingly relied upon to meet the public's need, the international environment continues to present substantial obstacles to the U.S. carrier customer who wants to rely on that competitive model beyond the U.S. shores. That requires focus by all the executive branch agencies and all these various fora.

In the years ahead, this area, I believe strongly, will be one of growing importance. International electronic communications systems force interdependence on each of us, and that interdependence, in turn, requires international cooperation.

That is, very briefly, the highlights of our statement. I shall be glad now to try to respond to your questions.

Mr. PREYER. Thank you very much, Mr. Geller. You have given us some strong statistics there, regarding both the bilateral United States-Japanese relationship, and the erosion of our position of leadership in the telecommunications field. As you point out, we are moving toward deregulating telecommunications—in which you are playing a very predominant role. And, at the same time, the other countries seem to be moving in the opposite direction. You are in a position to observe all of these interrelated factors.

Can you outline for us specifically what your role has been in the OECD negotiations on international guidelines for the protection of privacy?

Mr. GELLER. We have participated very heavily with the State Department working group on this matter. We, I think, have the sort of laboring oar. It is under the State Department's aegis, but we have been the main honchos on it. Mr. Fishman, in NTIA, has been particularly active in that area.

We have worked very hard in these negotiations to seek guidelines along the lines that, as I said, do recognize personal privacy and its importance but, at the same time, do not interfere with the free flow of data.

Mr. PREYER. I do want to commend NTIA and you for providing the basic policy development in this area and for providing the labor oar, as you put it.

I think the OECD negotiations are the one area of international data flow problems where the United States has clearly taken some affirmative and effective action. While the U.S. Congress might not agree entirely with your view on the need for reform of privacy laws, we certainly do commend you on what you have done in this area.

Organizationally, at what level of responsibility in NTIA is policy developed concerning international data flow issues?

Mr. GELLER. It has received fairly high-level attention. Mr. Fishman, who worked on the OECD, is a very high-level staffer. I have participated in that exercise and gone to the OECD. We are now focusing on the trade issue at very high level happened is that the parties have become so used to working together that they directly do that. The Office of Policy Analysis works very directly with the

International Affairs Office, and when the issue warrants it there are meetings in my office. But there has grown up a very close working relationship between these various offices.

Mr. PREYER. How many times have you gone to the Secretary of Commerce to back you up on policy decision that NTIA has made and where you might be at loggerheads with another agency on a particular issue?

Mr. GELLER. In this field?

Mr. PREYER. Yes.

Mr. GELLER. We have not had occasion to go directly to Secretary Klutznick since he has assumed his office. He is very interested in it; he has made trade a primary focus. We are meeting with him on this issue on April 3 in order to present a discussion of this issue directly to him.

There have been presentations on this in what is called the Commerce Council—a weekly meeting of all Assistant Secretaries—and this area has been mentioned in the Commerce Council with the Secretary present.

Mr. PREYER. Let me ask the same question with regard to Secretary Klutznick's predecessor.

Mr. GELLER. I do not believe there were any discussions with Secretary Kreps.

With the heightened trade responsibilities that came to us in the latter part of 1979, there has been a renewed focus. As a result of that renewed focus within Commerce, all departments in Commerce, not just ITA, have been directed to look at this issue to see how they can contribute. Therefore, while we have been involved in the past—and I do not mean to indicate we have not; we have participated very heavily in a number—we have not gone to the Secretary, not raised it to that level before.

Under the Reorganization Act of 1979, the Secretary's office is now focusing on it, and we have much more feedback. Previously, we just went and did our job with regard to international communications, trying to work out entry of new competitors, and so on, without going to the high level of the Secretary.

Mr. PREYER. We will be looking to the role the Secretary plays as far as presenting your case to Cabinet officials is concerned and with the President.

Mr. GELLER. As I said, this has now been made the first priority of the Department of Commerce in the years to come, to really make the trade area functions be as effective as possible.

Mr. PREYER. Recently, the FCC has opened dockets and made decisions regarding entry of foreign telecommunications and teleprocessing services into this country and entry of additional U.S. communications carriers in international markets. How has NTIA coordinated with the FCC on these questions?

Mr. GELLER. We do have very close coordination with the FCC in the area of increasing competition, trying to get our U.S. companies into service abroad, to make connections with foreign correspondents; that is a very difficult area. If I understand correctly, you are referring there to the recent FCC staff decision with regard to the KDD application. If that is the particular focus of that, we offered the Common Carrier Bureau of the FCC a briefing on the position of the executive branch with regard to this issue—the

Trade Facilitation Committee's consideration of it. We sent that letter over but did not receive a response.

We have recently sent a letter to them—and I mean recently, today—from the Commerce Department over my signature and that of Assistant Secretary Katz, offering again and expressing our interest in this matter. What we have said in that letter is that they have made the grant; it is subject to review at the end of the year. We think there is a very serious issue involved. The action of the Japanese Government and KDD are anticompetitive; they are not justified; they are trying to control communications beyond the midpoint and interfere with what happens within the borders of this country; and they are trying to protect their own data industry in doing so. That is the purpose of it.

We therefore said to the Commission that we would like to have full data on the growth of this service in the next year and that we would, in the meantime, be pressuring the Japanese Government very strongly to remove the restrictions and that we would get back to the Commission when they review the matter in the year, when we can take into account the benefits, the detriments, and give them more direct advice.

I would be glad to provide a copy of that letter to the subcommittee, if you would be interested.

Mr. PREYER. Thank you. That would be helpful. Without objection, it will be included in the record at this point.

[The material follows.]



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

April 16, 1980

Honorable Charles D. Ferris
Chairman
Federal Communications Commission
1919 M Street N.W.
Washington, D.C.

Dear Mr. Chairman:

On December 11, 1979 the Commission's Common Carrier Bureau authorized three U.S. international record carriers, in cooperation with their Japanese correspondent, Kokusai Denshin Denwa (KDD), to initiate the new VENUS-ICAS specialized public data communications services between the United States and Japan for an experimental period of one year. Concerned U.S. firms and industry associations opposed the applications, and petitioned the Commission to deny or condition its approval, citing restrictions imposed by the Japanese Government on the use of private leased international telecommunications lines for time sharing services. In approving the new service applications the Common Carrier Bureau rejected these petitions. Subsequently, on January 14, 1980 the Association of Data Processing Service Organizations filed a petition for review of the authorization by the full Commission.

The Department of Commerce has not taken a formal position on the merits of the applications or the petition for review. Nevertheless, there are important trade, telecommunications and information policy issues within the purview of the Department which have been raised in connection with these applications. The restrictions imposed by the Japanese on private leased line services are adversely affecting U.S. economic and competitive interests. We are concerned that these adverse results will outweigh any benefits to the public interest that may be derived from the availability of the new public data services. Accordingly, we intend to monitor closely the development of the new services during the experimental period granted by the Commission. At the expiration of the experimental period, we shall make recommendations to the Commission concerning a regular grant of authority, and shall consider other appropriate courses of action we may wish to pursue.



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As you know, the U.S. Government has made efforts to obtain the removal of Japanese restrictions placed on U.S. data processing firms. These restrictions limit the firms in accessing their multiple computer centers in the United States via the trans-Pacific circuits which they lease.* They impose economic inefficiency in the use of the circuits by severely limiting the scope of services the firms can offer in Japan, and inhibit competition.

The Japanese authorities have based their action on a questionable technical interpretation of the concept of message switching, classifying the offering of international remote access data processing through a distributed computer system as a prohibited communications service. They have thus effectively erected a non-tariff barrier to U.S. companies seeking to compete in the Japanese market. The Japanese restrictions are also inconsistent with the conventional means of providing international telecommunications services, in which the correspondent administrations are responsible for services only to the midpoint of the international facility.

The resulting diseconomies could lead some companies to withdraw from the Japanese market, and they do deter others from entering the market. The U.S. data processing firms are also concerned that the Japanese may go one step further and terminate the availability of private line services altogether. The Common Carrier Bureau, however, has asserted that there is no persuasive evidence of a threat of the discontinuance of private line services. Even if there were no threat of an explicit termination of the private line services, the Department of Commerce remains concerned about the continued impairment of these services, or any action by the Japanese that would directly or indirectly result in the cessation of such services.

* The Department of Commerce is interested in the Commission action from a user's perspective as well. The Department is currently implementing its Worldwide Information and Trade System (WITS), a computerized international market-information system for government and business users, for which Control Data Corporation has been awarded a contract to provide the international access and data base services during an experimental period. However, the Japanese restrictions discussed above prohibit the Department's use of this U.S. firm's service in Japan. Thus, the U.S. Government will be forced to use impractical and uneconomic alternatives, because of Japanese restrictions imposed on the transfer of data between the company's computer centers located in U.S. territory.

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For about two years, we have been trying without success to get the Japanese government to remove this obstacle to trade. The Commission's decision will permit the Japanese entry into the U.S. teleprocessing market through VENUS-ICAS. This action will enable Japanese firms to provide services on a competitive basis with those offered in Japan by U.S. data processing firms via leased lines. However, as the Japanese continue to restrain the operations of U.S. companies in Japan in the manner discussed above, it is questionable whether the Commission's actions will serve its stated objective of fostering competition.

We believe that the Commission should be fully aware of all of the implications of any final decision it makes regarding the VENUS-ICAS applications. We therefore repeat our offer made in our letter of June 15, 1979 to brief the Commission on the potential impact of its decision on U.S. trade policy, and on our efforts through the Joint U.S.-Japan Trade Facilitation Committee and through other means to eliminate the Japanese restrictions on private leased line services.

The Department of Commerce will continue to pursue the elimination of the existing restrictions imposed by the Japanese Government and its agencies on leased line services. Because of the Department's interest in the VENUS-ICAS applications, we request that the Commission keep us fully informed of all developments relating to this case, and provide us with the results of its examination of the data it receives regarding the development and operation of these services.

Sincerely,


Abraham Katz
Assistant Secretary for
International Economic Policy



Henry Geller
Assistant Secretary for
Telecommunications and
Information

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

May 12, 1980

OFFICE OF
THE CHAIRMAN

Honorable Abraham Katz
 Assistant Secretary for
 International Economic Policy
 U.S. Department of Commerce
 International Trade Administration
 Washington, D.C. 20230

Honorable Henry Geller
 Assistant Secretary for
 Telecommunications and Information
 U.S. Department of Commerce
 International Trade Administration
 Washington, D.C. 20230

Date Rec'd MAY 15 1980
 Control # _____
 Action Office HG
 Copies to: Alex
Chairman
 Suspense Date _____
 Remarks:

Dear Messrs. Katz and Geller:

This is in response to your letter of April 16, 1980, requesting the opportunity to brief the Commission on various problems involving Japanese restrictions on private leased lines. As you have noted, the Common Carrier Bureau on December 14, 1979, authorized three international record carriers pursuant to Section 214 of the Communications Act, as amended, to provide a specialized data service to Japan.

The Commission is, of course, very willing to be briefed by your staff on the potential impact of its decision on U.S. Japan trade policies. As you are no doubt aware, there are several pending petitions for review of the Common Carrier Bureau's December 14, 1979 order. Since the briefing would appear to address the merits of this pending proceeding, we believe that it is necessary to assure basic fairness to other interested parties. We believe that this is particularly necessary here since, as you noted in your letter of April 16, the Department is a user of international access and data services offered by one of the parties objecting to Commission approval of the Section 214 applications in question. It thus might be viewed by some parties as an interested party.

We would, therefore, propose that the briefing be open to other parties to this proceeding so that they might have a subsequent opportunity to present their views as to any material issues in dispute. Alternatively, we invite you to submit for the record a further written statement which would detail your views of the impact on the efforts of the Joint U.S. - Japan Trade Facilitation Committee of the various options open to the Commission in reviewing the Common Carrier Bureau's December 14, 1979 order. In particular, you might specifically advise us as to what action you would recommend we take with respect to the pending applications for review.

We remain anxious to be fully informed on U.S. - Japan trade issues and their bearing on pending proceedings before the Commission. Willard L. Denory, Assistant Chief, Common Carrier Bureau, will contact your office to discuss appropriate arrangements for a briefing.

Sincerely,

Charles D. Ferris
Chairman

cc: Parties to the Proceeding

P.S. As Senator Geller is aware, the Chairman is presently in the People's Republic of China but negotiated that we respond immediately to your April 16th letter in his absence/absent

Mr. PREYER. Had there been other cases similar to the Japanese reciprocity case, to your knowledge?

Mr. GELLER. There was one example involving the French telegraph company where one of its applications was held up because of this lack of reciprocity. They then cut their umbilical cord to the French Government and a grant was made. I think the more difficult area has been the area that was mentioned earlier this morning—the GTE-Telenet issue where the Commission authorizes Graphnet and Telenet to enter into arrangements with foreign correspondents; the foreign correspondents have been very reluctant to do so. That is an area that the FCC and we have been focusing on a great deal. We want that additional competition. It is a very difficult area in which to succeed because the foreign administrations which have control over their half of the telecommunications circuit do not want it; they say that it may cause additional expense to them; they may have to buy additional equipment, usually of U.S. origin. Also, they are worried that some of the new services will be cross-elastic with existing services, such as telex, and will remove revenues.

So, the bottom line, they ask, is will the addition be economically advantageous to them.

We have argued very strongly in international meetings with them—the FCC and we—very recently in England that there ought to be more opening of these markets; and we have given, we believe, very persuasive reasons for that.

In all our bilateral discussions—and I have had them with representatives from the United Kingdom and the French—we have hammered on this point, and we intend to hang in there and do our best to open up those markets to U.S. participation by additional carriers.

Mr. PREYER. Let me get this clear. Do you think it would be appropriate, in terms of policy and in legal terms, for the FCC to consider questions of reciprocity in deciding whether enterprises of foreign nations should be permitted to enter the U.S. communications market?

Mr. GELLER. Their mandate is the public interest; it is a very broad mandate. If the service does result in plusses on the U.S. side that have been asserted—and as you see in the CDC example that it should be granted—I believe there is an argument under the public interest standard that all considerations should be taken into account. And if, on balance, the anticompetitive consequences outweigh the pluses here, that the Commission remains free to act in a situation such as the CDC situation. But it is, I want to emphasize to you, not a settled matter.

There have been some indications that the Commission is willing to consider this, others that they have backed away. And they are not, as Mr. Nimetz said, an independent agency. Therefore, if they did act upon it, there would then be court review, and it would finally be settled in the court.

Mr. PREYER. Do we need any statutory changes to allow the FCC to effectively consider these questions?

Mr. GELLER. I think that if there were, certainly, a congressional statement that the FCC and the executive branch are to act in a way consistent with the promotion of competition, that would be very helpful.

It is my understanding, Mr. Chairman, that following action on the domestic common carrier legislation, there will be consideration of international communications legislation.

It is my further understanding that there is some possibility that such a provision might be inserted in that bill. NTIA has urged the insertion of such language in the Telecommunications Act revision.

This is all to follow along after there has been consideration of the domestic; but there was a bill, H.R. 3333, which did consider this issue. That bill is no longer under active consideration, but in commenting on it, NTIA and others urged that there be a provision calling upon both the executive branch and the FCC to take into account this policy in their actions and activity.

Mr. PREYER. I gather you are saying that we do need some statutory change.

Mr. GELLER. We think it would be helpful. It would certainly clarify the area, and it would deliver a very strong message to our foreign partners that this is a policy, not just of the executive branch or the FCC—important as they are—but is the policy of the U.S. Government as declared by Congress.

Mr. PREYER. Thank you. I have some more questions, but I would like to recognize Mr. Butler at this time.

Mr. BUTLER. Thank you, Mr. Chairman.

I, too, want to congratulate you, Mr. Geller, on a fine statement. It is most instructive and helpful, and I appreciate the effort that went into it.

You seem to have mastered the acronym, and I want to congratulate you on that, although I will admit that I was a little bit stumped for a moment by what the "USG" was; that turned out to be the U.S. Government, I figured after a while. [Laughter.]

Mr. GELLER. A minor player in the proceedings.

Mr. BUTLER. I think you are very inventive; I appreciate that. Let us turn to page 10 of your statement, paragraph (5): "Foreign preferential financing is among the most important threats to American exporters. Plans should be developed for giving priority to investments in the telecommunications and information sector as a means of developing new markets."

How should the United States go about giving priority to investments in the telecommunications and information sector, as you suggest?

Mr. GELLER. I think it is a matter of coordination among the interested Departments. I think Commerce and State, when they find a situation where it is appropriate to come forward and say there is a need for a different financial plan, should perhaps approach the Export-Import Bank and bring it into the issue.

The Export-Import Bank has many other claims upon it, obviously, and it is going to be a matter of their weighing them.

I speak to you from an obvious prejudice—this is our area. NTIA is terribly interested in it. We say it is of great importance, and we believe it is of great importance for all the reasons I gave.

It would then be up to the Export-Import Bank, however, to respond to this coordinated effort to our bringing to its attention that a financing plan would be very helpful in the following area, let us say, in the area of the Egyptian procurement or some other procurement.

I cannot tell you that we will be successful; I can only tell you that we think there has to be focus on this because, however superior our technology is, if you do not make the money available, if money becomes the guiding force and the Europeans or others can make money available on different terms than us, then within limits we ought to look at that and try to do the best we can to meet that challenge.

Mr. BUTLER. I appreciate that.

What I am trying to figure out is, from the point of view of the Congress, how we would—what should Congress be doing to respond to your suggestion here?

Mr. GELLER. I think the question would be how much funding goes into AID and to the Export-Import Bank—what they have available and what priority Congress indicates it has to AID or, as best they can, to the Export-Import Bank.

Mr. BUTLER. You think it is quite appropriate for Congress in funding AID and Eximbank, to the extent that we do, to call attention to these priorities?

Mr. GELLER. I think that would certainly be appropriate. Congress has the whole ball park in front of it. As I said, we can be accused of being parochial, and I admit it. But I cannot possibly be in a position to evaluate what other industries need and what the competing considerations are. You are in the position to do that, and so also, obviously, is the Export-Import Bank and others. I think, therefore, that guidance would be welcome and would be important.

Mr. BUTLER. I thank you.

Turning to another area, you seem to be saying that the EG's—do you know what that is? European governments—[Laughter.]

Are you satisfied with our privacy protection laws. Considering our constitutional due process protections and the privacy statutes on the books now at Federal and State levels, is there any real foundation to these concerns by foreign nations?

Mr. GELLER. No, I do not believe so. I think the United States has been a leader in this area, and I think the process in the OECD has been very helpful because it has been educational in showing what we have done.

In this area, we have the Federal Privacy Act of 1974, the Fair Credit Reporting Act; we have the Equal Credit Opportunity Act, the Buckley amendment in the educational area. We are proceeding, as the chairman knows because he has been in charge of several of the bills here in Congress, with a very broad legislative program to carry that out sector-by-sector as appropriate with even further privacy protections. So, I think the United States has no need for apology in this area at all.

Mr. BUTLER. In the same general area, is there a need to extend the protection of the Privacy Act of 1974 to foreign nationals? You mentioned that in passing, I think.

Mr. GELLER. The Privacy Act of 1974 applies only to the Government. I would think that any foreign national who might be a consultant or employee of the Federal Government should be covered—I am told that the Privacy Act excludes nonresident aliens. So your question is very appropriate.

In my view, I do not see why these individual protections should not be extended. The rights are rather fundamental rights of individuals. And my offhand reaction—and this has not been coordinated through OMB and others—is that yes, it ought to be extended. I am not aware of the policy debate that went on as to its deliberate exclusion, but it seems to me that these rights we are talking about—that you know what records are being collected, that you have a right to see them when an adverse decision is made, that you have a right to access to information that went in them, and that there be restrictions on how that information will be disseminated—are all very important rights. There are exceptions, and those exceptions do allow the Government to function properly in the area of law enforcement.

Mr. BUTLER. This may pose some problems with the FBI and the CIA, but I judge from your answer that you are really not going to undertake to respond to that.

Mr. GELLER. The issue, a revision of the Privacy Act of 1974, came up when we were considering the President's privacy program, and it was determined not to seek that—to gain further experience and not return to this issue for several years. I think when we again approach this issue we can then focus on the question that you have raised and see how it has worked out, and whether there have been any abuses, and whether there is a need for remedial action. That is not now under active consideration.

Mr. BUTLER. I thank you.

Several witnesses have suggested the primary responsibility for the international data flow problems should be handled by the special trade representative—the STR. What is your opinion concerning the appropriateness of the STR to handle negotiations in this area and their ability to develop policy in this area?

Mr. GELLER. I would echo what Under Secretary Nimetz said on the issue. I think that when it evolves trade issues that are of major importance, the USTR obviously should be the leader, and its brings the most clout and the most leverage to the issue since it is a White House organization.

On many other issues, the State Department, with the assistance of Commerce, should be, I think, the ones who are the leader and should be doing the work. For example, the transborder data flow issue that we have been dealing with, and personal privacy, is not really appropriate for the USTR to handle. It was handled successfully by State with our participation.

Mr. BUTLER. I think the issues that arise on international data networks, about access to them, private lines, and other technical issues. I do not believe, again, that it would make any sense to say this must go to the USTR. That is an issue much more appropriately handled by State and Commerce. And by overloading the circuits we might dilute the ability of the USTR to do the essential task it has to do when the issue is a trade issue that is of great magnitude.

Turning to one more problem, you state that the creation of a central administrative body to oversee the operation of our privacy laws and serve as a focal point for intergovernmental discussion of privacy issues is not indicated. I would like you to develop your reasons why.

Mr. GELLER. This is one of the differences between us and the Europeans. The Privacy Commission study did recommend that there be a single focal point. The President decided not to do so. He felt that, once again, we are creating another agency, that the agencies tend to move on, and while they do a great deal of good they also interfere considerably and the better approach in this area would be to set out what the principles are, to make the law very clear, and then to allow that to go to individual enforcement—enforcement by the individuals in the courts for specified damages, liquidated damages, or other ways of insuring that there is a deterrent. We felt that was much better than setting up another administrative structure.

Under Secretary Nimetz said that once you set up an international body, it is never disbanded and marches on. We were afraid that however you set up this privacy agency and whatever small powers you gave it, it would grow, and grow, and grow, and then we would have something that, in the name of protecting individual liberties, might interfere too much in the processes of the individual, the Government, and so on. We preferred this route of setting out the principles and allowing enforcement.

As you know, there are some exceptions to that. In the insurance areas, we have suggested that enforcement powers should be vested in the State commissioners, not the Federal Government; if the State commissioners want to carry out the privacy principles, they also ought to be allowed to intervene; but there would be no Federal mechanism here.

Mr. BUTLER. Thank you. I appreciate the response, and I yield back to the chairman.

Mr. PREYER. Thank you.

Mr. Geller, we received some testimony from GTE-Telenet that a consortium approach among the U.S. telecommunications carriers

in negotiating with foreign PTT's for operating agreements would be advisable. They suggested that a representative of the FCC or NTIA should chair such a committee. What do you think about the feasibility of that approach?

Mr. GELLER. If there were such a consortium, it would certainly need a governmental entity to be the chair of it for antitrust reasons.

It is one that has been suggested and is worthy of study. We have reached no conclusion on it. It would be helpful in preventing our carriers from being played off, one against the other, when they deal with a single foreign entity—the PTT. And it might be helpful also in facilitating new entry. So it does have some plusses. It may have some deterrents, and we are looking at it; it is under consideration.

Mr. PREYER. Thank you. I have one other question.

You gave us some interesting statistics on the important role that information and communications sectors play, both in terms of our economic growth and in our balance-of-payments problem. Do you have any estimate of the negative impact on our economy which might result if data flow barriers continue to grow?

Mr. GELLER. No, we do not. It is very difficult to estimate negative ones. The only thing I would say is that it obviously could be very substantial. We are talking of goods worth around \$12 billion. I know you can argue that the \$12 billion will not disappear, but I do point out that in the area of TV sets, we used to have \$1.5 billion in exported goods, and that disappeared entirely. So, while I am not projecting that here, the amounts of money are very large, so the effects could be very large. Those effects, in turn, can result in quite a loss of jobs.

Again, in the TV area, it is estimated that 20,000 U.S. jobs were lost as a result of this. I believe that is the figure—we could check on that.

We could try to supply more definitive figures, but I think in the end it would always be conjecture. But we would fully agree with all the witnesses who have testified, and we believe, with the thrust of the subcommittee's own questions, that it is very serious. The area is so important, as you said, Mr. Chairman, to the U.S. economy. This represents, after agricultural and aviation products, the most important export area.

Mr. PREYER. Thank you very much.

Do you have one question?

Mr. VIZAS. Just one quick question.

Mr. Geller, you indicated—and Mr. Nimitz indicated—that there is close coordination between NTIA and the Department of State. Prior to the recent reorganization at State and the most recent decisions that were made, was NTIA ever requested by the Office of Telecommunications in the Department of State to assist or advise the State Department on this range of issues that we are calling international data flow and transborder data flow?

Mr. GELLER. The particular transborder data flow issue did not go to the Office of Telecommunications; it was in a different part of State—in that working group under Mr. Morris Crawford—and we participated there. We have very close connections, as you know, with the Office of Telecommunications.

Mr. VIZAS. But I was asking on the nonprivacy matters, and the trade area, and so forth. Have you ever been requested to give advice?

Mr. GELLER. On the working level, there may have been some inquiries. At my level, I do not recall that.

Mr. VIZAS. Thank you.

Thank you, Mr. Chairman.

Mr. PREYER. Thank you very much, Mr. Geller. We appreciate your being with us today and your testimony. We would like to keep in touch with you as these matters develop in the future.

[Mr. Geller's prepared statement and submissions to additional subcommittee questions follow:]

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Statement of

**Henry Geller
Assistant Secretary of Commerce
for
Communications and Information**

Before the

**Subcommittee on Government Information and Individual Rights
Committee on Government Operations
U.S. House of Representatives**

March 27, 1980

Mr. Chairman and Members of the Subcommittee:

I am Henry Geller, Assistant Secretary of Commerce for Communications and Information and Administrator of the National Telecommunications and Information Administration (NTIA). President Carter created NTIA in 1978 by Executive Order 12046, in which he named the Secretary of Commerce his principal adviser on telecommunications and information policy matters. Of particular interest to this Subcommittee is Section 2-410 which requires us to study and make recommendations concerning the impact of the convergence of computer and communications technology. Since NTIA's creation, we have been engaged in a number of activities which are related to today's area of concern -- international telecommunications and information flows.

We have actively participated in the Organization for Economic Cooperation and Development (OECD) activities, formulating Guidelines to harmonize national efforts in the transborder data flow area. These Guidelines seek to harmonize, on a voluntary basis, the proliferating national privacy protection laws of OECD

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Member countries. We regard the Guidelines as an important first step in the necessary international effort to foster both legitimate privacy protection and the free flow of information and trade. In view of the Subcommittee's interest in this specific area, I shall report to you in detail on our activities within the OECD later in my testimony. NTIA is also very involved in CCITT and CCIR* work in spectrum allocation and standard setting. NTIA chairs the Alternative Facility Plans Group of the North Atlantic Consultative Process and we have long advocated the establishment of a world-wide telecommunications facility planning process.

Before reporting to you on specific issues, let me attempt to put the broader problem before you in a way that will help you to understand not only transborder data flows, but the whole panoply of telecommunications and information issues. In our international activities we have observed a growing awareness of the importance of telecommunications and information. In the last decade, much of the world has become concerned about the convergence of computers and communications — and the impact of the policy issues that convergence raises. Several high-level commissions have been constituted to look into the issue of the effect of "informatics" on society, and their recommendations are being considered seriously by governments. Those recommendations generally can be characterized as seeking to preserve and enhance the role of national telecommunications and information industries, and to protect national sovereignty in the information field,

* The Consultative Committee on Telephones and Telegraphs (CCITT) and the Consultative Committee on Radio (CCIR) are standing committees within the International Telecommunication Union (ITU).

through whatever private or governmental means appropriate, given the importance of the field.

We have already seen the impact of these recommendations in a variety of forms and disguises. Efforts to restrict the flow of data and efforts to restrict the availability of telecommunications facilities and services are becoming more and more prevalent. Many nations have targeted the telecommunications and information industry as critical to national growth in the 1980's. The United States has yet to fully recognize the importance of this sector and the necessity of a coordinated, cohesive effort to promote its growth and development. At the present time, it is important to observe that the USG has developed a set of principles which have been quite consistently applied in the international telecommunications and transborder data flow areas. These principles may be summarized as follows:

- free flow of information;
- free trade;
- telecommunications networks and services constructed, operated and tariffed according to legitimate customer needs and on a technically and economically sound basis;
- assistance to LDC's entering the information age;
- support for legitimate privacy protection.

An Interagency Committee chaired by the State Department addressed the issues last year, and has been meeting since to deal with transborder data flow issues. NTIA has worked closely with State and its Industry Advisory Committee

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on TBDF over the last two years. However, we could certainly agree that more concerted attention to this area is desirable. Given the growing importance of the area, its broad scope, and the fairly complex and technical nature of its component parts, a renewed effort of interagency policy coordination should be adopted. Certainly State, USTR, FCC and NTIA should be involved; other agencies may wish to participate also, such as DOD, DOJ, NSF and others.

Importance of the Sector

In addressing the many issues affecting telecommunications and information goods and services, it is important to consider these industries as a single sector. From a technological, functional, institutional and political point of view, they are interdependent aspects of a single whole.

We consider this sector generally to consist of a wide range of goods and services -- from computers, telephone equipment, books and magazines to consumer electronics, data processing, advertising and films. However, our immediate concentration is on a significant percentage of the sector comprised of computers, computer services, telecommunications equipment and services, consumer electronics and closely related items.

Total U.S. exports in telecommunications and information goods (excluding services) in 1977 was in excess of \$12 billion, more than double the 1972 total for this sector. In key areas, growth was even more rapid. For example, exports of semiconductors more than tripled in the same timeframe, reaching a 1977 total of \$1.5 billion. The U.S. balance of payments for telecommunications and information merchandise in 1977 was slightly favorable, with exports exceeding imports by more than \$77 million; however, if consumer electronics (TV sets,

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radios, etc.) are excluded from the calculation, the balance improves significantly -- reaching almost \$3 billion. This compares with total U.S. merchandise exports of over \$120 billion in 1977, and a negative balance of payments of \$31 billion. Thus, telecommunications and information merchandise exports represented 10% of the overall U.S. merchandise exports in 1977. Overall, the telecommunications and information sector, together with agriculture and aviation, are currently the leading portions of the export market for the United States.*

Precise data on services are not available -- this is an area in which definitions are not yet commonly accepted. However, U.S. overseas message telephone services alone have grown from \$357 million in 1972 to \$976 million in 1978.** In addition, international telecommunications and information services are critical to other aspects of international trade. For example, banks, insurance companies and other multinational corporations find it impossible to operate abroad without telecommunications ties to U.S. data processing and data bases, and without the availability of U.S. technology abroad to gain access to these systems. In fact, telecommunications and information services form the critical infrastructure of the international marketplace. Without the rapid availability of accurate information, most corporations would not be able to carry on multinational enterprises.

* Source: U.S. Department of Commerce Annual Reports, FT 610 and FT 210. SIC Codes and data attached as Appendix I.

** Source: Federal Communications Commission, Statistics of Common Carriers, 1978 Edition.

Challenges to the Sector

At this point, the United States is the leader in the overall world market for computers and telecommunications equipment. Our strength has been in the size and vigor of our domestic economy and our advanced capability in key areas of basic and applied technology.

On the other hand, that leadership appears to be diminishing.

For example, a recent GAO study points out a declining surplus position in U.S.-Japan trade in computers and related equipment, as shown in Table I.

Table 1

Bilateral Trade in Computers and Related Equipment

(including parts)

	<u>1974</u>	<u>1975</u>	<u>1976</u> (millions)	<u>1977</u>	<u>1978</u>
U.S. Exports to Japan	\$281.7	\$214.1	\$271.7	\$346.2	\$367.9
Japanese Exports to U.S.	16.7	33.5	99.7	96.9	218.2
Balance	\$265.0	\$180.6	\$172.0	\$249.3	\$149.7

Source: Report by the General Accounting Office, United States -- Japan Trade: Issues and Problems, ID-79-53, September 21, 1979.

Both Japan and Europe have directly set out to challenge the U.S. position in the provision of telecommunications and information goods and services. It is clear, that the Japanese Government and industry partnership has led to the creation of a significant export industry in consumer electronics, computers and telephone equipment. Increasingly, European nations, both individually and

collectively, are beginning to adopt somewhat similar policies. Overall, the foreign challenge has several key elements:

- (1) National or regional procurement preferences for government or private sector institutions to encourage and protect national industries;
- (2) Direct subsidies for research and development and operating expenses for national or regional industries;
- (3) Availability of preferential financing for international procurements;
- (4) Regulatory barriers to the introduction or expansion of U.S. telecommunications and information service industries;
- (5) National or regional standards that discriminate against American goods in favor of national or regional goods and services;
- (6) Government promotion of joint ventures, information exchanges, etc.; and
- (7) Strategic government planning on a national or regional basis identifying product lines, marketing strategies, etc. for key export targets.

Most of these national strategies are only beginning to have an effect upon the U.S. industries. But some of the effects to date have been impressive. For example, a consortium of U.S. manufacturers failed to win a \$1.8 billion Egyptian telecommunications procurement contract because its European competitors appear to have successfully arranged significant concessionary financing. Further, the Japanese have erected regulatory barriers to the acquisition of leased line telecommunications services which have had the effect of severely restricting the

operations of U.S. data processing companies. Recently, representatives of European countries made clear their reluctance to introduce U.S.-based telecommunications services which might divert revenue from future or existing services. Finally, as I shall discuss in more detail, we have concerns that efforts to protect privacy may eventually result in significant restrictions on the flow of data across national boundaries.

The United States is vulnerable to a steady erosion of its position in the international marketplace unless we respond by focusing our attention on this important sector. We should not wait until the effects of foreign actions have so impacted our industries that they cannot recover.

Need for Aggressive, Coordinated Action

It will be necessary, in order to successfully promote our national interest in this trade sector, to focus on several policy areas simultaneously and in a highly coordinated fashion. Linkages between discrete aspects of this complex area must be analyzed and evaluated. Among the aspects that should be considered are:

(1) Multilateral Trade Negotiations:

Strong analytical support is needed for implementation of existing agreements as they relate to telecommunications and information goods and services. Further, and most importantly, this sector must be targeted for special attention in future negotiations.

(2) International Organizations:

As discussed more fully within, OECD has been studying "transborder data flow" issues, with a view towards harmonizing national efforts in the personal privacy area. Now the OECD is expanding its agenda to include:

transborder data flows of non-personal information; data communication policies; and international trade in information goods and services. Other international organizations, such as the European Economic Community (EEC), have been monitoring that issue. The International Telecommunications Union (ITU) has longstanding authority to deal with the technical aspects of international telecommunications. Further, the U.N., through UNESCO, has begun concentrating on international information issues. Finally, the International Bureau of Informatics (IBI), principally a European and Third World organization, has developed a concentration on information trade issues. It is clear that coordinated U.S. efforts are urgently needed for the purpose of organizing a consistent U.S. response to telecommunications and information activities as they arise in international organizations.

(3)

Standards:

The development of standards for interconnection of telecommunications and information equipment -- and the assurance of technical compatibility -- is a necessary part of any export effort. This was recognized in the Tokyo Round of the Unilateral Trade Negotiations which enacted the Agreement on Technical Barriers to Trade, requiring open procedures in standards-related activities. Implementation of the Agreement as it relates to the telecommunications and information sector will required focused U.S.

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attention. Moreover, standards activities in various international organizations and in multi-lateral negotiations not primarily focused on technical issues cannot be conducted in isolation from implementation of MTN agreement on larger policy issues.

(4) International Bidding:

More aggressive promotion and vigorous representation of U.S. interests in bidding for contracts abroad is necessary. Promotion of this sort will require a more effective information gathering system targeting this area.

(5) Financing:

Foreign preferential financing is among the most important threats to American exporters. Plans should be developed for giving priority to investments in the telecommunications and information sector as a means of developing new markets.

(6) Introduction of New Services:

Efforts have been underway for several years to expand the service offerings available in the international telecommunications market, particularly to include a greater range of inter-active computer-to-computer communications. These efforts have been stalled by the reluctance of some foreign administrations to introduce innovative services which may require initial capital investment (often in U.S. manufactured telecommunications equipment), or which may display some cross-elasticity with existing or planned services. The availability of a wide range of services within the United States upon which the operations of many large companies are dependent is

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increasing the need to make similar services available internationally. Specific U.S. efforts to demonstrate the advantages of the introduction of new services should be undertaken.

(7) Export Regulations:

U.S. export procedures obviously should be as efficient as possible in this area. There should be continuing evaluation in order to streamline procedures for the export of telecommunications and information goods and services.

(8) Developing Countries:

The potentially large telecommunications and information market in developing countries provides a significant opportunity for expansion. However, more effective coordination between government and industry will be necessary to take full advantage of this opportunity.

(9) Information Gathering:

All efforts toward the promotion of U.S. trade, and particularly in the telecommunications and information sector, must be built upon a strong data base regarding markets, trends and opportunities. The Commerce Department, is currently pursuing efforts in this regard. Certainly improved data gathering, and analysis would itself be a major step toward trade development in this sector.

(10) U.S. Domestic Policies:

Any steps taken to promote the expansion of U.S. trade in the telecommunications and information sector should be consistent with U.S. domestic policies, since these policies have formed the

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foundation for the dynamic U.S. industry. For example, Congress is currently developing strongly pro-competitive free market policies aimed at strengthening the domestic telecommunications market. Steps taken toward export promotion, if consistent with these market-strengthening policies, are likely to result in a healthy and vigorous international marketplace, of benefit not only to large and small companies, but ultimately to the consumer of their goods and services.

I have attempted to outline for you some of the interrelated aspects which must be considered if we decide to take aggressive action to promote the U.S. telecommunications and information sector in the world marketplace. The list is not all-inclusive, but it does demonstrate the breadth of activities involved in a sectoral approach. This approach will require close cooperation and coordination within the Executive Branch and with Congress. Of equal, or perhaps greater importance, will be an alliance between government and industry, in its dual role of user and provider of telecommunications and information goods and services.

Recommendation

NTIA strongly believes that the telecommunications and information industry should be identified as a "key" industry for promotion and expansion. As you know, the Department of Commerce has been given new and much heightened responsibilities in promoting U.S. exports. In light of this and the new problems arising in this particular sector a specific program should be developed within the

Department of Commerce which would concentrate resources to address this problem.

This program might include activities in four general areas:

- (1) Identification of Non-Tariff Barriers;
- (2) Investigation of Financial Opportunities
- (3) Promotion of Trade Opportunities;
- (4) Support of International Negotiations.

(1) Identification of Non-Tariff Barriers

Increasingly, international competition in the provision of telecommunications and information goods and services is being restricted by the erection of non-tariff barriers, including technical regulations, operating restrictions, rights of establishment policies, government procurement policies, and the refusal of facilities interconnection. Critically important among these may be the use to which equipment and transmission standards are put. The Department of Commerce program would include intensive use of existing Government mechanisms in an effort to identify and analyze non-tariff barriers -- using available U.S. Government and industry sources -- and providing support for, and advocating positions within, multilateral and bilateral fora. Particular emphasis would be placed on standards issues arising within the ITU and other international organizations.

(2) Investigation of Financial Opportunities

The program would include coordination among of the Departments of Commerce, Treasury, and State, AID, the Export-Import Bank and other interested

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parties, to evaluate existing mechanisms for arranging financing for telecommunications and information projects.

(3) Promotion of Trade Opportunities

The program would include coordination of existing and potential promotional activities relating to telecommunications and information, and establishment of a technology training seminar for commercial attaches. This seminar would provide the commercial officers in our embassies abroad with the necessary understanding to effectively assist U.S. industry in taking advantage of export opportunities.

(4) Support of International Negotiations

By virtue of its coordinating role, this program would be very well suited to provide analytical support for international negotiations involving telecommunications and information. It will identify specific opportunities for leverage over a broad range of issues and will give assistance to negotiators in diverse fora, including GATT, the U.N. and the ITU.

I have intended here to give you only the briefest description of a program which would begin to provide a focus for aggressive, coordinated action. Obviously, the four general areas I have identified are integrally related and involve the leadership of several agencies within the U.S. Government, the USTR, and the Departments of Commerce, State and Treasury, for example.

Transborder Data Flows

I would now like to discuss in more detail one set of issues that fall within this general context -- transborder data flows -- an issue of concern to your

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Subcommittee and prior witnesses. NTIA shares that concern, and, accordingly, I would like to inform you of our views on the transborder data flow issue and what steps we and others are taking toward resolving it.

In view of the extensive prior testimony on this matter, with much of which I am in agreement, I will not burden the record with a discussion of the underlying policy trends in other countries. In our view, there are two major elements to this question: flows of personal data and the broader question of all data flows, personal and nonpersonal.

As others have testified, many countries have begun addressing the personal privacy aspect of TBDF through the enactment of national "data protection" laws. These laws generally establish a standard of privacy protection and an administrative mechanism to enforce it. They often require licenses or permission to create personal data files or to operate automatic data processing systems containing such files; a number of the laws require permission for the export of data for processing or other action. Approximately 10 countries now have such laws; others are actively considering draft bills or Commission reports.

While the U.S. fully supports the notion of privacy protection both domestically and internationally, we see a potential for privacy protection to become a device for unduly hindering both free flow of information and free trade. We are of course well aware that the Europeans and Canadians have often expressed their fear of undue reliance on the U.S. for information resources. One of the great dangers perceived by us was that other countries would exercise their

inherent sovereign power to block the export of their data to the U.S. for processing. The Europeans have on occasion mistaken the absence of an omnibus privacy statute in the U.S. to mean we are not as concerned about the issue as they are and offer a lower level of privacy protection. Nothing, of course, could be further from the truth. The U.S. has been at pains to point out to our foreign colleagues that we have a strong record of protection of personal and civil rights, and specifically have many privacy protection guarantees, both statutory and constitutional, at both the state and federal level which no other country can match. The U.S. Privacy Act (although it does not cover records on foreign nationals) and Freedom of Information Act are particularly strong privacy protection tools for records maintained by the Federal Government; the Fair Credit Reporting Act, Equal Credit Opportunity Act, and the Family Educational Rights and Privacy Act (commonly called the Buckley Amendments) provide privacy protections for certain kinds of records.

The EEC, the Council of Europe, and the OECD have also addressed themselves to the international aspect of privacy protection and related questions. For the last two years, the U.S. has been heavily engaged in an effort to negotiate at the OECD a set of Guidelines to harmonize national privacy protection activity within member countries. This OECD effort, undertaken in large part at the suggestion of the U.S., seemed to us a more practical and sensible way to approach the still unsettled questions of international privacy protection than to proceed, as the Europeans have done among themselves, to draft a formal, binding international convention. We believe that the problems in this area are not yet sufficiently defined to warrant the formal strictures of a treaty; the dynamic

nature of the technology and industry also argue against taking immediate action which will be difficult to update as appropriate.

Attached to my testimony as Appendix II is a copy of the OECD draft Guidelines as they currently read. We believe that this effort is a significant, albeit limited first step along the path to a workable international regime for personal privacy protection, consistent with the competing value of free flow of information. Accordingly, I would like to describe briefly the development and the primary thrusts of the Guidelines. OECD undertook to draft Guidelines because it was recognized that the proliferation of varying national laws and policies could lead to restrictions on data flow and to a chaotic or unmanageable situation. The U.S. is, as I mentioned earlier, the principal exporter of information goods and services.

Finding consensus on the Guidelines has proven to be a difficult process. Although there is wide agreement on the nature of the basic privacy protection principles, i.e., the core principles appearing in Sec. II of the Guidelines, there have emerged some major substantive and procedural differences in the European and U.S. approaches to privacy protection. The U.S. policy generally endorses the following:

- privacy rights to be self enforced through judicial rather than administrative remedies;
- privacy legislation to be narrowly drawn, i.e., sectoral;
- avoidance of additional governmental bureaucracy;
- emphasis on the civil or human rights of individuals rather than on the medium used to maintain the records, i.e., automatic or manual processing;

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- avoidance of licensing data bases or regulation of the data processing sector;
- emphasis on the free flow of information;
- support for free trade and elimination of artificial barriers thereto.

The European approach, broadly characterized, relies on the following basic principles:

- creation of governmental commissions to administer privacy laws and to protect citizen's interests;
- legislation to be omnibus in nature;
- interest in, or in some cases support and implementation of, the notion that privacy rights should be accorded to legal persons as well as private, natural citizens;
- regulation of data bases and data processing activities; emphasis on regulating the automatic processing of data to the exclusion of manual;
- emphasis on the protection of national interests, and consideration of potential restrictions on the free flow of information;

The European nations also believe that the Council of Europe effort to draft a binding international convention is far more effective as a tool for harmonizing diverse national legislation; they have participated simultaneously in the OECD exercise only because many non-European countries were not ready to participate in treaty negotiations. Nevertheless, it would be wrong to conclude that the U.S. is isolated or that the OECD discussions have been completely polarized. In addition to the previously mentioned wide area of substantive agreement, a number

of other countries, in varying degrees, support the U.S. views outlined above. In particular, countries with a common law tradition often supported U.S. views on implementation schemes.

Given differences in approach to privacy protection, and the unavoidable necessity in international negotiations to find compromise solutions to such differences, it should not be surprising that the Guidelines allow considerable latitude for member countries to approach privacy protection in their own way. Paragraph 19, for example, calls on countries to implement the substantive principles through a variety of mechanisms, including legislative, administrative, and private sector initiative. Nevertheless, we believe that the Guidelines constitute an important watershed in the crucial task of establishing, on an international basis, the principle of personal privacy protection. Specifically, the Guidelines accomplish the following:

- establish, on an international basis, certain substantive core principles agreed upon by member countries;
- recognize the need to balance the competing considerations -- legitimate privacy protection and the free flow of information;
- call on governments to avoid measures which unduly interfere with the free flow of information in the name of privacy protection;
- recognize the need for sending, receiving, and transit countries to take account of the effect of their policies and practices on the interests of other states;
- recognize the need for continued cooperative international attention to the issue of international privacy protection including review of the Guidelines at an appropriate time.

One of the thorniest conceptual difficulties encountered in drawing up the Guidelines is raised by the relative ease of moving data from country to country. Multijurisdictional transactions inevitably involve choice of law questions. Some countries have expressed considerable anxiety about the possibility that data on their nationals, once exported, will be beyond the effective reach of their privacy law. An issue currently under discussion is whether processing countries should be obligated to assure compliance with the local law of the originating state, or whether adherence to the principles of the Guidelines would establish a sufficient standard of privacy protection. The U.S. and others favor the current formula in paras. 15 and 17 which establishes the Guidelines as the appropriate standard, adherence to which should suffice to permit transfer of data between countries. The Scandinavian countries and Belgium, on the other hand, are currently supporting a standard based on the law of the exporting state.

The development of the draft Guidelines and their progress through the OECD review process in less than two years constitutes a major accomplishment and reflects the importance member governments attach to the subject matter. Recently, there have been some delays in final adoption at the Council level of the OECD. However vexing to us, such delays are to be anticipated and reflect in part the seriousness with which participating governments view the Guidelines as an important statement of international commitment. We remain confident that final adoption will take place in the months ahead.

The Guidelines, of course, are nonbinding in nature; neither the U.S. Government nor the private sector will be under any legal obligation to do or refrain from doing any particular act as a direct result of the Council's adoption of

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the Guidelines. At the same time we regard the Guidelines as an important moral commitment and believe other OECD countries do also. While the obligation on the U.S. Government is a moral one, rather than the legal obligations of a treaty, the means the Executive Branch has chosen to implement this moral commitment are in large measure to adopt Federal legislation. And we have cited the Guidelines and international situation as an important reason for moving forward with the President's comprehensive personal privacy program now before the Congress. In addition, NTIA plans to make specific efforts to encourage the private sector to support the Guidelines through voluntary steps of various kinds.

We also believe that adoption of the Guidelines by the OECD will have an impact beyond the 24 member countries. We would expect that certain nonmember countries will interpret the Guidelines as an important indication of the scope of privacy protection and of the direction in which it is moving. Nonmember countries can be expected at least to take account of the Guidelines in developing their own policy. This is not to say that we expect widespread acceptance of the Guidelines beyond the OECD member countries, but rather that both individually and through fora like the U.N., other countries will be looking to the Guidelines as the most authoritative international codification of principles. The mere process of drafting the Guidelines has been a useful exercise. As a result of such negotiations and discussions many foreign representatives have developed a fuller and more realistic view of the extent of U.S. privacy protection. To further reinforce this exposure, we have provided a number of briefings specifically to acquaint them with the details of the U.S. privacy law.

On the whole, I think the U.S. has been quite successful in negotiating a document which substantially complies with our policy views. We have had to make certain concessions, of course, but the most fundamental of our concerns, to avoid endorsing a regime of data processing regulation, and to avoid inclusion of legal persons, have been amply satisfied. Paras. 2 and 3 make clear that the thrust of the Guidelines is to protect personal privacy rather than to regulate data processing or economic relations between commercial entities. However, they do not preclude individual countries adopting a contrary policy. There may, of course, be further changes in the current text before its final adoption but we do not currently believe any such changes will be fundamental.

Another question has been raised which merits brief additional discussion. It is quite clear that one of the Europeans' concerns about the U.S. approach to privacy protection is the absence of a central administrative board to which they can direct their questions, grievances and routine intergovernmental discussion. While this is a valid concern we do not believe it is desirable to establish a formal bureaucracy in this area. NTIA is now performing this function on a very informal basis and would continue to do so.

The Guidelines, of course are addressed primarily to the narrow personal privacy aspect of TBDF. However, the OECD Committee on Information, Computer and Communications Policy plans to move ahead, over the next few years, to deal on a high priority basis with the nonpersonal aspects of TBDF, including the social, economic, and cultural aspects of the question. This aspect of TBDF will prove to be of far greater economic significance to the U.S. and to other countries than the personal privacy aspect of the question.

Let me briefly illustrate this. We have resisted inclusion of legal entities in the privacy Guidelines because we believe that question is conceptually different from the civil rights or political rights of citizens. However, the issue of data rights vis a vis competitors, suppliers, or others in the economic context is assuredly a most important question, raises profound issues, and is one which OECD should be addressing. We will accordingly support OECD analytical studies in this area in the years ahead. Similarly, as I mentioned earlier, it is important to recognize that the overarching principles of international data network transmission must now be accorded the importance in a policy sense which they warrant: access, interface standards, protocols, tariff and charging principles are all becoming matters of considerable policy significance.

The question of foreign governments' motives in advancing "data protection" policies is often raised, usually with the allegation that privacy is just a stalking point for the coming protectionism in information industries. I believe foreign concern for privacy protection is quite genuine and quite sincere; we have not hesitated to work with others to establish international rules of the road for privacy protection. At the same time, let me repeat that there is a great deal of evidence that other countries are looking at the telecommunications and information industries as an industrial sector they must protect or subsidize, whether in the interests of national sovereignty, national pride, culture, employment, or the like.

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As a leading producer and exporter of telecommunications and information goods and services, it is absolutely vital for us to understand this and to prepare to deal with it in the substantial way it deserves. While the U.S. is moving toward a deregulated domestic telecommunications industry in which competition is increasingly relied upon to meet the public's needs, the international environment continues to present substantial obstacles to the U.S. carrier and customer who wish to rely on the competitive model beyond U.S. shores. What all this suggests to me is that the international community, including interested countries and international bodies such as the CCITT, OECD, CEPT, and Intelsat must begin to think about systematically addressing these issues in order to find common groundrules. The U. S. Government must be prepared for that effort.

Indeed, Mr. Chairman, I would like to indicate that in the years ahead the growing importance of this subject will almost certainly require greater and more formal attention to policy making at the international level, and perhaps also to the negotiation of international instruments ranging from the nonbinding Guidelines to formal treaties. Although greater resources will surely be required for these efforts, we are not dismayed at all by the need to focus greater attention on this area; the unavoidable truth is that international electronic communications systems force interdependence on each of us. In turn, such interdependence makes international cooperation absolutely vital for all countries participating in the information age.

* * *

Appendix 1

STATISTICS ON TELECOMMUNICATIONS AND INFORMATION

MERCHANDISE TRADE

Various Balances on Merchandise Accounts
(millions of current dollars)

	Exports	Imports	Trade Balance	Industry Output	Exports as Percentage of Output
Unregulated communications media					
1972	269.4	166.9	102.5	15079.8	1.8
1976	460.6	211.7	248.9	21261.3	2.2
1977	507.7	231.4	276.3	24859.1	2.0
Advertising industries					
1972	4.1	1.5	2.6	1089.2	0.4
1976	7.3	2.8	4.5	1183.0	0.6
1977	6.7	3.1	3.6	1604.1	0.4
Photengraving and commercial printing					
1972	71.1	14.8	56.3	510.9	1.4
1976	138.6	54.6	84.0	814.9	1.7
1977	158.1	45.6	112.5	9183.9	1.7
Non-electronic consumption or intermediate goods					
1972	90.5	1527.0	(626.8)	15344.9	5.9
1976	190.4	2684.0	(778.6)	25555.6	7.5
1977	207.2	3172.2	(1100.0)	28777.2	7.2
Non-electronic investment goods					
1972	586.9	827.7	(240.8)	3643.9	16.1
1976	1059.4	1494.0	(434.6)	5553.3	19.1
1977	1078.3	1811.3	(713.0)	NA	NA
Electronic consumption or intermediate goods					
1972	956.1	483.9	492.2	7297.3	13.1
1976	2349.3	1455.1	894.2	10455.7	22.9
1977	2476.8	1843.0	631.8	NA	NA
Electronic investment goods					
1972	2429.3	2388.7	40.6	23557.2	10.3
1976	5299.1	4876.5	422.6	33005.9	15.6
1977	6094.3	5222.1	872.2	42748.4	14.3
All of the above industries					
1972	5120.1	5410.5	(190.4)	71153.2	7.3
1976	11229.7	10778.7	451.0	105850.0	10.6
1977	12406.0	12328.7	77.3	NA	NA
Total U.S. trade in merchandise					
1972	49381	55797	(6416)	756467	6.5
1976	114745	124051	(9306)	1185595	9.7
1977	120816	151669	(30873)	NA	NA

Sources: Exports: FT 610/Annual; Imports: FT 210/Annual; Industry Output: U. S. Department of Commerce, Bureau of the Census; Commodity Exports and Imports as Related to Output (annual publication).

		Balances on Merchandise Accounts (in millions of current dollars)		Trade Balance	Industry Output	Exports as Percentage of Output
	Exports	Imports				
<u>Information Production & Inventive Industries</u>						
Ten Service Industries:	No Data					
Information Distribution and Communication Industries						
Seventeen Service Industries:	No Data					
<u>Unregulated Communications Media</u>						
Newspapers: publishing, publishing and printing	2.4	11.7	(9.3)	7,908.4	4.3	
1972	5.3	25.8	(26.5)	11,447.0	4.3	
1976	7.0	33.5	(26.5)	12,170.9	0.1	
1977						
Periodicals: publishing, publishing and printing	97.8	19.1	78.7	3,197.7	3.1	
1972	158.3	24.3	134.0	4,455.5	3.6	
1976	185.2	26.9	158.3	5,528.6	3.4	
1977						
Books: publishing, publishing and printing	169.2	136.1	33.1	3,973.7	4.3	
1972	297.0	161.6	135.4	5,163.8	5.3	
1976	313.5	171.0	144.5	6,859.6	4.3	
1977						
Total	269.4	166.9	102.5	15,079.8	1.6	
1972	460.6	211.7	248.9	21,661.3	2.2	
1976	507.7	231.4	276.3	24,859.1	2.0	
1977						

SOURCE: U.S. Department of Commerce, Bureau of the Census, Commodity Exports and Imports as Related to Output, 1972, 1976, and 1977

	Balances on Merchandise Accounts (in millions of dollars—debtors)			Industry Output	Exports as Percentage of Output		
	Exports	Imports	Trade Balance				
<u>Search and Coordination Industries</u>							
Twenty-One Service Industries: No Data							
Advertising Industries							
Signs and advertising displays	4.1	3.5	2.6	1,089.2	0.4		
1972	7.3	2.8	4.5	1,183.0	0.6		
1976	6.7	3.1	3.6	1,604.1	0.4		
Total	4.1	3.5	2.6	1,089.2	0.4		
1972	7.3	2.8	4.5	1,183.0	0.6		
1976	6.7	3.1	3.6	1,604.1	0.4		
Risk Management Industries							
Six Service Industries: No Data							
Information Processing and Transmission Services							
Fourteen Service Industries: No Data							
Non-Electronic Based Processing							
Photogravuring	3.4	0.8	2.6	221.3	1.5		
1972	0.1	0.4	(0.3)	306.1	*		
1976	5.4	0.5	4.6	227.7	2.2		
1977							
Commercial Printing (lithographic)	67.7	14.0	53.7	4,919.6	1.4		
1972	138.5	54.2	84.3	7,988.8	1.8		
1976	153.0	45.1	107.9	6,955.4	1.7		
1977							

Source: U.S. Department of Commerce, Bureau of the Census, Commodity Exports and Imports as Related to Output, 1972, 1976, and 1977

		Balances on Merchandise Accounts (in millions of current dollars)		Exports as Percentage of Output	
	Exports	Imports	Trade Balance	Industry Output	
<u>Information Processing and Transmission Services (Continued)</u>					
<u>Total</u>					
1972	71.1	14.8	56.3	5,140.9	1.4
1976	138.6	54.6	84.0	8,153.9	1.7
1977	158.1	45.6	112.5	9,183.1	1.7
<u>Information Goods Manufacturing Industries</u>					
Five Industries: No Data					
Non-Electronic Consumption or Inter- mediate Goods					
Paper mills, except building paper mills					
1972	206.4	1,137.0	(930.6)	6,182.2	3.3
1976	512.4	1,891.2	(1,381.8)	11,361.6	4.7
1977	418.0	2,110.6	(1,692.6)	12,613.8	3.3
Envelopes					
1972	0.5	0.6	(0.1)	587.9	0.1
1976	2.7	0.5	2.2	844.8	0.3
1977	3.2	0.5	2.7	2,721.2	0.1
Blankbooks, binders and devices					
1972	3.1	20.1	(17.0)	566.2	0.5
1976	7.0	25.8	(18.8)	824.7	0.8
1977	7.3	28.1	(20.8)	1,017.5	0.7

Source: U.S. Department of Commerce, Bureau of the Census, Commodity Exports and Imports as Related to Output, 1972, 1976, and 1977.

Balances on Merchandise Accounts
(in million of current dollars)

	Exports	Imports	Trade Balance	Industry Output	Exports as Percentage of Output
Information Goods Manufacturing Industries (Continued)					
Printing ink	10.3	3.0	7.3	221.3	4.7
1972	17.4	5.6	11.6	306.1	5.7
1976	18.1	5.4	12.7	960.2	1.9
1977					
Carton black	15.4	0.2	15.2	227.1	6.8
1972	27.2	7.4	19.8	377.1	7.2
1976	30.6	7.7	22.9	466.2	6.6
Photographic equipment and supplies	614.2	348.1	266.1	5,211.4	11.8
1972	1,198.3	718.8	479.5	8,241.6	14.5
1976	1,436.4	969.5	466.9	9,477.9	15.2
Pens...mechanical pencils and parts	35.2	11.9	23.3	311.7	11.3
1972	79.2	25.9	53.3	413.6	19.1
1976	99.8	39.6	60.2	546.3	18.3
1977					
Lead pencils, crayons, artist's materials	5.0	6.0	(1.0)	174.3	2.9
1972	12.6	8.3	4.3	247.9	5.1
1976	16.0	10.6	5.4	261.0	6.1
1977					
Carbon paper and ink ribbons	10.1	0.1	10.0	317.5	3.2
1972	32.0	0.3	31.7	431.6	7.1
1976	42.8	0.2	42.6	481.6	6.9
1977					

SOURCE: U.S. Department of Commerce, Bureau of the Census, *Commodity Exports and Imports as Related to Output*, 1972, 1976, and 1977.

Balances on Merchandise Accounts (in millions of current dollars)						Exports as Percentage of Output
	Exports	Imports	Trade Balance	Industry Output		
<u>Information Goods Manufacturing Industries (Continued)</u>						
Non-Electronic Consumption or Inter- mediate Goods						
Total	1972	900.2	1327.0	626.8	15346.9	5.9
	1976	1005.6	2684.0	778.2	25555.9	7.5
	1977	2072.2	3172.2	1100.0	28777.2	7.2
Non-Electronic Investment Goods						
Paper industries machinery	1972	77.6	55.0	22.6	381.4	20.3
	1976	198.0	95.3	102.7	772.5	25.6
	1977	184.2	151.2	33.0	704.9	26.1
Printing trades machinery and equipment	1972	142.4	69.0	73.4	736.6	19.3
	1976	278.3	101.3	177.0	1066.1	27.7
	1977	318.6	147.3	171.3	1278.2	24.9
Calculating and accounting machines	1972	192.3	150.1	42.2	696.2	27.7
	1976	217.1	273.3	(56.2)	730.1	27.5
	1977	212.0	240.8	(28.8)	NA	NA
Scales and balances, except laboratory	1972	16.3	4.3	12.0	162.1	9.0
	1976	33.1	11.2	21.9	299.4	11.1
	1977	39.1	13.0	26.1	326.9	12.0

Source: U.S. Department of Commerce, Bureau of the Census, *Commodity Imports and Exports as Related to Output*, 1972, 1976, and 1977.

		Balances on Merchandise Accounts (In million of current dollars)			Exports as Percentage of Output	
		Exports	Imports	Trade Balance	Industry Output	
<u>Information Goods Manufacturing Industries (Continued)</u>						
Non-Electronic Investment Goods						
Office machines (ncc)		88.1	425.1	(337.0)	1064.9	8.3
1972		159.1	799.2	(640.1)	1562.9	10.2
1976		161.9	958.8	(796.9)	2014.0	8.0
1977						
Optical instruments and lenses		70.2	124.2	(54.0)	584.7	12.0
1972		171.8	213.7	(39.9)	1122.3	15.5
1976		162.5	300.2	(137.7)	1946.8	12.4
1977						
Total		586.9	827.7	(240.8)	3653.9	16.1
1972		1059.4	1494.0	(434.6)	5533.3	19.1
1976		1078.3	1811.3	(733.0)	MA	MA
1977						
Electronic Consumption or Intermediate Goods						
Phonographic records		22.2	11.1	11.1	537.3	4.1
1972		66.1	22.0	44.1	741.8	8.9
1976		75.5	28.9	46.6	1152.5	6.6
1977						
Radio and TV receiving tubes (except CRT)		12.9	20.1	(7.2)	189.6	6.8
1972		12.8	24.7	(11.9)	112.9	11.3
1976		13.1	24.0	(10.9)	1253.2	0.1
1977						

Sources: U.S. Department of Commerce, Bureau of the Census, Commodity Exports and Imports as Related to Output, 1972, 1976, and 1977.

Balances on Merchandise Accounts
(in millions of current dollars)

	Exports	Imports	Trade Balance	Industry Output	Exports as Percentage of Output
Information Goods Manufacturing Industries (Continued)					
Electronic Consumption or Intermediate Goods (Continued)					
Cathode ray picture tubes	45.9	55.7	-10.4	633.6	7.2
1972	107.5	155.7	-48.2	604.9	17.7
1976	83.7	20.2	63.5	NA	NA
1977					
Transmitting electron tubes	40.8	14.5	32.3	366.2	12.8
1972	64.7	28.3	36.4	445.7	14.5
1976	73.3	33.7	39.6	NA	NA
1977					
Semiconductors and related devices	469.6	328.8	140.8	2360.8	19.9
1972	1385.9	1075.5	310.4	4078.8	34.0
1976	1490.5	1342.9	147.6	4482.7	33.2
1977					
Electronic components (nec)	358.7	103.9	254.8	3209.8	11.2
1972	712.3	288.9	423.4	4661.6	16.7
1976	740.7	393.3	347.4	5314.2	13.9
1977					
Total	956.1	483.9	472.2	7997.3	13.1
1972	2449.3	1455.1	894.2	10245.7	22.9
1976	2476.8	1843.0	633.8	12202.6	20.3
1977					

SOURCE: U.S. Department of Commerce, Bureau of the Census, Commodity Exports and Imports as Related to Output, 1972, 1976, and 1977

Balances on Merchandise Accounts
(In millions of current dollars^a)

	Exports	Imports	Trade Balance	Industry Output	Exports as Percentage of Output
Information Goods Manufacturing					
Industries (Continued)					
Electronic computing equipment	1339.6	0.9	1138.7	6108.0	21.9
1972	2707.9	0.0	2707.9	10133.2	26.7
1976	3256.9	0.0	3256.9	13396.4	24.3
1977					
Radio and TV receiving sets	215.6	1947.2	(1731.6)	3699.7	6.0
1972	438.8	2986.3	(2487.5)	4133.3	12.0
1976	486.5	3528.1	(3061.6)	4788.2	9.8
1977					
Telephone and telegraph apparatus	76.5	86.5	(10.0)	393.9	1.9
1972	226.5	95.3	131.2	5132.0	4.4
1976	237.2	117.7	139.5	7095.0	3.6
1977					
Radio and TV transmitting apparatus	588.4	276.6	309.8	8376.6	7.0
1972	1444.9	1595.9	(151.0)	12077.9	11.7
1976	1551.2	1342.2	209.0	13906.4	11.2
1977					
Radiographic X-ray, electro-medical equipment	81.2	56.3	24.9	383.0	21.2
1972	223.3	169.9	53.4	820.3	27.2
1976	337.9	188.0	139.9	1711.0	19.3
1977					

Sources: U.S. Department of Commerce, Bureau of the Census, Commodity Exports and Imports as Related to Output; 1972, 1976, and 1977.

		Balance on Merchandise Accounts (In millions of current dollars)			Exports as Percentage of Output	
		Exports	Imports	Trade Balance	Industry Output	
<u>Information Goods Manufacturing</u>						
<u>Industries (Continued)</u>						
Electronic Investment Goods (Continued)						
Engineering, lab and research						
Equipment						
1972	126.0	19.2	106.8	1106.0	11.6	
1976	221.7	29.1	192.6	1598.5	11.3	
1977	224.6	36.1	188.5	1829.4	12.3	
Total						
1972	2429.3	2386.7	40.6	23537.2	10.3	
1976	5299.1	4876.5	422.6	33905.9	15.6	
1977	6094.3	5222.1	872.2	42768.4	14.3	
<u>Wholesale and Retail Trade, In</u>						
<u>Information</u>						
Six Service Industries: No Data						
Support Facilities For Information						
Activities						
Three Service Industries: No Data						

Source: U.S. Department of Commerce, Bureau of the Census, Statistical Abstract of the United States, 1972, 1976, and 1977.

United States' Trade in Merchandise — All Merchandise, Merchandise Excluding Agriculture, Merchandise Excluding Agriculture and Petroleum Products, Merchandise of Telecommunications and Information Industries, and Merchandise Excluding Radio and Television Receiving Sets, for 1972, 1976, and 1977.

	1972			1976			1977			Per Cent Change, 1972-1977
	Exports	Imports	Balance	Exports	Imports	Balance	Exports	Imports	Balance	
(1) All merchandise	\$49.4	\$55.8	(\$6.4)	\$114.7	\$124.1	(\$9.4)	\$120.8	\$151.7	(\$30.9)	+144.5%
(2) Merchandise excluding agricultural products	\$39.9	\$49.3	(\$9.4)	\$91.3	\$112.8	(\$21.5)	\$96.1	\$138.1	(\$42.0)	+140.9%
(3) Merchandise excluding agricultural and petroleum products	\$39.4	\$44.6	(\$5.2)	\$90.2	\$78.2	\$12.0	\$94.8	\$93.1	\$1.7	+140.6%
(4) Merchandise of telecommunications and information industries	\$5.2	\$5.4	(\$0.2)	\$11.2	\$10.8	\$0.4	\$12.4	\$12.3	\$0.1	+138.5%
(5) Merchandise of telecommunications and information excl. radio and television receiving sets	\$5.0	\$3.5	\$1.5	\$10.7	\$7.8	\$2.9	\$11.9	\$8.8	\$3.1	+138.0%
Telecommunications and Information Industries as a Percentage of:										+151.1%
(6) All merchandise	10.5%	9.7%	—	9.8%	8.7%	—	10.3%	8.1%	—	
(7) Merchandise excl. agricultural products	13.0%	11.0%	—	12.3%	9.6%	—	12.9%	9.6%	—	
(8) Merchandise excl. agricultural and petroleum products	13.2%	12.1%	—	12.4%	13.8%	—	13.1%	13.2%	—	

Sources: Rows (1), (2), and (3) from U.S. Department of Commerce, Survey of Current Business; 1972 data: vol. 57, no. 6, p. 42.
 Rows (4) and (5) from U.S. Department of Commerce, Reports: FF 610/Annual, 1976-77 data: vol. 58, no. 3, p. 51.

Rows (6) and (7) from U.S. Department of Commerce, Reports: FF 210/Annual, 1972, 1976, and 1977;
 Imports: FF 210/Annual, 1972, 1976, and 1977.

Values of exports and imports are in billions of current U.S. dollars.

UNITED STATES MERCHANDISE TRADE IN
 Newspapers: Publishing,
 Publishing and Printing (SIC 2711)
 (in millions of current dollars)

REGION	1972			1976			1977		
	Exports dollars per cent	Imports dollars per cent	Balance	Exports dollars per cent	Imports dollars per cent	Balance	Exports dollars per cent	Imports dollars per cent	Balance
Canada	1.8	75.0	11.6 100%	(9.8)	4.3	82.8	25.6 99.2	(21.3)	6.1 87.1
Other Western Hemisphere	0.3	12.5	* *	0.3	0.2	3.8	0.1 0.4	0.1	0.6 8.6
Western Europe	0.2	8.3	* *	0.2	0.5	9.6	0.1 0.4	0.4	0.2 2.9
Communist Europe	*	*	- -	-	0.1	1.9	* *	0.1	* *
Japan	*	*	* *	-	0.1	1.9	* *	0.1	0.1 1.4
Other Asia	-	-	- -	-	*	*	- -	*	- -
Australia and Oceania	0.1	4.2	- -	-	0.1	*	*	*	- -
Africa	*	*	- -	-	*	*	- -	*	- -
TOTAL	2.4	100%	11.6 100%	(9.2)	5.2	100%	25.8 100%	(20.6)	7.0 100%
									(26.5) 33.5 100%

* No values shown in source publication.
 * Value less than \$50,000 or percentage share less than 0.1 per cent.

Sources: U.S. Department of Commerce, U.S. Exports, PT 610/Annual, 1972, 1976, and 1977; U.S. Imports, PT 210/Annual, 1977, 1976, and 1972.

UNITED STATES MERCHANDISE TRADE IN

Periodicals: Publishing, Publishing and Printing (SIC 2721)
(in millions of current dollars)

REGION	1972				1976				1977			
	Exports		Imports		Exports		Imports		Exports		Imports	
	dollars	per cent										
Canada	64.6	66.1	1.3	6.8	63.3	113.4	71.7	6.0	24.5	107.4	132.7	71.6
Other Western Hemisphere	11.9	12.2	3.6	19.0	8.3	15.1	9.6	6.4	26.1	8.7	18.2	9.8
Western Europe	10.5	10.7	13.1	69.4	(2.6)	16.4	10.4	10.5	42.9	5.9	20.5	11.1
Communist Europe	*	*	*	*	-	*	*	*	-	0.2	0.1	*
Japan	1.0	1.0	0.7	3.7	0.3	1.9	1.2	1.1	4.5	0.8	1.8	1.0
Other Asia	0.7	0.7	0.2	1.1	0.5	1.8	1.1	0.4	1.6	1.4	2.1	1.1
Australia and Oceania	7.5	7.7	*	*	7.5	8.1	5.1	0.1	0.4	8.0	8.3	4.5
Africa	1.6	1.6	*	*	1.6	1.4	0.9	*	*	1.4	1.4	0.8
TOTAL	97.8	100X	18.9	100X	78.9	158.1	100X	24.5	100X	133.6	185.2	100X
										26.5	100X	158.7

* No values shown in source publication.

** Value less than \$50,000 or percentage share less than 0.1 per cent.

Source: U.S. Department of Commerce, U.S. Exports, PT 610/Annual, 1972, 1976, and 1977; U.S. Imports, PT 210/Annual, 1977, 1976, and 1972.

UNITED STATES MERCHANDISE TRADE IN
Miscellaneous Publishing (SIC 2741)
(in millions of current dollars)

SECTION	1972			1976			1977		
	Exports per dollar cent	Imports per dollar cent	Balance	Exports per dollar cent	Imports per dollar cent	Balance	Exports per dollar cent	Imports per dollar cent	Balance
Canada	0.1	2.4	-	0.1	0.1	8.3	-	-	0.1
Other Western Hemisphere	0.2	4.8	-	0.2	0.1	8.3	-	-	0.1
Western Europe	3.8	90.4	-	3.8	0.5	41.0	-	-	0.5
Communist Europe	*	*	-	-	-	-	-	-	0.3
Japan	0.1	2.4	-	0.1	*	*	-	*	-
Other Asia	*	*	-	*	0.1	6.3	-	0.1	16.7
Australia and Oceania	*	*	-	*	0.4	33.3	-	0.4	16.7
Africa	*	*	-	*	*	*	*	*	-
TOTAL	4.2	100.0	-	4.2	1.2	100.0	-	1.2	100.0
								0.6	-

* No values shown in source publication.

† Value less than \$50,000 or percentage share less than 0.1 per cent.

Sources: U.S. Department of Commerce, U.S. Exports, PT 610/Annual, 1972, 1976, and 1977; U.S. Imports, PT 210/Annual, 1977, 1976, and 1972.

UNITED STATES MERCHANDISE TRADE IN
Calculating and Accounting Machines, Except Electronic
Computing Equipment (SIC 3374)
(in millions of current dollars)

REGION	1972			1976			1977		
	Exports		Imports	Exports		Imports	Balance	Exports	
	dollars	per cent	dollars						
Canada	58.7	30.5	2.6	1.7	56.1	52.5	24.2	0.5	0.2
Other Western Hemisphere	21.5	11.2	3.2	2.1	18.3	41.7	19.2	16.1	5.9
Western Europe	78.8	40.9	30.0	20.0	48.8	83.3	38.3	14.6	5.3
Communist Europe	0.1	0.1	-	-	0.1	1.2	0.6	-	-
Japan	11.7	6.1	112.0	74.9	(100.3)	7.8	3.6	180.6	66.1
Other Asia	13.6	7.1	2.0	1.3	11.6	22.1	10.2	61.6	22.5
Australia and Oceania	5.2	2.7	-	-	5.2	5.1	2.3	*	*
Africa	2.6	1.4	-	-	2.6	3.5	1.6	0.1	*
TOTAL	192.2	100.0	149.8	100.0	42.4	237.2	100.0	273.5	100.0
								56.2	212.3
								100.0	240.8
									100.0
									(28.5)

* No values shown in source publication.

* Value less than \$50,000 or percentage share less than 0.1 per cent.

Sources: U.S. Department of Commerce, U.S. Exports, PT 610/Annual, 1972, 1976, and 1977; U.S. Imports, PT 210/Annual, 1977, 1976, and 1972.

UNITED STATES MERCHANDISE TRADE IN
Office Machines, Not Elsewhere Classified (SIC: 3379)
(In millions of current dollars)

REGION	1972			1976			1977		
	Exports dollars per cent.	Imports dollars per cent.	Balance per cent.	Exports dollars per cent.	Imports dollars per cent.	Balance per cent.	Exports dollars per cent.	Imports dollars per cent.	Balance per cent.
Canada	22.4	25.5	165.7	38.8	(143.3)	28.1	17.7	164.4	20.6
Other Western Hemisphere	10.2	11.6	34.5	8.1	(24.3)	19.9	12.5	50.8	6.4
Western Europe	40.0	45.4	150.7	35.4	(110.7)	75.9	47.8	273.3	34.1
Communist Europe	*	*	0.1	*	(0.1)	1.5	0.9	1.3	0.2
Japan	5.6	6.3	41.2	9.8	(35.6)	9.6	6.0	233.0	29.1
Other Asia	5.6	6.4	32.8	7.7	(27.2)	12.7	8.0	75.1	9.4
Australia and Oceania	2.7	3.1	0.6	0.2	1.9	6.7	4.2	1.3	0.2
Africa	1.5	1.7	*	*	1.5	4.6	2.9	*	*
TOTAL	86.0	100.0	425.8	100%	(337.8)	159.0	100.0	759.2	100%
								(640.2)	162.0
								100%	954.9
									(796.9)

* No values shown in source publication.

• Value less than \$50,000 or percentage share less than 0.1 per cent.

Sources: U.S. Department of Commerce, U.S. Exports, PT 610/Monthly, 1972, 1976, and 1977; U.S. Imports, PT 210/Monthly, 1977, 1976, and 1972.

UNITED STATES MERCHANDISE TRADE IN
 Phonograph Records (SIC 3652)
 (in millions of current dollars)

REGION	1972			1976			1977		
	Exports dollars per cent	Imports dollars per cent	Balance	Exports dollars per cent	Imports dollars per cent	Balance	Exports dollars per cent	Imports dollars per cent	Balance
Canada	3.5	15.8	0.6	5.5	2.9	9.2	14.0	1.5	6.8
Other Western Hemisphere	3.0	13.5	0.7	6.4	2.3	6.3	9.5	0.4	1.8
Western Europe	10.2	45.9	8.7	79.8	1.5	33.0	50.0	18.1	62.4
Communist Europe	*	*	0.1	0.9	(0.1)	0.1	0.2	0.2	0.9
Japan	2.4	10.8	0.4	3.7	2.0	7.9	12.0	0.8	3.6
Other Asia	1.3	5.9	0.4	3.7	0.9	2.0	3.0	1.0	4.5
Australia and Oceania	1.0	4.5	*	*	1.0	4.7	7.1	*	*
Africa	0.8	3.6	*	*	0.8	2.8	4.2	*	*
TOTAL	22.2	100.0	10.9	100.0	11.3	66.0	100.0	22.0	100.0
							44.0	75.5	100.0
								29.0	100.0
								46.5	

= No values shown in source publication.

* Value less than \$5,000 or percentage share less than 0.1 per cent.

Sources: U.S. Department of Commerce, U.S. Exports, FT 610/Annual, 1972, 1976, and 1977; U.S. Imports, FT 210/Annual, 1977, 1976, and 1972.

UNITED STATES MERCHANDISE TRADE IN
Radio and Television Receiving Type Picture Tubes,
Except Cathode Ray (SIC 3671)
(In millions of current dollars)

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REGION	1972				1976				1977			
	Exports dollars per cent	Imports dollars per cent	Balance Exports per cent	Imports dollars per cent	Exports dollars per cent	Imports dollars per cent	Balance Exports per cent	Exports dollars per cent	Imports dollars per cent	Balance Exports per cent	Imports dollars per cent	Balance Exports per cent
Canada	1.8	14.0	0.7	3.4	1.1	2.3	18.0	*	*	2.3	1.5	11.5
Other Western Hemisphere	4.4	2.4	11.5	2.0	4.4	34.3	6.6	26.9	(2.2)	5.7	43.9	6.8
Western Europe	4	31.0	3.9	18.7	0.1	3.5	27.3	1.2	4.9	2.3	3.7	28.5
Communist Europe	*	*	*	*	*	*	0.2	0.8	(0.2)	*	*	0.2
Japan	0.4	3.1	13.5	64.5	(13.1)	0.8	6.3	6.4	26.0	(5.6)	0.4	3.1
Other Asia	1.8	14.0	0.4	1.9	1.4	1.3	10.2	10.2	41.4	(8.9)	1.3	10.0
Australia and Oceania	0.3	2.3	*	*	0.3	0.2	1.6	-	*	0.2	0.2	1.5
Africa	0.2	1.6	-	*	0.2	0.3	2.3	-	*	0.3	0.2	1.5
TOTAL	12.9	100.0	20.9	100.0	(8.0)	12.8	100.0	24.6	100.0	(11.0)	13.0	100.0
												24.2
												100.0
												11.0

* No value shown in source publication.
+ Value less than \$50,000 or percentage share less than 0.1 per cent.

Sources: U.S. Department of Commerce, U.S. Imports, PT 910/Annual, 1972, 1976, and 1977; U.S. Imports, PT 230/Annual, 1977, 1976, and 1972.

UNITED STATES MERCHANDISE TRADE IN
Cathode Ray Picture Tubes (SIC 3672)
(in millions of current dollars)

REGION	1972			1976			1977		
	Exports per dollar cent	Imports per dollar cent	Balance per cent	Exports per dollar cent	Imports per dollar cent	Balance per cent	Exports per dollar cent	Imports per dollar cent	Balance per cent
Canada	13.9	30.3	0.2	3.6	13.7	0.8	8.2	6.3	40.1
Other Western Hemisphere	1.8	3.9	-	-	1.8	3.3	3.1	*	*
Western Europe	29.8	65.1	*	*	29.8	82.0	76.2	0.1	0.6
Communist Europe	*	*	-	*	-	-	-	*	*
Japan	0.1	0.2	5.3	94.6	(5.2)	0.8	0.7	7.5	47.8
Other Asia	0.2	0.5	0.1	1.8	0.1	0.8	0.7	1.8	11.5
Australia and Oceania	*	*	*	*	4.0	3.7	-	-	4.0
Africa	-	-	-	-	7.9	7.4	-	-	7.9
TOTAL	45.8	100.0	5.6	100.0	40.2	107.6	100.0	15.7	100.0
							91.9	83.7	100.0
								20.1	100.0
									63.6

* No values shown in source publication.
+ Value less than \$0.000 or percentage share less than 0.1 per cent.

Sources: U.S. Department of Commerce, U.S. Exports, FT 610/Annual, 1972, 1976, and 1977; U.S. Imports, FT 210/Annual, 1977, 1976, and 1972.

UNITED STATES MERCHANDISE TRADE IN
Transmitting, Industrial and Special
Purpose Electron Tubes (SIC 3633)
(in millions of current dollars)

REGION	1972			1976			1977		
	Exports dollars per cent	Imports dollars per cent	Balance per cent	Exports dollars per cent	Imports dollars per cent	Balance per cent	Exports dollars per cent	Imports dollars per cent	Balance per cent
Canada	6.5	15.9	1.3	8.9	5.2	5.0	7.7	1.8	6.3
Other Western Hemisphere	2.4	5.9	0.3	2.1	2.1	4.1	6.3	0.1	0.4
Western Europe	23.5	57.6	10.0	68.5	13.5	39.9	61.6	12.1	42.6
Communist Europe	*	*	*	*	*	0.1	0.2	0.1	0.4
Japan	3.1	7.6	2.9	19.8	0.2	4.9	7.6	13.8	48.6
Other Asia	3.7	9.1	0.1	6.7	3.6	7.9	12.1	0.5	1.7
Australia and Oceania	1.2	2.9	*	*	1.2	1.4	2.2	-	-
Africa	0.4	1.0	-	-	0.4	1.5	2.3	-	-
TOTAL	40.8	100.2	14.6	100.2	26.2	64.8	100.2	28.4	100.2

* No values shown in source publication.
+ Value less than \$50,000 or percentage share less than 0.1 per cent.

Sources: U.S. Department of Commerce, U.S. Exports, PT 610/Annual, 1972, 1976, and 1977; U.S. Imports, PT 210/Annual, 1977, 1976, and 1972.

UNITED STATES MERCHANDISE TRADE IN

Semiconductors and Related Devices (SIC 3674)
(in millions of current dollars)

REGION	1972						1976						1977					
	Exports			Imports			Balance			Exports			Imports			Balance		
	dollars	per cent																
Canada	24.6	5.2	7.6	2.3	17.0	29.8	2.1	12.2	1.1	17.6	35.6	2.4	16.9	1.3	18.7			
Other Western Hemisphere	53.0	11.3	60.8	18.5	(7.8)	158.9	11.5	145.7	13.6	13.2	135.0	9.1	131.5	9.8	3.5			
Western Europe	169.3	36.0	43.3	13.2	126.0	309.0	22.3	52.6	4.9	256.4	331.7	23.6	66.0	4.9	285.7			
Communist Europe	-	-	*	*	-	4.0	0.3	0.1	*	3.9	2.6	0.2	0.1	*	2.5			
Japan	53.0	11.3	14.7	4.5	38.3	86.1	6.2	58.5	5.4	27.6	75.1	5.0	65.0	6.3	(9.9)			
Other Asia	166.1	35.4	202.3	61.5	(36.2)	747.9	56.9	803.3	75.0	(17.4)	879.1	59.0	1043.1	77.7	(164.0)			
Australia and Oceania	3.3	0.7	0.1	*	3.2	4.5	0.3	*	*	4.5	6.5	0.4	0.1	*	6.4			
Africa	0.5	0.1	*	*	0.5	6.0	0.4	*	*	6.0	4.9	0.3	0.1	*	4.8			
TOTAL	469.8	100X	228.8	100.0	141.0	1386.2	100X	1074.4	100X	311.8	1490.5	100X	1342.8	100X	147.7			

* No values shown in source publication.

+ Value less than \$50,000 or percentage share less than 0.1 per cent.

Source: U.S. Department of Commerce, U.S. Exports, FT 610/Annual, 1972, 1976, and 1977; U.S. Imports, FT 210/Annual, 1977, 1976, and 1972.

UNITED STATES MERCHANDISE TRADE IN

Electronic Components and Accessories, Not
Plumbore Classified (SIC 3179)
(in millions of current dollars)

REGION	1972			1976			1977		
	Exports per dollar cent	Imports per dollar cent	Balance	Exports per dollar cent	Imports per dollar cent	Balance	Exports per dollar cent	Imports per dollar cent	Balance
Canada	61.1	17.1	8.0	52.8	79.9	11.2	17.1	5.9	62.8
Other Eastern Hemisphere	97.6	27.2	25.6	24.7	72.0	242.9	34.1	67.1	23.2
Western Europe	101.1	28.1	20.2	19.5	80.9	209.4	29.4	56.3	19.5
Communist Europe	0.6	0.2	*	0	0.6	2.2	0.3	*	*
Japan	16.7	4.7	40.4	38.9	(23.7)	43.8	6.2	86.8	30.1
Other Asia	74.6	20.8	9.3	8.9	65.3	116.0	16.3	61.4	21.3
Australia and Oceania	4.3	1.2	*	0	4.3	12.1	1.7	0.1	*
Africa	2.4	0.7	-	-	2.4	6.0	0.8	1.1	*
TOTAL	358.4	100.8	103.8	100.8	254.6	712.3	100.8	288.9	100.8
							423.4	740.6	100.8
								393.2	100.8
								347.4	

- No values shown in source publication.

* Value less than \$50,000 or percentage share less than 0.1 per cent.

Sources: U.S. Department of Commerce, U.S. Exports, PT 610/Annual, 1972, 1976, and 1977; U.S. Imports, PT 210/Annual, 1977, 1976, and 1972.

UNITED STATES MERCHANDISE TRADE IN
Electric Computing Equipment (SIC 3573)

(in millions of current dollars)

REGION	1972			1976			1977								
	Exports dollar per cent.	Imports per cent.	Balance	Exports dollar per cent.	Imports dollar per cent.	Balance	Exports dollar per cent.	Imports dollar per cent.	Balance						
Canada	225.8	16.9	0.1	11.1	225.7	407.6	15.1	-	407.6	468.4	14.4	-	-	468.4	
Other Western Hemisphere	69.1	5.2	-	-	69.1	147.1	5.4	-	147.1	199.5	6.1	-	-	199.5	
Western Europe	753.0	56.2	0.5	55.5	752.5	1447.6	53.5	-	1447.1	1890.5	58.0	-	-	1890.5	
Communist Europe	6.5	0.5	-	-	6.5	33.3	1.2	-	-	33.3	19.5	0.6	-	-	19.5
Japan	144.0	10.7	0.2	22.2	143.8	239.5	8.8	-	239.5	279.5	8.6	-	-	279.5	
Other Asia	92.0	6.9	0.1	11.1	91.9	153.8	5.7	-	153.8	188.1	5.8	-	-	188.1	
Australia and Oceania	36.7	2.7	*	*	36.7	118.8	4.4	-	-	118.8	161.1	4.9	-	-	161.1
Africa	12.2	0.9	-	-	12.2	160.3	5.9	-	-	160.3	50.5	1.6	-	-	50.5
TOTAL	1339.3	100*	0.5	100*	1338.4	2708.2	100*	-	2708.2	3257.1	100*	-	-	3257.1	

- No values shown in source publication.

* Value less than \$50,000 or percentage share less than 0.1 per cent.

Sources: U.S. Department of Commerce, U.S. Exports, PT 610/Annual, 1972, 1976, and 1977; U.S. Imports, PT 210/Annual, 1977, 1976, and 1972.

UNITED STATES MERCHANDISE TRADE IN
Radio and Television Receiving Sets,
Except Communication Types (SIC 3651)
(in millions of current dollars)

REGION	1972			1976			1977		
	Exports dollars per cent	Imports dollars per cent	Balance	Exports dollars per cent	Imports dollars per cent	Balance	Exports dollars per cent	Imports dollars per cent	Balance
Canada	95.9	44.5	51.4	110.4	22.1	88.3	113.2	24.3	88.9
Other Western Hemisphere	46.8	21.7	25.1	193.2	38.7	154.5	159.0	34.2	166.3
Western Europe	48.0	22.3	25.7	113.5	22.7	90.8	113.1	24.2	190.4
Communist Europe	0.2	0.1	0.1	(0.5)	0.3	0.1	0.3	0.1	1.6
Japan	7.8	3.6	4.2	29.0	5.8	23.2	25.4	5.4	21.0
Other Asia	13.3	6.2	7.1	(1310.7)	41.6	8.3	776.6	26.0	(735.0)
Australia and Oceania	2.1	1.0	1.1	*	2.1	9.0	-	9.0	6.7
Africa	1.2	0.6	0.6	-	1.2	2.3	0.5	-	2.3
TOTAL	215.3	100	104.7	100	(1732.0)	499.1	100	2,986.0	100

* No value shown in source publication.

^a Value less than \$50,000 or percentage share less than 0.1 per cent.

Sources: U.S. Department of Commerce, U.S. Exports, Pt. 610/annual, 1972, 1976, and 1977; U.S. Imports, Pt. 210/annual, 1977, 1976, and 1972.

UNITED STATES MERCHANTILE TRADE IN
Telephone and Telegraph Apparatus (SIC 3661)

(in millions of current dollars)

SECTOR	1972			1976			1977		
	Exports dollars per cent	Imports dollars per cent	Balance par cent	Exports dollars per cent	Imports dollars per cent	Balance par cent	Exports dollars per cent	Imports dollars per cent	Balance par cent
Canada	27.4	35.8	23.2	26.8	4.2	49.8	21.9	30.6	31.9
Other Western Hemisphere	11.9	15.5	1.3	1.5	10.6	39.3	17.3	10.3	10.7
Western Europe	21.3	27.8	24.8	26.6	(3.5)	52.7	23.2	18.2	19.0
Communist Europe	*	*	*	*	*	0.7	0.3	*	*
Japan	9.9	12.9	36.8	42.5	(26.9)	5.2	2.3	32.2	33.6
Other Asia	5.2	6.8	0.5	0.6	4.7	72.1	31.8	4.0	4.2
Australia and Oceania	0.4	0.5	*	*	0.4	2.3	1.0	*	*
Africa	0.5	0.7	-	-	0.5	5.1	2.2	0.6	0.6
TOTAL	76.6	103.1	86.6	100.8	(0.0)	227.2	100.8	95.9	100.8
							131.3		256.8
								100.8	117.7
									100.2
									139.1

= No value shown in source publication.

* Value less than \$50,000 or percentage share less than 0.1 per cent.

Sources: U.S. Department of Commerce, U.S. Exports, Pt. 610/Annual, 1972, 1976, and 1977; U.S. Exports, Pt. 210/Annual, 1977, 1976, and 1972.

UNITED STATES MERCHANDISE TRADE IN
 Radio and Television Transmitters, Signalling, and
 Detection Equipment and Apparatus (3462)
 (in millions of current dollars)

REGION	1972			1976			1977		
	Exports dollars per cent.	Imports dollars per cent.	Balance per cent.	Exports dollars per cent.	Imports dollars per cent.	Balance per cent.	Exports dollars per cent.	Imports dollars per cent.	Balance per cent.
Canada	74.4	12.7	33.9	12.2	40.5	140.7	9.9	59.1	3.7
Other Western Hemisphere	100.7	17.1	51.2	18.4	49.5	153.1	10.8	214.5	13.4
Western Europe	245.1	41.7	37.3	13.4	207.8	425.2	30.1	75.7	4.7
Communist Europe	1.1	0.2	*	1.1	6.0	0.4	*	6.0	12.5
Japan	44.2	7.5	112.1	40.2	(67.9)	61.8	4.4	976.7	61.2
Other Asia	82.5	14.0	44.0	15.8	38.5	445.2	31.5	267.3	16.8
Australia and Oceania	17.8	3.0	*	17.8	28.0	2.0	0.1	*	27.9
Africa	22.3	3.8	*	22.3	154.1	10.9	2.4	0.2	151.7
TOTAL	588.1	100%	278.5	100%	309.6	1414.1	100%	1595.8	100%
							181.7	1551.2	100%
									1342.2
									100%
									209.0

* No values shown in source publication.
 * Value less than \$50,000 or percentage share less than 0.1 per cent.

Sources: U.S. Department of Commerce, U.S. Exports, Pt. 610/Annual; 1972, 1976, and 1977; U.S. Imports, Pt. 210/Annual, 1977, 1976, and 1972.

UNITED STATES MERCHANDISE TRADE IN
Radiographic X-ray, Fluoroscopic X-ray, Therapeutic
X-ray, and other X-ray Apparatus and Tubes (SIC 3693)
(in millions of current dollars)

SECTION	1972				1976				1977			
	Exports dollar par cent	Imports par cent	Balance dollar par cent	Exports dollar par cent	Imports dollar par cent	Balance dollar par cent	Exports dollar par cent	Imports dollar par cent	Balance dollar par cent	Exports per cent	Imports per cent	Balance per cent
Canada	20.1	24.8	3.9	6.9	16.2	37.9	16.9	12.5	7.4	25.4	49.8	14.7
Other Western Hemisphere	12.8	15.8	*	*	12.8	30.8	13.7	*	*	30.8	39.7	11.7
Western Europe	32.0	39.4	46.7	83.0	(14.7)	93.7	41.6	146.0	86.0	(52.3)	160.8	47.7
Communist Europe	0.5	0.6	-	-	0.5	1.2	1.2	*	*	1.2	3.1	0.9
Japan	3.5	4.3	4.3	7.6	(0.8)	22.3	10.0	10.0	5.9	12.3	37.3	11.0
Other Asia	8.6	10.6	1.4	2.5	7.2	23.4	10.4	1.3	0.7	22.1	27.5	8.1
Australia and Oceania	1.6	2.0	*	*	1.6	10.4	4.6	-	-	10.4	14.7	4.4
Africa	2.0	2.5	*	*	2.0	3.6	1.6	-	-	3.6	5.0	1.5
TOTAL	81.1	100.1	56.3	100.8	24.8	223.3	100.2	169.8	100.2	51.5	337.9	100.8
												139.9

* No values shown in source publication.

† Value less than \$50,000 or percentage share less than 0.1 per cent.

Sources: U.S. Department of Commerce, U.S. Exports, PT 610/Annual, 1972, 1976, and 1977; U.S. Imports, PT 210/Annual, 1977, 1976, and 1972.

UNITED STATES MERCHANDISE TRADE IN
 Engineering, Laboratory, and Scientific and Research
 Instruments and Associated Equipment (SIC 3811)
 (In millions of current dollars)

REGION	1972				1976				1977						
	Exports		Imports		Exports		Imports		Exports		Imports				
	dollars	per cent													
Canada	22.6	17.7	0.7	3.6	21.9	38.2	16.8	1.3	4.5	36.9	38.5	17.2	1.9	5.3	36.6
Other Western Hemisphere	25.3	19.8	*	*	25.3	37.0	16.3	1.4	4.8	35.6	37.6	16.8	1.7	4.8	35.9
Western Europe	42.9	33.7	13.7	71.0	29.2	79.7	34.9	20.1	69.6	59.6	72.5	32.3	24.3	67.3	48.2
Communist Europe	0.7	0.5	0.1	0.5	0.6	3.6	1.6	0.1	0.3	3.5	4.0	1.8	0.2	0.6	3.8
Japan	15.8	12.4	4.5	23.3	11.3	20.4	9.0	4.9	17.0	15.5	19.6	8.7	6.3	17.4	13.3
Other Asia	11.2	8.3	0.3	1.6	10.9	31.7	13.9	1.1	3.8	30.6	33.4	14.8	1.6	4.4	31.8
Australia and Oceania	4.6	3.6	*	*	4.6	7.0	3.1	*	*	7.0	7.0	3.1	0.1	0.2	6.9
Africa	4.5	3.5	-	-	4.5	9.9	4.4	*	*	9.9	11.9	5.3	*	*	11.9
TOTAL	127.6	1003	19.3	1003	108.3	227.5	1003	28.9	1003	198.6	224.5	1003	36.1	1003	188.4

= No values shown in source publication.
 * Value less than \$50,000 or percentage share less than 0.1 per cent.

Sources: U.S. Department of Commerce, U.S. Exports, FT 610/Annual, 1972, 1976, and 1977; U.S. Imports, FT 210/Annual, 1977, 1976, and 1972.

APPENDIX II

**DRAFT RECOMMENDATION OF THE COUNCIL CONCERNING
GUIDELINES GOVERNING THE PROTECTION OF
PRIVACY AND TRANSBORDER FLOWS OF PERSONAL DATA**

January 1980

DRAFT RECOMMENDATION OF THE COUNCIL CONCERNING
GUIDELINES GOVERNING THE PROTECTION OF
PRIVACY AND TRANSBORDER FLOWS OF PERSONAL DATA

THE COUNCIL

Having regard to articles 1(c), 3(a) and 5(b) of the Convention on the Organisation for Economic Co-operation and Development of 14th December, 1960:

Recognising:

that, although national laws and policies may differ, Member countries have a common interest in protecting privacy and individual liberties, and in reconciling fundamental but competing values such as privacy and the free flow of information;

that automatic processing and transborder flows of personal data create new forms of relationships among countries and require the development of compatible rules and practices;

that transborder flows of personal data contribute to economic and social development;

that domestic legislation concerning privacy protection and transborder flows of personal data may hinder such transborder flows;

Determined to advance the free flow of information between Member countries and to avoid the creation of unjustified obstacles to the development of economic and social relations among Member countries:

RECOMMENDS

1. That Member countries take into account in their domestic legislation the principles concerning the protection of privacy and individual liberties set forth in the Guidelines contained in the Annex to this Recommendation which is an integral part thereof(1);

2. That Member countries endeavour to remove or avoid creating, in the name of privacy protection, unjustified obstacles to transborder flows of personal data;

3. That Member countries co-operate in the implementation of the Guidelines set forth in the Annex;

4. That Member countries agree as soon as possible on a specific mechanism of consultation and co-operation for the application of these Guidelines.

* (1) Reservation by France.

* See attached correction sheet

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ANNEX

DRAFT GUIDELINES GOVERNING THE PROTECTION OF
PRIVACY AND TRANSBORDER FLOWS OF PERSONAL DATA

PART ONE. GENERAL

Definitions

1. For the purposes of these Guidelines:
 - (a) "data controller" means a party who, according to domestic law, is competent to decide about the contents and use of personal data regardless of whether or not such data are collected, stored, processed or disseminated by that party or by an agent on its behalf;
 - (b) "personal data" means any information relating to an identified or identifiable individual (data subject);
 - (c) "transborder flows of personal data" means movements of personal data across national borders.

Scope of Guidelines

2. These Guidelines apply to personal data, whether in the public or private sectors, which, because of the manner in which they are processed, or because of their nature or the context in which they are used, pose a danger to privacy and individual liberties.
3. These Guidelines should not be interpreted as preventing:
 - (a) the application, to different categories of personal data, of different protective measures depending upon their nature and the context in which they are collected, stored, processed or disseminated;
 - (b) the exclusion from the application of the Guidelines of personal data which obviously do not contain any risk to privacy and individual liberties; or
 - (c) the application of the Guidelines only to automatic processing of personal data.
4. Exceptions to the Principles contained in Parts Two and Three of these Guidelines, including those relating to national sovereignty, national security and public policy ("ordre public"), should be(1):

(1) Reservation by Canada.

- (a) as few as possible, and
 - (b) made known to the public.
5. In the particular case of Federal countries the observance of these Guidelines may be affected by the division of powers in the Federation.
6. These Guidelines should be regarded as minimum standards which are capable of being supplemented by additional measures for the protection of privacy and individual liberties.

PART TWO. BASIC PRINCIPLES OF NATIONAL APPLICATION

Collection Limitation Principle

7. There should be limits to the collection of personal data and any such data should be obtained by lawful and fair means and, where appropriate, with the knowledge or consent of the data subject(1).

Data Quality Principle

8. Personal data should be relevant to the purposes for which they are to be used, and, to the extent necessary for those purposes, should be accurate, complete and kept up-to-date.

Purpose Specification Principle

9. The purposes for which personal data are collected should be specified not later than at the time of data collection and the subsequent use limited to the fulfilment of those purposes or such others as are not incompatible with those purposes and as are specified on each occasion of change of purpose.

Use Limitation Principle

10. Personal data should not be disclosed, made available or otherwise used for purposes other than those specified in accordance with Paragraph 9 except:
- (a) with the consent of the data subject; or
 - (b) by the authority of law.

(1) Reservation by France.

Security Safeguards Principle

11. Personal data should be protected by reasonable security safeguards against such risks as loss or unauthorised access, destruction, use, modification or disclosure of data.

Openness Principle

12. There should be a general policy of openness about developments, practices and policies with respect to personal data. Means should be readily available of establishing the existence and nature of personal data, and the main purposes of their use, as well as the identity and usual residence of the data controller.

Individual Participation Principle

13. An individual should have the right:
- (a) to obtain from a data controller, or otherwise, confirmation of whether or not the data controller has data relating to him;
 - (b) to have communicated to him, data relating to him
 - (i) within a reasonable time;
 - (ii) at a charge, if any, that is not excessive;
 - (iii) in a reasonable manner; and
 - (iv) in a form that is readily intelligible to him;
 - (c) to be given reasons if a request made under subparagraphs (a) and (b) is denied, and to be able to challenge such denial; and
 - (d) to challenge data relating to him and, if the challenge is successful, to have the data erased, rectified, completed or amended.

Accountability Principle

14. A data controller should be accountable for complying with measures which give effect to the principles stated above.

**PART THREE. BASIC PRINCIPLES OF INTERNATIONAL APPLICATION:
FREE FLOW AND LEGITIMATE RESTRICTIONS**

15. Member countries should take into consideration the implications for other Member countries of domestic processing and re-export of personal data, particularly where processing in one Member country would result in the non-observance of Part Two of the Guidelines(1).
16. Member countries should take all reasonable and appropriate steps to ensure that transborder flows of personal data, including transit through a Member country, are uninterrupted and secure.
17. A Member country should refrain from restricting trans-border flows of personal data between itself and another Member country except where the latter does not yet substantially observe these Guidelines or where the re-export of such data takes place from one Member country to another country which has not yet taken the necessary measures, in its legislation or otherwise, for the protection of privacy and individual liberties to ensure observance of the principles contained in Part Two of these Guidelines(2).
18. Member countries should avoid developing laws, policies and practices in the name of the protection of privacy and individual liberties which, by exceeding requirements for the protection of privacy and individual liberties, are inconsistent with the free transborder flow of personal data.

PART FOUR. NATIONAL IMPLEMENTATION

19. In implementing domestically the principles set forth in Parts Two and Three, Member countries should establish legal, administrative or other procedures or institutions for the protection of privacy and individual liberties in respect of personal data. Member countries should in particular endeavour to(2):
 - (a) adopt appropriate domestic legislation;
 - (b) encourage and support self-regulation, whether in the form of codes of conduct or otherwise;
 - (c) provide for reasonable means for individuals to exercise their rights;

(1) Reservation by Denmark and Norway.

(2) Reservation ad referendum by France.

DSTI/ICCP/79.40
(2nd Revision)
Annex

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- (d) provide for adequate sanctions and remedies in case of failures to comply with measures which implement the principles set forth in Parts Two and Three; and
- (e) ensure that there is no unfair discrimination against data subjects.

PART FIVE. INTERNATIONAL CO-OPERATION

20. Member countries should, where requested, make known to other Member countries details of the observance of the principles set forth in these Guidelines. Member countries should also ensure that procedures for transborder flows of personal data and for the protection of privacy and individual liberties are simple and compatible with those of other Member countries which comply with these Guidelines.
21. Member countries should establish procedures to facilitate:
 - (i) information exchange related to these Guidelines, and
 - (ii) mutual assistance in the procedural and investigative matters involved.
22. Member countries should work towards the development of principles, domestic and international, to govern the applicable law in the case of transborder flows of personal data.

ORGANISATION FOR ECONOMIC
CO-OPERATION AND DEVELOPMENT

RESTRICTED

Paris, 26th February, 1980

Directorate for Science,
Technology and Industry

Or. Engl./Fr.

Working Party on Information,
Computer and Communications
Policy

Corrigendum 1 to:
DSTI/ICCP/79.40
(2nd Revision)

Scale E

DRAFT RECOMMENDATION OF THE COUNCIL CONCERNING
GUIDELINES GOVERNING THE PROTECTION OF
PRIVACY AND TRANSBORDER FLOWS OF PERSONAL DATA

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The footnote "(1) Reservation by France" applies to Point 4 of the Draft Recommendation (Mechanism of consultation and co-operation), and not to point 1 as at present indicated.

E.7784



**UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for Communications
and Information
Washington, D.C. 20230**

June 24, 1980

JUN 25 1980

Honorable Richardson Preyer
Chairman, Subcommittee on Government
Information and Individual Rights
House of Representatives
Washington, D.C. 20515

Dear Mr. Preyer:

Thank you for your letter of April 26, in which you enclosed a list of questions relating to my testimony before your Subcommittee on March 27, 1980. I am pleased to answer your questions and am enclosing the NTIA response. I am also enclosing a corrected copy of the transcript of my testimony.

Thank you for the opportunity to appear before your Subcommittee, and for your interest in the subject of international data flows.

Sincerely,

A handwritten signature in black ink, appearing to read "Henry Geller".
Henry Geller

Enclosures

**Response to Questions from
the Government Information and Individual Rights Subcommittee**

1. Can you provide figures on the amount of resources you have allocated to international data flow within NTIA:

- a. in terms of man years of effort?
- b. in terms of budget allocations?

While definitions of "international data flow" differ and make an exact response difficult, under most reasonable definitions, NTIA will allocate an estimated 5.1 man years of effort to issues relating to international data flow in FY 80, amounting to an expenditure of approximately \$238,000.

2. Have you assisted, advised or consulted with the Department of Justice, the FCC, the Postal Service, other trade elements within the Department of Commerce, or private organizations in attempting to define the problems or formulate U.S. policy in international data flow? Describe the nature and extent of any such coordination.

NTIA has played a leading role in the Interagency Task Force dealing with TBDF issues from the very beginning of that group. State, Commerce, Defense, FCC, DOJ, and other agencies have attended the Task Force meetings as their interests were involved in the discussions. Individual NTIA staff members have also discussed specific issues with staff personnel at other agencies, such as the U.S. Trade Representative. We have not discussed TBDF specifically with the USPS, although we did review and support by letter to the FCC a USPS request to initiate international electronic mail on an experimental basis.

Our contacts with the private sector have been both formal and informal. Formally, we of course participate in the State Department's Government/Industry Advisory Committee on TBDF. Informally, our staff maintains close liaison with a wide segment of the concerned industry, including trade associations, computer companies, data processing firms, communications firms, equipment suppliers, and others. By their request, we have assisted individual companies in attempting to resolve problems they are encountering in this area. See, for example, our responses to questions 5 and 7. Indeed, our informal but extensive network of industry contacts is invaluable in the formulation and execution of policy.

3. You note in your testimony the need for improved coordination and emphasis on international negotiations concerning agreements relating to telecommunications goods and services, as well as those establishing standards. What suggestions do you have concerning how the interests of U.S. enterprises can be better represented in international arenas or with foreign PTT's?

A complete answer to this question would involve extensive discussion of a wide variety of international telecommunications issues, including the central problem of inducing foreign PTT's to sign operating agreements with newly emerging U.S. carriers. In general, we believe that greater resources and attention to international telecommunications issues are appropriate in light of the growing importance of this area. Attention should also be given to a more active government role in international discussions and negotiations in these areas. While we prefer to have the private sector play as large a role as possible in international commercial activities, it must be recognized that the foreign players are often governments or government-created entities. In such a climate, a more active U.S. Government role, carefully circumscribed, may be appropriate.

4. Everyone agrees that this is an extremely complex issue. In your opinion, what are the key problems in international data flow which should be addressed on a priority basis?

It is difficult to set priorities in this admittedly complex area. However, if it is assumed that a key goal is the continuance and promotion of exchanges across national boundaries of information and information products, the major problem in general terms is the existence of present and planned restrictions which impede information flows and flows of the merchandise that support information flows. These restrictions can be either tariff or non-tariff barriers. The latter would include domestic industrial promotion policies, regulatory restrictions, national subsidies and other preferential types of treatment for local or regional information goods and services.

Another problem is the very real inequality between nations vis-a-vis communications systems development and use. The call for a New World Information Order underscores not only the increasing importance of information flows to every nation but also the potential for increased restrictions on information import and export.

5. There are several components within the Department of Commerce which have been actively involved in aspects of this issue. What type of coordination exists, for example, between NTIA and the Trade Facilitation Committees?

NTIA and the U.S.-Japan Trade Facilitation Committee (TFC) have coordinated very closely in an attempt to alert the FCC to the trade implications of applications filed by the international record carriers to provide data base services between the United States and Japan. Last year, before any Commission action was taken, NTIA wrote a letter to the Chief of the Common Carrier Bureau offering to arrange for a TFC briefing on trade problems resulting from positive Commission action. This letter received no answer. In December, the Common Carrier Bureau granted these applications for an experimental period of one year. In response,

Assistant Secretary Geller, in conjunction with Assistant Secretary Katz of the International Trade Administration, wrote a letter to Chairman Ferris of the FCC, alerting him to the Commerce Department's intentions to monitor these services throughout the experimental period, requesting quarterly reports on the services, and reiterating the offer of a briefing. In a May 16, 1980 letter, the Commission accepted the offer of a briefing or, alternatively, requested a written statement of the Department's position. Currently, NTIA and the TFC are jointly developing a response to the Commission.

In general, NTIA works with trade specialists at the Department of Commerce on international data flow issues. The nature of the interaction ranges from ad hoc exchanges of information to strategic planning, depending on the particular issue.

6. Is the United States presenting any background or position papers on the topic of international data flow at conferences in the next nine months? If so, what topics do they cover, where will they be presented, and who is preparing them?

The United States will present a paper entitled "The Foundations of United States Information Policy" at the High-Level Conference on Information, Computer and Communications Policy at the Organization for Economic Development in October 1980. The paper was written by Arthur Bushkin and Jane Yurov of NTIA. A second paper on "United States Trade in Information Goods and Services" may be submitted informally for the same conference sometime in late summer. This paper is being prepared by Kenneth Leeson. James. O. Howard, Program Manager of NTIA's Privacy Program, will present a paper on "Privacy: The U.S. Perspective" at the Fifth International Conference on Computer Communication, Atlanta, Georgia, October 1980. William L. Fishman will be speaking at INTELCOM 80 in November on TBDF.

7. Please provide a copy of the letters sent by NTIA to the FCC regarding the "CDC/Japan" case.

In response to this request, we are enclosing a copy of the exchange of correspondence.

Mr. PREYER. There is a vote on the House floor. We have one final witness today, Mr. Russell Pipe, an international consultant and president of Transportation Data Reporting Service, Inc. He has done substantial work for the OECD and Third World nations.

Mr. Pipe, we look forward to your testimony. If you would excuse us for about 10 minutes, we will run over and vote and return to hear your testimony.

The subcommittee will stand in recess for about 10 minutes.

[Recess taken.]

Mr. PREYER. The subcommittee will resume its sitting.

Mr. Butler will be back shortly, he hoped, and asked that we proceed.

We are happy to have you here today, Mr. Pipe.

STATEMENT OF G. RUSSELL PIPE, PRESIDENT, TRANSNATIONAL DATA REPORTING SERVICE, INC., WASHINGTON, D.C.

Mr. PIPE. Thank you, Mr. Chairman.

Mr. PREYER. Your statement, without objection, will be made a part of the record, and we look forward to your testimony.

Mr. PIPE. Mr. Chairman, in view of the previous witnesses and the lateness of the hour, I will try to summarize my statement.

I want to note that for the last number of years I have been residing in Europe, spending most of my time as a consultant or writer on information policy and communications issues for such organizations as the OECD and the Intergovernmental Bureau for Informatics and others, and that our company publishes Transnational Data Report, a specialized publication in the field of international information flow focusing on political, economic, legal, and social issues. My testimony today will be on my own behalf.

In your letter of invitation, Mr. Chairman, you asked for my assessment of a number of these issues and their developments in Europe and other western countries. But, if I may, I would like to add a slightly broader context because many developing countries, in addition to western industrialized nations, are the recipients of increased U.S. trade, and these new markets for American information communication technology, products, and services are also taking actions affecting American corporations.

Before going into some more detailed examples of some of the manifestations taking place abroad, I think it would be useful to discuss for a moment the context in which these issues might be considered.

In addition to the U.S. Government and the work of this subcommittee and committees on which you are a member, Mr. Chairman, concerned with a number of issues of information and telecommunications, governments and parliaments in many, if not most, of the countries of the world are discussing similar issues according to their own political structure, according to their own states of economic and social development. They are seeing and reading about what is happening in the United States where the post-industrial society is emerging, where most of the labor force will be engaged in information products and services, where the GNP will be dependent on the success of domestic economies to meet the challenge that this new transition will bear upon.

The studies and activities in the United States, in part due to the fact we are talking about communications technologies, are going around the world. Indeed, this is not a usual issue where it is an exclusive province of the developed countries and slowly, over 5 or 10 years, it goes to the lesser developed countries. Because of communications and the similarities of the technologies, and computers in particular, all over the world, these problems are much more real and evident than they would be in smaller nations in parallel activities.

This information revolution is being taken seriously, Mr. Chairman, in many, many countries. I have cited to you one quotation, and there are many from all part of the world, particularly our neighbor countries of the United States. Canada has done considerable work and developed governmental institutions in this field, and lately Mexico is becoming very interested and concerned about this issue. With their new assets from petroleum, they will be increasingly getting into this. So, indeed, in the North American context, I believe this will be a very important area.

I cited a very interesting quotation in my testimony from IT&T which, in an advertisement, recently said, "By the year 2000, a country's gross national product will largely depend on its ability to deliver information."

So I think that policy makers as far away as Baghdad, Lagos, Libreville, Tokyo, Rio, and Paris are looking to shoring up their economies and trying to get a leg up as regards telecommunications, data processing, and data bank capabilities. I think it is important to understand the motives of these people, just as to understand the motives that drive the American economy and the free enterprise system.

To understand where these people are coming from is not necessarily to agree with them or even tolerate their views, but to take account of this is a basic part of the policies which are developed in the U.S. Government.

Let me describe a few of these aspects which have been alluded to in part today but are made more precise, perhaps, in my testimony.

First of all, there is the regulatory philosophy, which was touched upon by Mr. Geller. It is absolutely clear that there are two diametrically opposed views as to the purposes of regulation. Here, particularly in recent years in the telecommunications field, there has been a spirit to deregulate and thus allow marketplace competition with a lesser amount of Government control or interference.

Conversely, in most of the countries of the world, regulations are looked upon as a means to create, not correct, unstable and sometimes discriminatory marketplace conditions. Regulations make open and serviceable different activities which otherwise would be controlled by different and vested interests.

Consequently, we are seeing, as has been pointed out, telecommunications and information—again in the broader context—as the future economies of many countries are becoming more regulated, rather than less regulated. Because there is a considerable body of national and international law in this field already, the

real issue is, what kind of regulatory environment will be created, not whether there will be regulation.

This explains why one of the more noted personalities in the data flow field, Mr. Jan Freese, director general of the Swedish Data Inspection Board, asks, "Would it not be better that the free flow of information be regulated in order to remain free?"

Another aspect, I think, has to be faced, particularly with the descriptions that are so often used in diplomacy and in political comments in this country and others as to the interdependence of countries, as opposed to dependent or unilateral actions by countries. This is, whether, in the international telecommunications and information policy field, the United States is really operating in accordance with principles of free flow of information, free trade, and unrestricted commercial activities, or not.

It was refreshing that Mr. Nimetz said that the United States favors a wide open system both philosophically and economically. But Mr. Nimetz did not address the question of whether the United States politically is maintaining these principles on an international basis.

One can pick up the newspaper and discuss the Middle East or other parts of the world and wonder whether this operational principle on the political level is being carried forward. The people with whom I am dealing are increasingly alarmed that the credibility and reliability of the United States is being compromised—perhaps for good reasons—but this is undermining confidence—the very confidence that may be needed for American commercial activities to have continued success.

Another point is the question of whether multinational corporations in the United States are maintaining what has traditionally been an independent posture from the foreign policy of this Government. In the banking, agriculture, high technology, broadcasting, and other areas, it does seem to people that this is being challenged. I need not go into the details, but in many parts of the world there are conditions laid upon multinational companies which prevent their normal operation in the marketplace of those countries. Is this to be the future policy of the United States, that the multinational corporations should be a servant of American foreign policy, or not?

To me, Mr Chairman, that is an open question, particularly when you are talking about dependence on satellites, data base services, computer spare parts, and other things. There has to be a dimension, a set of rules, so that all the actors know where they are.

Finally, there is the question of balancing of interests or how serious and how long-term this kind of activity is likely to be. All the evidence that I have seen abroad is that there is a spectrum of interrelated issues in this field. They begin with human rights, employment, technological capabilities, balance of payments, trade, sovereignty, and national security. These are many long-term questions which are now being faced very carefully by governments. Indeed, if these were ad hoc, rather scurrilous activities with no continuity, this committee and the desirable goals with which you are pursuing this inquiry, Mr. Chairman, would not be urgent. But,

once in place, this set of regulatory conditions and restraints will be carried forward for the next 20 to 30 years.

We are now in the gestation stage; things are generally fluid; and it is appropriate for the United States to be looking very carefully at the present situation and to the future.

As regards the barriers and constraints which are developing in different sectors of the international information telecommunications area, I have attempted to outline a number of them, several of which have been the subject of previous testimony. But I have tried to attach to these points the motives which lie behind them. Again, it is in the interest of understanding what motivates these foreign governments, just as they try to understand what motivates U.S. policy, that will bring about some closer harmony or direct communication on the situation.

I remember very well a meeting I had with an official of the Euronet data transmission network in Luxembourg a couple of years ago. This was just a general discussion. This gentleman told me:

Look, what we are doing here is equivalent to redeveloping Europe after the Second World War; it is that fundamental to us; if we do not have the capabilities in telecommunications and information systems, we will not be the continental economic entity that we must in order to survive in an area—indeed for them—of scarce direct mineral resources.

They are rapidly using up this kind of capability, and they have to be technologically strong. This is the message from every speech that you read from the European community. Granted, they are taking sometimes clumsy steps, sometimes very protectionist steps, but many of them are pursuing this from very fundamental views.

Nevertheless, some of these actions are having adverse consequences on the U.S. carriers, users, equipment suppliers, and others. Where this is a trade barrier, indeed, blatantly so, it should be treated in this way.

I think we are perhaps overcomplicating things. If we can call a bird a bird, we should treat it that way and not necessarily label it under some new manifestation. I think, the label, transborder, transnational, or international data flow, is just a convenient title under which a number of elements lie, and they should be dealt with as, in many cases, tradition has determined.

I have cited the actions proposed by the German Bundespost to require local processing, which will affect many of the time-sharing services.

The Brazilian Government wants to build up a local processing service by restricting what they consider dumping of American time-sharing services because of the vast American market and the overnight transmission. They feel this is unfair, and so they have taken some steps to blunt American actions in their market.

I have indicated a number of other aspects. The French Government is usually cited as the worst protagonist of the lot. And perhaps they are. But in my opinion, Mr. Chairman, the French Government, starting with the report by Mr. Nora and Mr. Minc 2 years ago, by the colloquium sponsored by the President of France, the French Government understand most intimately the importance of the information society that is coming to their country, and they are the most aggressive on a policy level and in terms of designing or redesigning their economy to meet what they think is

both a challenge and a threat. Therefore, while they may be the bad guys on the street, they may be doing something for France that will be very important, irrespective of short-term international dislocations and some cost to certain industries.

We frequently have discussions on what the Swedes are doing. They have in their government, because they are a neutral country and no one is going to come to their aid if there is trouble, sitting next to the Ministry of Military Defense the Ministry of Economic Defense. They see this in that kind of context. They have taken steps to be sure that their vulnerability to foreign sources in this field is being kept to a minimum.

But, then again, you have more direct protectionist activities such as I have cited—the question of the Lockheed companies. Statistics show—and if you wish I can provide them to you—that the dominance of the American data base industry would not allow, according to the views of many people developing the Euronet information system, the kind of data base capabilities at the costs which they can afford. Therefore, they have taken action to discriminate against an organization such as Lockheed in not allowing them to hook into the Euronet system.

There have been other areas which have developed. One example I cite is a question which could have been a political crisis—the Pemex situation where the Mexican oil company did not want to have its data stored in Chicago. The service organization put a computer into Mexico for that. And this is the same view that is taken in a number of cases vis-à-vis our northern neighbors who feel their ability to govern is compromised if most of the essential economic and social data of Canada resides in data banks in the United States.

Another aspect which is indeed important and is being dealt with to some extent by the NTIA is the question of national information policies or, in most other countries of the world, the word "informatics" policies is being used. Almost all of these countries have at least the national focus, if not a strong independent authority, under the presidency of the country governing the procurement of computers and services, determining applications, training, and also a develop local capabilities in areas in which they can become competent.

The new electronics in this information field will allow more and more small countries to have intermediate technologies, to have new technologies, which are not the same as we have had for the last 25 years. So, many of these countries are looking to see how they can have a share of the world market, and they are taking steps to try to do this, both on a national and a regional basis.

We have heard discussed the data protection privacy aspect this morning, and I will not get into it, except to note, as has been discussed earlier, the differences between the United States and the other statutes which exist in Europe. The first is the discrimination against noncitizens; the second is the lack of a focal point.

The United States has moved very constructively in the OECD to solve many of the earlier problems of equivalence of reciprocity. But it remains to be seen whether the OECD guidelines will become the instrument to avoid all of the problems which are now said to beset some American companies.

Mr. Chairman, in a study which my organization conducted last year on data protection laws, we did indeed find that there were a lot of wider impacts than simply protecting the rights of individuals who had their information in computerized systems. I have indicated a number of them for you, but I would underline the basic one, the concept for the first time that all information collected and used by an organization can be licensed and regulated down to the finest bit of information. This, I think, is a very important precedent and a danger in terms of those who feel that this will lead to a highly regulated environment, both for economic as well as personal information.

I have also noted in my testimony and supplied to the subcommittee information on the survey that we have conducted in which people from 67 countries participated that shows both a number of very important concerns of an economic nature and, second, that there is a higher consciousness and concern of this field, not simply in North America but all around the world.

Finally, to address the questions you have asked as to what the U.S. Government should be doing, and in particular how your subcommittee might find legislative solutions to some of these activities, I would like to first underscore that in a number of the more important issues that have arisen in the last 2 years, the United States did, perhaps on an ad hoc basis or another basis, rise to the occasion, in my opinion, in the World Administrative Radio Conference, in the UNESCO mass media, and in the OECD guidelines, to make exceptionally strong efforts, and I think the results were as good as could be expected in today's world.

Similarly, I think the Carter administration has articulated for the first of any administration in Washington the stakes that are involved in this field. I think once one elevates this field to those high national security, political, and ideological stakes, then one has set a proper perspective.

But again, as a footnote, Mr. Chairman, if you were sitting in another capital of the world today and you read this statement which I have included here, would you not also say that those stakes apply to your country? Therefore, in a certain sense, the priority that is put on this—and particularly national security priority, the utilization of political tools, economic warfare in this field—raises the ante all around the world, and therefore you can expect whatever happens in this country in terms of raising the priorities will be echoed in many, many cases in different countries.

As was pointed out by Mr. Geller, the complementarity of U.S. law and foreign law is generally coming out of synchronization. I am not coming to you today to tell the United States to pass laws just to meet other laws. But I think, perhaps, an important study should be made as to these trends, where there will be, either a legal vacuum, or a significant mismatch of legal provisions in different countries with the United States having the least legal tools, other than the court system, to utilize. I think this is an important study area so that the United States is prepared at the times when they are needed.

In addition, Mr. Chairman, from the domestic restructuring that may well be in order, the position of international organizations

ought to be closely examined. I respect that an international organization does seem to have a permanent life and constantly enlarges itself; nevertheless, if we are talking about a revolution, and if we are talking about major changes that will affect this country and the world in the 21st century, perhaps it would be wise to look at some more suitable structure because I have heard, outside of the Congress, that many U.S. Government officials do not have a great regard for some of the work of the present agencies which are treating these matters.

So, perhaps, rather than belaboring the present organization, there could be some other choices developed in the next few years. So I think, while again we are in a fluid state, we should consider this particular area.

Finally, Mr. Chairman, I have responded to this question, to some extent, of the role of the trade dimension to the issue. I think it is wrong to lump all these issues as a trade issue, and I support the previous witnesses in that. Not only is it wrong to lump it; I believe it is dangerous to put too many of these issues under trade because they will be addressed in other fora, and the bottom line of a trade negotiation is a lot of regulations. The service industry is not heavily regulated, but after they pass through a GATT round with the EEC and the Third World working them over, they will have plenty of regulation.

Regulations can liberate, and they can enslave. It is not clear, in my opinion, what the result of a GATT negotiation would be, particularly in the on-line data base industry and the services industry. Also for the telecommunications industry, they are already heavily regulated, and they have a number of arrangements, for good or bad, worked out, and the GATT has really never heard of them. If the GATT gets into their backdoor, there may be similar complications which will even exacerbate the present situation.

Finally, the United States has a considerable body of support in the world for the open and generally free operation of enterprises and the desirability for the open and continuous flow of information between countries. If one calls all of this activity economy, then one has to look at the two parts of the issue. The first part is the sales of products and services; that you can put a figure on—you can evaluate. But you have had speakers coming here from the Continental Illinois Bank, from American Express, and others. How do you value the ability of a bank to send information around the world instantaneously? It must be worth something; it must be worth a lot.

If you say that information is a product, it can be taxed; it can be required for a higher level of disclosure. So, to treat all of these things, not just as a need of a company to do business, but to say this is an economic phenomenon which should be treated in the same way as all the others, I think exposes the U.S. multinational companies to what is an unnecessary, early exposure to these kinds of issues which should be watched with very great care.

Mr. Chairman, it has been a pleasure to come before you this morning.

Mr. PREYER. Thank you, Mr. Pipe. Your testimony has been not only very interesting but also very helpful. You are obviously a real authority in this field.

On your closing comments that we should not view these international data flow issues in strictly trade terms, are you suggesting that the specific trade problems should be addressed separately from the less traditional complex of data flow issues?

Mr. PIPE. I believe there are two aspects of this trade issue. The first aspect is using traditional machinery that is in place now. For example, the International Trade Commission has not been referred to this morning at all, I believe.

I have had some very preliminary discussions with them. While they are dealing under a body of law that mostly has to do with commodities and products, they do not have the tools—the intellectual or practical tools—apparently to talk about trade in intangibles. But certainly the traditional problems of dumping and other activities—the products that are being dealt with by the International Trade Commission—could be considered for some of these activities.

Surely the special trade representative has to be involved, not just in negotiation. But I believe that because we are now between a GATT we have missed a round, as it were, of multinational trade negotiations. That has been finished up, and before another it will probably be 7 to 9 years.

I think it would be wrong to just talk about the word "negotiation" because some people will not be in business if we have to wait until 1990 to solve these problems.

What can be done in the meantime is working through the GATT in the services area on an informal basis to gather the evidence, both domestically and to create the proper terminologies and nomenclature and procedural rules within the GATT organization in Geneva, so that before the next MTN there will be a proper structure to give services the attention that they should have. So I think there is a considerable job.

But I do believe that it would not be desirable to extend into a nonplanning or nonnegotiating context many of the other social, economic, and political issues which have another context and which cannot be defined tightly enough as trade issues. I think some of those should reside—as has been suggested before by Mr. Geller—in the places that they do. But in terms of overall policy, I think the policy level ought to be more closely tied to the White House because these are political issues and very important ones indeed.

Mr. PREYER. You gave us some good examples in your statement of American corporations being hampered from effective competition due to data flow barriers. You indicated that the Government ought to respond as in any other trade barrier situation. You noted that the U.S. Government lacked the machinery to deal with those cases.

What recommendations would you have as to how the Government should be organized to better represent the interests of U.S. enterprises in this area?

Mr. PIPE. Mr. Chairman, my suggestions would perhaps not be strikingly new. It is my understanding that the report submitted to

Congress, to which I referred, pursuant to Public Law 95-426, was part of an Executive review which was the subject of a Presidential review memo, and the National Security Council has been watching this issue for some 5 years.

In view of the heightened interest and importance of this, I believe that the overall policy directions ought to emanate from the level of the National Security Council.

What kind of structure—whether it is another agency such as the OTP, which had a bad reputation and was consequently put out of business—I am not prepared to say. I think from a policy and coordination direction, it can be no lower than the White House to have effective overall review.

Conversely, I would not suggest that it have a great deal of operational activities, but that they should lie in the present agencies and structures with particularly important lead given by the State Department, as is the case today.

Mr. PREYER. You suggest that the United States is sending mixed signals to its trading partners as a result of the use of trade embargoes by the administration to achieve political objectives, that there are embargoes on particular technologies where a nation has committed a human rights violation.

Do you feel that using U.S. technology as leverage for nontrade purposes in our foreign relations is an unwise force for implementing U.S. policies, national defense issues aside, of course?

Mr. PIPE. I think it poses a direct conflict with another set of issues—two sets of issues. Basically, one is the objective of an openness policy on the exchange of information of all sorts. I think that shows the very fragile nature of that. It seems unfortunate—the United States, which not only in its Constitution, but in most of its laws, as the first advocate of that, should be one of the first advocates of its violation, unless it is, as you say, on the very important national security grounds.

Second, because of the nature of the technologies and the information which are the source of this \$12 billion export industry in the United States, they are very complicated and delicate instruments in most cases; they require maintenance; they require a lot of careful attention, and much of it has to be given across national borders.

So, the confidence factor in American multinationals has to be present, and if the Government will deny the multinational company the confidence that their products will be serviced, that their contracts will be met, then that is very important.

Recently, a number of contracts have been terminated by the Government. Recent unilateral actions have been terminated. Perhaps this is well and good. But I think it is now, both in Europe and especially in developing countries, where they are told that they need this and the United States will be a good friend and a good ally, they cannot help but look at the other side of the coin and say: "At what price and what condition will I be the product of a cut-off?"

So, I think it is an issue that is of the highest significance to the multinational corporations who are the delivery services of this export activity.

Mr. PREYER. You indicated in your statement that the PTT's in Europe were beginning to act in a unified manner and that the Confederation of European Postal, Telephone and Telegraph Authorities has articulated certain policies which would be detrimental to U.S.-based enterprises operating in Europe.

Is it your impression that the Europeans will increasingly act together in order to secure their own markets?

Mr. PIPE. Yes, Mr. Chairman. First of all because, geographically, they are much like the States of the United States; many countries border other countries, and they have a large volume of international traffic. So, for simply standardization in traffic, tariffs, and other means, they have to cooperate.

But I believe the cooperation extended in the area of data transmission, and also in the area soon of satellite development in Europe, it is a first; they have never been so unified or committed. They have an agency called Eurodata Foundation. The nine PTT's have organized and put together the public switched data network called Euronet. They are regionally—in Scandinavia and other parts of Europe—establishing public data networks. So, I think because they have been behind, because they have relied on the telex system and need to get the revenues, you will find an even stronger cooperation among the 17 countries of CEPT.

Mr. PREYER. Thank you.

I believe Mr. Morr has a few questions. Mr. Morr?

Mr. MORR. Thank you, Mr. Chairman.

Mr. Pipe, there is a phrase you used that I thought was particularly appropriate; you said the "spectrum of interrelated issues." If I read you correctly, you are saying we need to respond to those separate issues in a variety of ways rather than treating it all as a trade issue. Is that correct?

Mr. PIPE. Yes.

Mr. MORR. In your prepared statement you indicate, or seem to indicate, that other governments are much more aware of the importance of communication and information industries than our own. How can we remedy that?

Mr. PIPE. It depends on what you mean by awareness. I had the pleasure to be one of the persons involved in preparing the National Information Policy Study under the direction of Vice President Rockefeller a few years ago. There has been work going on in different branches of the Government, particularly the Office of Telecommunications, formerly the OTP, and now the NTIA, and a number of other agencies, which indicate the trends and directions of the American Government, of the information society, as it were.

Figures which have been around for some years say that about 50 percent of the work force are working in information jobs, and things like that.

What has not happened, it seems, is that any action has been taken to reform or revitalize the institutional arrangements of the Federal Government to accommodate this kind of change. I do not really know why that has not happened.

It is convenient to say we do not want an information czar, and that is well and good, but that does not get you anywhere after you have said it. It is clear that if the United States is going to have a

modern postindustrial economy its Government will have to have modern institutions to deal with it.

I think the Congress—and as you know, I was a staff member of Congress for a number of years for two Members of the House, and so I am, in a way, very partisan to the congressional process—probably, in its fragmented approach to some of these issues, ought to look at whether they could not get together in a cross-disciplinary way to tackle these matters.

Mr. MORR. Secretary Geller made a statement that telecommunications and information services form the critical infrastructure of the international marketplace. Would you agree with that statement generally?

Mr. PIPE. Absolutely. I would almost add to that the unquantifiable dimension, which is perhaps in the hundreds of billions of dollars, and that is the ability of American multinationals around the world to send and receive information vital to their operations. No one has attempted to quantify that. The only quantification that I could suggest was, what would it cost them if they could not do it?

So, I would share very much the parallel made to the idea of information as the nervous system of any organization.

Mr. MORR. What I was leading up to was really this question. We have focused largely on the impact on our own economy and our own industry. But is not the infrastructure we are talking about really in the best interest of all nations—to encourage the free flow of information worldwide?

Mr. PIPE. What you are talking about particularly in this context and what I am addressing in large measure is that short-run manifestation of change or discomfort to these new impacts. It is possible to attribute some of this to short-run problems and in 5 or 10 years things will smooth out because it does not look as if the world is going to break apart into 150 islands, as it were. But it does look as if the forest is changing and the actors are changing and that this change has to be addressed by every country, and, particularly, again, the country that originated much of the technology and is in the avant garde of it.

In fact, this is one of the comments that one hears all over the world—they are looking for U.S. leadership, and with it would come a lot of U.S. dominance on the political level.

Mr. MORR. Thank you.

Thank you, Mr. Chairman.

Mr. PREYER. You indicated, Mr. Pipe, that concerns of the Third World nations with regard to international data flow problems are becoming more pronounced. How can the United States effectively address the legitimate appeals for assistance from the less developed countries while maintaining our commitment to such things as copyright and the rights of private enterprise to control their proprietary information?

Mr. PIPE. There are many ways, as Secretary Nimetz has mentioned; I would certainly agree with those. In building infrastructures in developing countries for communications and for data processing, the whole area which is entitled "transfer of technology," is a vital one, and small steps apparently have been taken

with NTIS and others. But certainly not large steps, certainly not at the level of need that exists.

Again, the United States has taken positions in a number of international bodies favoring this, again favoring principles but often not favoring really the support necessary from the Federal level.

I would simply suggest to you that the priorities which are established in this area for the U.S. Government would have to be a dimension for developing country assistance in all of these areas, and it would not be just the giving of assistance with equipment but would also go further to take note of adapting that equipment and of taking concern for local cultural and other interests instead of just the transfer of satellite time or something like that.

There is a lot to be done, and I must say that, other than the verbiage, there does not seem to be much behind American policy today.

Mr. PREYER. Mr. Pipe, your testimony has been very interesting and very helpful. I regret that I am going to have to conclude at this point although there are some further questions we would like to ask you. We hope you would be willing to respond to them in writing.

Mr. PIPE. Certainly.

Mr. PREYER. Without objection, they will be included in the record at this point.

Thank you very much. At this point, the subcommittee stands adjourned until April 21.

[Mr. Pipe's prepared statement and submissions to additional subcommittee questions follow:]

TRANSNATIONAL DATA REPORTING SERVICE, INC.
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PREPARED STATEMENT
OF

G. RUSSELL PIPE
PRESIDENT OF TRANSNATIONAL DATA
REPORTING SERVICE, INC.

BEFORE THE

GOVERNMENT INFORMATION AND INDIVIDUAL
RIGHTS SUBCOMMITTEE

COMMITTEE ON GOVERNMENT OPERATIONS

UNITED STATES HOUSE OF REPRESENTATIVES

MARCH 27, 1980

Mr. Chairman, my name is Russell Pipe and I am President of Transnational Data Reporting Service, Incorporated (TDRS) of Washington, D.C. and Amsterdam, Holland. Accompanying me is Timothy G. Donovan, Executive Director of our company. Mr. Donovan operates our United States office. For 10 years I have been living in Europe, spending most of my time as a consultant or writer on information policy and communication issues, for such organizations as the Organization for Economic Cooperation and Development (OECD), the Intergovernmental Bureau for Informatics (IBI), Online Conferences Limited, and publications such as Datamation, Computer-world and others. TDRS publishes Transnational Data Report which is the first and only international publication to focus on political, economic, legal and social aspects of information flow.

Last year, in association with the LINK organization of New York, we undertook a major multiclient study on regulatory developments in this field and their potential impacts on commercial and corporate information and communications. I shall refer today to some of the findings from the first part of this study, concerning broader implications of data protection / privacy legislation.

Also, Transnational Data Report recently concluded a world survey on data flow attitudes. I will mention several of the statements raised in the survey and their relevance to future trends in this field. The Subcommittee has been provided with copies of the full report on the survey.

In your letter of invitation, Mr. Chairman, you asked for my "candid assessment of the range and complexity of problems which may affect American and international enterprises, a description of data protection laws and other information flow policies in Europe and other Western nations, and views on how the United States Government can effectively represent American interests." Mr. Chairman, I will try to comply with this request making clear that my presentation contains my personal views.

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If I may, Mr. Chairman, I would like to consider the subject in a broader context. Many developing countries, in addition to Western industrialized nations, are the recipients of increased U.S. trade and these new markets for American information / communication technology products and services are also taking actions affecting American corporations.

CONTEXT FOR CONSIDERATION OF INTERNATIONAL DATA FLOW ISSUES

The governments and parliaments of many countries have begun to consider the necessity of taking action to maximize benefits from evolving information oriented societies. These countries, with increasing support from domestic business, trade unions, research and other elements of their economies, believe they must plan for service economies where information products and services are the major sector of the work-force and the main component of their gross national product. Studies and projections of such impacts in the United States have been taken perhaps more seriously outside this country than here in Washington.

The information revolution is real to many national leaders and, as in all revolutions, governmental responsibilities must adapt to a changing environment. In the widely discussed Nora-Minc report, commissioned by French President Valery Giscard d'Estaing, the authors state in their conclusions:

"France must find the correct solution to new and serious challenges. Otherwise, domestic tensions will deprive her of the ability to control her fate."

These views are reiterated in studies and policies on information resource utilization in Canada, the Netherlands and the United Kingdom as well as in many developing countries.

Mr. Chairman, the Congress is at the vortex of American policymaking as it addresses the rewrite of the 1934 communications act, electronic mail, copyright,

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privacy and electronic funds transfer. So, too, Mr. Chairman, are similar issues being debated in councils of ministers and parliaments in countries of Europe, Latin America, Africa and Asia. Telecommunications and information resources are increasingly seen as essential to national survival. ITT succinctly captured this theme in a recent advertisement: "By the year 2000, a country's gross national product will largely depend on its ability to deliver information." Mr. Chairman, if you were a policymaker in Baghdad, Buenos Aires, Lagos, Libreville, Paris, Rio, Sydney or Tokyo, what steps would you take to shore up your economy and get a leg up as regards telecommunications, data processing and databank capabilities? If the motivations of foreign officials can be understood, not necessarily agreed with nor even tolerated, but understood, this would be an important step toward the formulation of effective United States policies.

Let me describe a number of matters being raised outside the United States which may explain some of the difficulties earlier witnesses have cited.

Regulatory Philosophy

There are two almost diametrically opposed views on the nature, function and operation of regulations. The Federal regulatory establishment is seen by various constituencies as costly, cumbersome, restrictive and often excessive. Consequently, I read that the Carter Administration is trying to rollback burdensome regulations affecting the telecommunications field. A second perspective on the purposes and administration of regulations, held by nearly all of the government officials with whom I have come into contact, is that they create order and reduce often chaotic conditions which can exist in a laissez-faire environment. Regulations are seen to correct unstable and sometimes discriminatory marketplace conditions, making them open and servicable to all. As regards telecommunications and information, due to their importance to national economies, it is logical to many foreign governments to increase rather than decrease regulation. In the data flow field, already the subject of

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a considerable body of national and international rules, the real question is how heavy a regulatory environment will develop, not the presence or absence of regulations, per se. This outlook explains why Mr. Jan Freese, Director-General of the Swedish Data Inspection Board believes: "the free international flow of data must be regulated in order to remain free."

Dependent or Interdependent Conditions

Is the international telecommunications and information policy of the United States operating in accordance with principles of a free flow of information, free trade and unrestricted commercial activities - or not? Recent events in the Near East, and U.S. response to them, seem to challenge the credibility and reliability of these principles. This is an increasingly serious concern of U.S. trading partners in Europe and developing countries.

Multinational Corporations -- Separate from U.S. Government Policies?

Over the years American multinationals have asserted their independence from the U.S. Government. In banking, agriculture, high technology and broadcasting, this independence is challenged by developments in the last twelve months. Congress would be well advised, I believe, to help both American corporations and the Executive Branch in resolving this dilemma. Economic warfare has been declared against the Soviet Union and at least partially against Iran. Previously, sanctions were imposed on Rhodesia and the Union of South Africa. Foreign concern is where else and under what circumstances might the U.S. be tempted to "pull the plug" on satellites, online database services, computers and spare parts.

Balancing Interests

I strongly stress the seriousness with which government officials approach

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developments in telecommunications and information. This is graphically demonstrated in most national reports and legislation on the topic. The spectrum of issues ranges from human rights through employment to technological capabilities, balance of payments, trade conditions, sovereignty and national security interests. Basic decisions of a long term nature are involved. Consequently, they are the product of organized decision-making and a balancing of interests greater than may be realised. Indeed, if many of the examples of the politico-economic terrain outside the country were the product of ad-hoc, isolated actions, the Subcommittee could treat these matters with less urgency. The entire landscape of public-sector involvement in this field is being consummated. Once in place, it will last until the 21st Century. Now is the gestation phase. Things are generally fluid. It is the appropriate time for the United States to help chart new directions.

NEW CONDITIONS AND BARRIERS TO INTERNATIONAL DATA FLOW

Mr. Chairman, examples of constraints on international information flow exist. I will cite some of them for you and provide the rationale given by officials of governments imposing such restrictions. To my knowledge no full catalog of such conditions or barriers exists, but Transnational Data Report carries new developments as they occur.

Telecommunications

European PTTs are busily engaged in building data transmission networks, replacing widely utilized Telex services. Leaders of the confederation of postal and telegraph organizations (CEPT) assert that a number of steps must be taken to financially support data services, including:

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- bringing more users of private leased circuits onto public networks through standards, maintenance rules, and rate structures;
- discouraging special user groups, such as banks, from having international private networks;
- obtaining more revenue from high-speed transmission users by imposing volume-sensitive tariffs; and
- stimulating more intra-Europe traffic by large and medium size users through distance insensitive EURONET tariffs.

Two years ago, I met in Luxembourg with a European Community official planning EURONET, who told me there is a parallel between post-war Europe in the late 1940's and the present period. "We had to get on our feet and develop our own industrial base after the war. Now that is the case with telecommunications and information capabilities. It is fundamental to Europe's future." Mr. Chairman, there is no doubt what European objectives are, nor those of the Japanese for that matter. These are political decisions with important economic consequences for American carriers, users, equipment manufacturers, and services. Obviously, this government should respond as in any other trade barrier situation.

I understand that the German Bundespost will require local processing of data to be transmitted outside the country and this will hurt nearly all American services operating there. What machinery the United States Government has in place to deal with such cases is not clear to me.

Closely related to such European telecommunications practices is a decision of the Brazilian Government to require registration of international data links. This is part of an information industry development program in Brazil and is well known to most U.S. traders in Latin America. However, the justification for this action has to be considered - the contention that U.S. timesharing services were "dumping" excess time below costs to Brazilian users thus thwarting fledgling local service bureaus.

Services and Online Database Industries

The dominance of the world market by U.S. data processing services and database providers is a major irritant to officials of ministries of industry which want to improve the status of local companies. The trade associations for these services here in Washington should be able to supplement such cases as the following:

- the French government is a client of Data Resources, Inc, buying econometric predictions on their economy. It seems that the models and quick up-dating by DRI exceed anything even the official French statistical bureau can prepare. Dependency on an information source 4000 miles away is intolerable, French officials say so the government is building its own database capabilities to be marketed in Europe and other parts of the world. An additional concern raised by the French is uneasiness in having to rely on wholly private companies which can suffer strikes, takeovers, and bankruptcy, possibly leaving foreign clients with cancelled or interrupted service.
- the oft cited Malmo fire brigade story has a not-so-often reiterated aspect. As you will recall, the brigade was a user of General Electric Information Services' computer facilities in Cleveland, Ohio. At the sound of an alarm, a fireman would dialup the Malmo block-by-block hazard inventory to learn the type of blaze to be expected, size of building, potential dangers and other pertinent information -- in 30 seconds or less the answer came back, and in Swedish: The story has a certain public appeal and has received considerable publicity. But what has not received as much attention is the sense of vulnerability the story and others similar have created in Sweden. So strong is this sense that a Swedish Government Committee under the

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Ministry of Defense, after two and a half years of study, has recently published its findings on "The Vulnerability of the Computerized Society." And incidentally, I understand that the fire brigade now uses a local service bureau. A copy of the English summary of the report has been provided to the Subcommittee staff.

- Lockheed Information Systems applied to the British Post Office (BPO) for access to EURONET via the U.K. node. Difficulties in X-75 standards compliance in the United States was the public reason for denial by the BPO (for 2 years at least), but privately it was made known that were Lockheed to move its database to England for accessing there, all problems would be resolved.
- A breach of OECD agreements on invisible barriers to trade was alleged when ADP Timesharing Company sought to set up a subsidiary with on-site processing facilities in France. The Bank of France, at the behest of the Ministry of Industry, rejected the request to transfer funds there on the basis that it was French policy to establish indigenous data processing services.
- On more political terms, a mini-scandal erupted in Mexico early last year when it was publicized that the information system of PEMEX, the state-owned oil company, was centralized in Chicago through the INFONET system. This flap was resolved, I am told, by Computer Sciences Corporation installing a computer in Mexico where local client data will be stored.

Information Policies

A 1978 survey by the Intergovernmental Bureau for Informatics (IBI) in which 68 countries participated, showed that 55 have or will soon establish national authorities for the procurement of computers and services, to determine priorities of applications and personnel training needs, and advise on the creation of local industries around all government-owned or controlled activities involving computers. In developing countries this comprises most of the national use

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of data processing. The recommendations of the 1978 Intergovernmental Conference on Strategies and Policies for Informatics (SPIN), in which the United States was officially represented, indicate that government direction in the information field is viewed as necessary by most countries. The Conference:

- called for the abolition of discriminatory restrictions for political or other motives in exchange of scientific and technical documentation and the sale of computer hardware and software;
- recommended broad-based concerted efforts at the international level to define conditions of compatibility between the principle of the free flow of information and necessary regulations - considering the political, economic, social and legal dimensions of the problems in data flow; and
- noted that one-tenth of the world's population holds at its disposal in computerized data banks, 95% of the world's technical, cultural, scientific and economic information, and this situation could further widen the gap between the developed and developing world.

Mr. Chairman, at the council of ministers and presidential level in nearly half of the countries in the world informatics authorities are preparing or implementing national masterplans. Information policy is that important to these countries, many having only a limited number of computers installed in their territory. The overall result of informatics policies should lead to the introduction of more equipment and use of data processing services. The commitment to computerization of public services, research and industrial applications is high in most countries and can be a major market for U.S. suppliers. To open and sustain these opportunities, American tax and commercial rules may have to provide at least the color of governmental backing - which every other country does for their export enterprises.

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Data Protection / Privacy Legislation

National laws to protect personal information have been adopted in 10 countries (Austria, Canada, Denmark, France, Germany, Luxembourg, New Zealand, Norway, Sweden and the United States) and another 10 countries are planning to enact such legislation (Australia, Belgium, Finland, Iceland, Italy, Netherlands, Portugal, Spain, Switzerland, and the United Kingdom). Data protection embraces the concepts contained in fair personal information practices as outlined by the HEW Advisory Committee report. In Europe, the rights of individuals to inspect, correct and to some extent control the use of personal details is enforced by the data subject personally or by a special governmental agency created for this purpose. This is being referred to as micro data protection, that is protection of interests of individuals. Macro data protection refers to those interests of society which may be affected by import or export of information.

Sweden has served as the model for data protection legislation, having the first national law. This was the Data Act of 1973. It contains five major responsibilities:

- 1) placing all personal information systems under a single regime of public law;
- 2) entrusting an independent specialized agency with enforcement of the law, thus reducing political, bureaucratic or commercial influences;
- 3) requiring registration and licensing of all personal records (in this case only computerized systems and those linked with manual systems);
- 4) giving the data protection agency power to undertake technical and administrative inspections to see that the law is properly enforced, as well as to respond to complaints of individuals; and

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5) allowing for adaptation of enforcement according to experience, changes in public attitudes and technology.

This model differs, some would contend significantly, from the United States approach to privacy protection. Rather than point up the reasons for such approaches, I would only note the main basis for the lack of reciprocity or equivalence of federal and foreign legislation:

- 1) the discrimination against those not citizens or permanent residents of the country; and
- 2) lack of a focal point for monitoring or enforcement of the statute (s).

The two points are interrelated. Even though the Freedom of Information Act may be a backdoor into foreigner's files held in the Federal Establishment, I believe Congress should review this policy.

The studies I have seen concerning imports of personal data into the United States deal mostly with the private sector and focus on information intensive industries. It so happens that the United States Government is a collector of considerable quantities of personal data about foreigners. For example, the medical records of employees of U.S. owned chemical companies wherever they operate in the world must be supplied to a Federal agency. Similarly, case histories of persons involved in drug testing by American pharmaceutical firms wherever they take place, must be submitted to the Food and Drug Administration. Any person, whether citizen or foreigner, who buys a check for \$5000.00 from an American bank outside the country will have a copy of that transaction filed with the Internal Revenue Service. In such cases, these records appear to be beyond the access of the individuals involved as well as foreign data protection authorities. These U.S. requirements also may not even be similar to host country reporting rules, thus encouraging other countries to ask for similar disclosure.

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The American government and business have a generally good record in protecting personal information. Therefore creating a Personal Privacy Bureau in the Department of Justice or another agency would serve to help bring uniform enforcement of the Privacy Act of 1974, other Federal privacy laws, and could be the needed link with other countries' data protection authorities. There is also a requirement that the U.S. Government assist the private sector with trans-national data flows of personal information by providing at least a certification system for those organizations which have established good practices.

The findings from the first part of our multiclient study, examining how to comply with foreign data protection laws, indicate that these laws can be expected to have a much wider impact on corporate information flows than merely imposing new procedures for handling personal information. In addition to instituting a new regulatory mechanism which can be applied more widely to information stores of companies, I would bring the following to your attention:

Licensing / Registration Precedent

The obligation that record-keeping organizations disclose all systems of personal records legitimizes a reporting scheme which could be used to install government supervision over any company information system. Furthermore, obliging companies to obtain permission to keep name-linked information in computerized form in effect imposes quasi-licensing requirements on computer users.

Security Procedures Disclosed

Physical and organizational measures which corporations take to insure the security-confidentiality of information must be reported in most countries adopting data protection legislation. This usually will encompass most if not all data processing facilities because name-linked information is not segregated from other types of data.

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Modifications in security practices may be required to accommodate provisions of these laws, regardless of whether the companies involved provide higher levels of protection, such as encoding or other measures. Data protection authorities are empowered to enter premises where data processing takes place, without prior notice, and must be allowed access to any and all technical or administrative information concerning data processing operations.

Employee Accountability Reduced

In some countries, employees engaged in data processing are legally accountable for implementing data protection laws and not responsible to corporate management for the conduct of their work. Such is the case in Germany. The French law gives computer specialists immunity from company loyalty when called upon to testify about possible law violation. Trade unions in some countries are seeking to have employees who are involved in data processing made accountable to the union for their actions rather than to management.

The loyalty of data processing employees to employers, government agencies, or trade unions, has become blurred in several European countries. Similarly, it may be difficult to limit disclosures of corporate practices to personal information. Proprietary information seems increasingly to be the larger target.

Multinational Data Flow Scrutinized

Conditions on the transfer of personal data across national boundaries puts multinational corporations in a highly visible, and possibly vulnerable position. Registering the patterns and destinations of flows within their organizations to comply with privacy rules may expose much wider corporate policies and practices.

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There is a danger that special scrutiny directed at cross-border traffic will result in a de-facto double standard; that is, corporate information collected and circulated within the country of origin will have a lower requirement of compliance than information which is to be exported. One immediate threat is that companies might be forced to disclose data to government entities -- to guarantee against loss, destruction, or prove there is no attempt to evade other reporting requirements.

Reduced Corporate Data Flow Encouraged

The curtailment of extensive corporate data transfers has emerged as an implied policy in several countries. Keeping economic and social information in the country of origin is viewed as a desirable public policy, except where a need for dissemination can be justified. This is a reversal of the longstanding principle of a generally free and open circulation of information among countries.

Conditioning corporate communications on a "need to transmit" basis is but the first of a number of barriers to data flows appearing on the horizon. Denying companies a right to retransmit data from the point of origin to a regional processing center and then to a destination in a third country is seen as a reasonable constraint on the movement of personal data. Commercial and corporate data flow could face similar restrictions.

Proprietary Data Exposed

The disclosure of personal information may involve a great deal of related, collateral information of a proprietary nature. The situation faced by pharmaceutical companies conducting drug testing programs and chemical companies whose records are open to health inspection, illustrates this danger. Limiting exposure of sensitive corporate information when complying with regulations or access rules may be one of the most important early actions to be undertaken by companies.

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Legal Person Provisions Constitute Serious Latent Threat

Four national laws include corporations, associations and organized groups in their scope of application. Although it is presently anticipated that registration, access and other provisions applying to physical persons will be applied to companies, only Austria is currently implementing its law along these lines at this time.

Commercial Transactions Affected

The open-ended definition of physical persons in these laws, meaning "any information relating to an identified or identifiable individual," covers those names, positions and other particulars included in commercial transactions. While it is not now the intention of data protectors to interpret their mandate in such a broad fashion, this definition may encourage an extension in time. This could subject financial institutions, reference, reporting services, and other organizations to a far wider involvement in data protection than they now envision.

Multinationals Bear Greater Compliance Costs Than National Companies

Multinational corporations operating in any country with data protection legislation may be obliged to extend their compliance to every country to which they transfer personal information. This is necessary to maintain fluid and transparent communications among all locations. Much as this seems to be an unreasonably high expectation from a cost and inconvenience viewpoint, it may be the only option available to allow the transfer of personal information anywhere in the organization. National and international companies seem to be in a much better position having to comply with those laws where they transmit personal data and in those situations, certain of the burden may fall to the recipient party.

TDR WORLD SURVEY OF DATA FLOW ATTITUDES

Transnational Data Report (TDR), published by our company, conducted a survey of government, business, academic and other individuals in over 100 countries for their opinion on several international data flow issues. A total of 561 replies were received from 67 countries, less than 20% of the respondents were from North America. Some of the more significant results are the following:

- 39% favor restricting foreign transmission of economic data; however another 39% oppose such curbs;
- "the absence of national capabilities to meet a country's data processing needs compromises its national sovereignty" was agreed with by 61% of the respondents;
- 76% thought that data communications services policy should be part of an overall government plan;
- more than 50% agreed that "companies should have the right to send to related companies located in another country any information they are allowed to use in their own country;"
- by a significant majority of 77% the participants in the survey feel government policies should help create a favorable environment for the growth of private sector information service industries;
- 40% think that "national legislation will significantly reduce the growth of transborder flows of information;" and
- only 11% favor taxing cross-border flows of information; but 24% are undecided on this issue.

Mr. Chairman, we were impressed by the thoughtfulness of respondents from all parts of the world. Over 200 took the time to add comments to their survey forms. We conclude that more attention will be given to these issues by people in various specialties from countries at all levels of development.

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UNITED STATES POLICY AND INSTITUTIONAL RESPONSE

Mr. Chairman, in my view the United States has been rising to the challenges posed by international bodies concerned with telecommunications, information and data flow perhaps more effectively than has been credited here. The long and thorough preparations for the World Administrative Radio Conference (WARC), difficult negotiations at UNESCO over the Mass Media Declaration, and preparations resulting in the OECD guidelines on data protection, confirm this conclusion. The outputs of these international exercises, it seem to me, were just about as good as could be realistically expected in today's world.

The Carter Administration is the first administration to assert America's stake in this field. Submitted to the Congress in 1979, pursuant to Public Law 95-426 (the Foreign Relations Authorization Act):

"The United States has national security, political, ideological, economic, and technological stakes in international communications.

Our national security is dependent on advanced telecommunications systems. Politically, we are committed to a broad exchange of information both domestically and internationally.

Our economic interest is obvious: our industrial base relies on adequate communications; large corporations have become increasingly dependent on world-wide computer circuits. Moreover, the United States is the world's largest producer and consumer of telecommunications equipment and services. (Exports of communications / computers and auxiliary hardware exceed \$5 billion per year.)

Technologically, the United States holds a lead in most areas of satellite communications, in fiber optic communication (along with Japan) and in very large electronic switching systems. In other

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areas of basic communications technology, such as microwave transmission systems or satellite earth stations, the United States, Japan and Western Europe are roughly equivalent technologically. In computer and data communications and in their applications the United States is commercially dominant."

The principal suggestion I would like to put forth, Mr. Chairman, is that the machinery for policymaking and implementation take into account these high stakes. The United States presently lacks complementary institutional counterparts to those set up in many countries and less equivalent public law concerning information and telecommunications. In an increasingly interdependent economic and political situation, even among industrialized nations, the Congress should consider how to insure that U.S. national interests are furthered by appropriate policies and infrastructures.

These hearings assess the present American governmental structure. However, just as rapid change in technologies are requiring domestic legal and administrative reforms, so too will international relationships be affected. Most United Nations agencies are 30 years old, constructed in the post-war period. Many of the issues which are within the context of international data flow have no comfortable home in the U.N. system which presently exists. It may be too bold to term the next few years a period of fluidity in the choices of fora for resolving these issues, but certainly countries which define their national goals will be looked to for substantive and institutional solutions. The United States, consequently, has a dual challenge, to fashion a strong domestic response and innovate for improved structures internationally.

Mr. Chairman, in the last few months there has been a rush to lump all

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data flow issues into a series of non-tariff trade barriers. Undeniably there is a certain logic to seek traditional commercial measures, under GATT or elsewhere, as the place to treat grievances of American corporations. Plunging into a multilateral trade negotiation as a panacea to data flow problems, in my view, should be carefully considered. The first reason for caution is that to transfer the human rights, cultural impacts, introduction of new technologies, open flow of information and knowledge, and national security interests of countries to a narrowly defined "trade issue" significantly reduces many persuasive arguments which could be advanced for achieving a livable regulatory environment for American industry. Approaching these issues only in a commercial context will do nothing to help the U.S. address these matters in many United Nations organizations having nothing to do with trade, such as UNESCO, ITU, WIPO, and ISO; or in the Intergovernmental Bureau for Informatics, and OECD.

United States corporations have a dominant position in exports of computers, telecommunications equipment, processing services and data bank retrieval services. Some statistics suggest this may be 90% in certain areas and for certain products. Where will a trade negotiation end up after Canada, the EEC, Japan and developing countries chip away at the American lead? Will the interests and objectives of both American vendors and users be satisfied by the trade route? Isn't this choice inviting a rather rigid regulatory situation, involving considerable reporting and disclosure of company practices? Several people with whom I have discussed this point in Europe express delight at the prospect of getting the U.S. at the bargaining table in this field. This pleasure suggests to me that the trade solution may not be the easy way around the present situation.

Mr. Chairman, I appreciate this opportunity to bring my views on these important issues to the Subcommittee.

Government Information and Individual Rights Subcommittee

Additional questions to and answers from Mr. G. Russell Pipe,
President, Transnational Data Reporting Service, Inc. — For the Record

1. If a cooperative agreement for the protection of privacy is not reached soon in the OECD, do you anticipate increased difficulties for U.S. firms operating internationally?

Mr. Pipe: It is too early to make any solid judgements on the lessening of potential personal data flow barriers as a result of the OECD guidelines.

2. Several of our witnesses stated that they regard compliance with foreign data protection laws as less of a barrier than such things as added tariffs, inconsistent standards, and excessive restrictions on use of telecommunications facilities. Do you think the data protection laws themselves pose real problems to U.S. enterprises or are you concerned that they could potentially be used as protectionist tools?

Mr. Pipe: Data protection laws are designed and intended to establish certain fair personal information practices - motivated by the desire to protect human rights. Their main impact will be limited to controls on personal data flow which will not be trade-barrier oriented. However, other responsibilities of Data Protection Authorities (DPA) such as controls on data processing generally, legal persons and vulnerability may be genuine non-tariff barrier issues.

3. You suggest in your testimony that the interface of the Freedom of Information Act and the Privacy Act, while providing appropriate rights of access for foreign nationals to records about them in a legal sense, suffers from problems of appearance and misunderstanding by the Europeans. Are you suggesting that we change a legally sufficient body of law because of appearances? Wouldn't it be more appropriate and easier to educate the concerned European nations regarding the structure and effect of current American law?

Mr. Pipe: The Privacy Act of 1974 is clear in its discrimination against foreigners. It would be unwise to try to paper over this variance with European statutes. Better to bring the U.S. law into line with others unless convincing arguments exist to the contrary.

22 May 1980

TRANSNATIONAL DATA REPORTING SERVICE, INC.

4. You recommend in your testimony that overall policy direction in the area of international data flow should emanate from the National Security Council. Why do you favor an entity located in the White House as compared to the Department of State and should the same entity be responsible for negotiating in particular cases as well as for formulating policy?

Mr. Pipe: The White House establishes national policy. Issues such as this where both domestic and international policy developments are involved, place prime responsibility in the White House. The Department of State executes international policy as well as helping the President to design it. Consequently, White House level formal direction in this area is what is required.

5. What has been the reaction to the findings of your survey? What type of further study do you feel is necessary for providing better information on which to base policymaking in this area?

Mr. Pipe: A main stream of this issue area is national and international information (informatics) policy. N.T.I.A. is chartered to gather and assess such matters. Surely this agency as well as others should provide useful inputs to the policy process. Our Transnational Data Report (TDR) World Survey indicates a high level of perception about these issues and indicates steps are to be taken to deal with them at national and international levels in the next few years.

6. It has been noted that modern technology is viewed as a threat by some foreign nations. Do you have any recommendations on how this country can foster the concept that the free flow of information and the proper employment of information and communications technology will benefit the economic development of all nations?

Mr. Pipe: Greater emphasis should be placed on the consequences of introducing information and communications technologies, rather than simply bringing new equipment to developing countries. The U.S. seems primarily tool oriented rather than being sensitive to wider rationale and impacts of these technologies.

22 May 1980

TRANSNATIONAL DATA REPORTING SERVICE, INC.

7. We have received significant testimony on the impact of the "information and communications revolution". If barriers to the free flow of information substantially diminish the progress of these technological developments, what result do you see for the economic growth of this nation and the world? What are the implications for political and cultural interaction?

Mr. Pipe: The principal question being posed in many countries of the world as regards technological developments is: What kind of national future do we want? It is far from certain that developing countries will choose such a high technology environment as has evolved in the United States. Most of the statements I read by leaders of developing countries emphasize the role of technology as a tool, to strengthen social, economic and political objectives of their national-states. This being the case, barriers to data flows may be erected to shelter societies from impacts brought about by technological developments. It is incumbent that U.S. policies take into account these factors when promoting technological solutions to problems in developing countries.

[Whereupon, at 12:50 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

INTERNATIONAL DATA FLOW

MONDAY, APRIL 21, 1980

**HOUSE OF REPRESENTATIVES,
GOVERNMENT INFORMATION
AND INDIVIDUAL RIGHTS SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
*Washington, D.C.***

The subcommittee met, pursuant to notice, at 10 a.m., in room 2247, Rayburn House Office Building, Hon. Richardson Preyer (chairman of the subcommittee) presiding.

Present: Representatives Richardson Preyer, Robert F. Drinan, and M. Caldwell Butler.

Also present: Timothy H. Ingram, staff director; Christopher J. Vizas, counsel; Donna Spradling, secretary; Thomas G. Morr, minority professional staff, Committee on Government Operations; and Jane Bortnick, analyst, Congressional Research Service, Library of Congress.

Mr. PREYER. The committee will come to order. Today we enter our fourth day of hearings into the problems posed by barriers to international data flow. During its investigation, the subcommittee has been made disturbingly aware of the immediacy of these problems and of the damage that barriers to data flow threaten—damage to both individual liberties and to international trade.

The revolution in computers and communications does pose certain risks to freedom and to economic stability that we must be aware of. But, it also offers unprecedented opportunities for expanding individual freedoms and sustaining even stronger economic growth throughout the free world. We, our Western trading partners, and the Third World can take a substantial step forward; or, we can impose unnecessary barriers to the free flow of information which will set us back in time and development.

To insure that the United States does not contribute to any retreat from opportunity, we must understand the dangers confronting us and the executive branch must be properly organized and prepared to effectively represent our Nation's interests.

Today's hearing will again have two points of focus. First, the range and nature of problems threatened by barriers to the free flow of information. Second, the appropriate place to establish the locus of authority for these issues in the executive branch and to coordinate agency activity.

We will hear this morning from the Federal Communications Commission, the Office of the U.S. Trade Representative, and a former Special Trade Representative. Regrettably, we will not be hearing from the Office of International Economic Policy in the Commerce Department.

I regret that they were unable to arrive at some agreement on their testimony. Although the staff of that Office has worked closely with subcommittee staff, it would have been desirable to hear the views of the Department in open hearing.

Our first witness this morning is Mr. William D. Eberle, former Special Trade Representative and currently Vice Chairman of the U.S. Council of the International Chamber of Commerce.

Ambassador Eberle, it is a pleasure to have you with us.

STATEMENT OF WILLIAM D. EBERLE, VICE CHAIRMAN, U.S. COUNCIL OF THE INTERNATIONAL CHAMBER OF COMMERCE; ACCCOMPANIED BY KAY RIDDLE, VICE PRESIDENT, CHASE MANHATTAN BANK

Mr. EBERLE. Mr. Chairman, it is a pleasure to be here with you this morning. Accompanying me this morning is Kay Riddle, vice president of the Chase Manhattan Bank.

Mr. Chairman, may I first submit my testimony for the record and then I will be happy just to cover the key points in the testimony.

Mr. PREYER. Without objection, your statement will be made a part of the record. We appreciate it and its enclosures.

Mr. EBERLE. Mr. Chairman, first, let me just cover quickly the ICC and the U.S. Council. The U.S. Council is made up of American businesses that are solely concerned with international problems. These are multinational companies with larger interests. The U.S. Council is a member, on the U.S. side, of the International Chamber of Commerce which represents more than 50 different countries which have national committees.

We focused on this issue of transborder data flows about 18 months ago and have moved rather rapidly to try to point out the problems throughout the world, even to the point of holding a seminar on this subject because of its importance. If you restrict the free flow of data across the national borders, you simply limit the possibility of international commerce in its broadest sense. The ICC has made a strong recommendation but from ICC, to all of its 55-member countries that the OECD guidelines be used as the basis for any future discussions. I point out in our testimony that basically these come down to the need for clear uniform rules covering the careful handling of personal information, the importance of one set of common rules, and the need for indepth study.

The ICC and the U.S. Council can be of service because they are the official business observers to many United Nation bodies and have representatives that appear from time to time.

Having said that, let me move quickly and talk about the problem. I think one of the reasons that it has not been focused on the way that it might have been is that the emphasis has been on national security and privacy, which is how the problem came up. Let me suggest to you that the business community certainly wants to protect privacy and is certainly willing to allow any country to protect its own national security. So, we do not perceive that as the issue that confronts this country today.

The issue is twofold. First of all, the various governments in the world have different systems for looking upon telecommunications, data processing or whatever you wish to call it. The European

Community and Japan basically want to have a monopoly. They do not believe in competition and they have government actions which control all aspects of the communications field. That starts with purchasing, where they want to buy domestically, all the way down to what kind of services you can have.

The United States, on the other side, with the opening of competition between IBM and A.T. & T. into each other's fields and with competitive policies now being approved by the FCC, follows an entirely different kind of approach, even to the point where the privacy issue is different. Here, we expect individuals to step up and complain, whereas Europe and Japan want to have government laws and government rules and regulations. What is happening here is that they are using the privacy and national security issues to get at the economic issue and to control a major new industry. It is just another form of protectionism that we are starting to face.

I brought along with me this morning the latest copy of the Economist magazine. Let me just quote from it:

Viscount Davignon has been campaigning for some time for an EEC strategy for the new vogue concept, much beloved by the French, of telematics, telecommunications, electronics and computers.

In a paper submitted to the EEC summit last November, he pointed out that although Europe makes up a third or a quarter of the world telematic market, much is being taken by imports from the United States and Japan.

At present, the EEC supplies 30 percent of the world's market for telecommunications, but only 16 percent for computers and software and 10 percent for electronic components and chips.

The Viscount is anxious to do everything possible to boost European industry.

I might point out that this whole problem gets down to one basically of control of this industry, of jobs, and of the various products. I only have to point out to you, Mr. Chairman, that we are approaching the point at which 70 percent of service of Americans are employed in the service industry of which the telecommunications, telematics, whatever you want to call it, is a terribly important part. That is where we are getting great growth in jobs. Jobs in the United States are upgraded because this is such an important growth sector for the United States. We are doing a better job.

I might point out here that you have a second difference between our Government and the other governments of the world. That is in the whole area of what I call control of purchases and control of services. In the rest of the world, and we can start with Japan or Europe, they control what kind of purchase will be made in their communications and postal systems. They control what kind of services will come into play. We talk about reciprocity of the FCC, and they will be testifying this morning, but, as an example, Control Data asked the Japanese Government if it could provide certain services in Japan from U.S. computers. They were turned down. They were limited. At the same time, the FCC granted Japanese companies the right to give the same kind of service that Control Data applied for, and I don't think this is reciprocity.

We have the same kind of problems in Britain today where if you use normal corporate documents, which are private to the companies but not private to the individual, the laws or regulations of Britain today will force, if they are enforced—which they are not yet—you to turn over to the Government what the code is, so that they can find out everything that is being done.

I might point out that other countries—Norway, France, Belgium—are all beginning to focus on how to use privacy and regulatory control to maintain the service business and the computer business at home. That is what the issue is.

I simply have to emphasize very strongly, Mr. Chairman, that the problem I am talking about is that laws are already on the books of many countries. The laws and potential regulations are being examined, including the entire policy statement within the EEC Commission under Davignon. You only have to look at his promotion of cartelism in steel and other industries in order to compete with the United States to know the objective they are trying to achieve.

We usually wait until it is too late, until we are already preempted from the market, and then we complain. I can only suggest that the time for action on this problem is now, before they have restricted us from the market. It does not take very long to remember the days when the United States had to invest billions of dollars to get behind trade barriers. We do not want to find ourselves in that position again. One says the problem does not exist. To point out the problem, there are hundreds of minor problems, minor problems that may be irritating to our Government. But, this is the beginning of how all these things start. I can only suggest that the time is now when we not only need action, but we need some results to be sure that this kind of industry and its jobs are protected freely around the world with an open market.

I would like to conclude with where and how best can this be approached. I think we, first of all, must recognize that we are dealing with an interrelated problem here. I do not want to suggest that it is not. We have FCC problems and the technical problems. We have national security problems and we have a privacy problem. We have the OECD guidelines. What we need here is what I consider to be a coordinated two-step approach on a simultaneous or parallel basis. We need to have discussion between the communications people and our State Department and the OECD going on to be sure that no one is taking advantage of us.

I commend the testimony of Mr. Nimetz where he is moving forward to recognize the importance of this problem. I think they should move forward and do that they are doing. At the same time, we have in the U.S. Government the USTR. They now have taken on the responsibility for services. They have taken on the responsibility and are in the middle of negotiations today. This is not a problem that is about to exist; it exists today. Ambassador Askew is leaving for Japan to talk about procurement and services. This is happening today. Part of that problem should also take up this issue of transborder data flows of communications. It is part of the same problem.

I think that we need to start to have the kind of action, that recognize services as part of the trade negotiations before it is too

late. We need a parallel approach and one in which we can see that these issues are put on the table to be resolved before it is too late.

Mr. Chairman, if you have any questions, I will be delighted to attempt to answer them.

Mr. PREYER. Thank you, Mr. Ambassador. I want to congratulate you and the International Chamber of Commerce for your work in bringing this issue to light. You mentioned that you first got into this 18 months ago, that you conducted a seminar on it. I certainly agree with you that it is a problem that we have to face today.

We run the real risk of being preempted before we understand what has happened to us if we do not. It is tough competing with some foreign countries, particularly Japan, in this area where you can have a government decision that is really a government and business elite position to say, for example, "We will shift our effort from color television into telecommunications." Then, with massive assistance from the Government and from the banking system, they are ready to go to work at it. This always gives our trade competitors a headstart.

You mentioned Mr. Nimetz' testimony before this committee. The Department of State announced that it had shifted responsibility for the international data flow issue to the Bureau of Economic and Business Affairs. Do you think this transfer of authority will enable the State Department to be more responsive to these problems?

Mr. EBERLE. Yes, I do, and particularly with Dean Hinton who heads that particular area and who used to work for me. I have a great deal of confidence they can. But, alone and separated from any discussions with the trade negotiations which are going on in parallel, they simply would not have the power to muster, to accomplish the whole job.

Mr. PREYER. Do you think that the primary responsibility for these international data flow problems ought to be handled by the U.S. Trade Representative?

Mr. EBERLE. Unfortunately, this whole area is an interrelated one. The way the Government is now organized, the responsibility for so-called communications aspects and the technical aspects is not in the USTR's area of responsibility. Incidentally, neither is it in the OECD which is a different forum. It is not a trade negotiation; they set various kinds of voluntary codes.

What does seem to me is that you need the State Department and the USTR working very closely together to see that their policies both on trade, which is trade in services, and these other issues, whether they be the national security, privacy or communication, which are the responsibility of other departments, are co-ordinated and are carried out. The USTR Office, I would think, would be very supportive, particularly when they are dealing with the NTT or postal system which are monopolies in Europe and are part of government procurement negotiations.

Mr. PREYER. How about the State Department's advisory committee on transborder data flows? Do you think this is an effective mechanism for bringing private sector interests into Government decisionmaking?

Mr. EBERLE. Mr. Chairman, being responsible for the entire setup in the 1974 trade bill which brought the private advisory system into play, wherein the private advisory system mechanisms were set forth for the USTR. Incidentally, they have created a secretarial advisory system for services now to which Government must respond if it does not take the advice. I find that kind of advisory system very important for the system to work.

Now, the State Department system is a voluntary program. There is no comparable mechanism in USTR. I cannot tell you whether it will be effective. In the past, one of the problems has been that it has been a one-way street rather than a two-way street in many instances. I only suggest if they are prepared to really follow out the advisory system that has proven to work in the USTR, then it will work, but, if they are suggesting to do it in order to pacify the business community, it is simply not going to work. I have seen systems in the State Department work and I have seen other systems that simply were used to pacify complaints.

Mr. PREYER. You have talked about some of the problems that would face American business if there were restrictions placed on the flow of data between countries. Has the Council or has the ICC made any estimates of loss of revenues that might occur if such restrictions were carried out?

Mr. EBERLE. No, Mr. Chairman, we have not. Again, we are dealing in a very sensitive area here. I am sure we could get macroinformation very similar to that which the European Commission has come up with for general areas. The problem is that the more governments know about what individual competitors in free-market countries are doing, then the more they are able to legislate and make regulations. I can only suggest that we are the leaders in the world today. I am sure that we have a preponderance of the world's production in telecommunications and data processing.

Once the Minister of Transportation discovered that their budget was being processed over here, he immediately decided it should be processed in France. It is that kind of problem that we are dealing with and why it is important to recognize on a macrobasis that we have a preponderant share of the world's business today because we are highly competitive, cost-efficient and ahead technology-wise. What we really have to do is recognize that there would be a severe cost in jobs as well as requirement of investment if they restricted us from making foreign investments.

Mr. PREYER. One of the ways that U.S. enterprises have tried to get around some of these barriers is by operating partially owned foreign subsidiaries. You mentioned the French problem. What does that approach mean in terms of cost and business efficiency? How does it affect our ability to produce goods and provide services directly from the United States? Is that an answer to the problem?

Mr. EBERLE. No, it is not an answer to the critical issue that is involved. First of all, just requiring that so-called data processing be done domestically, does not really get to the problem of sending the data internationally. What it says is: do it locally and we won't have to send it internationally. But there are many companies that are world companies and they need this information on a world

basis. So, really, it does not solve the problem at all. More importantly, it creates some very serious problems, whether it is a U.S. company or a foreign company, in this sense: First of all, you would have to have additional investment which is unnecessary; and second, the jobs would be then local jobs in that country instead of domestic jobs where the know-how was developed and can be run just as easily today. So, what you are really talking about here is whether data processing, excepting the national security and privacy problem which is certainly not the issue as far as we are concerned, can be done or should be done on a free-flow basis. Those who are competitive around the world should be able to maintain that and not have to create artificial investments, with the resultant loss of jobs just because some political decision is made that runs contradictory to the GATT rules, contrary to the principles of free trade and contrary to the OECD trade pledge saying that countries will not take, during a specified period of time, protectionist action.

Mr. PREYER. If I can draw on your past experience for a moment, were there any positions that were taken during the time you were Special Trade Representative in this area of international data flow where you would act differently today? Or, perhaps the way I should put it is, were there any decisions that you were unable to take, that you would have liked to have taken, because of organizational difficulties or problems with the executive branch that foreclosed any action?

Mr. EBERLE. Mr. Chairman, I would like to give you two answers to that. There are some decisions I wish I had made at the time, but I cannot use the excuse of the organization at the time because I not only wore the hat of STR, but also of the Executive Director of the Council for International Economic Policy and was a member of the Cabinet's Economic Policy Committee. Those don't exist today, so it is a different problem today than when I was STR.

Let me come back. In the Ushiba-Eberle meeting in 1972 or 1973 we did discuss this whole general area. But, we didn't go far enough. What we did after discussions with Control Data, IBM, and other companies, was to get an agreement for opening up the Japanese market over a period of time. If you ask me from all I know today, I think we would have tried to reach a broader understanding rather than to have a limited opening up at that time.

Second, in the creation of the Tokyo round, the mandate for the Tokyo round did include some general language about services. I think that the good faith intent was that services were to be included. Unfortunately, they were not included in this particular round. I think that a lot happened between 1973 and 1979 when the Tokyo round was completed with different people and I think that services became more important. Therefore, many governments really did not want to discuss it and this is why it is now important that it be discussed and that the issue be put on the table.

Mr. PREYER. Thank you.

I recognize Congressman Drinan.

Mr. DRINAN. Thank you very much, Mr. Chairman, Thank you, sir.

I find these hearings very fascinating and particularly comforting because no one is asking the Congress for anything apparently

at this moment in time. Do you have any ideas as to what the Congress should be doing besides thinking about this problem?

Mr. EBERLE. Congressman Drinan—

Mr. DRINAN. I hope you say no. That will be a relief on a Monday morning.

Mr. EBERLE. I think there is a very major role for the Congress and that is what I call the oversight. I think Congress responsibility for oversight in some of these areas is to see that some of these things get carried out.

The Trade Act of 1979 as well as 1974 both provide that services, including telecommunications and data processing, be taken up by our Government and managed efficiently and be part of the trade negotiations as well as other negotiations. I think the fact that Congress has taken an interest in this and that the State Department has reorganized itself shows the kind of thing that oversight can do. It seems to be this is a very important function for Congress.

Mr. DRINAN. I thank you. I commend the chairman again for seeing that.

With respect to the organization of the State Department, do you have any comments on what Under Secretary Matthew Nimetz told us the other day?

Mr. EBERLE. None other than the fact that it is a major step forward and properly managed in conjunction with the parallel steps of the Office of the Trade Representative will work effectively. Neither one can operate separately; they must operate together. This is a trade problem, a trade negotiation problem; it is a communications problem; it is a national defense problem. We have to sort those out and act accordingly.

Mr. DRINAN. Is there any need at this time to designate a lead agency?

Mr. EBERLE. I don't believe it is necessary, but I think it is important that each agency that has responsibility for a particular area ought to take responsibility and move forward. The Trade Representative negotiations has responsibility for services. The State Department has responsibility for dealing with the OECD and the codes on this matter. There should be one policy of the Government and each of the agencies following their particular and respective areas under it.

Mr. DRINAN. What would you say about the FCC?

Mr. EBERLE. They have responsibility for channels and hopefully they will be deregulators so that they won't have to worry about rates too long. That is another area that Congress can be helpful in. But, they still have responsibility for rates today, so they do have that area to look after.

Mr. DRINAN. I thank you very much and thank you for coming. I know that all of us are intensely interested in this area and that it has enormous implications obviously for the future of this country in trade and in all types of ways. I thank you very much and I yield the balance of my time.

Mr. EBERLE. Thank you, sir.

Mr. PREYER. Thank you, sir. I have just one more very narrow question and one very general question to ask you, Mr. Ambassador.

I did ask you about the appropriateness of the USTR having primary responsibility for international data flow problems. Do you think the USTR has the ability to develop policy in this area?

Mr. EBERLE. Recognizing that it is an interrelated problem, they certainly have the expertise for developing the policy on their side for that part of the problem with which they must deal. I think when it comes to the code side of it and the technical side of the allocation of channels, those are technical problems and not in their area of expertise. But, the general policy which relates to the so-called economic relations among countries of which telecommunications is one, certainly they have the expertise.

Mr. PREYER. Thank you.

My final summing up question, and you really have discussed this throughout your testimony, but if you want to take another crack at it, I will throw this over the plate. We have heard a lot of testimony about the impact of the information and communication revolution. If barriers to the free flow of information substantially slow down the progress of these technological developments, what result do you see for the economic growth of this Nation, the economic growth of the world, and would it have political and cultural affects also?

That is a big one for you.

Mr. EBERLE. I am afraid we might be here all morning, Mr. Chairman. Let me see if I can make a few brief comments to that.

I think as far as technological advancement is concerned, the limitations will be more in the use of technological advances rather than the development of them. There probably would be some limitation in the development of the international system if advancements can only be used within each country. That would be a major setback.

As we look at the satellite systems you have today, the Southern Pacific communications request for a satellite, the joint venture between AETNA and IBM and a concept for a new business telecommunications system with the use of satellites, which really tie in the entire world of data lines, what you will have is econometrics in which the United States is leader. If other countries cannot come into our computers, it may be economically inefficient or it may be uneconomical for this whole system to be transferred country by country. Therefore, they would no longer have the advantage of that system if they restricted it. This certainly would hurt both jobs in those countries as well as limiting the use of the system. That is basically where the handicap would come.

Certainly if you cannot develop this total worldwide communication system, it will slow jobs down throughout the world. It could require uneconomic investment if you have to duplicate facilities throughout the world. Many of the jobs, once the system is in place, will remain national sovereign jobs because they will simply tie in. But, you have to have that ability of size and massive investment in order to have the data banks and systems to make it work. Not to have that ability could obviously create some distress throughout the world.

Mr. PREYER. Thank you very much.

Mr. Drinan. Do you have anything further?

Mr. DRINAN. No, Mr. Chairman. Thank you very much.

Mr. PREYER. Mr. Ambassador, I want to thank you for your very helpful testimony. We will look forward to keeping in touch with you. We wish you well on the work you are doing in this area.

Mr. EBERLE. Thank you very much.

[Mr. Eberle's prepared statement and submissions to additional subcommittee questions follow:]

PREPARED STATEMENT
OF

WILLIAM D. EBERLE
VICE CHAIRMAN
UNITED STATES COUNCIL
of the
INTERNATIONAL CHAMBER OF COMMERCE

Mr. Chairman and Members of the Subcommittee:

Thank you for this opportunity to testify before the Subcommittee on an issue which I, and an ever-widening segment of the American Business community believe is becoming, and should be so regarded, fundamental to our continued effectiveness in international commerce.

My name is William D. Eberle. I am Vice Chairman of the United States Council of the International Chamber of Commerce and former Special Trade Representative. I am pleased to be accompanied today by a member of the Council's Committee on Transborder Data Flows, Kay Riddle, Vice President, The Chase Manhattan Bank.

As an aside, let me add here that although this is the first opportunity that the U.S. Council has had to testify on this important issue before the Subcommittee, several members of the Council's Committee on Transborder Data Flows, which represents virtually all sectors of U.S. internationally operating business, have testified before you, particularly during the first two days of hearings, March 10th and 13th.

The U.S. Council belongs to a global federation of national business councils -- the ICC -- with affiliates in over ninety countries. There are similar national committees in most of the other twenty-three member countries of the Organization for Economic Cooperation and Development (OECD) and in a broad range of developing countries throughout Africa, Asia and Latin America. The Council represents U.S. internationally operating business on a broad range of issues affecting trade and investment. It is the only major U.S. business association that concentrates on the international marketplace and it draws its membership from all sectors of U.S. business; manufacturing, finance, service, agriculture and natural resources. Because virtually all of its members are heavily engaged in international commerce, the Council is particularly sensitive to issues that threaten or in any way jeopardize that system.

Efforts to limit, or restrict, the free flow of data across national boundaries -- without which the conduct of international commerce would be impossible -- constitute a threat to international business and are of grave concern. Because of its unique character, the issue of transborder data flows raises problems for all businesses engaged in international activities. Although it is oftentimes misunderstood and thought to be a problem only for the data processing and telecommunications industries, it is of vital importance to any company which transmits data across national boundaries, irrespective of its lines of business. And let there be no misunderstanding -- the flow of data which may be restricted, taxed or otherwise impeded -- does not have to be

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limited to either "personal" or "personnel" data. In a number of European countries, Austria, Denmark, Luxembourg and Norway, existing legislation covers "legal" as well as "natural" persons and can include financial, production, and marketing data in addition to the more normal "personnel" data.

The United States Council became actively involved in the area of transborder data flows early last year on the initiative of several of its members who either faced real or foresaw potential problems in their dealings with the growing number of countries, particularly European countries, enacting "privacy" legislation. Because appreciation of the issue as a threat to the conduct of international commerce was not widespread, and because the Council hoped to engage as broad a segment as possible of U.S. business in consideration of the issue, the Council's Committee on Transborder Data Flows, chaired by Mr. Donaghue of Control Data Corporation, who testified before your Subcommittee on March 10th, decided to organize a Seminar on Transborder Data Flows last Fall. That seminar took place in New York on November 19th. I have provided you with copies of summaries and transcripts of the remarks made during the session. I might add that we were most fortunate to have Senator Schmitt of New Mexico deliver the keynote remarks.

The seminar was designed to analyze and clarify the broad implications of the issue and to initiate a process for the formulation of policy recommendations for the U.S. and the international community at large. Due to its success -- it was attended by 150 individuals representing a variety of interests -- the Council has increased its involvement in transborder data flows as to both the level of corporate participation and the breadth of subtopics addressed.

Concurrently, because of the international character of the transborder data flow issue, the U.S. Council encouraged the International Chamber of Commerce to become involved. An ICC Working Party, comprising representatives from a significant number of member countries, met most recently on February 6th and adopted a policy statement "on protection of personal data and transborder data flows" (a copy of which is annexed). The statement covers:

1. The need for clear and uniform rules covering the careful handling of personal information;
2. The importance of one set of common rules in the international arena -- urging governments to introduce legislation based on the draft OECD Guidelines in order to achieve coherence; and
3. The need for in-depth studies of the impact of controls on transborder flows of non-personal data. The ICC will cooperate in such studies and help the business community to

-3-

understand and comply with data protection legislation.

I would add here that the ICC policy statement goes on to propose that the OECD draft Guidelines be utilized as a model so as to avoid "potentially conflicting approaches," pointing out that the OECD approach is to be preferred since, "one of the most significant advantages of guidelines is ease and practicability of implementation."

Throughout the debate on transborder data flows the Council's overriding concern has been one of assuring the free flow of data internationally while, at the same time, recognizing the legitimate concerns of an individual's rights to privacy and a nation's to security. It has not gone unnoticed among members of the U.S. Council that the potential exists for overzealous, arbitrary or discriminatory application of transborder data flow or "privacy" legislation, particularly on the part of a number of European governments. The potential trade implications -- using transborder data flow legislation as a non-tariff barrier to trade -- for the United States particularly in light of current difficulties with inflation, unemployment and balance of payments must be recognized. I sincerely hope, and wish to believe that the fact that these hearings are being held is indicative of an increased appreciation of the seriousness of the problem.

In order for the U.S. Government to deal effectively with the issue and to meet the challenge posed by the growing body of transborder data flow legislation, it is imperative that it be approached at the macro level and that there be increased coordination among the essential actors, particularly within the Executive Branch. The Council was pleased to see this view reflected in the testimony of Under Secretary of State Matthew Nimitz before this committee on March 27, 1980. We sincerely hope that the proposed departmental reorganization, as well as increased high level attention to the many facets of this issue, will lead to a fully effective U.S. approach in international fora. We believe that the issues are so important and so complex that the coordination role involving the many government agencies requires that full time attention of a senior executive of the Department of State.

Also given the trade implications, of the issue early involvement of the U.S. Trade Representative in its new and expanded role seems most appropriate. If the trade aspects of this issue continue to grow, in significance, the U.S. Trade Representative may well need to become the lead agency in coordinating this activity.

My colleague and I again thank you for the opportunity to testify. We stand ready to respond to your questions and, as may be appropriate, to work with the Subcommittee in the future.



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WORKING PARTY ON TRANSBORDER DATA FLOWS

Transport & Facilitation Secretariat

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WORKING PARTY "TRANSBORDER DATA FLOWS"

(Meeting on 6 February 1980)

PROPOSALS OF THE OECD, COUNCIL OF EUROPE, AND EUROPEAN PARLIAMENT ON
DATA PROTECTION AND TRANSBORDER DATA FLOWS

Statement adopted by the Working Party

(in accordance with the advance authorization granted by the
Council of the ICC at its 136th Session)

1. The ICC has followed with interest the development of national laws designed to protect the rights and interests of individuals with regard to the handling of personal data by public and private sector institutions. The business community has a legitimate interest in the protection of individual freedoms through limited access to and careful handling of personal information. It also has an interest in freedom of access to information to fulfill the various needs of a free and democratic society. It is only in a society that has achieved a reasonable balance between these sometimes conflicting objectives that business can play its proper and most constructive role.
2. The ICC endorses the basic principles of personal data protection which have emerged from the various studies conducted in many countries during the last decade. In general, individuals should have access to information about themselves in record keeping systems and should be able to find out how this information is used. There should be effective means provided to allow the individual to correct an inaccurate record. Personal information given by the individual for one purpose should not be used for an unrelated purpose without his consent, unless required by law. The custodian of data files containing personal information

should take reasonable precautions to ensure the reliability and prevent misuse of the data. The business community has a responsibility to maintain high standards in the way in which it handles personal data which it receives in the normal course of business.

3. It is also important that any legislation designed to give effect to these principles should recognise the variety of information requirements of organisations which process personal data and ensure that the statutory requirements are reasonably related to the needs of each organisation that processes the data, the benefits derived by society from the use of that data and the risks to the individual whose data is processed. Unnecessarily restrictive or onerous requirements could remove the beneficial effects derived from the handling of personal data in many instances. In particular, legislation which parliaments have approved to protect the human rights and interests of individuals should not be misused to achieve economic ends.
4. There is a need for international coherence of data protection legislation. If the same legal protection is afforded to personal data in whatever country it is held, the need for regulations and controls on the transmission of that data between countries is reduced. The ICC therefore welcomes the recent initiatives in the OECD, the Council of Europe and the European Parliament designed to achieve harmonisation, and has studied the various texts and proposals available from those organisations.
5. The ICC finds a great deal that is common to the various proposals, particularly in the protection they afford to the individual. However, there are significant differences in the scope of the protection, in the national implementation procedures and in the international cooperation mechanisms urged in these proposals.
6. In view of the present low level of experience in the implementation of law on privacy, data protection and transborder data flows, we consider that any form of guidelines or conventions at a European or international level should be modest and flexible in approach, and should remain so until there is a considerable knowledge accumulated from valid practical experience of implementation at the country level.

7. It is also important that there should be one set of common rules in the international arena, rather than three different, and therefore potentially conflicting, approaches which could develop from the OECD, Council of Europe and European Parliament proposals.
8. The ICC considers that the OECD draft guidelines today best meet this objective. One of the most significant advantages of guidelines is ease and practicability of implementation. Since they are not a treaty the guidelines do not entail the cumbersome and time consuming process of ratification. Most states would have little difficulty in voluntarily implementing a code such as that embodied in the OECD guidelines and the ICC strongly recommends that they do so.
9. The OECD proposals allow flexible implementation mechanisms whilst requiring the same guarantees of protection for the individual found in other proposals. The ICC believes that they will therefore prove to be acceptable to a larger number of states, and facilitate free flow of data over a greater geographical area than the Council of Europe or European Parliament proposals.
10. The European Parliament proposals envisage a two-tier system of approvals for export of personal data beyond the boundaries of the EEC. The second tier of approval would involve a new kind of supranational authority, increasing the bureaucratic impediments to business systems. The OECD proposals would not involve any such constraints.
11. The OECD guidelines are confined to data about individuals. The Council of Europe and European Parliament proposals on the other hand provide for extension to cover data about corporations. We believe that the questions surrounding transborder flows of non-personal data are separate from the human rights questions addressed by most privacy and data protection legislation throughout the world. The economic significance of limitations on flows of economic data have not yet been addressed and governments should beware of support for such moves until appropriate studies are made.

12. The ICC is aware of a growing interest by national governments in other aspects of international information flows, and the concerns that are expressed in the context of national defence, economic and cultural considerations. The ICC wishes to express its willingness to cooperate with appropriate national and international bodies who wish to study these questions in greater depth than has been possible to date, and will help the business community to understand and comply with data protection legislation.
 13. The ICC recognises the legitimate aspirations of governments to protect the economic and cultural well-being of their citizens, and their overriding responsibility to ensure the safety and security of their countries. The Chamber is concerned to ensure that in the course of such considerations national governments do not lose sight of the benefits - economic, cultural and security benefits - which flow to their citizens from a liberal economic system and increasing interdependence through international trade.
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United States Council of the International Chamber of Commerce Inc 1212 Avenue of the Americas New York NY 10036

United States Council

May 21, 1980

Congressman Richard Preyer
Chairman, Government Information
and Individual Rights Subcommittee
Rayburn House Office Building
Washington, D. C. 20515

MAY 23 1980

Dear Congressman Preyer:

At the request of William Eberle I am enclosing copies of both his response to the questions you sent him by your letter of April 28 and his edited testimony delivered before your Subcommittee on April 21.

I know I speak for him in thanking you for inviting the United States Council to testify on the transborder data flow issue. As he mentioned, we are concerned with both the real and potential problems presented and commend your Subcommittee for the work it is doing.

Sincerely yours,

Pete M. Daniels

Peter M. Daniels
Associate Director of Program

PMD:hlp
Enclosures

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RESPONSES TO QUESTIONS

(dated April 28, 1980)

1. I do not believe it is appropriate for me to make specific recommendations how the concerned agencies should best deal with the problem areas highlighted in my testimony. The President must make his own decision how to proceed; there is no other way. I have tried to point out the seriousness and complexity of the transborder data flow issue and, importantly, the need for coordination. State, the STR, NTIA and others concerned -- possibly with the participation of the Economic Policy Group as the leader -- should be left to devise appropriate mechanisms for ensuring this coordination.

2. The need for coordination as mentioned above is crucial. An overall policy, encompassing the concerns of all relevant agencies and providing a framework within which future problems can be addressed, is essential. Once the policy is developed (by the methods outlined in Number 1 above), it becomes relatively easy to ensure that individual agencies are acting according to it and are proceeding along the same lines.

The fact that the Subcommittee has held its hearings and that the State Department has apparently recognized the importance of the transborder data flow issue is encouraging. The need for general awareness is that first step. This must now be followed by a cooperative effort of concerned agencies to develop an overall policy which can then be used to ensure consistent action and to structure individual responses of various agencies as they deal with day-to-day problems.

I would add only that continued oversight by the Subcommittee remains most important in guaranteeing the effective response of individual agencies.

3. Because of the importance of the transborder data flow issue, it is not inconceivable that the Executive Office of the President would become involved at the policy level so as to ensure all points of view are considered and that one or another agency does not predominate. One possible alternative which I have already referred to in Number 1 above is through the Economic Policy Group. However, once that policy is developed, the responsibility of ensuring coordination in implementation will most likely fall to State or to the USTR.

4. As I mentioned in my oral testimony in response to an earlier question, I believe that the advisory system can prove most effective as was the case during the GATT negotiations. If the Government wants two-way communication, the advisory system is a most useful mechanism.

5. My concern is not particularly over foreign government access to corporate information of American based multinationals but how they exercise control over this information. Although I am not happy with the great mass of information governments demand of companies and believe they should generally be constrained in requiring data by their "need to know" and by the cost to companies, I am most concerned by their control of that data -- how it is used and how its confidentiality is guarded. My concerns are heightened by the knowledge of the close relationship which exists between many foreign governments and their own corporations. If data collected on U.S. companies is used to our competitive disadvantage, then we have every right to take strong action. Hopefully our addressing of these concerns internationally, particularly in the OECD will obviate the need for such a response.

Mr. PREYER. Our next witness today is Mr. Robert Bruce, General Counsel of the Federal Communications Commission.

Mr. Bruce, it is our practice in this committee to swear agency witnesses in an oversight hearing. If you or your associates who might testify will stand, I will administer the oath.

Do you solemnly swear that the testimony you are about to give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BRUCE. I do.

Mr. DEMORY. I do.

STATEMENT OF ROBERT R. BRUCE, GENERAL COUNSEL, FEDERAL COMMUNICATIONS COMMISSION; ACCCOMPANIED BY WILLARD DEMORY, ASSISTANT BUREAU CHIEF, INTERNATIONAL MATTERS, COMMON CARRIER BUREAU

Mr. BRUCE. Mr. Chairman, I appreciate very much this opportunity to testify on the issue of international data flow and the FCC's

role in regard to this issue. With me is Willard Demory who is the Assistant Bureau Chief in charge of international matters for the Common Carrier Bureau.

The views that I will outline this morning are based on my own role over the past several years in the FCC's efforts in the international communication field. I will, at the outset, try to distill my prepared statement and bring it into somewhat sharper focus.

The Commission has followed with interest these important and useful hearings on international data flow. These hearings have focused the attention of top policymakers at the FCC and in the executive branch on an extraordinarily complex and sensitive public policy problem.

It is a problem that has many facets. It involves important national concerns about privacy, national security, national sovereignty, trade and economic, as well as telecommunications and information policies. It, thus, must be dealt with at different levels by different institutions each of which brings to bear diverse experience and expertise.

The policy problems in this area are, to a large degree, novel ones. They have been evolving as a result of burgeoning international trade and as a result of very rapid advances in computer and communications technologies. All the governmental entities involved, including the FCC, have been straining to keep pace with developments and to adapt old policy and institutional procedures to a new agenda of issues.

We approach the issue of international data flow with the view that we do need to improve the information base on which we premise our policies. We also clearly see the need to strengthen our relationships with executive branch agencies that deal at other levels with other aspects of the international data flow problem.

The FCC is currently addressing many important telecommunications policies which have a significant impact on communications and communications services available overseas to U.S. users. But, it has become increasingly aware of restrictive trade and communications practices which impede the export of American technology and know-how and the efficient flow of data internationally.

Domestically, the procompetitive policies of the FCC have fostered increased availability of services and equipment to users. The demand for diversity and flexibility spills over into international services as well. It is often difficult to accommodate user demands because of different approaches, different attitudes, and different institutional arrangements on the part of foreign entities.

The Commission's recent decision in the Second Computer Inquiry reflects a realization that the transmission of information and the processing of information cannot be neatly categorized and are closely interrelated.

Foreign telecommunications entities are also wrestling with the blurring distinctions between data processing and communications. These service distinctions have important regulatory implications both here and overseas. Particularly overseas the definition of communications may establish the boundaries of the State telecommunications monopoly and, thus, significantly affect the overseas operating rights of many U.S. companies offering international information or communications services.

Thus, we face an elusive and vexing agenda of international policy issues that are generated not only by both foreign laws and regulations, but by changing domestic policies as well.

I would like, as background to my testimony, to catalog briefly some recent FCC actions which affect the overall flow of communications and data overseas.

Over the past 2 years, we have addressed comprehensively plans for international telecommunications facilities in the North Atlantic region through 1985. We have recently begun a planning process for facilities and services through the end of the decade. In this process, we must deal not only with the narrow question of facilities planning, but overall telecommunications relationships with U.S. carriers and foreign entities as well. This process has been a useful forum for exchange of views since each side must take account of the concerns of the other.

Last December in a very comprehensive set of decisions, the FCC took some steps to facilitate transmission of data and traffic over the international telephone network. At the same time, it accorded U.S. international record carriers greater flexibility and broader communication rights in marketing similar services.

At its meeting this week, the Commission will be considering an application by a new carrier to provide services overseas as well as proposals to eliminate current restrictions in the international tariffs on the sharing and resale of international communication circuits. We will also be dealing with some of the institutional and procedural mechanisms by which the Commission gathers information from and obtains the views of foreign telecommunications entities on facilities and service issues.

Accommodating the needs of U.S. users necessarily involves coordination and cooperation with foreign entities. It takes such cooperation to implement U.S. international telecommunications policy since the jurisdictional reach of U.S. law is limited.

Our foreign counterparts do not necessarily share our views that competition is an efficient allocator of our society's resources. Some of these differences in approach are inevitable, but we believe the FCC does have a variety of legal and institutional mechanisms for attempting to accommodate the diverse U.S. and foreign telecommunications policy perspectives.

Many of the legal and institutional issues we must deal with are novel. They involve difficult issues of the reach and impact of domestic regulatory law in the international arena. They require the FCC to adapt substantive and procedural standards of a domestic regulatory statute. These are new realities in the international telecommunications marketplace.

Under the Communications Act of 1934, the FCC is empowered to authorize new entrants and approve the institution of new telecommunications facilities. In exercising these explicit functions, the FCC must assure that it acts under a broad public interest standard. The specific criteria which gives this "public interest standard" content has been defined by agency action and by judicial interpretation over the years.

The basic mandate is a broad one, to encourage a rapid, efficient, nationwide and worldwide communication system. But, in carrying out this mandate, the Commission must assure that the best inter-

ests of U.S. ratepayers and users are protected to the fullest possible extent. In doing so, it need not ignore the views and policies of foreign telecommunications entities.

On the contrary, according these views consideration provides the basis for applying the important principles of reciprocity and comity to protect U.S. interests in FCC deliberations.

The critical policy question is how and to what extent these foreign interests should be taken into account. The Commission faced this question in considering whether to authorize for service a new under overseas cable. That was the case in which the Europeans requested the FCC to consider the cost of the cable, not only from the perspective of the U.S. side, but from their side as well.

It was in this sort of circumstances that the FCC thought it was appropriate to consider the factor of comity. In our mind, comity requires a weighing of the delicate interweaving of U.S. and foreign interests in any international telecommunications service. But, comity also implies some notion of reciprocity. That is, in deciding what weight to accord foreign interest in our regulatory forum, the FCC is entitled to take into account the degree of deference to U.S. policy within foreign decisionmaking fora.

In the facilities planning area, the FCC has hoped that foreign entities would give consideration to our need to justify investment decisions on an adequate administrative record.

But, in addition to being concerned about the degree of mutuality in the international decisionmaking process, the Commission can and should also examine its overall telecommunications relationship of all entities in considering facilities decisions. There are indeed some very sound public policy reasons for not entirely compartmentalizing issues involving facilities and issues in other areas of concern to the FCC, such as issues involving restrictions on new carriers and new services.

It is in this area of new services that the FCC has been increasingly interested in better understanding the factors that have led many foreign telecommunications entities to refuse to enter into operating agreements with new carriers authorized by the Commission.

This often means new carriers which have been sources of new service and new innovations to U.S. companies doing business overseas. Likewise, tariff and other international telecommunications policies implemented by the FCC can be thwarted if they are not acceded to by foreign entities.

Therefore, consultative discussions for fact gathering purposes serve a very essential role in the international policy formulation process. This sort of information becomes part of a larger mosaic that the Commission can weigh in its own regulatory activities.

The FCC's consultative procedures and its reciprocity principles are thus, I believe, important tools for dealing with some aspects of data flow issues and review by this subcommittee. The Commission can weigh, I believe, evidence of restrictive practices by foreign entities in acting both on individual applications and on overall facilities.

That is not to say, of course, that evidence of such practice should in every case be controlling under the public interest stand-

ard, for example, it seems reasonable to expect there should be some reasonable nexus between the particular restrictive practices and operating privileges being sought on behalf of foreign telecommunications entities.

It would not seem reasonable under the Commission's mandate to base telecommunications policies and restrictive policies wholly unrelated to the telecommunications arena.

In assessing the relevance of restrictive practices in a particular case, the FCC has the responsibility to weigh all the costs and all the benefits that are at issue, for in disapproving a particular plan or application, the Commission might significantly disadvantage one set of U.S. interests while according public interest benefits to other U.S. interests.

In carrying out its statutory functions under the public interest standard, the Commission certainly can give weight to those interests which reflect basic national policy concerns. To the extent that the Congress or other governmental entities clearly set forth policies in the data flow area and focus on particular issues of direct relevance to the Commission, these issues can be considered by the Commission in the facilities planning and service authorization process.

In a related way, as the FCC identifies areas of policy concerns, such as refusals by foreign entities to enter into new carrier operating agreements or to place restrictions on new services, other executive branch agencies may also be able to address these issues at different institutional levels and internationally.

We believe that increased collaboration in this area among the FCC and the executive branch agencies is very essential and there is already evidence that that process is well under way as a result of the attention what has been focused on this problem during these hearings.

In addition to its activities on facilities and services, the FCC has actively participated in conferences under the aegis of the International Telecommunications Union. The State Department is the official coordinating body for all CCIR and CCITT meetings.

However, the FCC participates in these meetings on a continuing basis. We hold and we chair public meetings pursuant to the Federal Advisory Committee Act and we are assisted in our participation by many private users as well as Government agencies, including the Department of Defense and NTIA.

The CCIR activities have been a very special focus of concern for the Commission. The work of the CCITT has assumed increasing importance and CCITT recommendations can serve to help or hinder the use of international telecommunications services and the export of telecommunications equipment throughout the rest of the world.

I would particularly note CCITT's role in dealing with problems of private leased channel usage. A study group of the CCITT has been considering whether flat-rate leased lines should continue to be so structured. The United States continues to support the availability of transparent flat-rate leased lines along with the introduction of new innovative services, including public data network services.

It might be useful if I turn briefly to describe in some detail one specific FCC action about which this subcommittee has heard testimony. That is the matter of United States-Japanese relationships and restrictions on data processing activities.

This is a matter which is currently under review before the Commission. It concerns the applications of various international record carriers to provide data services to Japan.

In early 1979, three U.S. international record carriers filed for authority to provide a specialized data service between the United States and Japan. This service would make available to the public a packet switched data service chargeable on a usage-sensitive basis.

At that time, the only efficient service available to companies retailing American data bases or transferring information to Japan were full period private leased circuits. These circuits are made available for a monthly charge and provide unlimited usage on a 24-hour basis daily. It is the large users who often require these full time circuits. Smaller firms often do not have the same requirements for such full time service. Their inability to obtain a more limited amount of capacity on a usage-sensitive basis can impair ability to do business overseas.

It might be useful then to elaborate some of the countervailing considerations that the FCC has to address in a case like this. On the one hand, there are apparent benefits to small users from usage-sensitive data services. At the same time, it is very essential to maintain intact the current structure of private full period lines. They are very important to U.S. businesses and to data processing companies that are doing business overseas.

In this case, a number of objections were filed to the applications to provide the new usage-sensitive service by several trade associations, and other companies expressed concern that if granted, these applications might result in the termination of all full period private lines.

In addition, there were objections to restrictions that the Japanese operating authority had placed on the use of international private-line services. These restrictions limited the number of locations at which an international private-line circuit could be connected in the United States. They impair the ability of U.S. data processing entities to offer a full range of services in Japan.

A number of foreign administrations impose these restrictions on the use of international private lines to prevent companies from setting up packet switched data networks. Many foreign government telecommunications administrations view such networks with concern since they infringe on existing telecommunications monopolies operated by the Government entity.

In this case, American international record carriers did submit assurances, based on letters from the Japanese private operating agency, that private-line services will continue to be available concurrently with the new specialized services.

I should point out it is this set of complex factors that this Commission is going to have to weigh when it acts on an application for review of the Common Carrier Bureau staff positions which did authorize the initiation of these private-line services.

Finally, I would like to reiterate that the FCC recognizes the importance of competition in domestic and international communications and data processing markets. During the remainder of this century, we expect that increased productivity and innovation in telecommunications and data processing will provide a major source of growth in our economy.

The FCC has taken many steps to foster competition in the domestic markets. We believe there is equal potential for competition in the international telecommunications and data processing markets. Removal of restrictions on trade and the flow of data processing services should benefit all concerned.

We believe that other parts of the U.S. Government, the Department of State, NTIA, the Special Trade Representative, play a vital role in facing these important problems. Each has experience in foreign trade issues and can pursue the U.S. interests in certain areas of foreign negotiations it knows best.

We will continue to lend our expertise to these agencies to work toward a free flow of information internationally. We encourage and will constructively utilize the advice of these agencies in those areas where we have prime responsibility.

I want to thank you again, Mr. Chairman, for the opportunity to outline these views on a very important emerging issue of information and telecommunications policy.

Mr. PREYER. Thank you very much, Mr. Bruce, for a very complete statement.

For the FCC to play the policy role that you see for it, is there any further legislation needed or can you play the role you envision under existing legislation?

Mr. BRUCE. Mr. Chairman, I think that we have substantial flexibility under the 1934 act. As I outlined, we are able to take into account reciprocity concerns under a public interest standard. The Congress did confer in 1934 a fairly comprehensive mandate to regulate domestic and international telecommunications activities.

The act, however, does not have a title which deals with international problems. The problems have been growing. They require a greater degree of collaboration with foreign entities. We have participated very fully in the House and Senate subcommittee hearings that have looked at questions of redrafting the communications act.

It may well be that the Congress could usefully augment or clarify the Commission's authority by focusing on the importance, as a policy statement, of competition both domestically and internationally.

We think it might be useful to recognize the very useful processes that have been undertaken to plan facilities and to recognize those from a statutory standpoint. We think it might also be useful to recognize in looking at facility issues that we want to look at service restrictions as well.

I think we can make some headway under the current act. I think we will want to work very closely with all the committees concerned to see if we can sharpen and focus our mandate from the Congress in this area.

Mr. PREYER. Do you see any basic conflict between the FCC's functions as a regulator in the domestic telecommunications indus-

try and the participation of the FCC in international telecommunications policy?

Mr. BRUCE. Mr. Chairman, I don't see any conflict between the regulatory and policy functions. I think what we are finding is that domestic and international issues are becoming much closely meshed together.

We are finding that the proliferation of new services and new carriers that have been authorized domestically has resulted in an impetus to provide those services overseas. The U.S. customers want to make use of those same data processing and communications capabilities with their affiliates doing business overseas.

I think that the FCC does act with a regulatory mandate, but I think when you deal on a case-by-case basis, you have to deal with the policy issues as well. So, I don't see a fundamental conflict between the regulatory and policy mandate of the Commission.

Mr. PREYER. We have had a number of witnesses who have testified that they feel that the FCC could and legally ought to consider questions of reciprocity when you make decisions on operating agreements. I gather you are telling us that you agree with that, as long as the decisions are related to the communications field and communications interest and not related to some wider governmental concern.

Foreign PTT's, we have been told, are often instruments of national policy as well as communications authority. They do not always seem to limit themselves in the way that you have suggested. They may subordinate the needs of communications usage for wider purposes of national policy.

How can the U.S. Government help insure that the requirements of U.S. communications users are effectively presented to these foreign entities?

Mr. BRUCE. Mr. Chairman, I think you have focused on one of the very difficult problems that we are wrestling with. As a result of changing U.S. international policies, we are moving in the direction of providing much more flexibility on the U.S. half of the circuit. We are looking at the possibilities of ending restrictions on resale and sharing of those lines.

We are looking at opening up the ability of telephone users to send data over those lines. If the foreign entities do not concur in those policies, those policies can be thwarted. The problem is how to achieve that cooperation. To some degree, it is a question of leverage. It is a question of linking concerns that they have and concerns that we have.

We have been looking at the balance between various communications issues in the facilities planning process. I think what we are seeing, as a result of changing policies, is that we may need a broader role for governmental entities in presenting views on changing U.S. telecommunications policies.

The historic role has been for the United States operating carriers to represent the U.S. interest in dealings with foreign entities. But, as we move to open entry and to encourage new competition and new carriers, the established carriers are not necessarily in a position in a wholly disinterested way to reflect and to represent U.S. policy positions.

I know that there have been a number of proposals that have been presented to the subcommittee to enhance the representational function.

Mr. PREYER. Like the consortium approach? What do you think of that approach?

Mr. BRUCE. It is an interesting proposal. It parallels to some degree a proposal that was included in one of the Senate bills, S. 611, which would have established a wholly new entity to represent U.S. interests overseas. The problems that have to be looked at in connection with the consortium approach are that there probably are some antitrust sensitivities whenever a governmental entity sits down and negotiates on behalf of a group of carriers.

The historic pattern is to leave the negotiation of operating agreements up to the individual carriers. It may well be that the better approach is for the U.S. entities not to become so directly involved in negotiating individual operating agreements. But, there may be a role for governmental entities in trying to explain emerging of changing telecommunications policies, addressing those problems that are at a somewhat higher policy level.

I think we have seen in the last several years that individual carriers have been effective on a piecemeal basis working their way into operating agreements with foreign entities. A new carrier will establish an operating agreement with Italy or Britain when it is denied operating rights in other countries.

As a result of those agreements, traffic begins to transit to the United Kingdom through Italy. As a result of those kinds of pressures, other markets have opened up as well.

I think what I am trying to say is that there is a need to strengthen the representations and the presentation of U.S. policy concerns with foreign entities. It may be preferable not to set up such a formal structure in which U.S. Government entities get involved in actually advocating or negotiating agreements with individual countries.

Mr. PREYER. Since you mentioned antitrust problems, I had better call on our two judiciary committee members here at the moment.

Congressman Drinan.

Mr. DRINAN. Thank you. I will be happy to defer to the gentleman from Virginia.

Mr. BUTLER. No.

Mr. DRINAN. Thank you, Mr. Chairman.

I thank you, Mr. Bruce, for your thoughtful comments. I just ask you, if you will, to elaborate a bit more on the U.S. Postal Service request, the status of that litigation, you mentioned on pages 16 and 17.

I am not certain I understand the thrust of the last paragraph on page 16.

Mr. BRUCE. I think the full statement for the record attempted to outline the status of a matter that is still pending before the Commission. Several of the international record carriers filed tariffs that would have allowed the Postal Service to participate in the intelpost experiment. Those tariffs were rejected by the chief of the Common Carrier Bureau on the grounds that they contained discriminatory provisions.

Most of the international service tariffs include restrictions on the use of a circuit by third parties. They prevent the sharing or resale of those services. Two of the carriers came in and filed an exception to that general restriction. The concern of the Common Carrier Bureau was that those provisions were in violation of section 202 of the act.

Now, the Commission has had some experience with so-called single user exceptions to the resale and sharing of tariff provisions. There were similar provisions at one time in the domestic A.T. & T. tariff. Those were removed. Now, it is possible for users to buy lines and then to resell them to any number of parties.

The Commission is looking at this general problem of international tariff restrictions and the staff is going to present a recommendation that the Commission ask for comments on the possible general ending of those restrictions so that all users would be in a similar position to lease circuits and then to provide them on a third-party basis.

Mr. DRINAN. That is interesting. I had not known about that before.

Going back to the chairman's question, I understand that you are not asking for legislation at this time, you feel that the 1934 act gives you adequate power. Could you tell me what might in the future be a power that you would request from the Congress?

Mr. BRUCE. I think the most useful step that could be taken legislatively is to provide legislative guidance. As I mentioned, the 1934 act did not contain any provisions or titles that addressed the special nature of international problems. The act does not contain any particular preference for encouraging competition. That is something that has evolved as a result of the FCC's own interpretation of the act.

The act does not recognize the planning process that is being utilized now for international facilities. It might be useful to provide that sort of framework and recognize it legislatively and to link legislatively issues involving facilities and other issues of concern, such as the ability of U.S. carriers to implement new services and establish some operating arrangements.

It is very difficult in the international area to compel results. The reach of domestic law is not long enough. I think ultimately the Congress cannot make it long enough because of limits on the extraterritorial reach of U.S. jurisdiction.

What we do need are effective mechanisms for implementing these policies. One of those mechanisms I have mentioned is the linkage of related concerns. Another mechanism is to turn the problem of telecommunications into general discussions involving trade relationships. That requires, I think, effective coordination between the FCC and executive branch agencies.

Mr. DRINAN. I thank you very much. One last question. The telecommunications industry and the computer business is very active in my congressional district. I haven't frankly heard from many of them. What might they be asking for eventually?

Mr. BRUCE. In the international area or in general?

Mr. DRINAN. Maybe they won't. Maybe they are satisfied with the way this question is emerging. I am trying to anticipate what their interests might be.

Mr. BRUCE. I am sure that generally those interests would be concerned with the FCC's and other agencies' ability to deal with these restrictive practices that are developing. Many of them may have an interest in the ability to sell telecommunications products overseas. That is a problem that is not particularly within the responsibility of FCC. It has been an issue, I think; the Special Trade Representative has been involved in discussions with the Japanese.

This is a very difficult area to deal with simply because you have so many different foreign entities with different policies, different approaches.

It is very interesting to note that the U.S. increasing commitment to opening competition is having some impact I think on telecommunications overseas. We are seeing a new look by many of those administrations at their own structures. They are moving in the direction of privatizing the ownership of communications services.

The British Post Office is now looking at different structural arrangements. They are beginning to revisit some of their own policies of discouraging competitor suppliers. I think we have a very dynamic situation. Our policy is changing. Theirs are changing. I think it is essential, though, that those who are involved at the FCC in developing these policies be in a position of having some sort of ongoing dialog with key officials who are involved with telecommunications issues in Japan and in Europe.

Mr. DRINAN. Thank you very much, Mr. Bruce. I yield back the balance of my time.

Mr. PREYER. Mr. Butler.

Mr. BUTLER. Following up on Mr. Drinan's series of questions, do you see the need for some kind of international forum to consider transborder data flow issues and the like?

Mr. BRUCE. Mr. Butler, I think there are several fora in which those issues are being discussed now. The OECD has some ongoing discussions. I think these kinds of discussions can be dealt with and should be dealt with at many levels. It is a multifaceted problem.

The OECD has had discussions, the Special Trade Representative has begun to focus on the issue. Secretary Nimetz testified several weeks ago that the State Department is refocusing its own policy efforts to deal with these issues. I think it would be useful at the FCC's own level in its ongoing discussions with the telecommunications entities to begin to open up a better forum to discuss changing policies. I think this is a problem that has to be dealt with at different levels through different kinds of forums.

I think what the FCC is recognizing is that to the extent it has relationships with the British post office or the French telecommunications administration or KDD, that we should be addressing some of these areas of concern as well and understanding what problems they see and trying to articulate to them the policy concerns that we have in these areas.

I think that is quite different from getting involved in actual negotiations on behalf of U.S. carriers. It is, I think, an important part of the process of dealing with these issues.

Mr. BUTLER. At your level, are you satisfied that you have the existing relationship with your counterparts in other countries to exchange information?

Mr. BRUCE. I think some of those relationships have begun to be established in the facilities planning area. The Commission itself has taken an active interest in this process. Chairman Ferris and two other members of the Commission are part of the telecommunications committee that has been involved in some of these discussions involving facilities.

So, the concern is being dealt with at a very high level within the Commission. It is regarded as a very important issue.

Mr. BUTLER. What is the relationship of your agency with the Department of State Office of Telecommunications on international data flow matters? Do you have a working relationship that is satisfactory? How is it working?

Mr. BRUCE. I would describe the relationship as a generally satisfactory one. There is an ongoing working group at the Department of State. I understand that there are some reorganization efforts in the Department that will give this issue even greater attention. FCC staff members have participated to a limited extent in the discussions that have gone on before.

There are some other coordinated efforts that are underway at the National Security Council level and the Commission has been involved in those discussions as well. So, I think generally it is a good relationship. Like most relationships, they can be made better.

Mr. BUTLER. I do not feel like I should pin you down too much there. Do you feel that you are involved in the decisionmaking that is going on at State, for example, that gives your agency an opportunity to give the benefit of your experience to them?

Mr. BRUCE. I might let Will Demory address that.

Mr. DEMORY. I think I would like to say that there is a very close working relationship with not only the State Department but NTIA as well. We have a working relationship not only on this issue, but a number of other issues. We have some joint responsibilities with oversight of Comsat, and so forth. So, we are in almost daily communication with the State Department, the Office of Telecommunication Policy and also the National Telecommunications Information Administration.

So, there is, I think, a very close staff level coordination between the agencies.

Mr. BUTLER. I have no further questions, Mr. Chairman.

Mr. PREYER. Thank you.

Just following up on that question of Mr. Butler's, you indicate there is a good working relationship at the State Department, but that it could be made better. We have had a lot of proposals for establishing specific responsibilities for international information and communications policymaking within the Government and for centralizing ultimate authority. Do you have any thoughts concerning how Government could be organized more effectively to address these policy areas?

Mr. BRUCE. Mr. Chairman, I think that it would be very difficult to centralize authority over the span of international issues generally. I think the State Department and the NTIA do share respon-

sibilities under the Executive order in this area. I know there are efforts on an international agency basis to try to bring all the policymakers together and make sure they all know in what direction they are going.

That has been done at the National Security Council level. I think generally the spectrum at issue and the number of fora are so diverse it would be hard to bring everybody under one roof. I think the most important step that can be taken in the interim is simply improving collaborative and cooperative relationships. We think it is awfully important for the executive branch agencies to make their views fully known to us when there are pending authorizations or when there are pending facilities plans.

I think it is a very difficult problem to deal with institutionally. I do not think everybody can be brought under one roof. I think State has a very critical role in this area, as does NTIA, and we are going to try to work very closely with them on this issue.

Mr. PREYER. Thank you. Just one final more specific question. A critical problem in insuring a healthy and effective U.S. telecommunications industry is the allocation of spectrum. The recent World Administrative Radio Conference, or WARC, left many crucial issues of allocation to be resolved in meetings over the next few years. What steps has the FCC taken to begin preparation for these meetings and have you begun coordinating your activities with the State Department?

Mr. BRUCE. Mr. Chairman, I think I can answer that question in general terms. We can supply for the record, if you would find it useful, a more detailed description of those preparatory efforts. I can say that the whole WARC undertaking was, I think, an example of very close and effective coordination between the Department of State and FCC. I know that the new chief scientist of the Commission is involved in laying the groundwork for those upcoming conferences.

I am not fully or completely informed on the exact status of those preparations. I know that it is going on and it is being given a very high priority.

Mr. PREYER. Do you have anything to add?

Mr. DEMORY. I could add that there is a lot of preparation going on not only by the Office of Chief Scientist, but by the Office of the Common Carrier Bureau. There are a number of staff people working on these issues. I will be glad to supply for the record the exact status of those efforts.

Mr. PREYER. We would appreciate that.

Mr. BUTLER. Do either of you participate in the negotiations?

Mr. BRUCE. In WARC discussions?

Mr. BUTLER. Yes.

Mr. BRUCE. No.

Mr. BUTLER. Thank you.

Mr. PREYER. Are there any further questions of these witnesses?

Mr. BUTLER. Mr. Chairman, I just felt that we got out traded there, from what I have read of the consultations. Do you have a view on that? Are you satisfied? You just said you did not participate, of course, but you felt that it was a well coordinated effort.

Mr. BRUCE. You are referring to the outcome of the WARC discussions?

Mr. BUTLER. Yes.

Mr. BRUCE. I think the general view of Ambassador Robinson and the Department of State and the commission is that we held our own in a very difficult setting. I think historically these radio conferences have been conducted by engineers of a very close community and as in other areas, the law of the sea area, there are increasing political pressures that are coming into the discussions.

I think there were many predictions that the U.S. interests would not fare well in the conference. I understand that generally the view is that we held our own reasonably well.

Mr. BUTLER. Thank you.

Mr. PREYER. Mr. Vizas has a question.

Mr. VIZAS. Thank you, Mr. Chairman.

I first would like to return briefly to something you mentioned in your testimony. You talked about the CDC-Japanese case. We earlier received testimony that the Commerce Department, rather the NTIA and the Trade Office in Commerce, had written you a letter offering to brief you. What reply did the FCC make?

Mr. BRUCE. Mr. Vizas, I think the record indicates that that letter was not replied to. It was filed as a comment in this pending proceeding. I think, as Mr. Demory indicated, there are generally good and frequent contacts with NTIA. I think that letter probably illustrates that there is a need for better coordination.

I should point out that that letter presented the Commission with some difficulties because it purported to not address the merits of the application. But, at the same time, it did suggest that the Trade Facilitation Committee activities would have some relevance to those applications.

So, I think our feeling is NTIA or the Department of State or others have views to articulate on this issue, they should do so and outline them in fairly specific terms.

The letter did not provide us with any specific advice as to the particular restrictions. Nor did it suggest that we should hold up action or defer action on these applications during the course of those discussions.

I think clearly it is an area where we hope to have a more effective dialog with NTIA and the Department of State. I think it is awfully important for the executive branch agencies to be quite precise about the advice that they intend to give us in these areas. If they think these are serious restrictive trade practices and we should not act on the applications favorably, they should say so.

Mr. VIZAS. I have two more brief sets of questions. I would appreciate it if you cannot answer the specific questions that you will indicate you will supply the material for the record and help to keep this brief in the interest of time.

In your testimony you indicated that American IRC's, international record carriers, submitted assurances, based on letters from the Japanese operating authority, that private leased lines would continue to be available concurrently with the new services that are proposed to be offered. In what form did you receive these assurances? Did you receive copies of the letters from the Japanese operating authority?

Mr. BRUCE. Mr. Vizas, I do not know exactly the form. I think we can supply that information to you for the record.

Mr. VIZAS. Did you receive any assurances directly from the Japanese operating authority?

Mr. BRUCE. No, sir, not that I am aware of. I think we can try to respond to that for the record.

Mr. VIZAS. I would appreciate it when you do that, if you would state whether you sought any assurances directly from the Japanese on this matter.

The reason I am pursuing this line of questions, as you are probably aware, is that the alleged assurances by the international record carriers conflict directly with testimony we received in our past 3 days of hearings from the American companies. They had a very different expression of intent from the Japanese Government regarding what they eventually were going to do once this new service was permitted across the Pacific.

In light of that conflict between the testimony before the sub-committee and the assurances of the IRC's, do you think the FCC will be reexamining the question of the assurances from the international record carriers regarding Japanese intent?

Mr. BRUCE. I think we would have to look at that testimony that was received in light of the assurances that we received. I suppose if we saw a substantial conflict, that would be an issue that we might want to focus on.

Mr. VIZAS. Thank you. I would appreciate it if you would include that in your reply for the record.

Turning to the same page of your testimony in regard to intelpost, you state that foreign PTT's currently prohibit the resale and shared use of international private leased channel service, and that this is the basis for your refusal to permit the IRC's to provide postal services.

I am just wondering if, in the intelpost area, foreign PTT's are permitting their own postal elements to offer the same sort of services that our Postal Service desires?

Mr. BRUCE. I think generally there are these direct arrangements set up with the postal side of the PTT's. I am aware in Europe there are some institutional questions about whether it will be the telecommunications or the postal people who will be involved in providing the service. We have been focusing on the fact that however these are described or however they are offered, they do look like traditional communications services.

Mr. VIZAS. What discussions has the FCC had with the Postal Service regarding intelpost, and in particular, have you discussed with the Postal Service what alternatives they would consider to the present proposal of the international record carriers or to the current configuration of the systems that they propose? Have you pursued any of that?

Mr. BRUCE. I am not aware that we have had any discussions. This issue is currently pending on a contested basis before the Commission. I think under those circumstances, we would probably not be having any discussions with them outside of a general meeting of all the parties.

Mr. VIZAS. What about private tariff offerings made? Did you have any discussions on these matters?

Mr. BRUCE. I am not aware that there were. We can try to supply that for the record.

Mr. VIZAS. I guess that this leads to my final question. What is the FCC's general policy and philosophy regarding entry of the Postal Service in offering telecommunications services; in particular, is that policy dependent at all on the fact that the Postal Service is a Government agency or Government authority?

Mr. BRUCE. There is not a general policy on Postal Service entry. We have been involved in one matter that involves Commission jurisdiction over the so-called domestic ECOM service. The only issue that the Commission reached in that proceeding was whether the Postal Service was, in offering what we regard as communications service, subject to FCC jurisdiction. The Commission found that it was.

The decision has been appealed to the D.C. court of appeals. There is now a pending motion to seek a remand of that order because in the aftermath of the FCC declaratory order, the Postal Rate Commission substantially revised the nature of the ECOM offering.

But, the Commission has not itself directly addressed the question of whether the Postal Service should be involved as a provider of service. We have dealt with simply the threshold question of whether that activity is a communications activity and subject to Commission jurisdiction.

Mr. VIZAS. Thank you, Mr. Bruce. Thank you, Mr. Chairman.

Mr. PREYER. Thank you very much, Mr. Bruce and Mr. Demory. We appreciate your being here with us today. We look forward to benefiting from your expertise and knowledge as we pursue this subject.

Mr. BRUCE. Thank you, Mr. Chairman.

[Mr. Bruce's prepared statement and submissions to additional subcommittee questions follow:]

Statement of Robert R. Bruce, General Counsel

Federal Communications Commission

Before the

House Government Operations

Subcommittee on Government Information and Individual Rights

April 21, 1980

Mr. Chairman and Members of the Subcommittee:

I am Robert Bruce, General Counsel of the Federal Communications Commission. With me is Willard Demory, the Assistant Bureau Chief in charge of international matters for the Common Carrier Bureau.

I appreciate very much this opportunity to testify on the issue of international data flow and the FCC's role in regard to this issue.

These views do not necessarily reflect the position of the Commission and are based on my role over the past several years in the FCC's continuing efforts to maintain the availability of efficient international communications services to the public.

The Commission has followed with interest these important and useful hearings on International Data Flow. These hearings have focused the attention of top policymakers at the FCC and in the executive branch-- the Department of State, NTIA and the Special Trade Representative -- on an extraordinarily complex and sensitive public policy problem.

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It is a problem that has many facets. It involves important national concerns about privacy, national sovereignty, trade and economic as well as telecommunications and information policies. It thus must be dealt with at these different levels by different institutions—each of which brings to bear diverse experience and expertise. The policy problems in this area are to a large degree novel and have been evolving as a result of burgeoning international trade and the rapid advances of computer and communications technologies. All the governmental entities involved, especially the FCC, are straining to keep pace with developments and to adapt old policy and institutional procedures to a new agenda of issues.

Thus we approach the issue of international data flows—and these hearings—very much with the view that we need to improve the information base upon which we premise our policies in this area. We also clearly see the need to strengthen our relationships with executive branch agencies dealing at other levels with other aspects of the international data flow problem.

THE ROLE OF THE COMMISSION

The Commission has been, and is currently, addressing many important telecommunications policies which have a significant bearing on the choice and diversity of communications and informational services available overseas. It has become increasingly aware of restrictive trade and communications practices which impede the export of American technology and know-how and the efficient flow of data internationally.

Domestically, the procompetitive policies of the FCC have fostered increased availability of services and equipment to

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consumers. The demand for diversity and flexibility spills over into the area of international services. But it is often difficult to accommodate user demands because of different approaches by foreign telecommunications entities.

Moreover, the Commission's recent decision in the Second Computer Inquiry reflects a realization that the transmission of information and the processing of information cannot be neatly categorized and are inextricably intertwined. Foreign telecommunications entities are also wrestling with the blurring distinctions between data processing and communications. These service categories have important regulatory implications both here and overseas. Particularly overseas, the definition of "communications" may establish the boundaries of the state telecommunications monopoly, and thus significantly affect the overseas operating rights of many U.S. companies offering international information/communications services. We face an elusive and vexing agenda of international policy issues generated both by foreign laws and regulations and by changing domestic policies.

Recent FCC Actions

As background to my testimony, I should perhaps catalogue briefly some recent FCC actions which affect the overall flow of communications and data overseas.

Over the past two years, we have addressed comprehensively plans for international telecommunications facilities in the North Atlantic region through 1985. We recently began the planning process for facilities and services through the end of the decade in this

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region. As a result of these planning and consultative relationships with U.S. carriers and foreign administrations, we are dealing not only with narrow facilities planning issues but with over all communications relationships as well. This process is a useful forum for the exchange of views since each side must take account of the concerns of the other.

Last December in a comprehensive set of interrelated decisions, the FCC took steps to facilitate the transmission of data traffic over the international telephone network. At the same time, it accorded U.S. international record carriers greater flexibility and broader domestic interconnection rights in marketing similar data services. In particular, it liberalized the ability of the international carriers to offer services throughout the United States—not just at a few "gateway" cities. We also required the unbundling and interconnection of international services to increase the diversity and choice of services available to users.

At meetings this week, the Commission will be considering an application by a new carrier to provide overseas services, as well as proposals to eliminate international tariff restrictions on the sharing and resale of international circuits. These issues involve the extent to which the FCC should be encouraging greater opportunities for competition and service innovation in the international field. At the same time, the Commission will be considering a Congressionally mandated report on Comsat's structure and future role in international services. Finally, this agenda will include an item which deals with the institutional and procedural mechanisms by which the Commission gathers information from and obtains the views of foreign

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telecommunications entities on facilities and service issues. We recognize that any competitive measures we approve must be matched with an expanded relationship with these foreign entities.

This is, of course, an extremely full agenda of issues. All these issues reflect the reality that communications is a highly dynamic field from a technological and marketing standpoint. Users benefit from innovation in this field and have created pressures in the domestic and international field for more alternatives and more flexibility. Accommodating the needs of U.S. users necessarily requires, however, coordination and cooperation with foreign telecommunications entities. It takes such cooperation to make international telecommunications policy since the jurisdictional reach of U.S. law is limited.

Comity and Reciprocity

Our foreign counterparts do not necessarily share our approach of relying on competition as the most efficient allocator of our society's resources. These differences are inevitable in dealings with countries with diverse economic and technological capacities and institutional and policy frameworks. But the FCC does have a variety of legal and institutional mechanisms for accommodating diverse domestic and foreign telecommunications policy perspectives.

Many of the legal and institutional issues we must deal with are novel. They involve difficult issues of the reach and impact of domestic regulatory law in the international arena. They require the FCC to adapt the substantive and procedural standards of a domestic regulatory statute to the realities of international telecommunications.

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I believe that the FCC has flexibility under the 1934 Act to effectuate this accommodation. However, Congressional guidance on the evolving data flow issue is, of course, extremely useful. To the extent that emerging problems begin to strain the limits of the 1934 Act, the Commission will be prepared to make any necessary legislative recommendations in the international field. Nevertheless, I believe we can make, and have made, considerable headway on issues of international reciprocity under our current mandate.

Under the Communications Act of 1934 the FCC is empowered to authorize new entrants, telecommunications services, and the acquisition of telecommunications services through construction, lease or otherwise. In exercising these explicit functions, the FCC must assure that it acts in accordance with the public interest. The specific criteria which give the "public interest standard" content have been defined by agency action and judicial interpretation over the years.

The FCC's basic mandate is to make available "a rapid, efficient, Nation-wide and world-wide wire and radio communications service with adequate facilities at reasonable charges." In carrying out this mandate in the area of international services, the FCC must, of course, assure that the best interests of U.S. ratepayers and users are protected to the fullest possible extent. In so doing, it need not ignore the views and policies of foreign telecommunications entities. On the contrary, according these views consideration provides the basis for applying the important principles of reciprocity and comity to protect U.S. interests in FCC deliberations. The critical policy question is how and to what extent these foreign interests should be taken into account. That is, I believe, a matter that has been entrusted to the reasoned discretion of the FCC under the 1934 Act.

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The FCC recently faced this question in considering whether or not to authorize for service in 1981 a new underseas cable, the TAT-7. In that case, the Europeans requested the FCC to consider the cost of the cable not only from the perspective of the U.S. side but from their perspective as well. In such circumstances, I believe it is appropriate for the FCC to consider the factor of international comity. Comity requires a weighing of the delicate interweaving of U.S. and foreign interests in any international telecommunications service. But comity also implies some notion of reciprocity. That is, in deciding what weight to accord foreign concerns in our regulatory forum, the FCC is entitled to take into account the degree of deference to U.S. policy within foreign decision making fora.

In the facilities planning area, the FCC has hoped that foreign entities would give consideration to our need to justify investment decisions on a record. To the extent that the FCC is asked to consider not just U.S. but foreign costs as relevant factors, it is reasonable to expect that such cost information will not only be available but will also be presented in something more than an entirely conclusory format. Thus, the Commission has invested considerable effort in the so-called consultative process with foreign telecommunications entities in order to achieve some greater degree of collaboration on basic methodologies and data in the facilities planning process.

In addition to being concerned about the degree of mutuality in the international decision making process, the Commission can and should also analyze the overall telecommunications relationships of

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all entities in considering facilities decisions. There are indeed some very sound public policy reasons for not entirely compartmentalizing policy issues involving facilities and issues in other areas of concern to the FCC.

Procedurally, the FCC has taken steps over the past two years to strengthen mechanisms, consistent with the 1934 Act and the Administrative Procedure Act, to gather and consider information about the views of foreign entities. It has done so through largely innovative procedural approaches to considering applications for new facilities and services.

I might digress briefly here to describe somewhat more fully the background of these procedures. Early in the 1970's, the Commission considered so-called Section 214 applications for new cables in isolation. It did not attempt to address the basic public interest findings required by the Act until contracts had been entered into between U.S. and foreign carriers. Any FCC action revising such facilities plans came late in the process and was very disruptive internationally. Another result was fragmented planning of cables and satellite facilities provided through Intelsat. Consequently, the FCC began through its rulemaking authority to develop overall facilities plans for various regions and for both cables and satellites. This policy has continued and grown more effective. Indeed, the FCC is now participating with U.S. carriers and foreign entities in a planning process for the 1985-1995 time period.

In this broad rulemaking context, the FCC can develop a comprehensive record based on the views of foreign entities. This record can then be evaluated in adopting an overall regional facilities

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plan. For example, at the end of the last planning period the FCC utilized consultative meetings to develop a factual record of the European entities' views on the FCC's decision in December 1977 to postpone construction of the TAT-7 until after 1985. The FCC took into account information derived from the consultative process when last summer it modified its December 1977 plan and allowed construction of the cable by July 1983. In this process, the FCC was not engaged in direct negotiations. Each side acknowledged the requirement of unilaterally and independently reaching a decision on a final plan under their respective domestic legal systems.

Outside the facilities area, the FCC has been increasingly interested in developing a better understanding of the factors that have led many foreign telecommunications entities to refuse to enter operating agreements with new carriers authorized by the Commission. Likewise, tariff and other international telecommunications policies implemented by the FCC can be thwarted if not acceded to by foreign telecommunications entities. Therefore, consultative discussions for fact gathering purposes serve a very essential role in the international policy formulation process. This information becomes part of a larger mosaic that the Commission can weigh in its various regulatory activities.

The FCC's consultative procedures and the reciprocity principle are thus important tools for dealing with some aspects of the data flow issues under review by the Subcommittee. The Commission can weigh, I believe, evidence of restrictive practices by foreign entities in acting on individual applications or on overall facilities plans.

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That is not to say, of course, that evidence of such practices should in every case be controlling under Section 214's public interest standard. For example, it seems reasonable to expect that there be some nexus between the particular restrictive practices and the FCC conferred privileges or operating rights being sought on behalf of a foreign entity. To illustrate, it would seem unreasonable for the FCC to take into account specific restrictive trade practices in a nontelecommunications area. But, if particular practices have a significant bearing on the efficient or cost effective usage of communications service, they may well be relevant factors in the balance.

Even then, however, the FCC has the responsibility to weigh all the costs and benefits at issue. In disapproving a particular plan or application, the Commission might significantly disadvantage one set of U.S. interests while according public interest benefits to other U.S. interests. An FCC disapproval may often adversely affect both U.S. and foreign interests. The Commission must carefully distinguish between restrictive practices with general, as opposed to particularized or limited, impact on U.S. interests.

In summary, in carrying out its statutory functions under the public interest standard, the Commission can certainly give weight to those interests which reflect basic national policy concerns. Thus, to the extent the Congress or other governmental entities clearly set forth policies in the data flow area and focus on particular issues of direct relevance to the Commission, these issues can be considered by the Commission in the facilities planning and service authorization process. In a related way, as the FCC identifies areas of policy concerns, i.e., such as refusals by foreign entities to enter into new carrier operating

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agreements, other executive branch agencies may also be able to address these issues at different institutional levels internationally. For example, the FCC's foreign contacts are with government-owned telecommunications entities, not with foreign ministries where the State Department has regular channels.

We believe that increased collaboration in this area among the FCC and executive branch agencies can and should result in important public policy benefits in the future. I can assure the Subcommittee that these positive developments are one clear outcome of the hearings.

The Consultative Process and Other International Relationships

I am somewhat optimistic about the prospects for enhanced consultative discussions with foreign telecommunications entities. As one participant in this process, I believe it is working well. The meetings, beginning in 1974, have grown into an institutionalized procedure in which the entities responsible for planning international telecommunications services may convey ideas and share their divergent perspectives on important issues. We are able to assess and understand the views of foreign entities and take them into account in our decisionmaking processes. Our foreign counterparts can gain the same from us and hopefully give greater consideration to interests vital to us.

Of course, we do not engage in discussions in a domestic vacuum. Sessions with interested domestic parties enable the Commission to incorporate the views of the private sector. In this way, the Commission is able to reflect better the concerns of American users at a point in the process at which implementation decisions have not become a fait accompli.

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In addition to facilities planning consultations with foreign governments, the FCC is an active participant representing the government in conferences under the aegis of the International Telecommunications Union. The State Department is the official coordinating body for all CCIR and CCITT meetings. However, the FCC participates in these meetings on a continuing basis. With representatives of such entities as NTIA, the Department of Defense, State and NASA and the private sector, the Commission negotiates agreements on frequency coordination, standards for international interconnection and allocation of radio spectrum.

The Commission maintains a large measure of responsibility for the representation of American users interests concerning regulatory matters before the CCITT. The CCITT prepares recommendations which serve as international standards in the operations, technical, and rate areas of telecommunications. These recommendations have a significant impact on the availability of telecommunications services and facilities internationally as well as the rates American consumers pay for these services.

In recent years, the work of the CCITT has assumed increasing importance. The recommendations of CCITT can serve to help or hinder the use of international telecommunications services and the export of telecommunications equipment throughout the rest of the world.

The charging, accounting and operational principles adopted by CCITT have a serious impact on the availability and cost of existing and future communications services. In this light, I should note the problems of private leased channel usage. There is a Study Group of CCITT which has been considering whether flat rate leased lines should

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continue to be so structured. The U.S. continues to support the availability of transparent flat rate leased lines along with the introduction of new and innovative services, including public data network services.

In other Study Groups, CCITT has considered and is considering the appropriate standards for new telecommunications, including communications word processing typewriters, facsimile, and viewdata, a system which permits interactive information retrieval to consumers utilizing a telephone line and a TV set.

I believe the FCC staff has credibly represented the United States in CCITT meetings under the aegis of the State Department. As part of this process, we hold and chair open public meetings pursuant to the provisions of the Federal Advisory Committee Act. We are assisted by the participation of many private users, as well as government agencies, including the Department of Defense and NTIA.

We feel that our efforts in the CCITT play a vital role in the maintenance of a strong telecommunications position internationally and serve to maintain a dialogue with the world's telecommunications experts.

The Commission is fully committed to assuring broad public participation by user and carrier interests on international telecommunications issues. One example of this commitment was the preparation for the recently concluded World Administrative Radio Conference. Advisory committees were established to support the WARC effort. FCC personnel served on these Service Advisory Committees at which industry and government consulted and developed positions. We were thus able

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to represent the telecommunications consumer from the initial stages of the WARC policy development.

Commission personnel further participated in the integrated effort at the Conference, with other agencies and private industry. The FCC and other agencies are now working with private industry to implement the WARC agreements.

Specific FCC Actions Affecting International Data Flow

The FCC has recently considered certain matters affecting international data flow. One matter currently under review before the Commission concerns the applications of various international record carriers to provide data services to Japan.

In early 1979, ITT World Communications, RCA Global Communications, and Western Union International filed for authority to provide a specialized data service between the U.S. and Japan. This service would make available to the public a packet switched data service chargeable on a usage-sensitive basis. Currently, the only efficient service available to companies retailing American data bases or transferring information to Japan are full period private leased circuits. These circuits are made available for a monthly charge and provide unlimited usage on a 24 hour daily basis. Obviously, it is the large user who often requires such a full time circuit.

Smaller firms often do not have the same requirements for such full time service. The inability to obtain more modest amounts of usage on a data circuit often acts as a serious barrier to operation in foreign countries by smaller American data processing companies.

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It might be useful, as background for the Subcommittee, to elaborate some of the countervailing interests that must be considered in a case like this. On the one hand, there are apparent benefits to some smaller users of usage sensitive data services, which charge on the amount of information transferred. At the same time, it is necessary to insure that existing international transparent leased channel services remain available to the U.S. customer. It is clearly important that the American business community be free to continue to use existing leased channels without restriction. In particular, large businesses should be able to continue using leased lines without regard to the type or amount of traffic transmitted over them.

In the case of Japan, a number of objections were filed to the applications to provide the new usage-sensitive service. Basically, several trade associations and other companies expressed concern that a grant of these applications might result in the termination of existing international private line service to Japan. In addition, there were objections to the restrictions the Japanese operating authority had placed on the use of international private line service. These restrictions are seen as detrimental to U.S. data processing entities to the extent that they limit the number of locations at which an international private line circuit can be connected in the U.S.

A number of foreign Administrations impose these restrictions on the use of international private lines to prevent companies from setting up public switched data networks. Many foreign government telecommunications administrations view such networks with concern since they infringe on the existing telecommunications monopoly operated by

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these governmental entities. 1/ In this case, American international record carriers have submitted assurances based on letters from the Japanese private operating agency, that private leased lines will continue to be available concurrently with the new specialized services.

It is this set of complex of factors which the Commission will have to weigh fully in this case.

Another current matter involving the flow of information internationally has been the proposal of the United States Postal Service to provide an international electronic message service, INTELPOST. This service involves the transmission of a letter or illustrative material from a U.S. post office to a foreign post office by means of an international leased channel. The message could then be delivered through normal postal channels. The proposed agreements between the carriers and the Postal Service provide for the Postal Service to obtain private international lease channels which it may then utilize to transmit and receive its INTELPOST message traffic.

International record carriers' tariffs currently prohibit the resale and shared use of international private leased channel services, a position which is consistent with that of foreign telecommunications administrations. The proposed agreements would remove the resale restrictions during an experimental period but would not permit any other entity other than the Postal Service to share private leased lines. Under these circumstances, the Common Carrier Bureau found these agreements to be discriminatory. The Bureau's ruling has been appealed to the Commission and is now under consideration.

1/ Transparent circuits do not impose their own communications or data protocols on user communications traffic and as such are highly valued by many data processing concerns.

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The Postal Service is of the view that it is not subject to the Commission's jurisdiction with regard to the offering of this service. But under the Communications Act, the Commission has primary responsibility for the regulation of new international communications facilities and services.

The Common Carrier Bureau's decision in the Intelpost case was not based on any determination to limit the types of service that USPS may provide. The Bureau concluded only that the carrier tariffs failed to insure non-discriminatory treatment of other similarly situated users.

CONCLUSION

I want to reiterate that the FCC recognizes the importance of competition in domestic and international telecommunications and data processing markets. During the remainder of this century, we expect that increased productivity and innovations in telecommunications and data processing will provide a major source of growth to our economy. The FCC has taken many steps to foster competition in domestic markets. We believe there is equal potential for competition in international telecommunications and data processing markets. A removal of restrictions on trade and the flow of data processing services should benefit all concerned.

We believe that other parts of the U.S. Government — the Department of State, the NITA, and the STR — play a vital role in facing these important problems. Each has experience in foreign trade issues and can pursue the U.S. interests in certain areas of foreign negotiations that it knows best. We will continue to lend our expertise to these agencies to work towards a free flow of international information. We encourage and will constructively utilize the advice of these agencies in those areas where we have the primary responsibility.

Thank you again for the opportunity to outline those issues on such an important emerging issue of information and telecommunications policy.

QUESTIONS MR. BRUCE STATED HE
WOULD ANSWER FOR THE RECORD

Question 1:

How is the FCC following up on the recent WARC? How is the FCC coordinating its work with the State Department?

Answer:

The FCC is currently in the process of implementing the outcome of the Final Acts of the 1979 World Administrative Radio Conference. Full domestic implementation will hinge on ratification of the Acts by Congress and the outcome of future FCC rulemaking proceedings. In addition, we are preparing for several radio conferences which resulted directly from resolutions and recommendations of the 1979 WARC or previous international meetings. These include regional and world conferences for mobile services, broadcast satellites, HF broadcasting, space services and others. The specific agenda, dates and duration of some of these conferences will be dealt with at the ITU Administrative Council meeting in Geneva which began on May 12. As in the past, we are taking steps to insure that input from the public is considered, and when appropriate, our views are developed in coordination with NTIA and the Department of State. This coordination is accomplished through direct consultations, inter-agency working groups or the Interdepartmental Radio Advisory Committee.

Question 2:

In the U.S. - Japan line case, we stated that we received assurances from the IRC's that private line usage would continue. In what form did we receive these assurances? Did any assurances come directly from the Japanese entities? Did we seek any assurances?

Answer:

IRC's proposing to offer the specialized data service to Japan indicated that private leased line service would continue to be offered. While no assurances came from the Japanese government, which was not a party to this proceeding, KDD, the Japanese correspondent, in letters to various IRC's which were filed with us, did state private leased line services would continue to be offered.

Question 3:

Did we have any meetings with the USPS before INTELPOST was filed?

Answer:

FCC staff had a number of informal meetings with the USPS on INTELPOST prior to its filing. Our purposes at these meetings were to ascertain the parameters of INTELPOST service including the equipment used and the marketing plans of the Post Office regarding this new service. The FCC continually monitors new developments in communications technology and the development of new services. These meetings were intended to apprise us of these new international developments.

ANSWERS TO QUESTIONS ATTACHED TO
APRIL 28 LETTER FROM CHAIRMAN PREYER

Question 1:

You stated that the FCC has adequate authority and substantial flexibility under the 1934 Act to play a policy role in international communications, but that it would be useful for Congress to provide "legislative guidance" in this area. What action should Congress take to strengthen and clarify FCC authority in international issues?

Answer:

The 1934 Act provides adequate authority to permit the Commission to play a valuable role in the formulation of international telecommunications policies. Indeed, the Commission has a long history of contributing to the formulation of such policies through the exercise of the facilities licensing and tariff regulation authority granted by the Act. As technology has developed, demands for more and different telecommunications services have increased and general economic conditions have changed. The 1934 Act has sufficient flexibility to permit the Commission to adjust its policies and procedures so it can continue to play a major role in the shaping of international telecommunications policies.

Many recent changes in the Commission's international policies and procedures have been appealed to the Federal Courts. While I believe the courts will find that the 1934 Act gives the Commission the necessary authority to make these changes, such challenges introduce uncertainty into international telecommunications activities. This may result in the delay of new

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offerings of international facilities, carriers and services. Similarly, overseas entities may delay concluding operating contracts with new carriers until the authority to operate has been affirmed. Even further delay could occur in the event a Court reverses a Commission decision.

As I indicated during my appearance before your Committee, there are a number of areas where legislative guidance by the Congress could remove these uncertainties. First, a legislative policy statement favoring the establishment of competition in the international and domestic telecommunications areas would be most useful. Virtually all major Commission decisions increasing competition in telecommunications have been appealed to the courts. While the Commission has been sustained in the vast majority of these cases, a clear legislative policy statement on the role of competition in telecommunications could be useful in reducing litigation in the future.

Second, the Congress could clarify the factors and procedures to be utilized in the facilities planning and authorization process. For example, it could explicitly reaffirm that international comity and reciprocity should be weighed under the public interest standard, even though, as I testified, I believe such factors can now be weighed by the Commission in its discretion. Obviously, such a legislative imprimatur

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would add to the agency's existing mandate -- both by binding the agency in the future to consider this factor and by signaling to foreign entities the importance attached to reciprocity in international dealings.

In addition, Congress could give the Commission explicitly greater flexibility to devise procedures for consulting with, and obtaining the views of, the executive branch with respect to pending facilities or authorization matters. Such authority would make clear that the Commission can both assure procedural fairness to all concerned parties in contested proceedings and recognize that executive branch entities have special advisory responsibilities to the FCC. To illustrate, Section 4(j) provides the Commission limited special authority to deal with classified information relating to national defense. It might be useful to expand the options for closed executive branch briefings relating to trade or foreign policy-related matters and to clarify the extent to which the Commission may act on such information without detailed disclosure in its orders.

Third, the Congress might also consider affording a specific mandate for the FCC to engage in discussions with foreign entities relating to facilities and services issues. While I do not believe that such an amendment is necessary to clarify the Commission's authority, such amendment could serve the useful purpose of establishing a firm national policy with respect to assuring the free flow of international communications and an absence of tariff or other restrictive practices in international communication services.

Question 2:

You noted that a broader role for government entities may be needed for negotiating with foreign entities and representing the interests of the U.S. Has the FCC analyzed what specific mechanisms and methods might be employed for accomplishing this?

Answer:

The Commission continues to explore mechanisms to most effectively fulfill its statutory mandate with respect to international telecommunications. For example, the North Atlantic Consultative Process concerned with facilities and the associated Commission proceedings are evolutionary rather than fixed mechanisms. Changes have been made in these processes as superior alternatives arose.

These changes include the development of procedures which permit the Commission to consult with the European and Canadian telecommunications entities throughout the inquiry, rulemaking and reconsideration phases of its facilities planning procedures in a manner consistent with the strictures of the Administrative Procedures Act and the Government in the Sunshine Act. Also developed was a mechanism for permitting the U.S. carriers to negotiate, within Commission specified guidelines, a resolution of the differing U.S. and European facilities preferences. This led to a comprehensive facilities construction plan for the 1980-85 period acceptable to all concerned entities.

Additional changes have been made in the Commission's proceedings and the Consultative Process in connection with planning North Atlantic facilities for the 1985-95 period. These changes have been directed toward developing more complete information in a shorter period of time. The Commission's staff is continuing to consider additional changes which might be useful in latter stages of these processes.

More recently, the Commission has been seeking to expand its consultations with European and Canadian telecommunications entities to include questions related to new U.S. carriers and new international services. The Commission's staff is examining the various mechanisms by which consultations on these additional topics could be conducted.

While the Commission has not adopted any specific mechanism, it recently addressed this matter in response to a petition for rulemaking filed by one of the U.S. international record carriers. In its Order denying the petition, the Commission rejected the petitioner's contentions that the FCC was engaged in negotiations with the European and Canadian telecommunications entities that were beyond its statutory authority or that contravened the ex parte rules or the Government in the Sunshine Act. The Commission concluded that the detailed procedures suggested by the petitioner for governing all

Commission participation in discussions with foreign telecommunications entities were not required by law and could, in some instances, impair the Commission's ability to engage in the useful exchange of information with such entities.

(A copy of this Commission decision is attached.)

As alluded to in the aforementioned discussion, the Commission has not participated in the actual negotiations of facilities construction and use contracts. The exchange of information and views among the U.S., Europe and Canada which takes place in the process of consultation is of primary importance, since it permits early identification of conflicting telecommunications policies and promotes understanding of the reasons for the adoptions of those policies. To date, the early acquisition of this knowledge has permitted resolution of policy differences in the facilities area without the need for Commission or other U.S. government participation in the negotiation of facilities construction and use contracts.

Nevertheless, as a part of its continuing review of the efficacy of the procedures and mechanisms used for consultation with foreign telecommunications entities, the Commission staff has given some preliminary consideration to the feasibility and advisability of direct Commission participation in negotiations with such entities either as an observer or an active participant. The tentative view is that Commission presence at such negotiations as observers would be permissible under existing law. The staff also tentatively concludes that active participation in some negotiations could be structured in a manner consistent with existing law. The Commission now participates with the Department of State and NTIA in WARC negotiations. A similar procedure could be used in other instances if necessary.

Question 3:

You commented that you see foreign telecommunications administrations moving in the direction of permitting private operation and ownership of communications services and facilities. What evidence led you to these conclusions?

Answer:

With respect to the offering of communications services, there may be several foreign countries where privately owned firms are offering resale-type services. The Commission is aware of at least one U.S. carrier that offers resale service either itself or through an affiliate in the United Kingdom and Israel. We know of one other firm that may be planning similar service.

Although we have not had an official foreign government reaction to such services, we suspect that officials in the foreign PTT's may, at least unofficially, oppose this service. However, the current U.K. government is advocating a greater role for private enterprise. We believe that this official government policy increases the likelihood that private firms will be able to operate in the United Kingdom.

A move toward some privatization of transmission facilities was underway in Canada. The Clark government had been considering private ownership of Teleglobe, which owns and operates international cable facilities. We are not certain how the new government will deal with those plans.

Question 4:

You indicated that one of the most critical improvements which should be made is to increase collaboration and strengthen relationships with executive branch agencies dealing with related aspects of international telecommunications. What type of coordinating mechanism do you think should be created and organizationally where should responsibility for it reside?

Answer:

As I indicated in my testimony, the changing nature of international communications and the wide-ranging issues which arise make it mandatory that governmental agencies coordinate their separate efforts. The rapid change in the international industry has made the traditional pattern -- where the carriers spoke for the United States -- inadequate. Further, since the overseas entities frequently have differing concerns and considerations, it has become vital that the United States present its policy forcefully. Since the existing carriers do not share all U.S. interests, that forceful voice for U.S. policy must come primarily from the government. Moreover, users often have interests divergent from carriers. Their interests must be more effectively represented than in the past.

Such an expanded governmental role necessarily requires greater coordination among those agencies responsible for such matters. The problems are too diverse and require too much specialized knowledge for any one agency to handle adequately.

The emphasis, therefore, must be on increasing the contacts among the concerned agencies so that each may bring its peculiar expertise to bear on the problems.

The Comsat instructional process and the North Atlantic facilities planning consultative process are examples of the kind of coordination which I believe is most useful. As we have noted, the FCC has the general line responsibility under the Communications Act and the Satellite Act to regulate the domestic and international communications networks. In carrying out our function under the Satellite Act to instruct Comsat in its participation in INTELSAT, we have worked closely with the Department of State and NTIA to assure that each has made its concerns known. We have also worked closely with the State Department and NTIA in preparing for and participating in the facilities planning activities in the North Atlantic. As a result, we have developed with these agencies a close collaboration at the staff level.

The FCC has also received the benefit of the views of other governmental agencies such as the State Department, the Defense Department, NTIA, NASA and others through formal and informal comments on specific communications matters. While the other agencies have frequently made their views known to us in such matters, there is room for improvement in some areas.

It may not be feasible to have a single group or focal point for coordinating all international policy issues. It might be more useful to develop an inventory of key issues where there are overlapping governmental concerns. Then, there can be an effort to identify the agency with primary responsibility and those agencies which should be consulted within the policy development process. A single entity in the executive branch -- the Department of State, NTIA, or the NSC -- could be mandated with the responsibility to oversee and assure the effective functioning of these diverse coordinative relationships.

Question 5:

As you noted, the recent policy of this country has been to increase competition in the communications industry, but to implement this policy internationally requires cooperation from foreign PTT's. What steps has the FCC taken to improve coordination and cooperation with foreign telecommunications administrations?

Answer:

The Commission is presently seeking to broaden its consultations with the European and Canadian Telecommunications entities to include the issues of new U.S. international carriers and services. Representatives of the Commission, Department of State and NTIA attending the October 2-3, 1979 Senior Level Meeting of the North Atlantic Facilities Consultative Process in Dublin, Ireland met informally with representatives of the European and Canadian telecommunications entities in attendance to explore the possibility of initiating U.S.-Europe-Canada consultations on additional telecommunications topics of mutual interest. The Commission's representatives expressed a particular interest in discussing the topics of new U.S. international carriers and services in such consultations. The European representatives expressed their interest in consultations pertaining to the technical standards for new international services and transmission networks.

A second meeting was held in Ascot, United Kingdom on February 20-21, 1980 to explore in more detail these topics and to consider expanding U.S.-Europe-Canada consultations. The consensus of that meeting was that the topic of new U.S. international carriers, new international services and technical standards for international services and networks would benefit from such consultations. A view was also expressed that consultations on these additional subjects should occur through a process similar to, but separate from, the existing North Atlantic Facilities Consultative Process. It was agreed that the U.S., European and Canadian representatives to the July 10-11, 1980 Senior Level meeting of the North Atlantic Facilities Consultative Process would meet briefly to determine a date and place for the next meeting to discuss these topics.

Question 6:

Can you outline specifically what your role has been in establishing international communications standards at the CCITT, other ITU meetings, and in other international fora?

Answer:

Generally the FCC does not develop standards. The State Department has named FCC representatives to lead U.S. delegations to various CCITT Study Groups for the formulation of CCITT recommendations. This activity takes place under the authorization of the Federal Advisory Committee Act where the establishment of U.S. "positions" are formulated by all interested telecommunications groups, e.g., communications user groups, U.S. common carriers, equipment manufacturers, interested governmental agencies, and U.S. industrial organizations. In addition to the CCITT, FCC representation has continued to monitor the activities of certain OECD groups dealing with transborder data issues.

Mr. PREYER. Our final witness this morning is an Assistant Trade Representative in the Office of the U.S. Trade Representative, Mr. Geza Feketekuty. If you and your associate will please stand, Mr. Feketekuty, you will both be sworn.

Do you solemnly swear that the testimony you are about to give before the subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. FEKETEKUTY. I do.

Mr. GOLDBERG. I do.

STATEMENT OF GEZA FEKETEKUTY, ASSISTANT U.S. TRADE REPRESENTATIVE FOR POLICY DEVELOPMENT, OFFICE OF THE U.S. TRADE REPRESENTATIVE; ACCCOMPANIED BY BARRY GOLDBERG, DIRECTOR OF COMPUTER OPERATIONS

Mr. FEKETEKUTY. I am pleased to be here this morning representing Governor Askew, Mr. Chairman. He very much regrets not having been able to come himself. I am the Assistant U.S. Trade Representative for Policy Development and I have operational responsibility for any trade issue in the services area.

I have brought Mr. Goldberg with me, who is the director of computer operations in our office and who has agreed to take on the trade issues in the communications and information area. I thought it might be useful, since he has technical expertise in this area, for him to join us.

I have prepared a written statement which we sent to you last Friday. I also have a short summary which touches on the key

points. If you will agree, I will go through the short summary, whichever way you would like.

Mr. PREYER. I think the summary, in view of the hour, might be appropriate.

Mr. FEKETEKUTY. I want to congratulate you, Mr. Chairman and the committee, for taking on what is an extremely important and timely issue. Modern technology has very greatly expanded the scope for developing and using data and information. By the same token, it has made us more vulnerable to interruption and restriction in this area.

It has also encouraged governments to assert greater control over access to communication information and data processing. Governments are getting into the act for a variety of reasons, some readily understandable and some regrettable.

The first reason for government involvement is to protect the privacy of citizens. You have heard extensive testimony in this connection. We ourselves have laws in this area. Problems can arise from different approaches to this issue among different governments, and this really has been the rationale for discussions in the OECD on trying to develop some kind of code regarding guidelines on privacy issues.

A second reason government gets involved is because they want to protect their national sovereignty. They get very concerned when they see that data processing or access to information is in the hands of foreign governments. They seek various ways of trying to protect themselves.

The third reason governments get involved is commercial, and regrettable frequently these commercial reasons involve pure protectionism of a very old kind.

The problem is that frequently efforts by governments to try to deal with privacy and deal with concerns of national sovereignty end up creating trade problems and, more importantly, sometimes they are just a cover for purely commercial objectives.

Here is where we think we in the U.S. Trade Representative's Office come in. Our office has primary concern for issues that affect commercial interests. Your committee has heard about the wide diversity of trade problems that are being encountered by American business. I do not think it would be a good use of your time if I were to recite them.

Let me just say that our doors are open to anyone who has a trade or investment problem. I think that is clearly our position. We stand ready to provide whatever assistance we can, together with the other agencies of the U.S. Government, in resolving such trade or investment issues.

As has been mentioned earlier today, we have been having intensive discussions with the Japanese in the telecommunications area. While these discussions have largely focused on telecommunications equipment, it has already included some issues related to telecommunications services, as, for example, the Control Data case you heard about earlier.

We recognize, however, that we need to do more than stand ready to provide assistance where it is requested. I think we need more than just a passive standard. There are very few trade agreements in the international communications area and we need to

work out new agreements that will help us avoid trade problems in these areas and, where problems cannot be avoided, to help us resolve such problems.

Mr. Chairman, we have taken the first step in this direction by taking the initiative in the OECD Trade Committee to launch a study of trade barriers to services. This study is designed to develop a consensus among the major developed countries on the type of trade issues and services we are to tackle in future negotiations.

We found, in the course of the multilateral trade negotiations, that we could not get very far in negotiating a trade agreement in the services area without first developing an agreement among the major countries on the types of issues that ought to be looked at and ought to be negotiated.

That is what we are trying to do at this point in the Trade Committee. We have been working closely with the private sector in building up our information on the types of problems they face as an input to the OECD exercise. I am hopeful that by this summer we will have acquired a good inventory of such trade problems so that we can begin to delineate some negotiating goals.

I should add here that the testimony which has been presented to your committee in the last couple of days should be helpful to us in putting together this comprehensive look at what the major trade issues are in this area.

The inventory of trade problems will also be very helpful to us in determining whether we need to develop a more short-term strategy for getting on top of the issues of this area and whether we need to develop some new policy goals. As we develop this information, we will certainly want to look at this.

This brings us to the organizational issues that have been raised in the course of these hearings. Mr. Chairman, the U.S. Trade Representative's Office is a relatively small office in the Executive Office of the President charged with coordinating U.S. commercial policies and leading negotiating efforts on key issues. Our goal is to pursue U.S. commercial interests abroad in a manner that will reflect a fair balance of all our competing policy goals.

As a small staff, we depend very heavily on the other agencies of the U.S. Government who have the expertise and resources that are needed to deal with these issues. The system works fairly well. I don't think that USTR needs to be given responsibility for all the nontrade aspects of telecommunications policy in order to discharge its responsibility in the commercial area.

The issues we deal with in the trade area touch on the substantive responsibilities of virtually every other Government agency and department. I would think that we would not therefore want to argue that USTR ought to take on all their substantive responsibilities.

It might be useful to cite an example from the health area. USTR has the lead responsibility for resolving trade problems that may arise as a result of differing national standards—for example, in the area of protecting human health and safety. During the multilateral trade negotiations, USTR coordinated negotiations on a standards code which prescribes procedures to be used in the development of standards so that trade problems can either be avoided or, where they occur, that they can be resolved.

This does not mean that USTR is or was responsible for discussions regarding the development of actual health standards either in this country or internationally, in a highly technical area where USTR has neither expertise nor policy responsibility.

On the other hand, when a health standard presents a major trade issue, USTR becomes involved in seeking a solution to the problem. For example, when, in 1978, U.S. citrus producers were faced with new health regulations in Japan which impaired export of citrus to that country, USTR played a major role in resolving this trade problem through negotiations with the Japanese Government.

There have been a number of other cases of a similar kind. We had a problem with Canadian beef and cattle involving a certain hormone. There are various other cases I could cite of a similar kind.

As soon as an industry came to us and said that there is a major trade problem because the Japanese or the Canadians or the French have done such and such in a health area or safety area, we have stepped in to try to resolve the issue. I think we should be able to do the same thing in the telecommunications area.

I should add, Mr. Chairman, that USTR is currently in the process of expanding its staff and we therefore expect to be able to devote more resources to the problems in the information and communications area. Until recently our staff was pretty much totally absorbed in the negotiation of the multilateral trade negotiations. It was really the completion of these negotiations that enabled us to begin focusing in a serious manner on the trade problems in the service area in general, and the information and communications area in particular. Your hearings have been helpful in pointing out the priority that we ought to give to this issue.

Thank you very much, Mr. Chairman. I shall be glad to try to answer and questions you may have.

Mr. PREYER. Thank you very much, Mr. Feketekuty. You noted at the end of your testimony that you are currently expanding your expertise in the area of international data flow. Could you provide us with information for the record, if you do not have it now, on how many staff persons are allocated to this area?

Mr. FEKETEKUTY. To the communication and information area I would say it would be part of my time and a good part of Mr. Goldberg's time in addition to his responsibilities in directing the computer operations plus I can draw on other members of my staff when needed. But they would not be people who would devote their full-time energies to this area.

Mr. PREYER. What is your budget in this area?

Mr. FEKETEKUTY. I am not sure that we have a separate budget for this particular area. I would say that we have the resources that I have described to you. In addition to Mr. Goldberg's services, I have about four people that I can draw upon to deal with services issues of any kind, whether it is banking, insurance or construction, whatever the nature of the issue.

Mr. PREYER. I would call it a lean staff.

Mr. FEKETEKUTY. It is.

Mr. PREYER. Do you feel that additional resources need to be allocated to you to handle these issues?

Mr. FEKETEKUTY. I would say that we are just in the process of building up to this lean staff that you cited. I would think that we would want a bit of experience under this arrangement before we come knocking on your door and saying we need more. I think, first, we can do a better job utilizing the new people we are bringing on board.

Mr. PREYER. We would like to keep in touch with you on that issue as you gain experience in that area.

Mr. FEKETEKUTY. We would welcome that, Mr. Chairman.

Mr. PREYER. We have asked the State Department to present us with a country-by-country analysis of international data flow problems. Once we have received this analysis from State, we would like to invite your comments whether the State Department analysis mirrors your own working experience with these various nations.

Mr. FEKETEKUTY. We will be delighted to do that.

Mr. PREYER. Thank you. Mr. Butler.

Mr. BUTLER. Thank you, Mr. Chairman.

I think this is a very fine presentation of your views at the moment. I guess the thing that I really have trouble understanding is: You are going to take an inventory of the problems in the area?

Mr. FEKETEKUTY. Yes, sir.

Mr. BUTLER. Your inventory is not going to be very worthwhile unless you have knowledgeable people on your staff to expand on those problems as they develop. I judge, from what you have said, that you do not have anybody there but Mr. Goldberg. You have privacy problems. In establishing health standards, you can isolate those; but you can't isolate privacy from the overall problem.

I guess what I am trying to say to you is, whether you realize it or not, I think more and more the responsibility in this area is going to fall on you. What are you doing to develop muscle on this lean staff that we talked about a moment ago?

Mr. FEKETEKUTY. Mr. Chairman—I mean Mr. Butler—

Mr. BUTLER. That is all right.

Mr. FEKETEKUTY [continuing]. If I could draw an analogy from the multilateral trade negotiations, those negotiations covered a very broad range of very difficult and technical issues. We have no more than an individual per every major area of commercial interest. We have one person perhaps who dealt with most of the ferrous and nonferrous metal issues, which can be very complicated issues.

We have developed a working style. We work very closely with the private sector involved. We draw heavily on their expertise. We work very closely with the other departments of the Government. We try basically to act as chairman to pull everybody together, to prod, to make sure we make progress, to make sure that things get done.

We don't necessarily feel we have to have all the substantive expertise in order to accomplish our objective. I think there is a great deal of advantage in having a small and lean staff because it means you can turn around much faster and you can provide dynamic leadership without being weighted down by a lot of other bureaus and bureaucratic concerns and red tape and so forth.

It might well turn out that we need more staff eventually in this area. For the moment, I think, we should go down this road as we are.

Mr. BUTLER. I had the impression that in the textile area, for example, you have a special ambassador or something like that.

Mr. FEKETEKUTY. We do, yes, sir. The textile area presents a very special problem because we have bilateral agreements with a very large number of countries. As you can appreciate, the textile area raises some very tough political as well as technical issues.

We have a negotiating team that is on the road virtually every day of the year. It is very rare you see our textile negotiator in Washington. So that is a very special case.

Mr. BUTLER. I guess what I am suggesting to you is that the things that make textiles special pale in significance beside the things that are going to make international data flow problems special.

Mr. FEKETEKUTY. I am sure you are right. We will have to take a look.

Mr. BUTLER. I am quite impressed with the work that you have done but I am really concerned that, as with the State Department, we suddenly realize that this is a problem. What you have told me about what you intend to get ready I think are minimal first steps. I would hope that you will recognize that more and more of the responsibility is going to fall on you in this area and that it is just not like comparing various qualities of metals.

Mr. FEKETEKUTY. We intend to be responsive, Mr. Butler, and we certainly like to pride ourselves on a very good relationship with the Congress. We look forward to developing that relationship. If in the course of that relationship it turns out we ought to do more or add to our staff, we certainly will be responsive to that.

I should also add that we are somewhat fortunate in having NTIA just down the hall from us and they have a very excellent staff and have been very helpful to us.

Mr. BUTLER. I am sure they are. I do not want to be overly critical but I am concerned that those of us who weren't instrumental in preparing the hearings are being constantly reminded of how complex the problem is, and sometimes I feel like it is as much news to our witnesses as it has been to us. You are an exception to that.

Mr. Chairman, I yield back the balance of my time.

Mr. PREYER. Thank you.

Recently the FCC opened dockets and made decisions regarding entry of foreign telecommunication and teleprocessing services into this country and entry of additional U.S. communication carriers in the international market. Has the USTR coordinated with the FCC on those questions?

Mr. FEKETEKUTY. Yes, sir; we have. We have been in touch with them. I should say, though, that the problem with those contacts is the concern that the FCC has for its quasi-judicial nature and function. To the extent that we can, we certainly have been working with them very closely.

Mr. PREYER. Is the FCC the appropriate place to address issues of reciprocity in this field?

Mr. FEKETEKUTY. I would raise some questions regarding their mandate for making decisions on reciprocity. I frankly would have to admit that I do not know enough about the legal basis and regulatory history, but I would be concerned if all the FCC could do is to take into account, as a previous witness said, issues of reciprocity and not take steps to assure reciprocity. I think those are two different standards.

I frankly will have to admit that I have not thought about this issue enough in order to be able to give you a complete answer.

Mr. PREYER. We would appreciate any further thoughts you have in that area.

Earlier witnesses emphasized or indicated that the postal telegraph and telephone authorities, PTTs, in Europe are beginning to act in a unified manner and that the confederation of European postal and telegraph authorities has articulated certain policies which will be detrimental to U.S. enterprises operating in Europe.

The question is: If Europeans increasingly act together in an attempt to secure their markets, what steps do you think the United States should take to protect American interests in data processing and telecommunications?

Mr. FEKETEKUTY. It seems to me, Mr. Chairman, the kind of situation you describe is precisely the kind of situation which makes it appropriate for the Government to step in and provide whatever assistance our private sector needs in this area. I think that we need to pursue this issue both bilaterally and multilaterally to assure that we have the best kind of arrangements which reflect the commercial interests that we have.

I think we have some strong points. We have the technology; as many previous witnesses have said, we have the technology, and that gives us a bargaining point and we should not waste that. Exactly how we go about structuring some international agreement or how we go about to support the commercial interest of the United States in individual cases I couldn't say. I need a lot more thought and lot more information in this area before I could make very concrete recommendations.

I do think that the situation calls for a more active Government approach in this area to assure that our commercial interests are protected.

Mr. PREYER. I understand that the USTR is establishing a private sector advisory committee drawn from the service industries. Can you give us, for one thing, the composition of that advisory committee?

Mr. FEKETEKUTY. Mr. Chairman, actually we are going to be establishing two committees at two separate levels as part of the overall trade advisory process: One, a service policy advisory committee which will be made up largely of chief executive officers of service companies. USTR has been taking a lead in establishing this particular committee.

At the same time, we are also taking steps to establish a so-called industry sector advisory committee for the services sector. This will be people with a substantive level of responsibility—vice presidents of major service companies and trade associations and so forth. Commerce has been taking a lead in establishing that particular body.

Now, the policy committee, which is the senior committee, will have, as I have said, chief executive officers from various service industries with one or two representatives from both users of information and communications facilities, as well as suppliers of information and communication facilities. We expect to have roughly about 30 people in this group, involving both industry representatives and labor representatives.

Mr. PREYER. How are these committees going to provide input to your negotiations?

Mr. FEKETEKUTY. We meet quite frequently with these committees. We go over the particular issues that we are wrestling with. We ask them for their advice. They provide us their advice. After we negotiate, we come back to them and report to them the results of the negotiations, why we were not able to carry out certain objectives or what we were able to do and why and have a further dialog with them.

So we have an ongoing, reiterative process where each step of the way we explain to them what we are doing, what we are thinking, and seek their advice. Periodically these committees are in a position to pass judgment to the Congress and others on whether or not we have been doing the job.

Mr. PREYER. Thank you. Mr. Vizas.

Mr. VIZAS. I have one request for you, Mr. Feketekuty, and two questions. The request—toward the end of your testimony you mentioned your preliminary inventory of trade barriers faced by service industries—would it be possible for you to provide us with a copy of that?

Mr. FEKETEKUTY. I will be happy to.

Mr. VIZAS. Thank you.

The first of my questions is on the independent regulatory agencies and their role in international trade. Independent agencies, such as the FCC, are charged with the responsibility of paying limited attention to concerns of international trade.

You mentioned earlier that you feel that the FCC should not simply consider questions of reciprocity, if it was the proper forum to do that, but it should actually pursue the assurance of reciprocity.

To what extent and in what manner, particularly in regard to the FCC but generally in regard to the independent regulatory agencies, does the partial attention to trade cause problems for the United States in its efforts to pursue a coordinated trade policy?

Mr. FEKETEKUTY. I think there is a problem that results from the different approach that we have tended to take toward regulation versus the approach that many other governments take to regulation. We have taken the view traditionally that we ought to have regulatory bodies independent of the Government generally. They are semi-independent bodies that take on quasi-judicial functions that are supposed to be objective and make some determinations about the public interest in terms of the domestic regulation.

Foreign governments generally don't make that kind of separation. As Mr. Eberle mentioned earlier, they find it much easier to use their regulatory powers for various ends, commercial or otherwise, and this creates a certain imbalance, which, I think, we will need to think through, to see how we can best deal with it. I do not

have any concrete suggestion at this point on how we deal with it. The important thing at first is to recognize the problem.

Mr. VIZAS. What did you mean by "imbalance"?

Mr. FEKETEKUTY. Imbalance in the sense that to the extent that we have regulatory decisions made without full consideration for reciprocity while other governments make regulatory decisions on a fully commercial basis, I think there is somewhat of an imbalance in terms of how decisions are made affecting interests in the communications and information area or other areas where regulatory activity is important.

Mr. VIZAS. Related to that is another question that goes to structure, although not necessarily of our regulatory agencies, although it involves them as well. In this country telecommunications and data processing are private industries. Data processing is virtually totally unregulated in its ordinary market functions. Telecommunications, while it is regulated, is regulated to varying degrees.

In Europe, Japan, and other countries, telecommunications and data processing are either government agencies performing the services and functions or they are wholly owned or government-controlled corporations.

When it comes to negotiating these questions of entry into markets and telecommunications and information and trade issues, we are in a strange position. The industry that is affecting the economic concerns lies in the private sector. The government is only a user, by and large, of these services just like any other user and has limited immediate concerns as a government. Yet the governments that we negotiate with, as private companies or a government, have immediate concerns. They are the providers.

What sort of problems does that create for us? What does it demand of us in negotiating with foreign nations?

Mr. FEKETEKUTY. I think what it calls for is a very close working relationship with the entities in our country who provide those services and facilities as well as those entities that regulate the use of our facilities. I just think that we have to overcome some of our inhibitions against close working relationships among so-called competing institutions and try to present a unified front.

Mr. VIZAS. In other words, you would suggest, for example, that the FCC, the communications industry, and the USTR get together to decide what the negotiating posture of the United States is going to be, with, of course, the Government having the final say in the national interest, and then pursue a unified front with the foreign governments?

Mr. FEKETEKUTY. I think that would be a good way to proceed after we have identified the issues.

Mr. VIZAS. Thank you. Thank you, Mr. Chairman.

Mr. PREYER. Thank you. We appreciate your testimony very much. We will look forward to keeping in touch with you.

Mr. Goldberg, we appreciate your being here. I am sorry that there is not any committee member who knows enough to ask you some computer questions today but maybe we will think of some soon.

Mr. FEKETEKUTY. Thank you very much.

Mr. PREYER. Thank you very much.

The subcommittee stands in recess.

[Mr. Feketekuty's prepared statement and submissions to additional subcommittee questions follow:]

Statement of

Geza Feketekuty

Assistant U.S. Trade Representative

for

Policy Development

before the

Subcommittee on Government Information and Individual Rights

Committee On Government Operations

U.S. House of Representatives

April 21, 1980

I am Geza Feketekuty, Assistant U.S. Trade Representative for Policy Development. I am pleased to be able to represent Governor Askew, the U.S. Trade Representative, on this occasion. He regrets that his schedule forced him to be out of town today.

I have the operational responsibility on Governor Askew's staff concerning matters of trade in services. The services field encompasses a wide variety of industries, including accounting, banking, computer services, insurance, construction/engineering, shipping, and communications services among others. It is an area

that has received very little attention by U.S. and foreign trade officials and industry representatives in the past, particularly in comparison with the attention given to trade in goods. We in the U.S. Government are working very hard to bring services trade issues up to the level of international treatment afforded issues in goods trade. This, of course, includes trade problems in the information and communications fields in general and, more specifically, the issue of transborder data flow.

I want to congratulate the Committee for focusing on this most important and timely issue. As we move towards the 21st Century, questions pertaining to international information flows will be at the center of many critical political and economic issues. We are presently seeing disturbing signs of restrictive actions by foreign governments which, if left unattended, will jeopardize international trade in the information services sector and ultimately undermine the strength of American business. It is important for us to respond to these challenges now, as they occur, and not in the aftermath. We must not allow ourselves to simply adjust to the actions of other governments, but instead defend our interests in the free flow of information.

The broader focus of attention being given to transborder data flow is relatively new. In the past, transborder data flow issues were primarily perceived as technical in nature with perhaps some concerns expressed regarding national sovereignty or security. Today, these issues have grown to include other considerations such

as privacy, economics, and cultural independence. We are also seeing, as has been so aptly highlighted throughout these hearings, transborder data flow issues being raised as trade issues.

Government restrictive actions taken for privacy or technical telecommunications reasons are, in some cases, affecting sales opportunities. In many of these cases one has the suspicion that the real purpose for imposing the restriction is a commercial one, in effect to keep U.S. companies from developing a market for information and communications-related services. The potential ramifications of these actions are immense; extending far beyond data and communications services. Not only would U.S. trade in these services diminish, but sales in communications and computer hardware would decline as well. Further, the ability of American multinationals to conduct business operations would be severely hampered.

We need to be alert to the harmful effects that restrictive actions in the communications/information area may have on U.S. commerce. It is essential that we develop strategies to prevent the deterioration of our country's competitive position abroad. In light of this, we have been following these hearings with a keen interest. The Committee has heard testimony on the emergence of a great number of diverse problems.

Mr. Chairman, we do not at this point want to repeat details of all the issues brought to your attention in these hearings. However, let me just take a minute to summarize some of the various forms of trade related restrictions that arise. In a number of cases,

discriminatory taxes have been placed on information transferred through private communication lines. In other cases, restrictions have been placed on the number of information sources that can be used or the kinds of information which can be moved across borders. Restrictions have also been placed on the kinds of information that may be maintained on a system and made accessible to private subscribers. This latter type of restriction also has taken the form of limitations on information about certain classes of commodities or services which place foreign sellers of these products at a severe disadvantage.

Mr. Chairman, our doors are open to anyone who has a trade problem and we will do what we can to work out solutions to the commercial problems involved. To insure that these problems receive the same priority given to problems related to goods trade, we have recently established an interagency Trade Policy Staff Committee (TPSC) Subcommittee on Services. As we are a small organization, we rely very heavily on the staff and expertise of many of the other agencies involved in trade. To a great extent USTR's role in trade policy involves prodding and encouraging interagency consensus on trade issues and assuring the rapid resolution of commercial problems. The TPSC provides a very special forum for discussing problems and reviewing policy options on specific trade concerns. USTR intends to pursue services trade issues, such as those involving transborder data flow, in this forum whether the issues are brought to us informally or formally in the context of Section 301 of the Trade Act of 1974.

We recognize that we have a difficult task ahead in resolving trade problems in services. To begin with, there are only a limited number of existing agreements that can provide significant avenues of relief. Such agreements as the OECD Code on Invisible Transactions or bilateral treaties of Friendship, Commerce and Navigation might be used more effectively in the future to seek resolution to problems than they have been in the past. However, while in the short run we can make better use of existing agreements, effective long term solutions to most commercial problems, including those related to transborder data flow, will require new international negotiations on services. The Trade Acts of 1974 and 1979 contain provisions dealing with non-tariff barriers to trade in international services and we intend to use this authority in the years ahead to work out agreements to effectively deal with problems which arise in this area.

Trade in services, of which transborder data flow is a component plays an important and positive role in the U.S. balance of payments, and is a key element of U.S. trade policy. We have taken a number of steps to deal with the critical trade issues existing and arising in services.

First, we have contacted U.S. services trade associations and expressed our willingness and determination to work with them to seek solutions to their problems. With their help, we have begun to draw up an inventory of problems that inhibit trade in services. In this context we have also begun to familiarize ourselves with current trade

problems in the communication and information area. As we acquire more comprehensive data we expect to work out short term strategies in the near future for dealing with such issues.

At the same time, we have begun to pursue a longer term effort to lay the groundwork for future multilateral negotiations which might take place in services. As already mentioned, we recognize the shortcomings in the current arrangements and agreements among governments for dealing with trade problems in the communications/information industries, as well as trade problems in services in general. During the MTN, trade issues involving services were raised, but only modest progress was achieved since little groundwork had been laid. The major participants in the MTN did agree that trade problems in services should be examined after the MTN. Given this agreement, the U.S. decided to take the opportunity to begin to build the international consensus needed in order to pursue services negotiations in the future. We began by introducing trade in services on to the agenda of the OECD Trade Committee. This Committee subsequently agreed to undertake a study of international trade issues in the services industries.

To provide an initial focus for the Trade Committee's review of services trade problems, the U.S. submitted a preliminary inventory of trade barriers faced by U.S. service industries. The Trade Committee welcomed this inventory and has invited other countries to add to it. As another component of its review of trade barriers in services, the Trade Committee, with the assistance of several other OECD Committees (Maritime Transport, Insurance and Capital Movements and Invisible Transactions), will study impediments to the maritime shipping,

insurance, banking and construction/engineering fields. It is our view that when the OECD Trade Committee Study is completed it will serve as a mechanism to develop international consensus on the importance of services trade barriers and how these barriers might be more effectively dealt with in a multilateral context.

At this point, Mr. Chairman, I would like to turn to the organizational issues that have been raised in the course of these hearings. As I have already suggested, USTR is a small office in the EOP with the responsibility for coordinating trade policies and negotiating trade issues on behalf of the U.S. USTR, with its small staff, provides the leadership while a great deal of the support is provided by larger agencies who have the resources to carry out much of the substantive work. USTR has a mandate to take the lead in international negotiation of trade issues, in goods as well as in services. This would include, of course, trade problems in the information and communications area.

The Congressional mandate in services has two sources -- (1) interpretations regarding the coverage of services issues under the Trade Reorganization Plan and (2) the provisions of the Trade Acts of 1974 and 1979. First, the recent trade reorganization plan assigns the role of policy leadership to the U.S. Trade Representative. At the same time, primary day-to-day responsibility for U.S. service industries will remain with the different agencies of the U.S. Government such as

Commerce, State, Treasury and Transportation, which currently handle services issues. Given the need to assure consistent U.S. policies on services, U.S. Trade Representative will coordinate the development of U.S. services policies when trade issues are involved.

Second, the Trade Acts of 1974 and 1979 assign to USTR the responsibility for negotiating non-tariff agreements covering trade issues in goods and services and for administering Section 301 of the Trade Act of 1974, which provides for remedies to unfair foreign trade practices, including those adversely affecting U.S. trade in services.

In the U.S. Government different organizations have different policy objectives and this inevitably leads to overlapping of policy concerns. At any one time, an issue such as transborder data flows might be a problem of trade or of privacy concerns or of telecommunications policy. Different issues may be looked at in different lights at different times. The significant question is: Is there adequate institutional responsibility for pursuing trade policy to an objective? This question arises in virtually every issue involving trade; what is perceived primarily as a trade issue one day may be perceived primarily as a regional issue, or a health issue on another.

One example of how the U.S. Government deals with these overlapping policy concerns and organizational issues bears mention. USTR has the lead responsibility for resolving trade problems that may arise as a result of differing national standards, particularly in the area of protecting human health and safety. During the MTN, USTR coordinated negotiation of the Standards Code, which prescribes procedures to be used in standards development so that trade problems can be eliminated. This does not mean that USTR is or was responsible for discussions regarding the development of actual health standards - a highly technical area where USTR has neither expertise nor policy responsibility. On the other hand, when a health standard presents a major trade issue, USTR becomes involved in seeking a solution to the problem. For example, when in 1978, U.S. citrus producers were faced with new health regulations in Japan which impaired export of citrus to that country, USTR played a major role in resolving this trade problem through negotiations with the Japanese Government.

Mr. Chairman, USTR intends to provide leadership on any trade issues in the communications/information area, as well.

Previous experts who have testified before this committee have expressed the need for creation of a single agency or authority to take responsibility for international telecommunication issues. We do not feel that the problems with the handling of transborder data flow concerns in the past can be attributed solely to organizational deficiencies. Rather, we perceive this to be a question of competing

priorities and competition for assignment of resources to this area. The fact is that, with a few exceptions communications and information problems have not been considered in a trade context by most industry or government officials. Indeed, this Committee has performed a real service in highlighting the trade issues in this area. We certainly are committed to working with industry in getting a better grip on trade problems created in the communications and information field and working out appropriate solutions.

The question now arises: Does USTR have the adequate resources to provide the needed leadership for dealing with the critical trade issues in communications and information, including transborder data flow problems? Mr. Chairman, it would be premature to come to any final conclusions at this time since USTR only recently has been in a position to expand its staff in this area. We will need some experience with our additional staff resources before making further judgements on the adequacy of this level of resources for fulfilling this major task.

OFFICE OF THE UNITED STATES
TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON
20506

MAY 30 1980

May 28, 1980

The Honorable Richardson Preyer
House of Representatives
Washington, D.C. 20515

Dear Congressman Preyer:

Thank you for providing us with the opportunity to present our views at the recent hearing on international data flow problems. Governor Askew has asked me to express his appreciation for the work you are doing, and again let me congratulate you and your committee for having the foresight to address this issue, which will be of even greater concern in the years ahead.

I hope we have been of help in your efforts to come to grips with the complex problems related to transborder data flows. We look forward to your recommendations once your inquiry is completed. Attached please find our responses to the questions you have submitted to us, as well as the corrected copy of the transcript. If we can be of further assistance, please let me know.

Sincerely,


Géza Fekete-Kuty
Assistant United States Trade
Representative
for Policy Development

QUESTION #1:

QUESTION: You testified that you expect long term solutions to transborder data flow problems will require new international negotiations on services. What type of bilateral or multilateral agreements do you envision being sought by the U.S. in this area? In the next three years? 10 years?

ANSWER: At this stage of our work, it is difficult to be very precise as to the type of bilateral and multilateral agreements we should eventually pursue. Negotiations are probably two or three years away. Our initial impression however, is that many of the trade problems encountered in the telecommunications, information, and data processing industries resemble the kind of trade issues we have addressed in the recently concluded multilateral trade negotiations, particularly those covered by non-tariff codes. Before we can be precise, we will need to hold further and more indepth discussions within the United States and with foreign government officials.

Our ultimate objective is to include trade issues in the information/communications area among issues to be addressed in broader, long-term discussions on trade in services. During the interim, we will be closely monitoring actions by foreign governments that restrict trade opportunities in the telecommunications, information and data processing areas; should such actions adversely affect U.S. commercial interests, we stand ready to bring them up either in bilateral discussions or in appropriate international organizations such as the OECD.

QUESTION #2:

QUESTION: Which international fora are the most appropriate for addressing the trade aspects of international data flow questions? Is there a need for new fora in which these issues can be deliberated?

ANSWER: In our view, the GATT and the OECD provide quite extensive opportunities for addressing and negotiating the issues that have been raised. At this time, we do not see the need for a new forum.

QUESTION #3:

QUESTION: Other witnesses testified that information and communications trade concerns should not be balanced against commodities like steel or shoes in international negotiations. If information and communications are of unique and fundamental importance, how can policies best be formulated to reflect this fact?

ANSWER: Our policy is to approach the commercial interests and trade problems of each industry on its own terms. Moreover, under the private sector advisory process established by the Congress under the Trade Agreements Act of 1974, each industry is given a separate opportunity to advise the administration on its needs, and to report to the Congress on the results. This process assured, for example, that at the conclusion of the MTN each of the individual industries (with one minor exception) reported to the Congress that they were satisfied with the outcome.

There is no reason to assume that trade concerns in the information and communications area would be traded off against other U.S. commercial interest. While negotiating issues in the information and communication area may be on the table at the same time, our aim would be to achieve a satisfactory result for each industry. In any case, the U.S. has a strong competitive position in the information and communication area, which means that we would be asking for concessions that benefit the industry rather than making concessions to other countries that hurt the industry.

QUESTION #4:

QUESTION: Many witnesses testified that establishment of a central coordinating mechanism is critical for improving policy making in international information and communications areas. What type of coordinating mechanism would you favor and how do you think it could be effectively implemented?

ANSWER: We believe that with respect to trade issues, the central coordinating mechanism already exists in the Trade Policy Committee structure. Through this structure, USTR has the responsibility for coordinating trade policies and negotiating trade issues on behalf of the U.S. As we pointed out in the testimony, USTR provides the leadership while a great deal of support is provided by larger agencies who have the resources to carry out much of the substantive work. We recognize, at the same time, that Congress has established other, non-trade policy objectives, in the telecommunications area, and that other agencies of the U.S. government such as NTIA, FCC and State have been given the responsibility for coordinating U.S. policies with respect to those objectives.

QUESTION #5:

QUESTION: To date, what has the USTR done to analyze the international data flow problems within the context of both tariff and nontariff trade barriers?

ANSWER: USTR, as part of its broader work on trade issues in services, has compiled an inventory of trade barriers in services from previously published sources. More recently, USTR has been working with private industry representatives to update and expand this inventory, and this effort is currently underway. International data flow problems were included in the original inventory under the category of computer services, and we have been working with various parts of the industry to update the inventory. We want to assure that the full range of issues of concern to the industry are included in the analysis.

QUESTION #6:

QUESTION: Have you assisted, advised, or consulted with NTIA, the Trade Administration in the Commerce Department, the FCC, the Department of State, or the Department of Justice in attempting to define the problems or formulate U.S. policy in international data flow? If you have, when, in what manner, with what office?

ANSWER: In connection with our work on the OECD study of trade issues in services, USTR has had regular contact with both the Policy Planning and the International Office of NTIA, the Economic Bureau and the European Regional Programs Office at State, the Common Carrier Division of the FCC and numerous trade offices at Commerce.

In addition, we have had individual contact with the FCC, NTIA, and others regarding specific trade issues in the information/communications area. For example, we were in frequent contact with these offices concerning our inquiry into restrictions imposed by the government of Japan on the use of leased lines for accessing data bases in the United States.

QUESTION #7:

QUESTION: Several witnesses have stated that the international data flow problem is primarily a trade issue. Others have argued that it encompasses such additional elements as concern for privacy, national sovereignty, and cultural erosion. Do you believe that the USTR is equipped to handle this issue in all its manifestations and do you think it is possible to address the strictly trade problems separately from the less traditional complex of data flow issues?

ANSWER: The Office of USTR is not in a position to handle all issues arising in the telecommunications, information and data processing industries, but we can provide the necessary leadership for working out solutions to trade issues. We feel that USTR is uniquely equipped to coordinate U.S. policies affecting the foreign commercial interests of these industries, and to negotiate appropriate solutions with foreign governments.

[Whereupon, at 12:10 p.m. the subcommittee adjourned, to reconvene subject to the call of the Chair.]

A P P E N D I X E S

APPENDIX 1.—STATEMENT SUBMITTED FOR THE RECORD
BY ABRAHAM KATZ, ASSISTANT SECRETARY FOR INTER-
NATIONAL ECONOMIC POLICY, DEPARTMENT OF COM-
MERCE



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

6-10-123

Honorable Richardson Poyer
Chairman, Subcommittee on Government
Information and Individual Rights of the
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am pleased to submit a statement for the record in connection with your Subcommittee's hearings on the subject of transborder data flows.

I want to express my apology for any inconvenience caused you or Subcommittee members because I was unable to testify on Monday, April 21st. As you know, I was not satisfied with the testimony prepared for me, which could not be revised in time to meet the Subcommittee's deadline. I felt it imperative that such a statement accurately reflect my views on this important subject.

If you have any questions with regard to the statement or need additional information, please let me know.

Sincerely,

Abraham Katz
Assistant Secretary for
International Economic Policy

Enclosure

(513)

Statement of Abraham Katz
Assistant Secretary of Commerce
for
International Economic Policy
Submitted to the
Subcommittee on Government Information
and Individual Rights
Committee on Government Operations
U.S. House of Representatives
April 30, 1980

Mr. Chairman and Members of the Subcommittee:

I am Abraham Katz, Assistant Secretary of Commerce for International Economic Policy. I am pleased to submit this statement to the Government Information and Individual Rights Subcommittee, and want to commend this Subcommittee for bringing the subject of transborder data flows to the forefront of the issues which our government will need to address in the 1980s.

The term "transborder data flow" has become an umbrella covering all the problems and issues concerning information flows, data protection laws, domestic and international telecommunications policies, and industries producing computers and communications equipment, including those providing data processing and communications services.

In my testimony, I would like to focus on two major areas of concern: first, the potential impact of data protection laws on international data flows; and, second, trade and investment issues affecting U.S. computer and telecommunications industries.

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Potential Impact of Data Protection Laws

First, let us look at data protection laws and their potential impact on international commerce.

The Swedish Data Protection Law of 1973 was the first national law to recognize the responsibility of a sovereign to extend protection to the personal privacy of its citizens when personal data is moved outside that sovereign's political boundaries. Nine other countries, including the United States, have privacy laws, and ten more nations are in the process of passing national data protection laws. Some of the newer laws go beyond the protection of personal data, and include the protection of non-personal data as well.

A motivating force behind the increase in national data protection laws is the concern about the enormous capacity and capability of computer/telecommunications technology to collect, process, store, and globally move vast quantities of data not only on a nation's citizens, but also on vital national economic and political subjects. Such a capability existing beyond national control is viewed as a threat to individual privacy, national economic objectives or even national security.

The proliferation of national data protection laws has alarmed the international business community. They are afraid that foreign data regulators, responsible for enforcing such laws, may restrict legitimate international information flows. This would have serious cost implications for those multinational corporations

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which rely on centralized data processing facilities and, also, could impair corporate planning and decision-making. To date, there has been no solid information that such problems have occurred. In fact, a previous witness, Mr. John Rankine of IBM, noted that there have not been "any particular difficulties of any great significance so far."

The Organization of Economic Cooperation and Development (OECD) has taken a first step to harmonize different national data protection laws and prevent restrictions to international flows of personal data through the preparation of Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data. Adoption of the voluntary Guidelines would represent a consensus by the OECD member countries to respect each others' national laws and policies to protect individual privacy, and to avoid erecting unjustified obstacles to the transborder flow of personal data. We hope the OECD Council will approve these Guidelines soon. The second phase began last month, when the OECD Working Party on Information, Computer and Communications Policy mapped out a work agenda for 1981 and 1982 to study economic and other issues concerning transborder flows of non-personal data.

I am in full agreement with Under Secretary Nimetz of the State Department who said in his testimony that, "We view the OECD as a major forum for consultation and study with the industrialized western world" on these issues. The State Department's Interagency Task Force on Transborder Data Flows is the coordinating mechanism

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to develop U.S. Government positions for the OECD and other international organizations dealing with transborder data flow issues. We believe its recent shift to the Economics Bureau in State gives appropriate recognition to the important relationship between international telecommunications policy and international economic policies. We will be vigilant in following developments in this area to ensure that U.S. commercial interests are protected.

Trade and Investment Issues

As requested in the Subcommittee's letter of invitation, I would like now to turn my attention to the international trade and investment problems faced by U.S. firms in the computer/telecommunications area and to describe how we are working hand-in-glove with other agencies to resolve them. Some of the problems that have arisen abroad are included under the term "transborder data flow" because these industries are involved in the collection, processing, storage, and transmission of data. Despite the fact that the problems described by some of the witnesses in previous testimony dealt with the most advanced technologies and new forms of trade restrictions, they are nevertheless similar in nature to the kinds of trade and investment problems faced by other exporters or investors as well.

Foreign industrial policies -- Over the last decade, countries such as Japan, France, Germany, and the U.K., have launched various programs to develop indigenous computer industries with varying degrees of success. U.S. dominance in foreign computer markets has been a major reason for this. Aware of the rapid developments in

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computer/telecommunications technology and the lucrative markets that will open in the future, these countries are pushing ahead to catch up to the U.S. lead. Depending on the particular situation, this may result in government procurement policies which favor local producers, restrictions on foreign investment and various forms of incentives or other assistance aimed at domestic firms.

For example, at the meeting of the EC heads of state in Dublin last November, the Commission proposed policy guidelines for the wider field of "telematics" (telecommunications, computers, microchips and data banks), with the goal of securing one-third of the global market in these areas by 1990. The heads of state endorsed this general proposal and directed the Commission to prepare a program which would: (1) provide funding for R&D of computers and microchips, and for encouragement of joint research projects; (2) establish common technical standards and standardize components; (3) harmonize government procurement policies and open up competition to all EC companies; and (4) cut tariffs on components which the Community does not manufacture and possibly raising tariffs on components which it does make.

We do not know at this point whether these programs would have discriminatory effects on U.S. firms. However, we have been monitoring developments in Europe closely and will continue to do so.

Foreign government procurement policies -- In addition to the EC's "telematics" proposal, many individual countries have ambitious

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plans and programs to promote their national computer/telecommunications industries. For example, government procurement policies are one method for supporting and promoting national firms. The Japanese have so far refused to allow foreign companies to sell telecommunications equipment to Nippon Telegraph and Telephone (NTT) which buys most of Japan's telecommunications equipment. Japan has resisted bringing the NTT under the discipline of the Government Procurement Code that was negotiated at the Multilateral Trade Negotiations in Geneva. The Japanese argue that NTT's purchases should not be considered as government procurement.

Agreement was reached, however, between Ambassador Strauss and Minister Ushiba that the NTT problem would be resolved by the end of 1980, that is, before the Procurement Agreement goes into effect on January 1, 1981. This issue was originally raised in the Joint U.S.-Japan Trade Facilitation Committee which Commerce runs. U.S. negotiators, led by the Office of the U.S. Trade Representative and with primary backing from the Commerce Department, have made it a top priority to obtain coverage on NTT's high technology purchases. The thrust of our policy here has been to open a major market to U.S. exporters and to assure that Japanese firms in the computer/telecommunications (and related semiconductor) industries do not enjoy a protected home base.

Linked to the entity coverage negotiations, we are also participating in discussions to facilitate access to the Japanese interconnect market, which is the civilian market for accessory

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telecommunications equipment, such as mobile telephones for use in vehicles. Although the interconnect market is not governmental, NTT does administer the testing, certification and inspection system used for interconnect equipment. This complicated system has acted as a trade barrier to U.S. imports, and consequently we are discussing the possibility of harmonizing the Japanese testing and certification system with the U.S. system. In order to avoid duplication of effort, we are holding the standards-related telecommunications discussions in the context of NTT procurement negotiations.

The British Government has for many years given preference to International Computers Ltd. (ICL), a U.K. firm, in orders for large computers for government use. This preference is generally acknowledged and has assured ICL predominance in its home market. The Conservative Government has indicated its intention to eliminate this preferential computer procurement policy. However, it has recently been reported that twelve British-owned companies, including ICL, have joined together in an effort to convince the European Community to set up a public sector computer procurement policy for member states to favor European companies at the expense of U.S. and Japanese manufacturers. This represents a lurking desire to keep U.S. firms out, or reduce our penetration, of these markets.

We clearly recognize that impediments to trade and investment in computer/telecommunications products and services could have a significant impact on our international competitive position.

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Today, revenues earned by U.S. computer companies from activities related to data processing products and services are highly dependent on overseas earnings.

According to the May 1979 issue of Datamation, the combined revenues (derived from data processing-related goods and services only) for the top 50 U.S. companies in the data processing industry amounted to \$36.1 billion in 1978. Foreign revenues accounted for 42 percent, or \$15.2 billion, of the total data processing revenues of the top 50 companies. Only two of the top 50 companies derived 100 percent of their data processing revenues domestically.

These 50 U.S. companies account for about 95 percent of total U.S. data processing industry revenues. The top seven companies together -- IBM, Burroughs, NCR, Control Data, Sperry Rand, Digital Equipment, and Honeywell -- account for 76 percent of the top 50 companies' total data processing revenues. Foreign revenues for the top seven companies comprised 48 percent of their total revenues which reached \$27.5 billion in 1978.

It is obvious from these figures that major U.S. data processing companies are highly dependent on foreign markets for their revenues. An international system of free trade and data flows and a liberal investment climate abroad are required for the continued growth of the American computer industry.

Government organization to meet trade and investment challenges -- Having described a number of problem areas, I would like to comment on the machinery we have in place to deal with them. I have already mentioned the State Department's Interagency Task Force on Transborder

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Data Flows and Commerce's Joint U.S.-Japan Trade Facilitation Committee.

The Trade Reorganization has provided within the Office of the U.S. Trade Representative the responsibility for coordination of U.S. trade and investment policies. Through its interagency committee structure, in which we actively participate, U.S. positions are established and actions are authorized to combat foreign restrictions on U.S. trade and investment.

The recently reconstituted industry consultation program provides facilities to ensure business participation in the identification and resolution of trade and investment barriers. We have established a new advisory committee on services which will include representatives from the communications and data processing industries. On the hardware side, there is also a committee covering electronics and instrumentation, which includes computers, communications equipment and non-consumer electronic equipment. The new Trade Advisory Center in Commerce will direct the industry consultation program and operate a facility where the private sector can obtain advice on substantive rights under trade agreements to which the U.S. is a party and receive guidance on procedures to set forth and follow-up on trade complaints.

Examples of Assistance to U.S. Firms

Mr. Chairman, I would like to utilize several examples to illustrate how the U.S. Government has assisted U.S. computer/telecommunications firms with specific trade and investment problems and in promoting U.S. exports. I think it is important

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to keep in mind that the kind of problems encountered by the telecommunications industry are generally similar in nature to those of a broad range of American industries.

Securing investment rights -- Previous testimony detailed the investment application problems that a U.S. computer services company experienced in a major developed country. In 1977, this firm applied, first from the parent firm and then through another foreign subsidiary, to establish a company to provide various types of data processing services. Later that year, a congressman referred to Commerce a complaint from this company that the foreign government had postponed indefinitely approval of the investment application.

At Commerce suggestion our Embassy inquired and learned that the foreign government had decided to reject this company's application in the interest of developing a national capability in data processing. Commerce, after several discussions with senior company officials, requested our Ambassador to approach appropriate senior foreign government officials to seek a reversal of this decision. This was done and, although no formal reversal of this decision was forthcoming, this company was successful in negotiating a joint venture with a local firm. The U.S. company assured Commerce that this resolved its problem and expressed appreciation for the help provided.

Providing U.S. services -- U.S. timesharing companies, after almost two years of effort (including representations made to the Japanese Government by our Embassy in Tokyo), were granted approvals

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to initiate timesharing service in Japan in late 1977. In granting this approval, however, the Japanese Government imposed a wide range of restrictions and obligations on the firms. The most serious restriction was limiting each company to access via their trans-Pacific leased telecommunications circuits to only one data processing center in the United States, although the companies handle their services through processing centers in various locations.

In the fall of 1978, Commerce was asked to raise this case in the Joint U.S.-Japan Trade Facilitation Committee (TFC). We consulted with the industry, NTIA, USTR, State and the FCC staff to prepare a TFC case on behalf of the U.S. timesharing companies which was submitted to the Japanese in March 1979 by our Embassy in Tokyo. The case was also raised by the former Commerce Assistant Secretary for Industry and Trade when he was in Japan in May 1979. We continue to press the Japanese to remove the restrictions on leased-line timesharing services offered by U.S. companies.

Reciprocal trade -- In a related but separate development, the U.S. common carriers applied to the FCC for authorization to establish new trans-Pacific circuits between the United States and Japan. These circuits would serve the Japanese VENUS-ICAS, usage sensitive, packet-switched international public data communication net. One U.S. company and the concerned trade associations petitioned the FCC to deny the petition or condition it on the Japanese elimination of restrictions on timesharing services, citing the TFC case as evidence of Japanese trade restrictive practices. We offered to brief the

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Commission on this TFC case. On December 11, 1979 the Commission authorized, on a one year trial basis, the establishment of the new services to Japan. Subsequently, the concerned association petitioned the Commission to review its decision.

I have joined with Assistant Secretary Geller of NTIA in a letter to the Chairman of the FCC noting that trade policy issues of concern to the Department of Commerce have been raised in connection with the new service authorization and the opposing petition and renewed our offer to the Commission to brief it on the TFC case and the potential international trade impact of its action.

Developing country markets -- The international market for telecommunications equipment promises to be one of the most important export markets for U.S. companies. We have been pushing sales for U.S. equipment in developing countries with major long-term potential. U.S. firms, often competing against government-backed competitors, face their greatest challenge when it comes to winning large contracts in these countries.

One of today's most notable projects involves Egypt, where an estimated \$20 billion in telecommunications equipment will be needed over the next 10 to 20 years. Based on an AID-funded study, completed in 1978, proposals were offered by U.S. and foreign companies to implement the \$2.5 billion first phase of the project -- including U.S. two/consortia (headed by ITT and Western Electric). It was expected that the U.S. Government would provide financing for about 25 percent or \$600 million.

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After a visit, late in 1978, of the Egyptian Minister of Transport, Communications, and Maritime Transport to discuss the proposed project and request assistance of the U.S. Government, former Commerce Secretary Kreps wrote to the Director of AID and the Chairman of Eximbank asking for their support. Thereafter, Eximbank offered a \$100 million loan under its Export Expansion Facility with concurring advice from the Departments of Commerce, State and Treasury. However, AID funds were unavailable at the time due to the need to solicit competitive bids.

The project remained dormant until on September 18, 1979, the New York Times published the news that Egypt had awarded a \$1.8 billion communications project to a European consortium consisting of Siemens (West Germany and Austria) and Thomson CSF (France). A key factor was the apparent availability of European government financing reportedly at 5 1/2 percent interest with a 5-year grace period, and payments spread over 15 years. This was not only superior to what eximbank would ordinarily offer, but exceeded the spirit of international guidelines on financing national exports. However, the last chapter on this story has not been written. U.S. Government agencies are presently working to develop a strategy to ensure U.S. business and technological participation in this project.

In another case, the Korean telecommunications authorities put up for bid an initial order for \$641 million of electronic switching equipment. German, French and Japanese companies competed strongly for this advanced technology order with standards-setting implications for Korean procurement over the next half-decade or longer. Commerce

-14-

vigorously promoted this project with Eximbank, the State Department, and other interested agencies in order to smooth over obstacles to an American bid award. In March 1980, Western Electric announced it had won the competition, and indications were received that the amount of U.S. procurement might eventually reach nearly \$2 billion by the late 1980s.

Trade promotion -- In addition to dealing with trade and investment policies and issues, the Commerce Department has a well-developed program to promote U.S. exports of computer and telecommunications equipment and services.

Commerce's export promotion offices regularly publish a variety of informational aids that are of considerable value to both the neophyte exporter and the most experienced businessman. For example, Global Market Surveys provide in-depth reports covering 20 to 30 of the best foreign markets for the computer, communications, and other related industries.

Commerce also assists U.S. firms by organizing, procuring and mounting U.S. exhibits in International Trade Fairs, U.S. Solo Fairs, and other events. Between 1975 and 1979, Commerce organized 73 events for the U.S. computer, telecommunications and related products industries.

Commerce not only promotes U.S. computer and telecommunications exports, but it also employs the latest technologies to assist U.S. exporters. The Department recently developed the World Information and Trade System (WITS), which is a computerized international marketing information system for business and government. WITS will use the international communications satellite network to link all Commerce District Offices and Foreign Service posts in major world markets to a centralized computer system. Through WITS the U.S. business community will be offered increased access to international marketing data, specific export sales leads, schedules of promotional events, and other types of valuable information. The WITS system is expected to begin operating before the end of this month in nine countries and five District Offices.

Conclusion

As I said earlier, Mr. Chairman, the term "transborder data flows" covers many issues and subjects. I have given you my views on the potential impact of data protection laws on international data flows and trade and investment problems. I have described the various ways the Commerce Department and other agencies work with the computer, telecommunications, and other related industries to solve these problems. I have briefly described the Commerce Department's efforts to promote U.S. exports of computer and telecommunications products and services.

We recognize the importance of the computer, telecommunications and other related industries to our economic prosperity. We will continue to work closely with the U.S. computer and telecommunications industry, and with other U.S. Government agencies. We will continue to play an active role in multilateral and bilateral discussions on transborder data flow issues.

Once again, I applaud this Subcommittee for bringing together the important views of industry and government on the subject of transborder data flows.

APPENDIX 2.—LETTERS SUBMITTED FOR THE RECORD BY GOVERNMENT AGENCIES



Office of the Chairman

Federal Maritime Commission
Washington, D.C. 20573

April 16, 1980

APR 16 1980

Honorable Richardson Preyer
Chairman, Government Information and
Individual Rights Subcommittee
House of Representatives
Washington, D.C. 20515

Dear Judge Preyer:

Thank you for your letter of April 8, 1980, concerning hearings before the Government Information and Individual Rights Subcommittee on international transfers of information.

You requested my assessment of related problems faced by the Federal Maritime Commission or American business as a result of foreign actions relating to data exchange.

The sole area the Commission has confronted a problem lies in the production of documents from European countries for use in Commission proceedings.

Attempts by the Commission to procure documents and records of foreign carriers located abroad throughout the 1960's led to the passage of so-called "blocking statutes" designed to avoid the reach of Commission subpoenas. Such laws have been enacted in Norway, Sweden, Denmark, The Netherlands, Great Britain, France and West Germany. The effect of these laws has been to make enforcement of the Shipping Act, 1916 more difficult with regard to foreign carriers in the U.S. trades since these governments may prohibit or refuse to allow production of documents in the United States.

The effect of these laws has been significantly vitiated by Public Law 96-25, the Shipping Act Amendments of 1979. The Congress empowered this Commission to suspend the rates of carriers, thus effectively eliminating them from the trade for refusal to cooperate with Commission enforcement efforts. Since this law took effect, no occasion has arisen which compelled such action.

If I can furnish any additional information on this subject, please advise.

Sincerely,

Richard J. Daschbach
Chairman

CHAIRMAN



APR 24 1980

UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, D.C. 20436

APR 22 1980

Honorable Richardson Preyer
 Chairman, Government information
 and Individual Rights Subcommittee
 of the Committee on Government Operations
 House of Representatives
 Washington, D.C. 20515

Dear Mr. Preyer:

Thank you for your letter of April 8, 1980, concerning international data flow. You ask that we advise you concerning our mandate in this area and request our views concerning current and future problems relating to such data.

The Commission has only limited opportunity or need to gather data from international sources. Most Commission investigations focus on the impact of imports on domestic industry. We obtain the major share of the data relevant to such investigations, including import statistics, from domestic sources such as other Government agencies, domestic producers, and U.S.-based importers.

The Commission from time to time gathers information concerning the size and nature of certain foreign industries. Most such information is obtained from public sources or with the assistance of the U.S. Department of State. Commission staff persons also occasionally travel abroad to gather information and participate in discovery in the course of unfair competition investigations conducted under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337).

The Commission is authorized, by section 333 of the Tariff Act, to issue subpoenas and orders to furnish information, to seek judicial enforcement of the same, and to represent itself in court. Such authority to compel the submission of data and information extends, of course, only to persons over whom U.S. courts have jurisdiction.

Honorable Richardson Preyer -- Page 2

The Commission's jurisdiction is such as to cause it to have only limited contact with foreign barriers which may inhibit the effective conduct of American business abroad or adversely affect the interests of U.S. citizens and the U.S. Government. Our contact with such barriers is so limited as to cause us to be hesitant to comment further on this matter.

If we can be of further assistance, please do not hesitate to contact us.

Sincerely yours,



Catherine Bedell
Chairman



National Aeronautics and
Space Administration

Washington, D.C.
20546

Office of the Administrator

April 25, 1980

Honorable Richardson Preyer
Chairman, Government Information and
Individual Rights Subcommittee
Committee on Government Operations
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This responds to your letter of April 8, 1980, requesting NASA's comments in connection with your Subcommittee's consideration of international data flow. NASA has some experience in this area which may be of interest to the Subcommittee; however, that experience is limited principally to dealing with scientific and technical data and does not relate directly to the flow of personal data or the privacy of individuals.

NASA has not encountered any serious problems in protecting personal information in our possession. Our implementation of the Privacy Act has not been unduly burdensome, and in general when there is an issue of release of personal data under the Freedom of Information Act (FOIA) we have been able without difficulty to protect against invasions of personal privacy. With respect to restrictions that others may impose in preventing the release or communication of personal data, this has not posed problems for NASA.

In our international cooperative programs, our policy is to structure the arrangements in such a way that proprietary technical and business information is protected. In the Spacelab program, for example, which involves significant investment by the European Space Agency (ESA) working with European aerospace contractors, special procedures were designed to provide the access NASA needed to ESA-financed technical data but only under safeguards which protect European contractors' proprietary information. The same practice was followed in a cooperative venture with Canada in which Canada and its contractors are developing at their cost a Remote Manipulating System for use in NASA Space Shuttle.

As a major R&D procuring agency NASA has a continuing need to review and evaluate proposals which contain proprietary technical and business information. Under our procurement regulations,

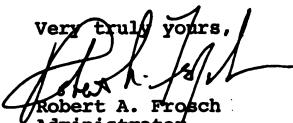
we undertake to the maximum extent possible to protect such information from release. During 1979, out of 205 initial determinations not to comply fully with a request under the FOIA because the information fell within one or more exemptions, 162 denials were based on the exemption concerning trade secrets and confidential business information. NASA's position in these actions is consistent with recent Federal court decisions sustaining agency denials of requests for such proposal information.

NASA also has specific instructions regarding the dissemination of NASA-developed technology having significant early commercial potential, and I am enclosing a copy of those instructions. The approach we adopted is now under review in light of the interagency efforts to implement the Export Administration Act of 1979.

Finally, having pioneered much of the technology now being used in the computer and communications industries, NASA has a keen appreciation for the importance of this technology in increasing efficiency and productivity. We therefore would share your concerns if the issue of international data flow were to be used artificially to restrict the use of data processing and communications networks in international business.

Although NASA's experience is not directly related to the control of computer bases and communications by foreign nations in the interest of personal privacy, I hope these comments will be of some assistance to the Subcommittee.

Very truly yours,


Robert A. Frosch
Administrator

Enclosure



THE SECRETARY OF THE TREASURY
WASHINGTON

April 24, 1980

Dear Mr. Chairman:

Thanks for the opportunity to express the Treasury Department's views on problems in the area of transborder data flow.

You have identified what promises to be a key issue of the eighties, one that involves issues of trade, cultural sovereignty, individual rights, and national security. The hearings you have held are a most welcome step in focusing attention on this issue.

As you note in your letter, transborder data flow is a relatively new issue. Thus far there has been no evidence that problems in this area have adversely affected the operations of the Treasury Department. Restrictions on transborder data flows have the potential, however, to create problems for many U.S. businesses, ranging from minor inconveniences to serious impairment of the profitability of international operations. The information gathered in the course of your hearings should provide a more accurate assessment of the impact of these restrictions and should establish U.S. priorities in this area.

There is considerable potential for governments to take trade restrictive actions affecting transborder data flow. Countries seeking to establish domestic telecommunication industries may place restrictions on foreign competitors under the guise of legitimate concerns about individual privacy, cultural sovereignty, or national security.

The Department of the Treasury has always sought to ensure that U.S. industries face fair competition from imports and that U.S. exporters have fair access to foreign markets.

- 2 -

International rules for trade in services are not as well defined as for trade in goods. The Trade Acts of 1974 and 1979 and the Executive Order reorganizing the trade functions of the government gave the United States Trade Representative a mandate to seek solutions to international problems of our service industries. The Treasury Department supports these goals. As a member of the interagency Trade Policy Staff Committee chaired by the USTR, Treasury will work to ensure that U.S. service industries, such as the telecommunications industry, do not suffer as a result of commercially motivated restrictions taken in the name of other national objectives.

Trade is only one aspect of the transborder data flow issue. Nevertheless it is an important part of the overall problem and one that should not be overlooked.

Sincerely,



Robert Carswell
Acting Secretary

The Honorable
Richardson Preyer
House of Representatives
Washington, D.C. 20515



THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

APR 30 1980

RECEIVED
MAY 2 1980

The Honorable Richardson Preyer, Chairman
Government Information and Individual
Rights Subcommittee
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of April 8 concerning the Subcommittee's hearings on international data flow. The Department of Transportation, being essentially a domestically-oriented agency, has limited involvement in such data flow. The involvement which the Department does have is related to its international cooperative activities which entail the exchange of data and information.

The relevant international activities of the Department consist of bilateral research cooperation and reimbursable technical assistance arrangements with foreign governmental counterparts and cooperation with such counterparts in working out and presenting common national positions in such technical international forums as the International Civil Aviation Organization (ICAO) and the Intergovernmental Maritime Consultative Organization (IMCO). Further, we participate in multilateral cooperative exchanges in such organizations as the Organization for Economic Cooperation and Development (OECD). The information we obtain is distributed through established systems for use by both public and private U.S. entities.

The technical nature of the foregoing exchanges excludes the privacy of individuals issue. Moreover, the information and data exchanged are generally non-proprietary, being the holdings of the governmental entities involved. Where there are proprietary implications, it is the Department's practice and that of our foreign partners to seek the consent of the owner and, if obtained, identify any restrictions on use which are then incorporated in the exchange arrangement. Our experience is that these restrictions are fully observed by our foreign partners.

Although the Department's international programs do not directly impact the overseas operations of American companies, it does seek to cooperate with them in showcasing their technology for possible sales. Opportunities for promoting the interests of American companies arise in research cooperation and technical assistance activities and in pushing, in concert with foreign partners, for acceptance of U.S.-developed technology as international standards. A recent example of the latter occurred last year when the Department

was successful in gaining, with foreign partner support, ICAO approval of a U.S.-developed Microwave Landing System (MLS) over several other foreign competitive systems. Although the Department does not maintain regular information and communications services for the private sector, it does, on an ad hoc basis, distribute information acquired from its cooperative activities and provide communications support in fulfillment of its implied mission to promote the sales abroad of U.S. transportation technology. In providing this facilitative support for American companies, the Department has not encountered any restrictive obstacles on the part of foreign counterparts. This is probably a reflection of the fact that foreign partners are engaged in a similar promotion effort in the U.S. transportation marketplace.

The Department is pleased to provide the foregoing in support of the important work of the Subcommittee.

Sincerely,

A handwritten signature in black ink, appearing to read "Neil Goldschmidt".

Neil Goldschmidt



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D.C. 20551

PAUL A. VOLCKER
CHAIRMAN

May 1, 1980

The Honorable Richardson Preyer
Chairman
Subcommittee on Government
Information and Individual Rights
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

Dear Chairman Preyer:

Thank you for your letter of April 8 requesting the assistance of the Federal Reserve in examining current and future problems in transborder data flows. In carrying out its responsibilities, the Federal Reserve relies on data generally supplied by domestic sources; however, important information is needed from foreign offices of U.S. banks. To date we have not experienced any difficulty in receiving the foreign data necessary to carry out Federal Reserve functions.

It is our understanding that the restrictions on transborder data flow cited in your letter could have an impact on international commerce and have an adverse impact on the ability of United States companies to compete overseas. The Department of Commerce, through the National Telecommunications and Information Administration, is currently studying the impact such restrictions would have on international commerce. The Federal Reserve will continue to monitor transborder data flow problems and we will apprise you of any difficulties we experience that constrain our ability to fulfill our role.

Sincerely,

A handwritten signature in black ink that appears to read "Paul Volcker".



**International
Communication
Agency**

*United States of America
Washington, D.C. 20547*

Office of the Director

May 7, 1980

Dear Mr. Chairman:

I am delighted to respond for the record to the thoughtful questions presented in your letter to me of April 28. They are important questions, and your interest in them can be most helpful to the policy-making process.

First, I think it may be useful to establish that the International Communication Agency has a strong operational interest in the issues of international data regulation, flowing from our role as a major user of communications channels on the world scene. We also have a more general policy interest in promoting the free flow of information, which is shared by the officials concerned within the Department of State. We have, therefore, been tracking this issue through participation in an interagency committee, but have not sought to take the lead in this area which is heavily freighted with technical and economic questions as well as with cultural and human rights issues.

Here are our comments to your specific questions:

(1) International data regulation encompasses a broad range of problems, technical/economic/legal as well as national/cultural sovereignty and impingement on individual rights. While most use

The Honorable
Richardson Preyer, Chairman
Subcommittee on Government Information
and Individual Rights
Committee on Government Operations
House of Representatives

- 2 -

of data communications involves business or government information needed to support operations, news information and even the literary arts will soon be passing through the same conduits and therefore may encounter the same regulatory restraints. To acquiesce in such tendencies would be to sanction a Balkanization of the world of information in a manner exactly opposite to the vision of an open world that we in USICA are committed to support. That is why we serve on the interagency committee and are prepared to give whatever support we can to the Department of State's lead-agency role.

(2) To date, we have encountered no operational problems with data regulation that we could not arrange to avoid. This has entailed some movement of files and some decentralization of our overseas computer resources, which might constitute prudent management in any case. The regulatory activities in this field by other countries and by the United States -- through passage of the Privacy Act of 1974 -- are constantly shifting in nature and scope, so that we need to continue to follow events very closely. USICA will be represented, for example, in the upcoming June 23 - 27 conference of the International Bureau of Informatics (computer communication) in Rome, which for the first time will raise the question of Third World engagement in data regulation.

(3) USICA does not involve itself in commercial trade concerns per se. I am convinced, however, that our own national interest lies in an effective and just distribution of communications and information resources in a way that will permit genuine two-way exchanges of ideas and data in a progressively more open world. That is the purpose behind the consensus recommendation for a new International Communications Development Program, approved last month by the member states of UNESCO on the initiative of the United States. This recommendation will encourage orderly assessments of needs and priorities by the developing world, and the identification of available remedial resources within and among the developed countries, international financial institutions, and the private sector. I personally hold out high hopes for the success of this endeavor, which we have made clear must include within its scope computer communications and telecommunications of all kinds.

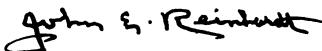
- 3 -

(4) The cultural dimensions of this problem are probably the most genuine and the least susceptible to facile resolution. We have heard it said on many occasions that "information is power," and we have also heard more carefully calibrated formulations. Thus, the French have suggested that the country that owns the most computer programs and the switched networks that go with them has the capacity to impose a dictionary and a grammar on the world. This may be extreme, but it shows that there are deeply rooted cultural values at stake in the debate. This is another reason why we are engaged in support of the Department's initiatives. I have given a speech on what to do with competing values when they arise, a copy of which I enclose for your information. In brief, it is to be sensitive to the existence and nature of genuine cultural values while at the same time pressing for acceptance of information flow as a "preferred freedom" whose primacy is presumptively entitled to recognition.

(5) I believe that leadership in this field must lie with the Department of State as the chief architect of our foreign policy. The lines of interagency authority we now have are adequate to assure proper coordination, but a full answer to this question would have to examine the sufficiency of manpower and other resources within the Department. I will say that on practical grounds it is very useful for us when inter-related problems can be dealt with through a single focal point at the Department, for then our advice and recommendations can go systematically to the same source across the entire spectrum of international communications and information issues.

I hope these answers will be helpful to you, and I wish you a productive outcome to your important hearings. Please do let me know if I can be of further assistance.

Sincerely,



John E. Reinhardt
Director

TOWARDS AN ACCEPTABLE CONCEPT

OF THE

NEW WORLD INFORMATION ORDER

An Address Prepared for Delivery by

AMBASSADOR JOHN E. REINHARDT

Director, International Communication Agency,

United States of America

At The

U.S.-JAPAN SYMPOSIUM

The Colonnade Hotel

Boston, Massachusetts

October 11, 1979

Embargoed for Release Until 6:00 P.M. E.D.T.

October 11, 1979

PROFESSOR HORTON AND DISTINGUISHED GUESTS:

IT IS INDEED A PLEASURE FOR ME TO TAKE PART IN THIS THOUGHTFULLY STRUCTURED U. S. - JAPAN SYMPOSIUM ON COMPARATIVE AND COMMUNAL INTERNATIONAL COMMUNICATIONS POLICIES.

AS YOU KNOW, WE DEBATED AND NEGOTIATED SUCH ISSUES AT SOME LENGTH AT LAST NOVEMBER'S UNESCO GENERAL CONFERENCE. ON THAT OCCASION, AS ON OTHERS, THE U. S. AND JAPANESE DELEGATIONS MAINTAINED CLOSE AND VERY CORDIAL CONSULTATIONS. AT ONE POINT OUR JAPANESE FRIENDS ACTUALLY SHARED WITH US THE INSTRUCTIONS THEY HAD BEEN GIVEN BY THE FOREIGN OFFICE IN TOKYO. THESE WERE, FIRST, TO MAKE COMMON CAUSE WITH THE UNITED STATES AND, SECOND, TO DO NOTHING THAT WOULD OFFEND THE FREE AND INDEPENDENT PRESS. I EXPRESSED SYMPATHY FOR THEIR PREDICAMENT, SINCE CRITICISM BY THE MEDIA IS AN INEVITABLE AND NO DOUBT A SALUTARY ACCOMPANIMENT TO ANY EFFORTS AT CREATIVE CONSENSUS BUILDING IN THIS SENSITIVE FIELD. I HOPE YOU WILL BEAR WITH ME THIS EVENING AS I RISK FURTHER SUCH CRITICISM BY MY CHOICE OF A TOPIC FOR DISCUSSION.

- 2 -

LAST DECEMBER THE UNITED STATES AND JAPAN JOINED IN THE CONSENSUS ADOPTION AT THE UN GENERAL ASSEMBLY OF A RESOLUTION SETTING OUT FOR THE FIRST TIME THE GOAL OF A NEW WORLD INFORMATION ORDER. THE ACTUAL LANGUAGE WAS MUCH MORE CAREFULLY CHOSEN, AND I CITE IT BECAUSE THE JAPANESE GOVERNMENT WAS FORTHRIGHTLY INSISTENT UPON ITS FAITHFUL REPRODUCTION IN SUBSEQUENT RESOLUTIONS ADOPTED AT THE KUALA LUMPUR CONFERENCE OF UNESCO ON COMMUNICATIONS POLICIES IN THE ASIAN AND PACIFIC REGIONS. WHAT WE SUBSCRIBED TO WAS THE GOAL OF A "NEW, MORE JUST AND MORE EFFECTIVE WORLD INFORMATION AND COMMUNICATION ORDER" -- IMPLYING AN EVOLUTIONARY PROCESS RATHER THAN A RADICAL BREAK, AND IMPLYING ALSO THAT EXISTING TENDENCIES TOWARDS JUSTICE AS WELL AS EFFECTIVENESS NEED TO BE STRENGTHENED IN ORDER TO MAKE THE SYSTEM WORK TO EVERYONE'S ADVANTAGE.

BUT ALTHOUGH IT WAS NOT RADICAL, THE ADOPTION OF THE UN RESOLUTION DID MARK A SIGNIFICANT NEW DEPARTURE IN THE APPROACH OF THE INDUSTRIALIZED DEMOCRACIES. HITHER-TO WE HAD TENDED TO DOWNPLAY CONCEPTUAL RHETORIC AND TO FOCUS INSTEAD ON THE ADOPTION OF CONCRETE AND PRACTICAL MEASURES THAT COULD MOVE IN THE DIRECTION OF EQUALIZING INFORMATION RELATIONSHIPS AMONG SOCIETIES. THOSE MEASURES

- 3 -

ARE STILL VERY IMPORTANT, AND OUR TWO COUNTRIES ARE IN THE VANGUARD OF EFFORTS TO PROMOTE THEM. BUT AFTER THE UN RESOLUTION, I WOULD SUBMIT THAT THEY ARE NO LONGER SUFFICIENT. THE WORLD INFORMATION AND COMMUNICATION ORDER HAS YET TO BE DEFINED WITH ANY PARTICULARITY IN A WAY THAT CAN COMMAND WIDESPREAD CONSENT. IT IS INCUMBENT ON US IN THE DEVELOPED WORLD TO INTRODUCE OUR OWN THEORETICAL FORMULATION, FAITHFUL TO LIBERTARIAN TRADITIONS BUT ALSO RESPONSIVE TO THE NEEDS AND INTERESTS OF THE DEVELOPING WORLD. THAT IS THE TASK I HAVE SET FOR MYSELF TO BEGIN THIS EVENING.

LET ME STATE AT THE OUTSET THAT THIS IS NOT A TASK WE APPROACH WITH THANKSGIVING. WE WOULD PREFER, IF POSSIBLE, TO AVOID IMPRISONING IN ANY HARD DEFINITION SO DELICATE AND SENSITIVE A MATTER AS WORLD INFORMATION RELATIONSHIPS. WE ARE TALKING ABOUT THE KIND OF INFORMATION THAT JAPANESE AND AMERICAN CITIZENS ARE GOING TO BE RECEIVING ABOUT QUESTIONS OF INTERNATIONAL RELATIONS ON WHICH THEIR ELECTED REPRESENTATIVES MUST MAKE DECISIONS. WE ARE TALKING ABOUT CULTURAL RELATIONS IN THE BROADEST SENSE: THE KIND OF IMAGE WE ARE FREE TO PUBLISH ABOUT OURSELVES, AND THE QUALITY

- 4 -

OF IMPRESSIONS WE RECEIVE FROM OTHER SOCIETIES. WE ARE TALKING ULTIMATELY ABOUT WHETHER A STABLE WORLD ORDER CAN BE FOUNDED ON SUSPICION OR WHETHER IT REQUIRES THE CLEAREST POSSIBLE INTERNATIONAL UNDERSTANDING.

THESE ARE MATTERS OF THE DEEPEST IMPORTANCE TO US ALL, AND MAINTAINING FREEDOM OF CHOICE TO TRANSMIT AND RECEIVE INFORMATION OF ALL KINDS IS THEREFORE A TRULY PRECIOUS IMPERATIVE.

BUT THESE CONSIDERATIONS ARGUE FOR ENGAGEMENT RATHER THAN DISENGAGEMENT IN THE CONCEPTUAL PROCESS THAT WILL LEAD TO DEFINITION OF THE NEW WORLD ORDER. THE ISSUES PRESENTED BY THAT DEFINITIONAL REQUIREMENT ARE GOING TO BE WITH US FOR A LONG TIME. THEY WILL NOT GO AWAY SIMPLY BECAUSE WE MIGHT PREFER TO IGNORE THEM. THE NEW WORLD ORDER SPRINGS FROM A DEEP DESIRE TO REDRESS NEO-COLONIAL STATUS IN THE WORLD, TO REMEDY HISTORIC DISPARITIES AND DEPENDENCIES AS THEY ARE CALLED, WHICH IS IN ANY EVENT IRRESISTIBLE. OUR OWN HISTORY AND SENSE OF MISSION IN THE UNITED STATES ARE FAVORABLY INCLINED TO THIS EVOLUTION. WE MIGHT HAVE BEEN ABLE TO DIVERT OR DEFER THE EVOLUTIONARY

- 5 -

PRESSURE FOR A WHILE, BUT EVENTUALLY IT WOULD BREAK THROUGH. AND WE ARE IN A FAR BETTER CONDITION TO SHAPE THE FUTURE COURSE OF THE NEW WORLD ORDER AS CO-ARCHITECTS THAN IF WE WERE FOLLOWING A POLICY OF DETACHMENT. THAT, AS I SEE IT, IS THE CENTRAL POINT.

SO IT IS THAT I RETURN TO THE TASK OF THEORETICAL FORMULATION OF AN UNSPECIFIED CONCEPT. ACTUALLY, WE DO HAVE SOME GUIDANCE FROM THE RELEVANT UN AND UNESCO RESOLUTIONS. EVEN THOUGH THERE IS AS YET NO SETTLED DEFINITION OF THE NEW ORDER, THREE IMPORTANT CONSIDERATIONS HAVE BEEN AGREED.

FIRST, THE NEW ORDER MUST BE "BASED ON THE FREE CIRCULATION AND WIDER AND BETTER-BALANCED DISSEMINATION OF INFORMATION." (UNGA RESOLUTION)

SECOND, IT SHOULD AIM TO "CHANGE THE SITUATION OF DEPENDENCE OF THE DEVELOPING WORLD IN THE FIELD OF INFORMATION AND COMMUNICATION, AND TO REPLACE IT WITH RELATIONSHIPS OF INTERDEPENDENCE AND COOPERATION." (UNESCO RESOLUTION)

- 6 -

THIRD, IT SHOULD STRIVE TO REALIZE "THE BENEFITS THAT MIGHT ACCRUE TO THE PEOPLES OF THE DEVELOPED COUNTRIES, AND OF THE WORLD, FROM AN EXPANDED OPPORTUNITY TO HEAR THE AUTHENTIC VOICE OF DIFFERENT SOCIETIES AND CULTURES IN A DIALOGUE MADE PROGRESSIVELY MORE EQUAL." (UNESCO RESOLUTION)

THE COMMON THEME IN ALL THIS, I SUGGEST, IS THAT THE REMEDY FOR INJUSTICE OR INEFFECTIVENESS IN WORLD COMMUNICATION RELATIONSHIPS MUST BE MORE INFORMATION AND NOT LESS. THIS IS IMPORTANT, BECAUSE WE ALL KNOW THAT INFORMATION IS OCCASIONALLY AN IRRITANT IN WORLD AFFAIRS. PERHAPS WHAT WE ARE WORKING TOWARDS IS A MUTUALITY OF IRRITATION. BE THAT AS IT MAY, WE SHOULD RECOGNIZE THAT WHEN FRICTION OCCURS THERE ARE AVENUES FOR ACCOMMODATION OF THE COMPETING VALUES THAT DO NOT REQUIRE THE SUPPRESSION OF INFORMATION FREEDOM.

THE COLLISION BETWEEN FREE CIRCULATION OF INFORMATION AND OTHER SOCIAL AND CULTURAL VALUES CAN TAKE A NUMBER OF FORMS. WE SHOULD BEGIN TO ACKNOWLEDGE THESE COMPETING VALUES AND DEAL WITH THEM AS SUCH. THERE IS FOR EXAMPLE

- 7 -

THE PROTECTION OF PERSONAL PRIVACY, WHICH WE ARE LEARNING CAN BE ACCOMMODATED WITH NO SUBSTANTIAL DISTORTION TO THE FLOW OF INFORMATION. I WOULD REFER YOU TO A THOUGHTFULLY BALANCED TREATMENT OF THIS QUESTION LAST AUGUST BY THE FOREIGN MINISTER OF SWEDEN -- A COUNTRY THAT HAS BEEN MUCH TROUBLED BY THE PRIVACY QUESTION. THEN THERE ARE THE NEW COMMUNICATIONS TECHNOLOGIES AND SERVICES, WHICH CAN ON OCCASION GIVE RISE TO CONCERNs ABOUT THE VIABILITY OF ESTABLISHED OR EMERGING INDUSTRIES, AND ABOUT IMPACTS ON EMPLOYMENT AND INVESTMENT. THESE ARE IMPORTANT BUT MAINLY TRANSITIONAL CONCERNs, WHICH CAN BE TREATED WITHIN THE GENERAL FRAMEWORK OF TRADE AND INVESTMENT RELATIONSHIPS. SOMETIMES ONE HEARS COMPLAINT OF INFRINGEMENT ON NATIONAL SECURITY, AS WHEN ONE NATION FINDS ITSELF PRECARIOUSLY DEPENDENT FOR SENSITIVE INFORMATION ON COMPUTERIZED DEPOSITORYS OF ANOTHER. HERE THERE IS THE SIMPLE REMEDY OF MAINTAINING DUPLICATE RECORDS WITHIN THE COUNTRY OF ORIGIN -- TO WHICH SHOULD BE JOINED A RECOGNITION THAT INFORMATION INDUSTRIES (AND THEIR HOME GOVERNMENTS) CANNOT STAY IN THE INTERNATIONAL BUSINESS UNLESS THEY DISPLAY A RECORD OF FAITHFUL AND UNBROKEN SERVICE.

THE EFFECT OF INFORMATION ON CULTURAL DIVERSITY IS PROBABLY A DEEPER AND MORE PERVERSIVE CONCERN. NO ONE WANTS TO PROMOTE A PROCESS OF CULTURAL HOMOGENIZATION.

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YET THERE IS ANXIETY THAT THE CONTROL OF INFORMATION RESOURCES BY DEVELOPED COUNTRIES MAY IMPOSE A GRAMMAR AND A DICTIONARY -- A WAY OF SEEING AND DESCRIBING THE WORLD -- ON OTHER SOCIETIES. I MUST SAY I THINK THIS ALLEGATION DOES DISCREDIT TO THE RICHNESS AND RESILIENCE OF LOCAL CULTURES EVERYWHERE. CERTAINLY THERE MUST BE RESPECT AND UNDERSTANDING FOR CULTURAL DIVERSITY. BUT AGAIN THIS CAN BEST BE DONE BY BUILDING UP THE INFORMATION AND COMMUNICATION CAPACITIES OF ALL SOCIETIES, SO THEY CAN TELL US ABOUT THEMSELVES IN THEIR OWN WAY. WE CANNOT LEARN TO RESPECT A CULTURAL EXPRESSION THAT WE CANNOT HEAR, AND WE NEED FOR OUR OWN ENRICHMENT TO BECOME ABLE TO HEAR IT.

WHAT THIS BRIEF SURVEY LEADS TO IS THE QUESTION OF WHAT RULE OF BEHAVIOR SHOULD PREVAIL WHEN INFORMATION FREEDOM BUMPS UP AGAINST ANOTHER IMPORTANT SOCIAL VALUE. CLEARLY THE IMPERATIVE OF FREE CIRCULATION CANNOT SIMPLY ENGULF THE COMPETING VALUE; THERE MUST BE SOME CONSIDERATION OF ITS MERITS AND OF WAYS IN WHICH IT MAY BE ACCOMMODATED. CLEARLY ALSO THE FREE FLOW OF

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INFORMATION CANNOT BE REQUIRED TO NEGOTIATE ITS WAY AROUND ANY AND EVERY OBSTACLE THAT MAY BE THROWN IN ITS WAY; "FREEDOM" WOULD BE QUICKLY ERODED. I SUGGEST THE ANSWER, WHICH SHOULD BE INCORPORATED IN THE NEW INFORMATION AND COMMUNICATION ORDER, IS TO TREAT INFORMATION FLOW AS A "PREFERRED FREEDOM," THAT IS, A VALUE WITH PRESUMPTIVE VALIDITY.

THIS IS THE WAY OUR U. S. SUPREME COURT HAS TREATED THE FIRST AMENDMENT VALUES OF FREE SPEECH AND FREE PRESS AND FREE ASSOCIATION. THEY ARE PREFERRED FREEDOMS, WHICH MEANS THEY MUST BEND TO ADMIT OTHER VALUES ONLY IF THERE IS NO OTHER WAY TO REALIZE THE COMPETING VALUE. IN MOST INSTANCES THAT IS NOT NECESSARY, AND IN AN INTERNATIONAL CONTEXT -- WITH ITS HORIZONTAL RATHER THAN VERTICAL LEGAL ORDER -- IT SHOULD ALMOST ALWAYS BE POSSIBLE TO FIND ROOM FOR COMPETING VALUES WITHIN THE FRAMEWORK OF INFORMATION FREEDOM. THIS IS WHAT A "PREFERRED FREEDOM" SHOULD MEAN -- THAT FREEDOM OF INFORMATION IS RESPECTED AND THAT COMPETING VALUES ARE GIVEN MAXIMUM SCOPE SHORT OF CURTAILING THAT FREEDOM.

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I SUGGEST THIS FORMULATION NOT BECAUSE IT COMES FROM OUR SUPREME COURT BUT BECAUSE IT IS FUNDAMENTAL TO WELL-ORDERED INTERNATIONAL RELATIONSHIPS. WHAT COULD BE MORE BASIC THAN THE FREE EXCHANGE OF INFORMATION AND IDEAS? WITHOUT IT, HOW CAN WE COME TO UNDERSTAND ECONOMIC AND SOCIAL AND CULTURAL TENSIONS? FREEDOM OF INFORMATION IS THE PRECONDITION FOR DEALING WITH ALL THE OTHER PROBLEMS THAT SHOULD COMMAND OUR ATTENTION. THAT IS WHY IT SHOULD BE A PREFERRED FREEDOM, AND WHY THE DEVELOPING COUNTRIES SHOULD WISH IT TO BE. FOR ONLY INFORMATION CAN ENERGIZE SOCIETIES BEHIND WIDELY SHARED PURPOSES AND ENRICH THE COMMON UNDERSTANDING BY CARRYING THE STORY OF DIFFERING CULTURES AND PEOPLES.

ONE OF THOSE WIDELY SHARED PURPOSES IS -- IN THE LANGUAGE OF THE UN RESOLUTION -- THE "WIDER AND BETTER BALANCED DISSEMINATION OF INFORMATION." THIS IS NOT IN CONFLICT WITH OUR "PREFERRED FREEDOM" BUT IN FULFILLMENT OF IT. A ONE-SIDED CONVERSATION IS NOT A CONVERSATION AT ALL. WE WANT TO EXCHANGE POINTS OF VIEW, NOT SIMPLY REPEAT WHAT IS ALREADY FAMILIAR. HERE I CAN SPEAK VERY CLOSE TO HOME. THE MANDATE I HAVE FROM PRESIDENT CARTER IS CLEAR ON THIS POINT: "IT IS IN OUR

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INTEREST," HE HAS SAID, "AND IN THE INTEREST OF OTHER NATIONS, THAT AMERICANS HAVE THE OPPORTUNITY TO UNDERSTAND THE HISTORIES, CULTURES AND PROBLEMS OF OTHERS, SO THAT WE CAN COME TO UNDERSTAND THEIR HOPES, PERCEPTIONS AND ASPIRATIONS." AND SO I CAN APPROACH THIS VERY SELFISHLY, AS A NEED AND AN INTEREST OF OUR OWN SOCIETY TO HAVE ACCESS TO THE VITAL EXPRESSION OF OTHER CULTURES. WE IN THE DEVELOPED COUNTRIES ARE CULTURALLY UNDERNOURISHED WHEN IT COMES TO UNDERSTANDING THE FULL WORLD COMMUNITY. WE SHOULD JOIN UNRESERVEDLY IN THE SEARCH FOR WAYS OF PROMOTING AN AMPLER AND RICHER DIALOGUE.

THE OBJECTIVE WILL HAVE TO BE DIVIDED INTO TWO PARTS: INFORMATION FREEDOM NOW FOR ALL THOSE EQUIPPED TO PARTICIPATE, AND FULL PARTICIPATION AS SOON AS POSSIBLE FOR THOSE CURRENTLY DISABLED. THE UNITED STATES HAS COMMITTED ITSELF TO PROMOTING UNIVERSAL PARTICIPATION, AND WE MEAN TO HONOR THAT PLEDGE. BUT IT MUST BE REMEMBERED THAT WE WILL NEED COOPERATION TO BRING ABOUT INTERNAL CONDITIONS OF PARTICIPATORY FREEDOM. LIMITS TO THE FLOW OF INFORMATION WITHIN ANY SOCIETY -- WHETHER BY REGULATORY EXCLUSIONS OR THE WITHHOLDING OF MEANS OF COMMUNICATION -- WILL INEVITABLY CURTAIL THE WIDER AND BETTER BALANCED DISSEMINATION WE ARE ALL PLEDGED TO SEEK.

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THIS IS AN IMPORTANT AND A BASIC POINT. WE CANNOT IGNORE THE INTERNAL DIMENSIONS OF THE NEW WORLD ORDER, EVEN THOUGH ATTENTION TO IT MAY BRING SOME DISCOMFORT. RECENTLY AN EAST EUROPEAN COMMUNICATIONS SCHOLAR PROPOSED THAT WE ABANDON THE NEW WORLD ORDER, AND SETTLE INSTEAD FOR A "SYSTEM OF INTERNATIONAL RELATIONS IN THE FIELD OF INFORMATION." I CAN UNDERSTAND THE MOTIVATION, BUT I SUBMIT TO YOU THAT IT WILL NOT SUFFICE. WE ARE DEALING NOT JUST WITH RELATIONS AMONG STATES, BUT ALSO AND FUNDAMENTALLY WITH THE FULFILLMENT OF HUMAN POTENTIAL. WE MUST ACCORDINGLY CONCERN OURSELVES WITH PEOPLES AND CULTURES AS WELL AS WITH NATIONS.

SUBJECT TO THAT OBSERVATION, WE IN THE UNITED STATES ARE PREPARED TO CONTRIBUTE IN PRACTICAL WAYS TO THE BUILDING UP OF IMPROVED INFORMATION PRODUCTION AND DISTRIBUTION CAPACITIES, AND ALSO TO DOING WHAT WE CAN TO INTEREST OUR INDEPENDENT MEDIA OUTLETS IN CARRYING CULTURAL AND SOCIAL AND POLITICAL MESSAGES FROM OTHER LANDS.

WE MUST ALL LEARN, DEVELOPED AND DEVELOPING COUNTRIES ALIKE, TO LIFT OUR PAROCHIAL BLINDERS AND TO SHOW A GENUINE INTEREST AND RESPECT FOR OTHER POINTS OF VIEW.

THANK YOU.



Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

May 7, 1980

Dear Mr. Chairman:

We welcome this opportunity to express our views on the important subject of transborder data flows. The issues surrounding this subject are complex and have the potential for affecting the operations of American banks and those of the Office of the Comptroller of the Currency.

Multinational banks may be affected by restrictions on the transfer of data across national borders in essentially two ways. First, as is the case with any multinational organization, a multinational bank must have appropriate, timely information on all of its diverse operations in order for its management decision-making processes to function effectively. Many multinational banks have developed highly sophisticated worldwide data processing and communication systems to meet this need. Foreign host country requirements for local processing and/or storage of data and restrictions on data transfers could delay or preclude the availability of such information for management use, thereby reducing the effectiveness of management decision making and possibly adversely affecting a bank's competitive position in the local market. Second, a bank provides information to its customers. Many customers of multinational banks are in fact themselves multinational organizations, and these customers rely upon their banks for timely, accurate information for use in the management of their worldwide financial resources. If a bank, due to data processing or transfer restrictions, is unable to provide this information service to its customers, then both the customers and the bank will be adversely affected. The

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customers will be forced to obtain this information from other possibly less efficient or reliable sources, while the bank will lose an important competitive tool. Overall, the potential results of the application of restrictions on data processing and transfer to the multinational banking industry are decreased operating efficiency, and consequently higher costs, and an erosion of the competitive positions of those banks most involved in the application of data processing and telecommunications technology.

In fulfilling its responsibility to oversee the national banking system, the OCC periodically examines each national bank. For multinational banks, the process includes examination of foreign operations. In order to effectively supervise offshore activities of national banks this Office needs complete and free access to information located in overseas branches. While we have experienced no difficulties to date which can be attributed to restrictions on data transfers, it is possible that such difficulties could arise. It is more likely that the agency's EDP examinations would be affected by host country requirements for local processing and/or storage of data. This is because such requirements could force banks to decentralize their data processing activities, thus increasing the number and diversity of data processing systems to be reviewed through the examination process. This would require the agency to devote additional staff and resources to this task, but it does not yet appear likely that the overall ability of the agency to review and evaluate multinational banks' data processing systems would be compromised.

The Office of the Comptroller of the Currency does not have any specific mandate regarding the subject of transborder data flows. However, we believe that a free flow of relevant information is critical for the proper functioning of the banking industry, and we recognize our duty to help ensure the continuation of this flow. To this end, the agency is monitoring developments related to the subject of transborder data flows in general, with specific attention to those developments having implications for the banking industry.

An indication of the nature and extent of American banks' problems in this area was given by bank responses to a question in a survey conducted by the OCC for the Department of the Treasury study on

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foreign government treatment of U. S. commercial banking organizations. The question asked for information on problems encountered as a result of restrictions on trans-border data flows or data protection laws. Nine of 119 respondent banks cited such problems, and the problems cited occurred in twelve of the eighty-six countries covered by the survey. Six of the banks cited more than one problem, and four of the twelve countries were mentioned for problems by more than one bank. Of the twenty problems cited, twelve related to secrecy laws, three to general restrictions on transfer of data, two to difficulties in obtaining EDP links and three to separate minor items. These numbers, while small, are not negligible. However, none of these banks has requested our assistance in resolving its problems or even made a point of bringing them to our attention. This indicates to us that the banks feel that they themselves are best suited to handle relatively isolated and infrequent problems of this type. Of course, should it become apparent that the problems are becoming more severe or widespread, the agency will be prepared to work with other Federal agencies to assist the banking industry in an appropriate manner.

In representing American interests on these issues, it is most important for the United States Government to have a meaningful policy, supported by American business, which can be implemented through the coordinated efforts of the various agencies involved. Such a policy should recognize legitimate privacy and national security concerns but should also recognize the importance of free trade and the smooth flow of information to the worldwide economy. Only through consistent and coordinated action can the U. S. Government work with American business to meet the challenges posed by the current and potential future problems associated with the subject of transborder data flows.

Sincerely,



John G. Heimann
Comptroller of the Currency

The Honorable
Richardson Preyer, Chairman
Subcommittee on Governmental Information
and Individual Rights of the Committee
on Governmental Operations
House of Representatives
Rayburn House Office Building, Room B-349-B-C
Washington, D. C. 20515

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

BUREAU OF COMPETITION

May 19, 1980

Honorable Richardson Preyer
Chairman
Government Information and
Individual Rights Subcommittee
Committee on Government Operations
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your April 8, 1980 letter to Michael Pertschuk, Chairman of the Federal Trade Commission, requesting our views of some of the problems developing in the area of international data flow. Commission staff has met with members of your staff to discuss some of these problems, and this elaborates on those conversations.

An international data transfer issue which has proven to be of great concern to the Commission is the increasing reluctance of foreign countries, including countries which have legal, economic and social traditions similar to ours, to permit the transfer to this country of data to be used for antitrust enforcement. An example is the recent enactment by the United Kingdom of the Protection of Trading Interests Act of 1980, which received royal assent on March 20, 1980. (A copy of the statute is enclosed.) The statute empowers the British Secretary of State to prohibit compliance with a requirement for the furnishing of commercial information on the production of commercial documents to overseas "court, tribunal or authority." The debates on the statute make clear that one of the primary objectives in enacting the legislation was to restrict data flow to U.S. antitrust enforcement agencies where such data may be used in enforcement actions involving U.K.-based corporations.

Similar prohibitions against the production of documents and other evidence to be used in certain antitrust litigation involving the uranium cartel are contained in recent decisions of the Supreme Court of Canada 1/ and the British House of Lords. 2/

1/ Gulf Oil Corp. v. Gulf Canada Ltd., 1980-1 CCH Trade Cas. Para. 63,285 (Supreme Court of Canada, March 18, 1980). A copy is enclosed.

2/ Rio Tinto Zinc Corp. v. Westinghouse, [1978] 1 All E. R. 434.

Honorable Richardson Preyer

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(Interestingly, the Canadian decision prohibits the production of documents in the possession of Gulf Oil Corporation's Canadian subsidiary to its American parent.) Both decisions refuse to enforce letters rogatory issued by an American court on the grounds that the interests of the foreign country in question was contrary to the claims asserted in the American litigation.

Given the scope of operation of many of the multinational corporations which may be subject to law enforcement investigations or litigation brought by the antitrust enforcement agencies of this country, the trend evidenced by the legislation and cases mentioned above is a troubling one.

We are, of course, willing to cooperate with the Subcommittee and its staff in any way which may be useful. We do not at the moment have a great deal of knowledge about other international data transfer issues, but our staff is examining a variety of matters which may in time prove to be relevant. We would appreciate being advised of the progress of your efforts, in particular as they uncover information relating to antitrust.

Sincerely,


Alfred F. Dougherty, Jr.
Director
Bureau of Competition

Enclosures



EXPORT-IMPORT BANK OF THE UNITED STATES

WASHINGTON, D.C. 20571

FIRST VICE PRESIDENT
AND
VICE CHAIRMAN

May 21, 1980

CABLE ADDRESS "EXIMBANK"
TELEX 88-461

Dear Mr. Chairman:

This is in response to your letter of April 8, 1980, requesting the position of the Export-Import Bank on the problems and issues of the Transnational Data Flow.

In seeking credit information on foreign entities, Eximbank utilizes several sources: International Dun and Bradstreet, U.S. Commerce Department (World Traders Data Reports), reports received through commercial banks and U.S. exporters applying to Eximbank for financing, and our U.S. Embassies abroad. Our international data flow is to meet Berne Union reporting requirements; all data to be held in confidence.

The gathering of transnational credit information is essential to the Eximbank mission. We use the information to evaluate the creditworthiness of borrowing entities and to make the judgments, as required by the Export-Import Bank Act, concerning "reasonable assurance of repayment" for all transactions we support. If international laws were to inhibit this flow of information or to put tight restrictions on type and amount of data to be transmitted, the consequences would be severely felt by the banking and exporting communities, as well as ourselves.

To date, we have experienced no special problems in gathering credit information from worldwide sources. However, we are aware that several countries are establishing practices that could lead to restrictions of data flow in the future. We understand that Norwegian banks will no longer give credit reports on Norwegian buyers for fear of libel suits. They must give the company a copy of whatever they give anyone else.

Financial reporting is recognized worldwide as an extremely critical facet of international business. To hinder, through any barriers, efficient and effective transmission of this vital data would be counterproductive to all participants in the data networks. There can be no quarrel with the protection aspects as far as the private citizen is concerned, however, and the security of the transmitted data once received and filed should be of paramount importance to all users of the systems. Eximbank is particularly sensitive to this problem and has carefully developed regulations for release of information of a privileged nature.

Your interest in the Export-Import Bank is appreciated.

Sincerely,

H. K. Allen

The Honorable Richardson Preyer
Chairman, Government Information
and Individual Rights Subcommittee
U.S. House of Representatives
B-349-B-C, Rayburn House Office Building
Washington, D.C. 20515



RESEARCH AND
ENGINEERING

THE UNDER SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

JUN 2 1980

28 MAY 1980

Honorable Richardson Preyer
 Chairman
 Subcommittee on Government Information
 and Individual Rights
 Committee on Government Operations
 Rayburn House Office Building
 Washington, D. C. 20515

Dear Mr. Chairman:

This letter is in response to your letter of April 8, 1980, in which you solicit our assistance in determining the scope of current and future problems that are related to transnational information policies. The nature of your inquiry was misunderstood at first. This misunderstanding resulted in the letter being referred to the wrong staff elements. However, after further consideration, I asked Mr. Albert M. Bottoms of my staff to discuss the interests of your subcommittee with Mr. Vizas of your subcommittee staff. As a result of that discussion I wish to bring the following matter to your attention.

The Export Administration Act of 1979 directs the Department of Defense to develop and publish an initial list of military critical technologies. This list is intended to be used in the formulation of improved export control policies, subject to approval by other federal agencies. These policies are designed to control technology transfer rather than solely the transfer of manufactured goods. Technical data, practical know-how, and parameters of critical test equipment will come under control. Some of this material falls into the category of intellectual property; some may be of the sort that is often published in the open scientific or trade literature; and some of the material may represent information that is exchanged in formal or informal visits, technical exchanges, patents, contract proposals, etc.

To date we have not encountered specific problems because current control practices do not extend to scientific exchanges, etc. This whole area is largely unexplored in law or custom so it is difficult to assess in advance the magnitude of the problems that we may encounter. Needless to say we welcome exploration of the individual rights issues that may be raised during our efforts to improve our ability to protect the U.S. technological leads that are so vital to our National Security.

Sincerely,

Gerald P. Denneen

Gerald P. Denneen
 Principal Deputy



SMITHSONIAN SCIENCE INFORMATION EXCHANGE, INC.

Room 300 • 1730 M Street, N.W. • Washington, D.C. 20036 • Tel. (202) 381-5511 • Telex 89495

— the national source for information on research in progress

— David F. Hersey, Ph. D., President

May 28, 1980

Honorable Richardson Preyer
 Chairman, Subcommittee on Government
 Information and Individual Rights
 Committee on Government Operations
 House of Representatives
 Rayburn House Office Building, Room B-349-B-C
 Washington, D.C. 20515

Dear Congressman Preyer:

I am pleased to have this opportunity to respond to your letter of May 5, 1980, regarding your Subcommittee's hearings on transborder data flow and the many issues relating to it.

I would like to indicate that the views expressed are my own, based on eighteen years of experience in the management of the Smithsonian Science Information Exchange (SSIE). I believe my comments might add viewpoint which will enhance the overall view which you will derive from the comments of others involved in transborder data flow and transnational information policy. As with other similar organizations, one of SSIE's objectives is to collect and provide information nationally and internationally to both the public and private sector and in the process recover costs associated with such a program. Our information on current research and development plays an important part in the planning and management of research funds as well as enhancing innovation in American industry and ultimately furthering its vitality, hence we are concerned with any developments which might limit the flow of information into and out of the U.S.

Two reasons I believe my comments may prove of interest in the development of any policy relating to TDF are first, the information with which the Exchange deals which emphasizes the need to recognize that not all information is comparable and certain types may need special consideration (see review of "Information Systems for Research in Progress" in Attachment D) and second, the problems that can arise when cost recovery in whole or in part becomes a major factor in the growth of an information system.

SSIE and its predecessors, while registering information on both Federal and non-Federal supported research activities and serving both the public and private sectors since its inception 30 years ago, were primarily

— a nonprofit corporation of the Smithsonian Institution —

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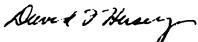
established to serve the needs of the Federal Government. In this regard it has been successful since nearly 80-90 percent of its research records and use have come from Government sources. U.S. research planners, managers and policy makers have long recognized the need to have access to information about non-Federally supported research as well as that supported by the Government prior to the publication of the results of such research and I sincerely believe that efforts to enhance such activity should be expanded and given greater Federal support.

Although the Office of Management and Budget (OMB) has recently directed the Department of Commerce to take over the functions of the Exchange in October of this year, I believe virtually all of the comments I will make in this letter will continue to be germane.

I have attached to this letter, an outline of what I consider to be several problem areas of concern in this area of transborder data flow and have offered comments where possible on their solution. I have also provided a series of attachments which explain in more detail background on the Exchange and its role in relation to the subject. Although the attachments look voluminous, I have tried to arrange them in such a way as to allow ready access to parts that may prove most germane.

Once again, I appreciate the opportunity to comment. Should you or members of your staff wish further information I would be pleased to cooperate in whatever way I can.

Sincerely,



David F. Hersey
President

Enclosures

**Outline of Problems and Potential Solutions Relating to
Transborder Data Flow of Ongoing Research Information
and the Smithsonian Science Information Exchange**

I. Need for better coordination, and where appropriate, policy development relating to Federal Information Activities at the international level and improved awareness of such activities in the non-Federal sector.

Basically there should be a maximum flow of scientific and technical information both into and out of the U.S. but it should be the responsibility of one office or organization in the Federal Government to see that efforts are taken to maintain a reasonable balance between the flow into and out of the country. The monitoring and coordination of Federal information activities on an international level is an important prerequisite if we are to gain better access to scientific and technical information in other countries. The U.S. has long recognized the need and importance of information from abroad as well as our responsibilities to disseminate information on our own activities. (See article by Adams and Werdel - "Cooperation in Information Activities through International Organizations" in Annual Review of Information Science, 10 = 301-356. 1975.) Hersey "Information on Research and Developments: The Growth of Science and Technology in the U.S." (in press, with a copy included in Attachment D for further reference). One also might note the National Academy of Sciences Proceedings on the Colloquium - Industrial Innovation and Public Policy Options held December 5-6, 1979 and the Summary Report on the White House Conference on Library and Information Services, National Commission on Libraries and Information Science, March, 1980.

Although there have been numerous studies relating to the need for a national policy for information activities, only recently have we begun to see concrete steps taken in that direction, such as the creation in OMB of an Office for Regulatory Reform and Federal Information Management Systems and the introduction of the Brooks Bill (H.R. 6410) which calls for the establishment of an Office of Federal Information Policy in OMB. Hopefully such an office or offices will play a major role in this area in the future.

II. Facts which should be considered in the development of any policy relating to TDF, e.g., differences in types of information which are made available for overseas use and the mode of access to such information.

It is important that one recognize that there are numerous types of information systems containing data which may vary in their value and usefulness to overseas users.¹ It is also important to note that there may be significant importance in how access to U.S. data bases is provided, e.g., if a data base can only be searched online through a terminal overseas one limits to some

¹ There is a recent article on non-bibliographic data bases which may be of interest in this regard. It identifies examples of such bases, their current and potential use as well as their relationship to other data bases and some issues related to their use. Wanger, J. and Landau, R. H. Non-bibliographic Online Data Base Services. *J.Amer.Soc.Info.Sciences* 31:171-180, 1980.

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extent what can be obtained from it. On the other hand, if one leases the tapes themselves without regard to the lessee or controls for the restriction of its use, it provides a mechanism for the recipient to massage and manipulate the information any way he sees fit, perhaps even in ways the original purveyor of the tapes never envisaged. One can insist that tapes provided for overseas use be limited to online use only but one might question whether this could be monitored effectively. One might also note that even limiting use of a tape file to online searching may not eliminate the copying of data files by individual users of the system since today's micro-computers are capable of pulling off large numbers of information records in a short period of time for subsequent manipulation locally.

It should also be noted that as more intermediaries and information brokers are trained we can expect to see increasing multi-data base use of conventional and non-conventional data bases which will enhance the value of information by combined packaging of data from a wide variety of sources. This was not possible before since many data bases were not previously available for easy access. While one might agree that information in a given data base should be accessible for searching (either directly from its originator or online through various sources), one might question in some cases as to whether the tapes themselves should be made available with no or only limited control over their use even though they contain no information classified for security reasons.

It is not clear at the present time whether anyone in the Federal Government is aware of all the data bases which have been developed by Federal agencies and whose information has or is being made available to overseas users through the agencies themselves directly, through online vendors (U.S.) or through the sale or lease of tapes of such data. The designation of a single office in the Federal Government to whom such information would be reported or which might act as an intermediary for the lease of such data bases might well prove a useful mechanism for obtaining such information including information on pricing and/or any restrictions placed on the leasing of such tapes.

III. Use of a centralized system or systems containing Federally supported research information or specialized types of information (e.g., ongoing research, SSIE, and technical reports, NTIS) including both foreign and domestic information.

One way to maintain a current awareness of U.S. involvement in TDF (for at least some types of information, such as noted above) is to utilize a centralized information center, such as SSIE/NTIS. While individual Federal organizations would continue to negotiate for and control the flow of information into and out of the country, they could do so through a central system (with the central system acting as their processor for input and dissemination). This would insure that all incoming and outgoing information would be available at a single location, that tapes or other forms of output could be generated by the central system for both Federal and non-Federal use and for both domestic and overseas users, with record maintenance on who got what information, in what form and under what conditions. This approach might also be used for

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more conventional data base systems as well possibly using the Federal Locator System now being developed.

At the present time a number of Federal agencies collect information both nationally and internationally independently of such central systems and process such information themselves, or through a contractor, into data banks under their control. They may or may not provide the information collected to central systems which now exist. Consequently the existence of the data may be known about or available only to a small group of selected clientele rather than available for the use of the entire S&T community. Usually such efforts are confined to subject oriented topics such as smoking, population research, energy, etc., and are expected to be most useful to those in such fields. However, the availability of such information to a broader research community could also prove useful.

A centralized system provides a mechanism to insure the greatest availability of interdisciplinary research, i.e., project information collected specifically for water resources purposes would also be available to those interested in environmental research activities; research dealing with materials research but to anyone regardless of their area of interest if such research were germane to their interests. Greater use of a central system which could spin off subject oriented subsets of the data bases would also minimize the cost associated with the development of ever expanding information systems, while providing needed statistics on the distribution of information. Particularly germane to such an approach is the impact it could have on the following. (An example of how such a system might develop, in the case of ongoing research information, is illustrated at the end of this paper.)

IV. Financial aspects of disseminating information both domestically and overseas.

In recent years we have seen increasing interest expressed by the Government for greater cost recovery by information systems in the Federal Government, a view which is not inconsistent with recognition of the fact that information is a valued commodity. There is also a need for the Government to make greater use of private industry in this field where possible. As the pressure for greater cost recovery increases, government information systems must continually seek new ways for obtaining the increased revenues necessary to support their activities. In some cases, this could lead to leasing of data bases whose content might better be made available in other ways. For example, directly from a generating resource or through online vendors in the U.S. only, where greater control is possible to insure proper use of a tape file or through limited overseas vendors of long term reliability. Standardized pricing for tape leasing of Federal information also becomes possible although vendors would be allowed a certain flexibility in setting their prices to the ultimate user. Federal agencies, where mandated by Congress to do so, could subsidize use in whole or in part. Concentration of overseas sales and/or leasing of government information through a centralized system could also have the added benefit of putting the U.S. in a better position to negotiate

- 4 -

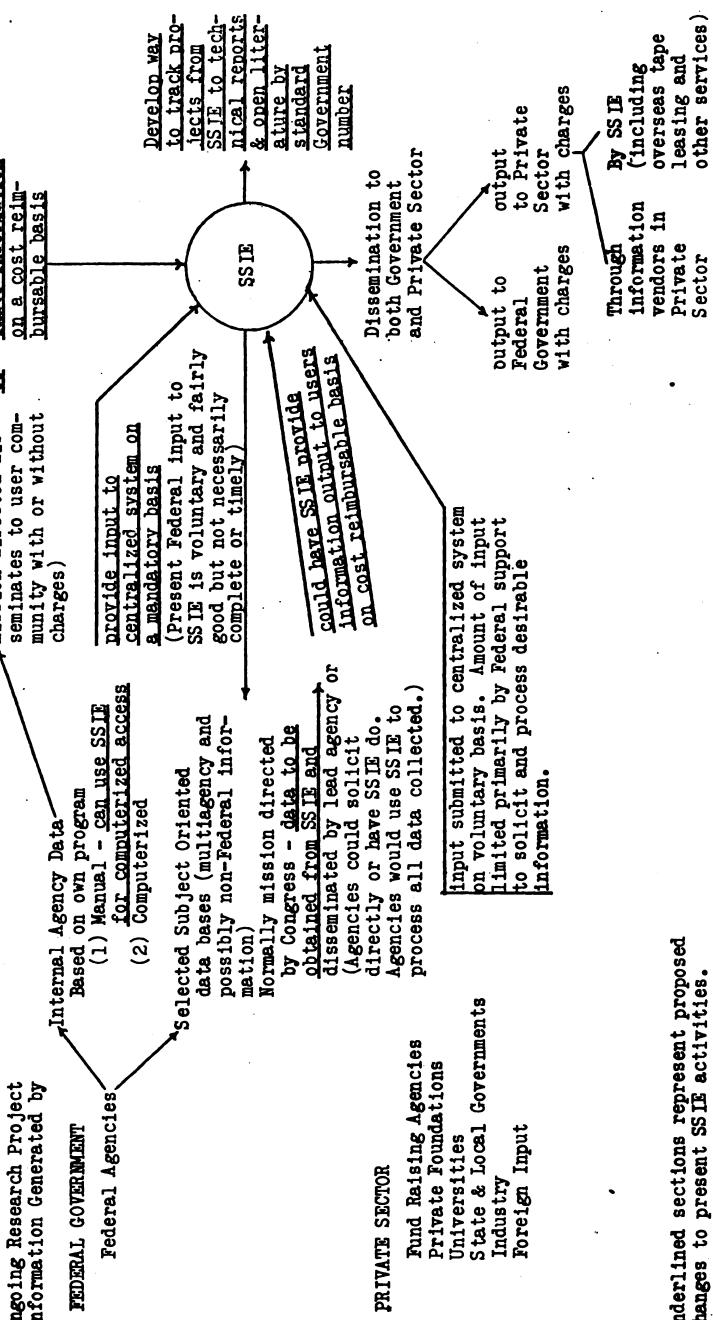
the solicitation and collection of overseas information on a more favorable basis.

While it is not economically feasible or desirable for the U.S. to collect and process all information on overseas science and technology, it is (a) feasible to collect and process information in selected areas of national concern and/or (b) to develop a mechanism to access overseas data bases in various countries whenever information in such systems would prove useful to the U.S. Government or the private sector. The SSIE has been involved for a number of years in both of these approaches, particularly in terms of efforts to help other countries develop comparable systems of ongoing research information. The development of a current research project data base with a minimum set of comparable data elements by countries overseas could greatly facilitate the ability for the U.S. to gain access to such information when it is deemed desirable to do so. Such an approach could also reduce costs substantially in obtaining and using such information.

V. Data protection laws and scientific and technical information.

I do not believe it is entirely clear at this time to what extent data protection and privacy laws will affect data bases of scientific and technical information. In many cases information in such systems is already publicly available and distributed worldwide (e.g., bibliographic information). On the other hand, ongoing research information in many cases may not have been published openly, although individuals who provide input to such systems are often advised that their input may be used for public disclosure and possibly appear in published or printed form. As such data bases go online, particularly containing multi-national projects (e.g., EEC data bases on Euronet) what problems will be raised by the individual countries which contributed to systems such as AGREP (Agricultural Research in Progress)? Before data protection and privacy laws were developed there were literally no complaints about dissemination of such information. From a scientific standpoint I would not like to see barriers to disseminating this type of information, but clearly there may be other factors which must be taken into account.

Proposed Changes in Generation and Dissemination of Ongoing Research Information



Underlined sections represent proposed changes to present SSIE activities.

Rationale for Proposed Changes in the Generation and Dissemination of ORI

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1. Numerous previous legislative and executive studies of the Exchange have recommended:
 - a. mandatory Federal input
 - b. expansion of non-Federal input.
 2. OMB in 1969 directed that the Exchange create a system of user charges to:
 - a. demonstrate the value of the information previously made available without cost to the user with appropriated funds
 - b. help reduce the rising cost of the Exchange (for both input and output) being paid for by appropriated funds.
 3. Numerous studies of the Exchange have shown that a major factor limiting the use of the Exchange was its failure to have comprehensive and timely input from the Federal agencies. This factor, coupled with (a) the availability of ongoing research information from systems created in various Federal agencies which partially or wholly subsidize use of them - thus encouraging users to use a "free" or subsidized system and (b) reluctance of OMB and Congress to accept the repeated requests of SSIE for additional funds to develop a major marketing effort (user education program) and develop new output products and services, have all contributed to the Exchange's inability to maximize user revenues, although over the years it has shown a slow but steady percent increase in user income with a concomitant decrease in the appropriated fund share of total operating costs of the Exchange (i.e., the appropriation percent of total operating cost decreased from 80% in FY 1974 to an estimated 5% in FY 1979). These factors may all be substantially reduced in their importance in the future, when SSIE and NTIS are merged and OMB issues a policy bulletin calling on the agencies for mandatory input to and use of the Exchange as they have proposed.
 4. SSIE firmly believes that the individual Federal agencies should maintain computerized data base systems of ongoing research which they support either within their agencies, or if too small to warrant it, through dependence on SSIE.
- We also recognize the need for a Federal agency which has received a mandate from Congress to serve as the coordinator for all Federal research in a broad subject area to maintain within the agency a data base covering that area or have ready and immediate access to such a file.

However, the Exchange believes that in this latter case the Government is not using the most cost effective approach because in many cases:

- a. the information needed is being requested directly from individual Federal agencies - when it could be obtained more readily and less expensively from the centralized system (SSIE) or if not available there, must be especially created to meet the request of the requiring agency without copies going to the central agency (SSIE) so that it can maintain a more comprehensive file for the entire scientific and technical community.

Note: The argument is often advanced that the data in SSIE does not contain all the information necessary for use by a new clearinghouse. SSIE would submit that it has an extremely versatile system and has demonstrated its ability to numerous Federal agencies to add additional data elements and index terms solely for the use of the agency which needs them.

SSIE believes it can meet the needs of current and proposed subject area clearinghouses with a mandated requirement for ongoing research information either directly, or by processing the input in computer tape output for delivery to an agency for use through that agency. Even given that SSIE were paid for special indexing or the addition of new data elements uniquely required for such systems, the Exchange believes the overall cost to the Federal Government would:

- a. be no greater than current costs and probably less because of the Exchange's experience in processing such information
- b. insure more comprehensive and timely input of ongoing research information into the Exchange regardless of who collects it and thus enhance the quality of the information contained therein for all users
- c. allow agencies with mandated coordinating responsibility to concentrate their internal efforts on the analysis, and interpretation, of the information which would be generated by the Exchange for their use. They could also have more time to spend in merging information from a number of sources such as SSIE/NTIS, etc., to enhance the overall service provided to their users.

Attachment A

**Brief Historical Background of SSIE, Inc.
and Its Predecessor Organizations**

The Exchange originated in the National Institutes of Health in 1946. At that time it kept track of all research projects supported by the U.S. Public Health Service. In order to better manage their research program, discussions in 1946 began between the Surgeon General of the Public Health Service and the Surgeon Generals of the Army, Navy and Air Force, as well as certain other Federal agencies with medically oriented R&D programs, to create an interdepartmental clearinghouse of such research. By July of 1949 some 5,000 research projects supported by both Federal and private organizations were registered, and it was decided that a more formal organization should be created outside the NIH for maintaining the Exchange and expanding its activities.

Establishment of the Medical Sciences Information Exchange

- July 1, 1950 - The Medical Sciences Information Exchange was established by an Agreement between 6 Federal agencies in accordance with the recommendations of the Panel on Exchange of Information (NIH) and the Interdepartmental Committee on Scientific Information. It was established at the National Academy of Sciences under a contract with the Atomic Energy Commission with the other Federal agencies (Federal Security Administration, Department of the Air Force, Department of the Navy, Department of the Army, Veterans Administration) transferring funds not to exceed 25% of total to the AEC. Initial budget was \$100,000. Direction of the Exchange's activities were to be determined by a policy committee of not more than 12 members made up of 1 member of the National Research Council, 1 member from each contributing Federal agency and 2 members from non-Federal agencies. It was agreed a standard form "Notice of Research Project" (OMB approved form No. 68R403) would be used for input to the Exchange.

Establishment of the Bio Sciences Information Exchange

- Nov. 1, 1953 - By means of an Agreement between 7 Federal agencies (NSF having now joined) and the Smithsonian Institution, the Medical Sciences Information Exchange was reconstituted as the Bio Sciences Information Exchange (BSIE) as an independent unit of the Smithsonian Institution. Participation by other Federal agencies and non-Federal organizations was encouraged as was the expansion of scientific coverage. The previous Policy Committee was reconstituted as a Governing Board responsible for policy and general management direction. Funding was to continue to be provided by grant or contract to SI from the seven agencies.

Establishment of the Science Information Exchange

- Sept. 22, 1960 - By means of an Agreement dated September 22, 1960, the Federal agencies supporting BSIE (six agencies DOD, NASA, NSF, AEC, VA and DHHEW) reconstituted the Bio Sciences Information Exchange as the Science Information Exchange (SIE), an independent unit of the Smithsonian Institution effective that date. Funding by grant or contract to the SI to continue by these and such other Federal agencies as might be added to the Governing Board. The

- 2 -

new agreement also provided for expansion of scientific coverage and services as approved by the Governing Board.

Expansion of SIE Coverage

Feb. 17, 1961 - The Governing Board specifically authorized the expansion and scope of the Exchange to include the collection and dissemination of information in the physical and social sciences areas in addition to the bioscience areas currently being covered.

Assignment of Management Responsibility of SIE to the National Science Foundation

July 1, 1963 - The Chairman of the Office of Science and Technology, Dr. Jerome Weisner, on June 6, 1963 requested the National Science Foundation to assume management of the Science Information Exchange effective this date with the understanding that the operation of the Exchange would continue under contractual arrangement with the Smithsonian Institution. Seven Federal agencies were asked to continue their support through FY 1964. In FY 1965, and subsequently, the Director of the NSF was asked to seek line item funding for the continuing operation of SIE. The Director of the BOB concurred with this plan. The Governing Board was to be dissolved and reconstituted as an SSIE Advisory Board to the National Science Foundation. A formal Memorandum of Agreement was signed between SI and NSF December 20, 1963 regarding this new arrangement for management. A Charter for the Management and Operation of the SIE was subsequently prepared essentially reiterating the Exchange's mission and purpose. All input and output costs for the operation of the Exchange were to be covered by appropriated funds.

July 1, 1964 - Funding of the Exchange initially by a grant from the NSF to SI of appropriated funds began. The mechanism for funding was later changed to a contract.

Institution of User Charges for Services

Jan. 1, 1969 - For non-Federal users.

July 1, 1969 - For all users including the Federal Government. User charges were initiated by SIE at the request of the National Science Foundation (letter September 25, 1968) because of current financial constraints in the Foundation's budget to fund SIE at the level deemed necessary by the SI. NSF noted the interest and support of the BOB regarding user fees to offset Federally appropriated funds. The charging of user fees and the schedule of user fees were approved by the SSIE Advisory Board prior to implementation. NSF support for FY 1969 was limited to 1.8 million dollars. Coordination was obtained regarding user charges with the Office of Science and Technology as well as BOB before implementation of charges (see NSF letter October 8, Ernest Sohns to Mel Day, Chairman of SIE Advisory Board).

- 3 -

Transfer of Management Responsibility from NSF to SI

July 17, 1970 - Agreement was reached between NSF, SI and OMB regarding the transfer of responsibilities for SIE from NSF to SI. FY 1971 funds were requested by NSF and Smithsonian was asked to assume responsibility for the budget preparation and request for FY 1972. Transfer of full responsibility for policy formulation, management and operational planning were to be gradually assumed by SI during the transition year (FY 1971) (letter from McElroy (NSF) to Ripley (SI) July 17, 1970). OMB concurrence -- letter October 16, 1970 from Mark Alger, OMB, to S. D. Ripley, SI.

Incorporation of the SSIE

June 10, 1971 - Incorporation of the Science Information Exchange as the Smithsonian Science Information Exchange, Inc., in the District of Columbia.

OMB concurrence of incorporation was received March 15, 1971 (letter from Mark Alger (OMB) to Dr. Ripley (SI)).

Letters advising the SI Appropriation Subcommittee of the House and Senate, April 7, 1971, were sent indicating the SI plans for incorporation and the reasons for such action. Both Chairmen were advised that a Board of Directors and an Advisory Group would be established for the Corporation. The matter of incorporation was further discussed in the FY 1973 appropriation hearings. The SI has continued to seek funding for the operation of the Exchange under its appropriation requests up through and including FY 1979.

Oct. 29, 1977 - Decision by OMB to transfer the functions of SSIE to the Department of Commerce (DOC), specifically within the National Technical Information Service. Transfer to take place October 1, 1980. In the interim, the DOC to conduct study to determine feasibility of integrating various aspects of SSIE/NTIS functions and a study on contracting out of certain facets of SSIE operation in accord with OMB Circular A76. DOC to seek appropriated funds for partial costs of operating the Exchange beginning with FY 1981.

Attachment C

Recent SSIE Efforts Relating to Registration
of Foreign Ongoing Research Information

- SSIE designated by the National Cancer Institute as the Current Cancer Research Project Analysis Center (CCRESPAC) for the collection and analysis of ongoing cancer research (including international research) under the International Cancer Research Data Bank Program (ICRDB). 1974 to date.
- SSIE collects and prepares annually a directory of dental research projects in the U.S. and other countries for the National Institute of Dental Research, USDHEW. Most recent Directory FY 1978.
- Under NSF, and later DOE grants, SSIE has collected information about ongoing energy research and development projects in Canada and seven European countries. Directories of this information were published in 1976 and 1977. SSIE has been unable to obtain support from DOE to continue program although information is still received by SSIE from many of these countries but cannot be entered into the data base for lack of funds.
- SSIE prepared under contract with the Swedish Government directories of ongoing energy research in Sweden published in 1977 and 1979. In addition, information on all such research was available through the SSIE data base to its users, even before publication of the directories.
- Under NSF and Kuwait Government grants, SSIE is currently collecting and will publish a Directory of International Ongoing Biosaline Research.
- Under the Water Resources Acts of 1964 and more recently 1978.

In 1964 President Johnson designated SSIE as the general purpose facility referred to in the Water Resources Act to collect and disseminate information about ongoing water resources research. The center was to include both Federally and non-Federally supported research and includes foreign research to the extent it is economically feasible.

The Department of the Interior has recommended to OSTP that SSIE continue to fill this role under the 1978 Act and OSTP is presently considering such a continuing designation.

- Designation in April, 1967 of the SSIE as the National Information Center for marine science information by the National Council on Marine Resources and Engineering Development, SSIE to cover both Federal and non-Federal supported research. Foreign supported research was collected to the extent it was economically possible.
- Two GAO reports to the Congress in 1975 and 1978 relating to materials research have recommended that SSIE be designated to perform the functions of a central clearinghouse for ongoing research in this area including both Federally and non-Federally supported research. These recommendations were further stressed in testimony at the House hearings on a National Policy for materials.

- 2 -

- The Exchange has suggested that the Department of the Interior seriously consider the use of SSIE to meet that portion of its responsibilities under the Surface Mining and Reclamation Act of 1977 which relate to a center for cataloging current and projected research in this area. (See section 307 of the Act which calls for the collection of both Federally and non-Federally supported research.)

While these last two items do not refer specifically to the collection of international research, they are broad enough in scope to permit such an effort were it judged to be in the best interest of the U.S. Should that be desirable, SSIE's experience in this type of effort would facilitate its implementation.

At present, information contained in the SSIE data base includes projects of ongoing research information supported by other countries in a number of areas of national interest. However, for lack of adequate financial support, only limited foreign information can presently be entered into the system even though there is a need for such information by research planners and managers in this country. The Exchange has had relatively few problems in obtaining input information from overseas, although not all major countries have fully developed ongoing research information systems comparable to SSIE. To improve that situation SSIE has been active both bilaterally with a number of countries and through international groups, such as UNESCO, to further the growth of such systems. At present, there are some 170 data bases of ongoing research information throughout the world including national, regional and international systems.

SSIE actively disseminates information in its system to overseas users either through direct response from the Exchange or through the use of its data base via online U.S. commercial vendors. At least 25 countries presently make use of the SSIE data base through these online vendors with these and many others using the services of SSIE directly. Only rarely has the Exchange encountered problems with shipment of information to overseas users since material is marked educational and advance notice of shipment is usually sent to receiving countries. As of May, 1980, SSIE has not leased its data base overseas for commercial or multicountry online use although discussions have been held with some Euronet host countries and the European Space Research Information Center in Frecscatti, Italy. A pilot study is currently underway with the Japanese Government through the Japan Scientific and Technical Information Center (JICST) to test the utility of older segments of the SSIE data base to Japanese online users only. A full scale leasing plan will probably be developed for Japan and other foreign countries in FY 1981 in order to enhance user revenues. The leasing of SSIE tapes only to recognized foreign online information centers, as opposed to centers which do only batch processing or who might wish to manipulate the tapes for other purposes, may be the best way of controlling any possibility of manipulation of the data, other than for purposes of obtaining scientific and technical information which could be obtained through normal online use.

With the further development of microprocessors and bubble memory equipment, the Exchange believes that the development of online capabilities for smaller countries becomes more feasible and thus the demand for tape leasing may increase. Also to the extent countries can unite to form regional centers, such as in Central and South America, Africa, or Southeast Asia, and develop composite data bases which can be accessed by users worldwide or through exchange agreements, the more likely the market for tape leasing will expand.

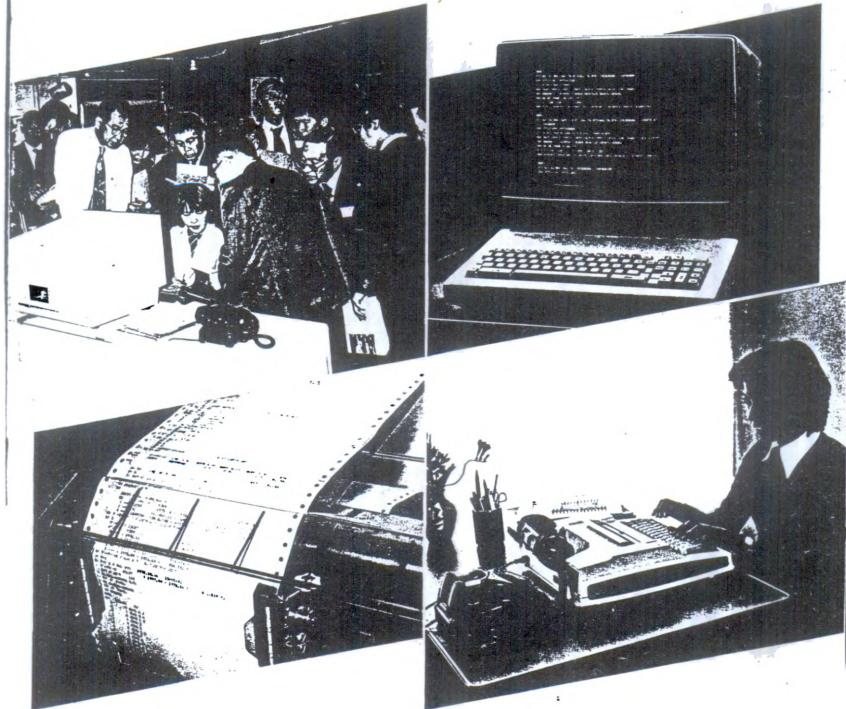
The merger of SSIE functions with those of NTIS should provide a mechanism for greater standardization of processing and distribution policies since the latter is currently aware of certain differences in the information collected and disseminated by SSIE.

Attachment E

Example of a Japanese publication prepared by the Japan Information Center for Science and Technology (JICST) describing the SSIE information system. Typical of effort of Japan to make its scientific community more aware of useful foreign R&D information systems.

JOIS ファイルガイド

SSIE米国研究案内ファイル編



JCISにおける会話の基本

検索のおてつだい

検索結果表示

YE コマンド

ある文字列を前方に持つ検索語のすべてを知りたいときは……

YE と打込むと

該当する検索語のすべてがその件数と共に出力されます。

これまでの会話履歴

YE コマンド

これまでの会話の過程を再現したいときは……

YE と打込むと

そのすべてが再現されます。

VC コマンド

不要なサーチステートメントを削除したいときは……

VC A と打込むとそのすべてが VC B - 12 と打込むと該当する部分が削除されます。

その他のユーティリティ

YRES S コマンド

回線断のため会話が中断した時は YRES S コマンドを使って会話を再開することができます。

会話の開始
JCIS会話用端末とセンターとの接続や特定回線用ビデオ端末では画面清空などの準備が必要です。

会話の開始
YIN JOIS. ××××××××
のようにまず、YIN コマンドでJOISを呼出します。

質問(複数)入力
○ キーワード、分類はそのままです。
○ 著者名はA:〇〇〇のように/
○ @をつけると「良い」検索が/
○ 前方一致検索は&をつけて/

論理式
○ 総合(OR)は+を使って
○ 論理積(AND)は*を使って
○ 論理差(NOT)は#を使って
質問式を作って下さい。

回答件数
○ 回答件数は、使用言語、発行国、著者名などで制限(設定)できます。

終了
○ &と打込み、質問および会話の終了を宣言して下さい。

JCISにおける会話の基本

JCIS会話用端末とセンターとの接続や特定回線用ビデオ端末では画面清空などの準備が必要です。

回答の表示と印字

回答表示

VD コマンド
特定回線用ビデオ端末スクリーン上に回答を表示したいときは……
VD コマンドを使って命令することができます。

回答印字

VP コマンド
端末のプリンタを使って回答を印字したいときは……
VP コマンドを使って命令することができます。

OF F コマンド

回答件数が多いときは……
OF F コマンドを使ってオフラインによる回答の出力を命令することができます。

会話

YF コマンド
会話の中途で、それまでの所要時間、料金を知りたい時に使います。

目 次

1 SSIE とは.....	1
2 SSIE の対象分野.....	1
3 会話の開始.....	2
4 質問事項の入力.....	2
5 回答出力.....	9

1 SSIE の概要

SSIE 米国研究案内ファイルは、米国のスミソニアン科学情報交換所(Smithsonian Science Information Exchange, Inc.)が作成提供するファイルで、研究実施または援助する米国国内の約1,300の公的および私的機関により、SSIE に任意に提出される現在進行中および計画中の研究情報を収録したものです。

これらの研究情報は、主として米国の政府・州および地方機関、協会、財團、大学、個人研究者などにより行われている研究テーマから成り、一部には産業界や外国(日本も含む)の機関のものも収録されています。

また、SSIE は現在 JOIS で提供しています CLEARING 国内研究案内ファイルの米国版であり、この両ファイルのご利用により、日本及び米国の研究情報が得られます。

2 SSIE の対象分野

理工学から生物科学、社会科学、行動科学などの分野にまでおよぶ広範な領域での基礎から応用研究までを対象としています。

対象分野の詳細は下表のとおりです。

	対象分野
1	AGRICULTURAL SCIENCES 農学
2	BEHAVIORAL SCIENCES 行動科学
3	BIOLOGICAL SCIENCES 生物科学
4	CHEMISTRY & CHEMICAL ENGINEERING 化学・化学工芸
5	EARTH SCIENCES 地球の科学
6	ELECTRONICS エレクトロニクス
7	ENGINEERING 機械工学
8	MATERIALS 材料科学
9	MATHEMATICS 数学・計算機工学
10	MEDICAL SCIENCES 医学
11	PHYSICS 物理学
12	SOCIAL SCIENCES 社会科学
13	SPECIAL INDEXES その他

3

会話の開始

¥IN JOIS,13J-0100,SAITO の後、あなたのユーザID、氏名を入れ、さらにパスワードを入れますと、
その日の提供ファイル名が出来ます。この中から SSIE を選択します。
次に、年度範囲を指定することにより会話が開始されます。

(例)

```
WIN JOIS,13J-0100,SAITO
SI パスワード ハ ?
UI
SI インプット テーブル エラー
UI
    JICST オンライン ケンウツ ラーピース
    NO テーブル名ス デクタ バイ ケンウツ ショウリヨウ ヨクイ
    1 --- JICST ( 1975.04 - 1979.07 ) 1,543,727 ケン 17:00
    4 --- CLEARING (ON GOING - HISTORY) 19,208 ケン 17:00
    6 --- TOXLINE ( 1974.01 - 1979.03 ) 557,121 ケン 17:00
    5 --- SSIE ( 1978.01 - 1978.15 ) 59,062 ケン 17:00
SI テーブル名ス ノ バンコウ ハ ? 5.アシN
UI 5
    テーブル名ス SSIE SSIE-COPYRIGHT
    バンコウ デクタ バイ ケンウツ
    8 --- ( 1978.15 ) 1 ケン
    0 --- ( 1978.01 - 1978.15 ) 59,062 ケン
SI テーブル名ス ノ バイ ハ ? 6.バンゴウ-バ-ンコウ
UI 0
SI ラーピース オ カイン シマス 1979.06.18 16:46:43
    テーブル名ス SSIE ( 1978.01 - 1978.15 ) 59,062 ケン
    カイワ バンコウ 7
```

4

質問事項の入力

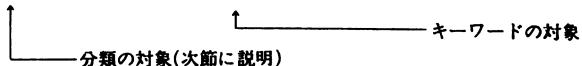
4.1 キーワード

SSIE ファイルでは、キーワードは個々の研究課題に付されている分類標目と研究
課題の標題及び研究概要中の用語からなっております。

分類コード

分類標目

0440	PHARMACOLOGY
044040	DRUG GROUPS
044040200	CARIOSTATIC AGENTS



研究課題例
(標題)

STUDY OF ANTIFERTILITY OF TERRAMYCIN MIXTURE

(研究概要)

Determine period of maximum contraceptive efficacy of pure quaternary ammonium salt in dogs and initiate a contraceptive nonhuman primate study using the same pure quaternary ammonium salt. Specifically, the study should cover the periods day 0-7, 7-14, and 14-21 to determine the efficacy of the compound administered in these periods; and using a pure (99%) quaternary ammonium compound (with established efficacy in dogs) establish, in the monkeys the maximum tolerated does for the anticipated dosing period (14 days). In monkeys which have had 2 prior menstrual cycles, cohabit male and female for three (3) days (days 11,12,13) from the last menses using luteal timing. Administration of compound should commence immediately after separation of the animals. Compound may be given as a tablet, capsule or bolus or by nasal gastric intubation for a period of 14 days. Controls receiving identical placebo treatment should be employed. Confirmation of pregnancy should be done using plasma or urine MCG test.

(上記の標題及び概要からストップワード及び重複語を削除してキーワードを抽出する)

(ストップワードは、付録のストップワードリストを参照して下さい。)

分類標目からのキーワードは必ずしも單一語ではなく、複合語になっていることが多いです。また、その研究課題を表わす分類標目だけでなく、その上位の概念を意味する分類標目も付加されております。

(例)

ADULT BASIC EDUCATION (細分類)

(上位) ADULT AND CONTINUING EDUCATION (中分類)

(最上位) EDUCATION AND TRAINING (大分類)

なお、分類標目に省略語が使われる場合がありますので注意して下さい。たとえば、ANDは & と書かれる場合もあり、ENGINEERINGは、ENGIN., ENGG., ENG. と書かれる場合があります。

研究の標題及び概要からのキーワードは、すべて単語に分割されています。

(例)

ION EXCHANGE RESIN は、それぞれ分割され、ION と EXCHANGE 及び RESIN と独立にキーワードとして扱われます。

従って、同じ単語にも、分類標目からの検索を指定 (@をつけた検索) した場合としない場合で研究課題件数が異なってきます。

(例) [7] U: JAPAN

S: 97 ケン ←全キーワード

[8] U: @JAPAN

S: 63 ケン ←分類標目からのキーワード

ある文字列を前方に持つ検索語を知りたい場合、¥Eのコマンドを使用しますが、このファイルでは複合語も表示しますので、この中から適格な語を選んで使用すると便利です

(例) [9] U: ¥E ECOLOGY

EXPAND ECOLOGY

NO	ヒロイ	セマイ(?)	タク"
/01	1390	1352	ECOLOGY
/02	453	453	ECOLOGY - SPECIALIZED FIELDS
/03	42	42	ECOLOGY AND MORPHOLOGY

S: シュツリヨク オワリマシタ

(ヒロイは標題及び概要から抽出したキーワードで、セマイは分類標目からのキーワードを示しています。ECOLOGY では、38件が標題及び概要からのキーワードであり、1,352件は分類標目からのキーワードです。)

なお、複合語が多い場合、これらの複合語の件数を全て調べますので、時間がかかることもあります。特に、次頁に示す例のように、一般的な単語では検索語が非常に多くなります。

複合語がある場合、前方一致による検索が便利ですが、複合語が非常に多いと¥Eコマンドの場合のように時間がかかります。

(例) [2] U: ALLOY&

S: 418 ケン

(例) [3] U: COMPUTER&

S: タイム オーハー 1445 ケン シヨリ シ 1050 ケン
ツツリ" ケマスカ ? ハイ=Y, イイエ=N

複合語の検索もできますが、この場合も前方一致検索による方が便利です。分類標目からのキーワードですから、分類標目の構成にもとづいており、2語と思っても、3語ないし4語にわたることが多いです。

(例) [16] U: ECOLOGY AND MORPHOLOGY

S: 42 ケン

[8] U: INFORMATION RETRIEVAL&

S: 76 ケン

(例)

[1] U: *E COMPUTER
EXPAND COMPUTER

NO	ヒロイ	セマイ(2)	タク"
/01	3471	0	COMPUTER
/02	12	12	COMPUTER AIDED CIRCUIT DESIGN
/03	10	10	COMPUTER AIDED CIRCUITS
/04	71	71	COMPUTER AIDED DESIGN
/05	26	26	COMPUTER AIDED PROCESSES
/06	54	54	COMPUTER APPLICATION
/07	106	106	COMPUTER ASSISTED INSTRUCTION
/08	14	14	COMPUTER ASSISTED MEASUREMENT
/09	1016	1016	COMPUTER AUXILIARY EQUIPMENTS
/10	415	415	COMPUTER CODES -GENERAL
/11	2	2	COMPUTER COMPONENTS
/12	13	13	COMPUTER COMPOSITION
/13	14	14	COMPUTER CONFERENCING SYSTEMS
/14	43	43	COMPUTER CONTROL
/15	2	2	COMPUTER CONTROL SYSTEMS
/16	15	15	COMPUTER DEVELOPMENT
/17	80	80	COMPUTER FACILITIES
/18	54	54	COMPUTER FACILITIES -OTHER
/19	181	181	COMPUTER GRAPHICS
/20	30	30	COMPUTER INTERFACING

S: ツツ" ケマスカ ? ハイ=Y, イイ=I=N

U: Y

省 略

EXPAND COMPUTER

NO	ヒロイ	セマイ(2)	タク"
/41	1	0	COMPUTERBASED
/42	1	0	COMPUTERISED
/43	26	0	COMPUTERIZATION
/44	19	0	COMPUTERIZE
/45	390	0	COMPUTERIZED
/46	16	16	COMPUTERIZED INSTRUMENTS
/47	4	0	COMPUTERIZING
/48	669	429	COMPUTERS
/49	243	243	COMPUTERS IN MEDICINE
/50	1	0	COMPUTERVISION

S: シュツリヨク オワリシタ

4.2 分類コード

SSIEの分類表 (Classifying Dictionary) は、研究課題を体系的に分類する、5階層分類表です。この分類項目は、分類コードと分類標目からなっています。JOISでは、この分類標目の方をキーワードとしています。

分類コードは、UUUUUVVXXYYZZZの形をしています。UUUUは大分類を表わし、VVは小分類、XXは最上位の細分類、YYは第2位の細分類、ZZは最下位の細分類を表わし、すべて数字です。

なお、上位の分類コードには、下位の数字はありません。たとえば、次のようになります。

0440	PHARMACOLOGY
044040	DRUG GROUPS
044040200	CARIOSTATIC AGENTS

分類コードも、1つの記事に下位の分類コードが付与されると、上位の分類コードも付与されます。したがって、上位の分類コードで検索するときは、前方一致検索しなくとも、その下位の分類コードが付与されている記事が探し出されます。

SSIE 分類表の階層例

領 域	大 分 類	小分類・細分類
AGRICULTURAL SCIENCES		
BEHAVIORAL SCIENCES		('76年2月の資料によるもので、現在までに) 変更されているものもあります。
BIOLOGICAL SCIENCES		
.....		
ENGINEERING	1010 Aerodynamics 1015 Aircraft 1016 Air, SpaceVehicle Engineering	
.....		
SOCIAL SCIENCES		
SPECIAL INDEXES		
.....		
1032 Aeronautical Engineering	103220 Aircraft Components 103220100 Aircraft Engines 10322010040 Jet-Engines 10322010040500 Ramjet Engines 10322010040700 Turbojet Engines 10322010040995 Jet Engines-Other 10322010040997 Jet Engines-General 103230 Aircraft Types 103230100 Commercial Aircraft	

分類コードも￥Eコマンドによる展開、前方一致ができますが、分類標目のキーワードを用いる方が便利でしょう。

(例) [3] U: ¥E 4860
 EXPAND 4860

NO	ヒロイ	セマイ(0)	77"
/01	272	272	4860
/02	13	13	486012
/03	11	11	486015
/04	4	4	486023
/05	12	12	486036
/06	174	174	486050
/07	16	16	486050560
/08	15	15	486050995
/09	23	23	486070
/10	47	47	486075
/11	6	6	486075050
/12	5	5	486075250
/13	1	1	486075540
/14	2	2	486075560
/15	1	1	486075650
/16	35	35	486075975
/17	3	3	486077
/18	23	23	486095

S: シュツリヨフ オワリマシフ

4.3 研究機関名

研究実施機関の公式名で検索できます。ただし、普通、冠詞が取除かれていること、スペースを含めて40字を越えるときは、40字までしか検索できないことに注意して下さい。40字を越えるときは、40字までを入力すれば、ほぼ希望の記事が検索できます。検索は、キーワードや分類コードとは異なり、記号 J: を用います。

(例) [6] U: J:UNITED TECHNOLOGIES CORP.
 S: 119 ケン

4.4 研究者名

主研究者名と共同研究者名で検索できます。

研究者名は、NN…N△I I (△はスペース) の形で入力されています。NN…Nは姓で最大25字、I Iは名で最大2字からなります。

たとえば、J. P. GREENFIELDは、GREENFIELD JPと入力されます。

研究者は、記号A:を入力し、次に研究者名を入れます。

(例) U: A:GREENFIELD JP
S: 1 ゲン

なお、姓だけですと同一姓が多いほど件数も多いので、名の方も入れる方がしばられます。ただし、名は第1名の頭文字とクリスチャンネームなどの第2名の頭文字はスペースを置かず、続けて入力して下さい。

4.5 検索結果の制限

キーワード、分類コード、著者名を単独または組合わせて得た検索結果を、更に使用言語や発行国、資料の種類、資料番号、記事区分、著者名、著者の所属機関名などで制限（限定）することができるほか、今後は分類コードやキーワードでも制限できると共に、発行年や記事番号（巻・号）での制限も可能になりました。

ただし、制限式は直前のサーチステートメントNaの文献集合に対してのみ有効です。SSIE ファイルでは次の項目が二次検索として検索できます。

① 課題索引番号（P=を使用）

SSIE が研究課題とその記事に付与するコードです。

課題索引番号は、UUUVVVVVVVXXYYの形で、UUUとVVVVVVは、その研究課題が生きている間は変わらない番号で、XXはその記事の年単位の区分を表す番号、YYは年内の細分を表す番号です。たとえば、G A △ 0 0 1 2 3 4 0 1 0 0（△はスペース）となります。

キーワードなどで、特定の領域の研究課題に絞ったあと、ある一つの研究課題に制限したいときは、UUUVVVVVVの部分を制限式で指定すると有効です。

② 研究部署（B=を使用）

研究実施機関の下部機構、所在地が入っています。

たとえば、次のように入っています。

(例)

SCHOOL OF ENGINEERING;
CHEMICAL ENGINEERING;
204 TIGER HALL, GAINSVILLE,
FLORIDA, 32601.

UNITED STATES OF AMERICA

③ 研究の種類（C=を使用）

研究費予算の種類を示す1字のコードで、補助金(G)、契約金(C)、特別給費(F)などの区別をします。入力されていない場合があります。

④ 研究年度（Y=を使用）

研究の開始年と終了年が西暦の下2桁で入っていますが、終了年が二次タグとして使えます。終了年は未定または不明の場合は99と入力されています。

なお、キーワードのうちの分類標目(K =)、研究機関名(J =)、研究者名(A =)は二次タグとしても使えます。

5

回答出力

CLEARING 国内研究案内ファイルとほぼ同一の形式で出力されます。

CLEARING 国内研究案内ファイルとの主な相違点は次の通りです。

① 参考文献の書誌事項の出力

その研究課題について、主研究者または共同研究者により、最近3年内に発表された1~2のレポートの書誌事項が出力されます。

② 研究年度の出力

SSIE ファイルの記事の研究費は年度単位になっています。このため研究費の年度を示す研究年度が出力されます。

③ 研究実施機関の所在地の出力

研究部署の後部に、研究実施機関の所在地の国名、州名、市名、町名、番地、室名、私書箱、郵便番号などが出力されます。これらの配列は、通常は米国の配列で出力されますが、米国外の場合で、米国の配列に合わない場合は、その配列のまま出力されます。

④ 研究援助機関の出力

その研究課題に補助金などを支出する研究援助機関名がキーワードの末尾に出力されます。

新型検索番号
研究登録番号

0001
GSE0063880100
• HEAT TRANSFER IN TUMORS

研究ノベルティがなければここに出力されません。

SSIE-COPYRIGHT

(77-80) --- 研究開始年月日
39,037トト・研究費

(78) --- 研究期間年月日
研究費

(79) --- 研究期間年月日
研究費

(80) --- 研究期間年月日
研究費

(81) --- 研究期間年月日
研究費

(82) --- 研究期間年月日
研究費

(83) --- 研究期間年月日
研究費

(84) --- 研究期間年月日
研究費

(85) --- 研究期間年月日
研究費

(86) --- 研究期間年月日
研究費

(87) --- 研究期間年月日
研究費

(88) --- 研究期間年月日
研究費

(89) --- 研究期間年月日
研究費

(90) --- 研究期間年月日
研究費

(91) --- 研究期間年月日
研究費

(92) --- 研究期間年月日
研究費

(93) --- 研究期間年月日
研究費

(94) --- 研究期間年月日
研究費

(95) --- 研究期間年月日
研究費

(96) --- 研究期間年月日
研究費

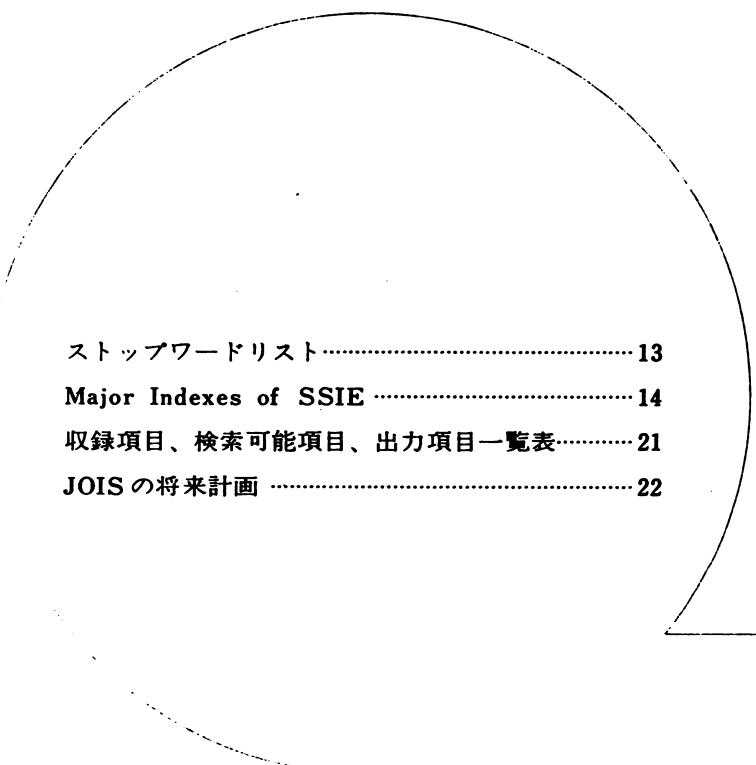
(97) --- 研究期間年月日
研究費

(98) --- 研究期間年月日
研究費

(99) --- 研究期間年月日
研究費

JAIN RK (INST. OF TECHNOLOGY; DEPT. OF CHEMICAL ENGINEERING)
AVE. & MARGARET MORRISON, PITTSBURGH, PENNSYLVANIA, 15213, U.S.A.
UNITED STATES OF AMERICA) 共同研究名がなければここに出力されます。
CARNEGIE MELLON UNIVERSITY
METHODOLOGY & INSTRUMENTATION; FLOW RATE AND VOLUME; INDICATOR
DILUTION TECHNIQUES; THERMAL DILUTION; PERFUSION TECHNIQUE;
TEMPERATURE MEASUREMENT; TEMPERATURE MEASUREMENT -OT; MEDICAL
PHYSICS; MEDICAL PHYSICS -OTHER; HEAT TRANSFER; BODY FLUIDS;
BLOOD PLASMA AND SERUM; MEDICINE/PSYC.; GENERAL TOPICS;
TREATMENT; CANCER; CANCER THERAPY; CANCER RADIATION THERAPY;
TUMOR PATHOLOGY; CARDIOVASCULAR SYSTEM; HEMODYNAMICS;
RADIOLOGY & NUCLEAR MEDICINE; RADIOLOGIC DIAGNOSIS; X RAY,
DIAGNOSTIC USES; THERMOGRAPHY; RADIATION THERAPY; RADIATION
THERAPY -OTHER; CELLULAR PHYSIOLOGY; CELL ENVIRONMENTAL
PARAMETERS; RADIATION EFFECTS; BIOLOGICAL; TEMPERATURE;
HYPERHERMAL; MAMMALS; RODENTIA; MURIDAE; RAT (LABORATORY
USE ONLY); U.S. NATIONAL SCIENCE FOUNDATION DIV. OF
ENGINEERING; ENG78-22814

付 錄



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ストップワードリスト

A	CHEM	KG	POTENTIALLY	THAN
ABOUT	COPYRIGHT	KM	PREDOMINANTLY	THAT
ABS	COULD	KNOWLEDGE	PRESENT	THE
ABSTRACT	DID	LARGELY	PREVIOUSLY	THEIR
ACCORDINGLY	DIFFERENT	LIKE	PRIMARY	THEIRS
AFFECT	DO	MADE	PROBABLY	THEM
AFFECTED	DOES	MAINLY	PROMPT	THEN
AFFECTING	DONE	MAKE	PROMPTLY	THERE
AFFECTS	DU	MANY	QUICKLY	THEREFORE
AFTER	DURING	MAY	QUITE	THESE
AGAIN	EACH	MG	RATHER	THEY
AGAINST	EITHER	RIGHT	READILY	THIS
ALL	ELSE	ML	REALLY	THOSE
ALMOST	ENOUGH	MORE	RECENTLY	THOUGH
ALREADY	ESPECIALLY	MOST	REFS	THROUGH
ALSO	ETC	MOSTLY	REGARDING	THROUGHOUT
ALTHOUGH	EVER	MUCH	REGARDLESS	TO
ALWAYS	EVERY	MUG	RELATIVELY	TOO
AMONG	FOLLOWING	MUST	RESPECTIVELY	TOWARD
AN	FOR	NEARLY	RESULTED	UNDER
AND	FOUND	NECESSARILY	RESULTING	UNLESS
ANOTHER	FROM	NEITHER	RESULTS	UNTIL
ANY	FURTHER	NEXT	SAYD	UP
ANYONE	GAVE	NO	SAME	UPON
APPARENTLY	GETS	NONE	SEEM	USE
ARE	GIVE	NOR	SEEN	USED
ARISE	GIVEN	NORMALLY	SEVERAL	USEFULLY
AS	GIVING	NOS	SHALL	USEFULNESS
ASIDE	GONE	NOT	SHOULD	USING
AT	GOT	NOTED	SHOW	USUALLY
AUTHOR	HAD	NOW	SHOWED	VARIOUS
AWAY	HAS	OBTAI	SHOWN	VERY
BE	HARDLY	OBTAINED	SHOWS	WAS
BECAME	HAVE	OF	SIGNIFICANTLY	WERE
BECAUSE	HAVING	OFTEN	SIMILAR	WHAT
BECOME	HERE	ON	SIMILARLY	WHEN
BECOMES	HOW	ONLY	SINCE	WHERE
BEEN	HOWEVER	OR	SLIGHTLY	WHETHER
BEFORE	IF	OTHER	SO	WHICH
BEING	IMMEDIATELY	OUGHT	SOME	WHITE
BETWEEN	IMPORTANCE	OUR	SOMETIM	WHO
BIOL	IMPORTANT	OUT	SOMEWHAT	WHOSE
BOTH	IN	OVERALL	SOON	WHY
BRIEFLY	INTO	OWING	SPECIFICALLY	WIDELY
BUT	IS	PARTICULARLY	STATE	WILL
BY	IT	PAST	STATES	WITH
CAME	ITS	PERHAPS	STRONGLY	WITHIN
CAN	ITSELF	PLEASE	SUBSTANTIALLY	WITHOUT
CANNOT	JUST	POORLY	SUCCESSFULLY	WOULD
CERTAIN	KEEP	POSSIBLE	SUCH	YET
CERTAINLY	KEPT	POSSIBLY	SUFFICIENTLY	

Major Indexes of SSIE

(‘76年2月の資料による)

AGRICULTURAL SCIENCES	
0007 Outdoor Recreation	0770 Plant Evaluation Parameters
Genetics (See Biological Sciences)	0772 Animal Evaluation Parameters
0054 Entomology, Applied	BEHAVIORAL SCIENCES
0200 Agricultural Methods	0319 Medicine/Psyc.- General Topics (See Medical Sciences)
0201 Agricultural Administration	Ethnic and Social Parameters (See Special Inddex)
0202 Agriculture	0800 Psychological Sciences
0203 Ag Industries & Agribusiness	0805 Aging
0205 Agronomy	0810 Clinical Psychology
0206 Weeds	0813 Communication
0210 Animal Husbandry	0816 Counselling and Guidance
0211 Chemical Control Measures	0820 Developmental Psychology
0214 Product Development Research	0825 Education And Training
0215 Agricultural Socio-economics	0828 Engineering Psychology
0220 Agricultural Engineering	0832 Evaluation/Measurement - Psych
0225 Feed Science and Technology	0833 Experimental Parameters
0230 Food Science and Technology	0840 Instrumentation in Psychology
0235 Forestry	0845 Learning and Retention
0240 Home Economics	0853 Motivation & Instinctive Behav
0245 Horticulture	0855 Occupations
0251 Environment, Plant	0856 Performance, Human and Animal
0252 Environment, Animal	0859 Personality
0253 Pest Control Measures	0860 "
0254 Plant Diseases	0863 Personnel Psychology
0286 Soil Science	0865 Physiological Psychology
0290 Veterinary Medicine	0868 Cognitive Processes
0291 Soil Unit Classification	0875 Rehabilitation, Social & Voc.
0292 Agricultural Climates	0880 Sensory & Perceptual Processes
0293 Fao -general Index	0883 Social Psychology
0744 Pesticides	0886 Stress - Behavioral Aspects

0890	Therapy of Mental Disorders	0096	Animal Preparations
0899	General Problems in Psychology	0111	International Biol. Program
BIOLOGICAL SCIENCES			
0011	Genetics	0208	Algal Studies
0033	Biophysics & Biophysical Chem.	0213	Bacterial Studies
0049	Taxonomy, Animal	0238	Fungal Studies
0050	Entomology, Morphorogy		Environments, Plant (See Agricultural Sciences)
0052	Entomology, Physiology	0256	Ecology, Plant
0053	Entomology, Pathology	0265	Plant Morphology
	Entomology, Applied (See Agricultural Sciences)	0270	Phytopathology
0061	Fish & Wildlife Biology	0275	Plant Physiology
0065	Ecology, Animal	0283	Test Plants
0066	Ecology	0284	Dicotyledons
0069	Vertebrate Pathology	0285	Monocotyledons
0073	Vertebrate Injury	0287	Taxonomy, Plants
0076	Vertebrate Toxins & Poisons	0288	Developmental Biology, Plant
0077	Reproductive Physiology	0294	Viral and Rickettsial Studies
0078	Invertebrate Nutrition	0295	Animal Pharmacology
0079	Vertebrate Nutrition	0296	Vertebrate Pathology & Disease
0080	Vertebrate Anatomy	0445	Enzyme Studies
0081	Vertebrate Physiology	0611	Cell Organelles & Organoids
0082	Invertebrate Anatomy	0615	Cellular Physiology
0083	Invertebrate Systems, Physiol.	0705	Organisms
0084	Developmental Biology - Animal	0751	Test Animals, Invertebr
0085	Parasitology, Anomal	0752	
		0753	Invertebrate
0087	Evolution, Organic	0754	Fish
0088	Zoogeography	0755	Amphibians
0089	Invertebrate Pathology	0756	Reptiles
0094	Epizootiology	0757	Birds
		0758	Mammals

0759	Test Animals, Human (See Special Indexes)	Air Pollution (See Earth Sciences)
0760	Viruses, Animal	4714 Ore Extraction & Refining
0761		8550 Elements & Inorganic Compounds
0771	Plant Morphology Parameters	EARTH SCIENCES
		2000 Astronomy
		3040 Air Pollution
2500	Substances	3505 Geology - general
2510	Organic Compounds	3520 Economics
2511	Organic Substituents	3540 Engineering Geology
2521	Coordination Chemistry	3560 Geochemistry
2536	Organic Phosphorus Compounds	3565 Geologic Time
2548	Organic Sulfur Compounds	3571 Fossil Invertebrates
2565	Polymer Chemistry	3572 Fossil Plants
2620	Analytical Chemistry	3573 Fossil Vertebrates
2650	Chemical Effects	3574 Paleontology
2680	Chemical Energy Conversion	3580 Geomorphology
2684	Fire Research	3585 Soils Geology
2705	Chemical Instrumentation	3590 Geophysics
2710	Chemical Kinetics & Mechanisms	3600 Glaciology
2720	Chemical Engineering	3610 Economic Geology
2740	Waste Water Treatment/Disposal	3640 Hydrology
2760	Chemical & Physical Properties	3645 Water Resources
2780	Chemical Reactions	3646 Hydrology and Water Resouces
2800	Surface and Colloid Chemistry	3660 Meteorology -general
2820	Atomic and Molecular Chemistry	3670 Meteorology 3675
2875	Chemistry - Nonresearch	3680 Mineralogy
2900	Photographic Chemistry	3685 Minerals
2950	Miscellaneous	3690 Minerals -general
2995	Chemistry - Specialized Fields	3700 Petrology
3000	Heat and Thermodynamics	

3710	Geography, Physical	1040	Air Field Operations
3730	Geography, Cultural	1050	Aeronautical Meteorology
3760	Sedimentology	1055	Flight Mechanics
3780	Sedimentology -general 1	1070	Aeronautics
3801	Stratigraphy	1075	Air Operations
3821	Structural Geology	1090	Astronautical Engineering
3850	Oceanography	1091	Air Programs
3855		1094	Aero Engineering - Nonresearch
3860		1105	Astronautics
3900	Earth Science Studies -general	1115	Space Engineering
3901	Environments	1120	
3911		1125	Aviation and Space Flight
3902	Techniques and Instrumentation	1135	Human Factors Engg. for Space
ELECTRONICS		1140	Launching Operations and Sites
4013	Biomedical Engineering	1155	Flight Mechanics
4050	Applied Electronics	1160	Navigation
4100	Electronics	1175	Orbital and Space Operations
4150	Electric Power Systems	1191	Space Programs
4200	Methods	1394	Engineering - General
4300	Electronic Systems - Applied	1433	Ordnance
4450	Electronic Technical Services	1434	Military Sciences
4475	Electronic Components	1490	Space, Air Projects
ENGINEERING		1510	Architectual Engineering
1010	Aerodynamics	1520	Building & Land Development
1015	Aircraft	1540	Hydraulic Engineering
1016	Air, Space Vehicle Engineering	1545	Hydraulics
1017	Aerospace Technology	1546	Marine Engineering
1020	Aircraft Development	1570	Air Pollution Control
1030	Aeronautical Engineering	1575	Solid Waste Management
1032		1580	Radioactive Waste
1033	Aerospace Engineering	1585	Waste Water Treatment/Disposal

650	Soil Engineering and Geology	7400	Underwater Ordnance
1660	Soil Mechanics	7790	Fluid Dynamics
1750	Surveying		MATERIALS
1775	Engineering Methodology	4532	Auxiliary Materials
1776	Engineering Alpha	4533	Ceramics and Glass
1800	Transportation Engineering	4534	Ceramics-special
1850		4580	Structure of Materials
1855		4630	Coating, Cleaning, Finishing
1860	Aviation - Air Transportation	4650	Inspection and Testing
1995	Engineering - Nonresearch	4660	Materials - Nonresearch
1999	Engr. & Arch. Disciplines	4675	Processes for Materials
4020	Aeronautics and Aerodynamics	4685	Joining and Assembling
4030	Aerospace Engin. & Technology	4700	Composite Materials
4035	Marine Eng. and Naval Archit.	4701	Construction Mtls. - Selected
4040	Ordnance	4703	Defects in Materials
6030	Mechanics & Mech. Properties	4705	Material Parameters
6050	Experiment Equipment	4708	Form and State, Materials
6100	Industrial Engineering	4709	Fabrication Processes
6150	Mechanics of Fluids	4710	Machining of Materials
6200	Mechanics of Structures	4711	Casting of Materials
6250	Naval Architecture	4713	Thermal Treatment of Materials
6251		4727	Corrosion, Deterioration
6300	Engineering - Nonresearch	4729	Mechanical Properties - Mtls.
6350	Power and Heat Applications	4731	Physical Properties- Materials
6360	Mechanical Power	4733	Materials Structure
7020	Ammunition	4735	Applications of Materials
7080	Combat and Tactical Vehicles	4736	Auxiliary Chemical Materials
7120	Defence and Protection	4737	Recycling, Disposal of Mtls.
7200	Guns and Missiles	4738	Poeder Technology
7250	Military Tactics	4739	Coatings
7300	Small Arms and Ammunition		
7350	Training Devices		

4740	Surface Cleaning, Finishing	5522	Algebraic Topology & Geometry
4741	Chemical Processing	5544	Analysis
4840	Metallic Alloys	5550	
4860	Ferrous Alloys	5600	Geometry
4861	Metals and Alloys	5650	Logic - Foundation
4875	Precious Metals Alloys	5700	Number Theory
4877	Rare Earth Metals	5725	Probability and Statistics
4880	Refractory Alloys	5750	Topology
4900	Special Purpose Alloys	5830	Data Type
4920	Superalloys	5832	Indexing Systems
4980	Iron and Steel Making	5850	Numerical Analysis
5000	Powder Metallurgy	5851	Computer Applications
5020	Primary Mechanical Working	5853	Computer Sciences
5040	Secondary Mechanical Working	5856	Data Analysis by Computers
5060	Welding, Joining, Assembly	5871	Language Translation, Machine
5245	Miscellaneous Materials	5876	Networks
5305	Plastics and Polymers	5897	Applied Math Index /match Grp/
5306	Elastomers	5900	Info. Sys. & Operations Res.
5310	Materials, Special		MEDICAL SCIENCES
5395	Auxiliary Materials	0011	Genetics (See Biological Sciences)
5400	Deterioration Protection	0012	Anthropology, Physical
5405	Textile Materials	0014	Methodology & Instrumentation
5410	Manufacturing Processes	0015	Aviation medicine
5424	Special Categories	0026	Medical Physics
	MATHEMATICS	0029	Mathematical Biophysics
5500	Computers, Studies on & Appl.	0036	Body Fluids
5501	Computer Types	0051	Entomology, Medical
5510	Major Fields #1	0060	Children
5520	Algebra	0063	Children - Biomedical Studies
5525		0070	Environment, Human

0115	Hospital & Medical facilities	0445	Enzyme Studies (See Biological Sciences)
0135	Nursing	0450	Endocrine System
0145	Devices & Prostheses	0455	Exocrine Glands
0151	Public Health	0474	Immunity
0160	Rehabilitation & Physical Med.	0480	Med & Veterinary Microbiology
0175	Space Medicine	0490	Injury and Shock
0177	Submarine & Diving Medicine	0500	Alcoholism and Drug Addiction
0180	Tests and Methods	0531	Metabolism & Metab. Diseases
0300	Aging	0540	Musculoskeletal System
0305	Accident	0550	Nervous System
0319	Medicine/Psyc. - General Topics	0560	Obsterics
0320	Allergy	0570	Radiation Effects, Biological
0331	Anesthesiology	0571	Radiology & Nuclear Medicine
0371	Blood, Lymph & R E System	0581	Respiratory System
0375	Body Temperature	0585	Sensory System
0380	Cancer	0591	Skin
0381	Cancer - Body Sites	0595	Stressors, Physiological
0382	Current Cancer Research	0600	Surgery
0383	Preclinical Cancer Therapy	0605	Syndromes
0384	Clin. Diagnosis, Therapy, Care	0610	Tissues, Biological
0385	Nonviral Cancer Etiol & Epidem	0615	Cellular Physiology (See Biological Sciences)
0386	Cancer Virology	0630	Urogenital System
0387	Cancer Immunology	0631	
0388	Cancer Biology	0640	Venereal Diseases
0390	Cardiovascular System	0651	Regional Body Sites
0400	Connective Tissues	0715	CNS and Peripheral Nerves
0421	Nutrition, Medical	0865	Physiological Psychology (See Behavioral Sciences)
0426	Dental Studies	0999	Miscellaneous
0430	Digestive System		
0440	Pharmacology		

PHYSICS	SOCIAL SCIENCES
1580 Radioactive Waste (See Engineering)	0203 Ag Industries & Agribusiness (See Agricultural Sciences)
2000 Astronomy (See Earth Sciences)	0702 Ethnic and Social Parameters (See Special Indexes)
3650 Upper Atmosphere Physics	0703 Occupations, Populations
3651	0855 Occupations
7501 Acoustics	0862 Personnel
7510 Atomic and Molecular Physics	0888 Social Sciences
7520	0889 Economics
7521	0891 Urban Research
7550 Crystallography	1875
7545 Gaseous State	0895 Social Services
7600 Electricity and Magnetism	0897 Poverty
7601 Electrical Phenomena	0240 Home Economics (See Agricultural Sciences)
7602 Magnetic Phenomena	3927 Functional Categories
7650 Liquid Structure	
7700 Nuclear Physics & Technology	
7705 Elementary Particle Physics	SPECIAL INDEXES
7706	0004 Reference Code
7707	0007 Outdoor Recreation
7725 Nuclear Structure	0030 Banks and Reference Standards
7750 Optics & Electromag. Radiation	0032 Physical Forces
7760 Lasers and Masers	0096 Animal Preparations
7770 Metrology and Meters	0111 International Biol. Program
7800 Plasma Physics	0130 Nonresearch & Selected Topics
7801 Plasmas	0594 National and Civil Defense
7802 Magnetohydrodynamics & Fusion	0701 Biometric Parameters
7803 Controlled Thermonuclear Phys.	0702 Ethnic and Social Parameters
7820 Pressure	0703 Occupations, Populations
7850 Solid State physics	0707 Regional Parameters
7865	0720 Isotopes
7900 Theoretical Physics	0730 Radiations
7950 Vibrations and Acoustics	0745 Substances

0759 Test Animals, Human	8000 Project Location Index
3020 Energy Research	8001 " "
3333 Instruments & Techniques	8660 Psd Unknown
5800 General Topics	8610 Mass Star
5980 Alphabetic Index	9600 Va Agency Program Sub

(現在変更されているものもあります。)

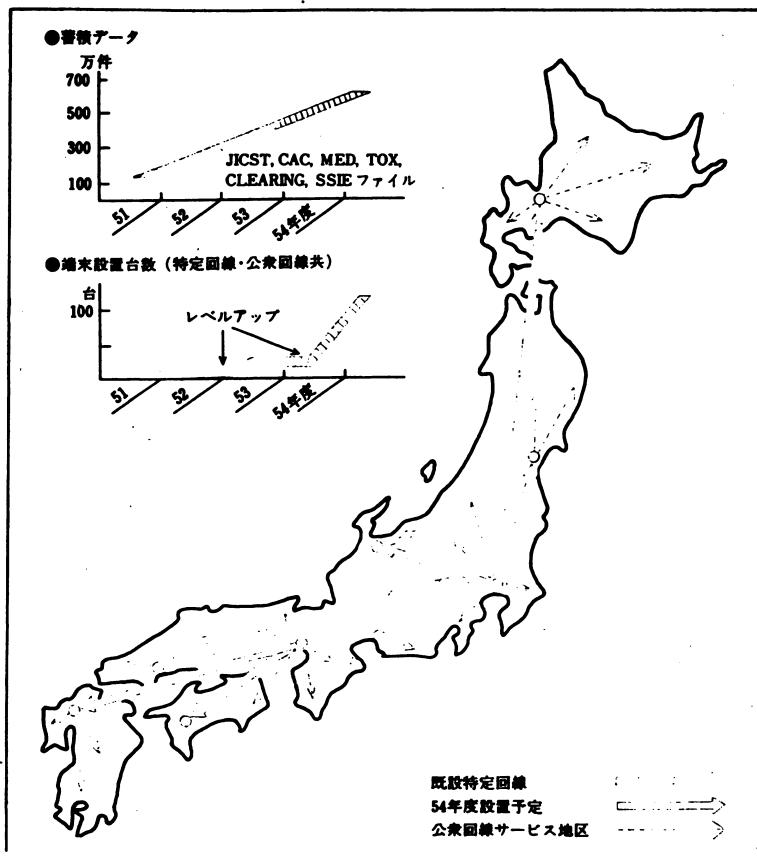
収録項目、検索可能項目、出力項目一覧表

項目番号	項目名	項目記号	検索可能項目		項目の内容	出力形式別の出力項目				
			第1検索タグ	制限文入力		SSIE	F	S	T	C
1	分類コード	CC	○ 直接入力	○ S=	SSIE 分類コード No	○				
2	UDC	CC	—	—	—	—	○			
3	課題索引番号	CN	—	○ P=	課題索引番号	○	○	○	○	
4	研究課題名	TI	—	—	英文	○	○	○		
5	研究者名	IR	○ A:	○ A=	英字	○	○			
6	研究部署名	IR	—	○ B=	英名	○	○			
7	機関番号	IN	○ J:	○ J=	—	—	○	○		
8	機関略名	IN	○ J:	—	研究機関英名	○	○			
9	機関所在地コード	IN	—	○ N=	—	—	○	○		
10	研究の種類	PI	—	○ C=	コードで表示	○	○			
11	研究費	PI	—	—	ドル単位で表示	○	○			
12	研究年度	PI	—	○ Y=	開始年-終了年で表示 検索タグとしては終了年のみ	○	○			
13	キーワード	KW	○ 直接入力	○ K=	SSIE 分類項目と自動抽出語	○		○		
14	入力年月日	—	—	○ D=	單體入力の日付					
15	その他の	MS	—	—	参考文献の書誌事項	○	○			

機器による情報計画

昭和54年度中には、現在蓄積中の6つのファイルの蓄積量が600万件を越える予定です。また今後は、他のデータファイルの追加も含めて650万件に及ぶ情報の蓄積が可能になります。

昭和54年度以降は端末機を数百台設置しても処理できるようにレベルアップをはかっていく予定です。



—JICST新刊案内—**JOIS 利用の手引き****—第 3 版—**B5判110ページ
定価 1,000円

この「JOIS利用の手引き」は、極めて平易かつ実際的なJOISの解説書であると同時に、利用マニュアルとして発売以来ご好評を得てまいりましたが、その後、新ファイルの追加、漢字オンラインサービス開始などがありましたため、このたび内容を大幅に改訂し、第3版として表いも新たに発行いたします。

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主な改訂点

- ◆新ファイル（TOXLINE毒性文献ファイル、SSIE米国研究案内ファイル）についての説明を追加しました。
- ◆従来のCAC化学文献ファイルがCA Search化学文献ファイルに変更されたことによる新たな利用方法につき解説いたしました。
- ◆漢字オンラインサービスの利用に関する記述を加えました。

申込先 日本科学技術情報センター各支所・支部窓口

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(1979. 7. NP. 500)

69-802 1024

UNITED STATES INTERNATIONAL DEVELOPMENT COOPERATION AGENCY
AGENCY FOR INTERNATIONAL DEVELOPMENT
WASHINGTON, D.C. 20523



THE ADMINISTRATOR

JUN 12 1980

11 JUN 1980

The Honorable Richardson Preyer
Chairman
Subcommittee on Government Information
and Individual Rights
Committee on Government Operations
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

I welcome the opportunity to respond from the viewpoint of the Agency for International Development to your Subcommittee on Government Information and Individual Rights in its hearings to examine the emerging trade, cultural, and individual rights problems in the areas variously labeled transborder data flow, transnational information policy, or international data flow.

The United States Government - organizationally - already has an information policy agency, the National Telecommunications and Information Administration (N.T.I.A.), which by executive order is mandated to deal with the types of international data flow issues of policy which your committee is addressing. The N.T.I.A. acts in an advisory capacity to the President regarding overall U.S. policy in the area of international data flow.

In regard to your question concerning our candid assessment of the range and complexity of problems in this area from the viewpoint of A.I.D., an international agency by mandate, we have transnational data flow of two types. The first type is that associated with generally administrative communications supporting the operations of our missions overseas. The second type involves data flow or data base transfer which characteristically might electronically transfer technical, economic, population, agricultural or other data or statistics between the U.S. and a host country.

The first type of data flow should not be considered a part of what is known now as transnational data flow, as these systems pass information which is an integral part of the

private U.S. embassy and A.I.D. mission communications network for our worldwide diplomatic presence overseas. An issue of some concern is that our planners must take care to insure protection and integrity of circuits over which this information passes and of installations in which it resides.

The second type of data flow (that of data base transfer) might involve a host country agreement to electronically share information, either into or out of the host country. Typically activity of this type involves data base access, key word indexing, literature search, abstracting and applications of that nature.

A problem of underdevelopment usually exists in this area in the lesser developed countries, which tend to lack the technological infrastructure which we have taken for granted in this country. A.I.D.'s client countries are much in need of technological assistance in setting up systems such as are being discussed by your committee.

In your letter you request a description of any particular problems we have encountered. As A.I.D.'s mandate is to promote economic growth and social development in the less developed countries, we have not been concerned with European data protection laws enacted to protect the privacy of individuals.

As concerns American business enterprises, other U.S. private sector groups, and U.S. national interests, a watershed conference (Intergovernmental Conference on Strategies and Policies) was held in Spain in August 1978 under the auspices of the United Nations (UNESCO and the Intergovernmental Bureau for Informatics). Over 75 countries addressed a nascent "global information technology policy." At that conference a coalition of developing countries, according to newspaper reports, noted that 10% of the world's population had 95% of the world's information at its disposal in computerized data banks. This coalition of developing countries initiated a recommendation calling for aid in assisting them in obtaining access to national and international data banks in more advanced countries.

Similarly, at the World Administrative Radio Conference held in Geneva last year in regards to allocation of the finite radio broadcast spectrum, the developing countries took the position that this was a world resource which should be equally allocated among countries of the world; whereas the United States position was that this "resource" should be available to countries on an "as needed" basis consistent with the technology available in each country.

The problems of the lesser developed countries are not transnational data flow concerns but rather an immediate desire for greater access to this technology as a resource for national development purposes. A.I.D. is responding to host country requests for such access whenever they are technically feasible, if our resources permit, and the request is supportive of U.S. foreign policy interests.

In the 1980's we expect that transnational data flow will, however, emerge as an issue for A.I.D. in its host country relations. For the present, we are dealing with countries on a case-by-case basis as issues of this nature arise, realizing that most of the time we are dealing with "technology transfer" of data and data systems approaches to the host country for development purposes as a sophisticated element of U.S. foreign assistance programs.

I would be happy to be of further assistance to your committee.

Sincerely,



Douglas J. Bennet, Jr.



UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for Productivity,
Technology, and Innovation
Washington, D.C. 20230
(202) 377-3111

JUN 30 1980

JUL 9 1980

Honorable Richardson Preyer
Chairman, Government Information and
Individual Rights Subcommittee
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for the opportunity to offer my comments and suggestions to assist your Subcommittee in determining the importance and scope of any potential problems resulting from transborder data flows and in determining whether the U.S. Government is adequately representing American interests in the current international development of transborder data flow regulation.

Although the flow of data across national boundaries obviously preceded the advent of both computers and the availability of modern communication system linked computer networks, the availability of this new technology has exacerbated the concerns about its impact. The leadership of American science and technology in this field has given a worldwide competitive advantage to American business. This relationship between the development of new technology and its successful application by American business to improve its own productivity and to improve its competitive stance is a primary concern of my office and will be the thrust of my comments. I am aware that some information industry spokesmen have expressed concern about the non-tariff trade barrier aspects of transborder data flow regulation. While I understand their concerns, I will limit my comments to issues addressed by this office.

In the attachment to this letter I offer three brief recommendations and a summary of past accomplishments of the National Bureau of Standards in finding technical approaches to the protection of computer-stored data and our consultation with the Department of State on technical aspects of transborder data flows.

I will be happy to provide any additional information that you or your Committee might require.

Sincerely,

A handwritten signature in black ink, appearing to read "Jordan J. Baruch".

Jordan J. Baruch

Attachment

From a technical standpoint, the joining of computerized data processing systems with communication systems is so natural and obvious that such systems were leaping national borders almost before most people realized that once one is processing digitized data on wires it makes little practical difference how long those wires are. The results of this joining of technologies were dramatic improvements in productivity, the opening of new services that earlier would have been impossible to support, and economical development of specialized databases for subsequent accessing by a broad, diverse, and geographically dispersed clientele. As a result, significant investment was made to improve and expand the use of these systems.

Current technical research emphasis in each of the following areas, open system interconnect standards, distributed systems and databases, and the development of easier-to-use high level programming languages for the vast number of new layman-users, is visible evidence of new technology spawned by the success of combining computers and communications systems. If more evidence is needed, consider the growing investments of and competition between the two industrial sectors that earlier only provided either computing or communication services.

To summarize briefly the benefits of joining computers and communications: improved productivity through reduced costs, improved utilization of data processing resources, speedier results and more effective personnel usage. This new technology has been successful in three important application areas:

1. The provision of remote data processing services through communication links.
2. The provision of access to specialized information bases through communication links.
3. More effective utilization of corporate data processing resources through communication links.

The rapid growth of these applications internationally in terms of actual systems in operation and the quantity of data transmitted daily marks dramatically the benefits of adopting this technology. At the same time, this success has resulted in the present inquiry into the potential impact of transborder data flow.

This introduction leads to three recommendations which this office feels are important. The recommendations address the impact that policy can have on technology and bring to the attention of your Subcommittee the need to insure that international requirements do not directly, or when translated to domestic requirements, inhibit an important, growing technology. These recommendations are:

1. There exists a close interrelationship between successful, beneficial application of a technology and the future investment and development of that technology. The joining of computers and communications is a new, developing technology with great promise. It already has given American business a significant productivity and competitive edge. It should be regulated only in the face of clear and overriding need. Regulation, if needed, should be carefully designed to avoid unnecessary inhibition of the technology.

2. Future application and development of computer-communication systems directly depend on public confidence in the ability of its users to prevent or control unintended consequences or abuses of this new technology. An area of clear need and one supported by public mandate throughout the western world is the protection of individual privacy. Within the U.S. information processing scientists, technicians, and practitioners have led the call for effective and practical controls. They can be counted on to assist in developing reasonable controls over transborder data flows where it is necessary.

3. The current U.S. position of limiting the scope of the developing OECD guidelines on transborder data flow to the privacy protection of a natural person is correct and should be continued. This approach has been highly successful because of the accepted need and public mandate for this protection and because of the comparative clarity of the issue relative to the others included under consideration. Attempts to dilute or divert treatment of this issue with other concerns should be prevented. Those issues deserving consideration should be shifted to more appropriate study areas where the individual merits of each issue can be determined.

Past Accomplishments

The Institute for Computer Sciences and Technology (ICST) at the National Bureau of Standards (NBS) has participated continuously in the Department of State Inter-agency Committees and Task Forces dealing with the subject of transborder data flows and has served as U.S. representative to the Working Party on Information, Computer and Communications Policy at OECD.

ICST's work includes:

two milestone reports on personal privacy protection in personnel and medical record keeping practices by the authoritative Columbia University scholar, Dr. Alan Westin.

a frequently cited model for estimating privacy protection costs under varying conditions to aid agencies and policy makers in understanding the potential costs and impact of privacy protection requirements.

several important workshops and conferences on privacy protection requirements.

the development of the widely accepted NBS data encryption standard which is used by private industry and internationally as well as by Federal agencies.

ICST is responsible for Federal Information Processing Standards which apply only to Federal agencies and participates in related American National Standards Institute and similar professional society standards groups. Such standardization work, while highly technical, provides the foundation for enforcing and validating conformance with legal requirements. Of special note to your Committee is NBS's accumulated experience in assuring that standards support, not hinder, technology.



AUG 4 1980

Department of Energy
Washington, D.C. 20585

JUL 30 1980

Honorable Richardson Preyer
Chairman, Government Information and
Individual Rights Subcommittee
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter concerning the experience of the Department of Energy with restrictions on international data transmission and their effect on the Department's ability to carry out its mission. In response, we wish to advise you of some concerns which may be within the range of your subcommittee's inquiry on this subject.

The Department's ability to analyze the global energy situation is affected significantly by restrictions on disclosure of data by certain oil and gas exporting countries. For example, two leading exporters impose severe penalties for unauthorized disclosure of certain data -- Saudi Arabia with respect to production and Iraq with respect to reserves. While this information is sometimes available through intelligence sources or commercial channels, it may be difficult to verify or use in formulating projections.

Most of the principal energy importing countries, including the United States, provide information on production, inventories, imports and exports to the International Energy Agency. The transmission of data by the Department is governed by Section 254 of the Energy Policy and Conservation Act, 42 U.S.C. § 6274. Section 254 contains a number of safeguards to assure confidentiality of company proprietary data, and we have been able to participate in International Energy Agency data collection systems by designing those systems to comply with the requirements of Section 254.

In the area of international technical agreements, statutory disclosure requirements, especially those of the Freedom of Information Act, applicable to the results of government research and development efforts have resulted in serious problems.

Much of the information developed in the Department's research and development programs, in cooperation with United States industry, consists of technical data ultimately intended for commercial use by our industry, domestically and abroad. Nonetheless, this information, created by expenditure of millions of our investment dollars is flowing to the industries of other nations for the cost of search and copying.

This situation has not only resulted in forcing domestic industry to compete with overseas competitors for the fruits of domestic private sector and government investment, it has also created barriers to cooperative relationships with other nations in joint developments. Our policy of free disclosure of information resulting from government-funded research and development in some instances impairs the Department's ability to enter into international cooperative arrangements. Unfortunately, information which other nations may obtain readily through normal distribution channels has limited exchange value. Also, our foreign partners hesitate to provide us with proprietary information, owned by either government or private industry, because they fear that the United States Government is incapable of protecting such data from disclosure under the Freedom of Information Act.

I appreciate the opportunity to offer the Department's views on these important concerns.

Sincerely,



Lynn R. Coleman
General Counsel

APPENDIX 3.—LETTERS SUBMITTED FOR THE RECORD BY PRIVATE SECTOR ENTERPRISES, ASSOCIATIONS, ET CETERA

NATIONAL ASSOCIATION OF MANUFACTURERS



International Economic
Affairs Department

MAR 24 1980

March 19, 1979

The Honorable Richardson Preyer
Chairman, Subcommittee on Government
Information and Individual Rights
2344 Rayburn Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

The National Association of Manufacturers has become increasingly concerned about international developments regarding the subject of transborder data flows. We appreciate the interest taken in this issue by the Subcommittee on Government Information and Individual Rights, of which you are the Chairman. While NAM did not testify at the hearings on March 10 and 13, I would like to submit this letter for the record.

NAM has always supported the free flow of information, data, capital, goods and services, internationally and domestically. In recent years national governments in Europe have taken steps to monitor or control transborder data flows, ostensibly to protect the privacy of personal information. We have become increasingly aware that the motivation for government action abroad is quite evidently influenced by commercial considerations of a nationalistic character which can seriously impact U.S. business interests. We are concerned that:

- a.) the ability of U.S. businesses to conduct international activities in an informed and efficient manner should not be hindered;
- b.) U.S. businesses should not be discriminated against in the sale of equipment, components, software, data storage and other technical services.

I am writing to suggest that the U.S. government, in forthcoming OECD negotiations, articulate the growing unease and concern of U.S. international business firms.

Ten European states now have omnibus data control laws, which require the registration and licensing of international computerized data transmissions, establish data inspection boards for the monitoring of such activity, and, in some cases, provide that a certain amount of processing must be done within the territory of the host country. Such laws, in NAM's view, go beyond the requirements of privacy protection and may act as a real impediment to the flow of information needed to make informed decisions regarding personnel, financial transactions and other matters requiring reference to personal data files. Furthermore, four of the smaller European states have specified that their laws should apply to information held by companies on non-personal legal entities such as corporations and associations. This type of requirement also goes beyond the question of individual privacy and purportedly addresses the issue of security of proprietary corporate information.

(612)

In response to this development, the U.S. government has participated in the establishment of a set of OECD principles relating to government control of transborder data flows. It seems to us that the principles as presently drafted are fairly balanced between accepting a government's desire to protect individual privacy rights and opposing governmental use of such protective legislation to discriminate against foreign business interests. NAM urges the U.S. government to press for the adoption of these principles as soon as possible.

Through the State Department Advisory Committee on International Data Flows, we have been informed that the OECD is also preparing for "Phase II" of its work on transborder data flows. This phase will focus on the subject of non-personal data, and will apparently cover a broad range of related economic and technical issues. In this area we have two special concerns about U.S. government policy to date:

- 1.) The U.S. government has so far failed to articulate clearly the view that both international data transmission restrictions and discriminatory practices by government agencies and government-owned telecommunications systems constitute artificial restraints of international trade. Our opinion on this subject was strongly supported by the testimony of several private sector witnesses during your Subcommittee's hearings.
- 2.) At the most recent Advisory Committee meeting, the U.S. government representatives announced that our government would propose consideration by the OECD of the general employment and productivity impact of the use of computers. This proposal is at once too narrow, because it looks at computers only, rather than the whole range of microelectronics information technology, and too broad, because it goes well beyond technology issues to the whole question of modernization and industrial policy. We would suggest that it is inappropriate for the United States to introduce this subject, because our international guidelines which legitimate restrictions on the importation of technological goods and services would be unacceptable to U.S. representatives.

While this letter focuses on legislation by European states and U.S. activity in the OECD, NAM is also carefully watching related developments elsewhere. Both the Council of Europe and, possibly, the EEC Commission are interested in dealing with the transborder data flow issue on a Europe-wide basis. Several specialized European organizations are planning European communications networks which could discriminate against American suppliers of equipment and services. There are also proposals before official intergovernmental global organizations such as UNESCO and the International Bureau on Informatics which, if adopted, may be used to restrict international information flow to the detriment of U.S. economic interests.

The indications are that the information technology sector will be critical for the United States as it faces the intensely competitive world economic situation for the 1980s. Our world leadership in this field will benefit American trade directly, through the export of goods and services in this sector itself, and indirectly through improving the competitive efficiency of U.S. companies worldwide in all sectors. It will, therefore, be in our national interest to minimize the international restraints on the flow of information

technology goods and services. As you know, the development of high-technology communications systems and production capability is being fostered by government support in Western Europe, Japan, Canada and other countries, often with government subsidies or through government procurement policies. A major objective of the Multilateral Trade Negotiations concluded last year was to establish reasonable "codes-of-conduct" to prevent commercial discrimination in trade arising from governmental action. We urge that your Committee continue to monitor these developments, bearing in mind all U.S. national interests, including our commercial interest.

Sincerely yours,



Lawrence A. Fox
Vice President for
International Economic Affairs

cc: Matthew Nimetz
Under Secretary of State for
Security Assistance
Science and Technology

Dean R. Hinton
Assistant Secretary of State for
Economic and Business Affairs

E.G. Kovach
Bureau of Oceans and International
Environmental and Scientific Affairs
Department of State

Lucy Hummer
Deputy Assistant
Legal Adviser for Management
Department of State

William L. Fishman
Senior Advisor
National Telecommunications and
Information Administration
Department of Commerce

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Staff Secretary
National Security Council

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Boeschenstein Professor of Political Economy and Public Policy

COLLEGE OF LIBERAL ARTS AND SCIENCES
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April 17, 1980

The Honorable Richardson Preyer
Chairman
Subcommittee on Government Information
and Individual Rights
Committee on Government Operations
U.S. House of Representatives
2344 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

I have been following the hearings on International Data Flows and believe there are some issues that have not yet been raised at the hearings. Upon bringing the matter to the attention of the Committee staff, I was urged to write you so that the points could be entered into the hearings record.

Based on communications and meetings with spokesmen for West Germany, Sweden, Italy, Australia, Canada, Brazil, among others, I do not believe we can effectively deal with the problems of international data flows until our nation has a legislated national public policy on privacy. The democratic nations throughout the world who have addressed themselves to the problem of transborder data flows feel their interests are threatened in two broad areas:

- 1) The personal privacy of their individual citizens is being increasingly subject to abuse both from within the nation and from abroad.
- 2) The economic interests and even sovereignty of a nation is increasingly being subjected to the dominance and control of organizations in those countries possessing technical equipment and know-how.

As you know, many of the other democratic nations of the world already have privacy protection legislation for the private sector, and have established some government mechanism to monitor and implement their privacy protection laws. We do not yet have adequate comprehensive privacy protection legislation, nor is there expected to be a government mechanism to administer such laws when they are enacted.

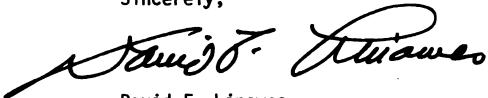
Even our neighbor to the north, Canada, is concerned about its relations with us in this area. This was expressed a number of years ago by the then Deputy Prime Minister Allen Gotlieb when he said, "For both Canada and the United States to transfer information in and out of the state without knowledge or control on the part of the jurisdiction concerned raises a number of issues that in the years prior to the communications revolution were barely perceptible, if they existed at all. They involve questions of human rights, property, economics and security." That nation's then Minister of State for Science and Technology further emphasized Canada's concern when he stated, ". . . national borders do exist -- they are a fact of life that cannot be ignored by national corporations. The operations of such firms from other countries cannot be regarded as mere extensions and adjuncts to headquarters, similar to branch plants in their own country of origin."

The Survey Research Laboratory here at the University of Illinois recently completed two research studies: one dealing with privacy protection safeguards for personnel records by the Fortune 500 companies, and the other examining the privacy protection policies of the largest banks in our nation in their dealings with their depositors and borrowers. The findings were less than encouraging, and pointed to the need for more intensive safeguards.

Some top foreign officials have studied these surveys and have expressed real concern that the same Fortune 500 companies and the same largest banks here who have branches and subsidiaries in their own countries are not adequately providing for the kinds of privacy protections their governments expect.

If you would like further elaboration of the foregoing points, I would be pleased to respond.

Sincerely,



David F. Linowes
Boeschenstein Professor of
Political Economy & Public Policy

DFL:kw

Chris Leuning

University of Illinois at Urbana-Champaign

Boeschenstein Professor of Political Economy and Public Policy

COLLEGE OF LIBERAL ARTS AND SCIENCES
308 Lincoln Hall
Urbana, Illinois 61801
(217) 333-0670

April 17, 1980

The Honorable Richardson Preyer
Chairman
Subcommittee on Government Information
and Individual Rights
Committee on Government Operations
U.S. House of Representatives
2344 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

I have been following the hearings on International Data Flows and believe there are some issues that have not yet been raised at the hearings. Upon bringing the matter to the attention of the Committee staff, I was urged to write you so that the points could be entered into the hearings record.

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Sincerely,



David F. Linowes
Boeschenstein Professor of
Political Economy & Public Policy

DFL:kw

Transamerica

Transamerica Corporation
Box 7648
San Francisco, California 94120
600 Montgomery Street
(415) 983-4120

John R. Beckett
Chairman and Chief Executive Officer

May 15, 1980

MAY 20 1980

The Honorable Richardson Preyer
Chairman
Government Information & Individual
Rights Subcommittee of the
Committee on Government Operations
Rayburn House Office Building
Room B-349-B-C
Washington, DC 20515

Dear Congressman Preyer:

Transamerica Corporation's present operations abroad are fairly limited and are not important in the data transmission business. My comments are consequently fairly general but may be helpful to your subcommittee.

A basic problem with regard to transborder data flow is that U. S. private corporations are faced with foreign government-owned or fully controlled companies, generally in the form of national post office arrangements which extend to data transmission. The role of the post office abroad is hardly that which exists at home: in many Western European countries they provide all the postal as well as telephone and telegraph services, generally all the data transmission service for international activities, and may be major financial institutions as well, providing a national checking and savings system, and may also be the conduit for all public payments to individuals. So we have a question of government to government coordination in which U. S. private companies necessarily must be provided a minor role. Further, most foreign governments make no apologies for favoring their own nationals in nearly all aspects of data processing or communications networks and contracts. It seems to me as a minimum that

Transamerica

The Honorable Richardson Preyer

May 15, 1980

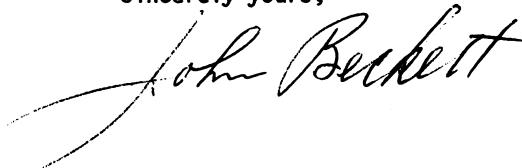
page two

we should have this tracked by our Government and the same treatment provided their firms in the U. S. that we are afforded in their countries. What would be even better would be to have free competition, but this seems unlikely for some years to come.

One other aspect of recent developments that concern me is the increasing discussion of U. S. companies making detailed financial and/or line of business data available on their operations. If there is any country in the world which provides exhaustive data, it is the U. S. To have countries which do not require their own corporations to provide equally good audited and detailed information -- and, indeed, whose corporations may also pay minimum income taxes -- insist that a U. S. "multinational" is not providing sufficient information so as to be able to determine whether U. S. actions are injurious to the host country is hypocrisy, and should be strongly resisted by both U. S. corporations and the U. S. Government.

Thank you for the opportunity of providing my views on some of the complex matters to be taken up by your subcommittee.

Sincerely yours,



JRB/yb

Walter E. Heller International Corporation

105 West Adams Street, Chicago, Illinois 60603

312/621-7000

MAY 27 1980

May 19, 1980

Hon. Richardson Preyer
House of Representatives
Government Information and Individual Rights
Subcommittee of the Committee on Government Operations
Rayburn House Office Building, Room B-349-B-C
Washington, D. C. 20515

Dear Mr. Preyer:

Thank you for your letter of May 5 to our Company informing us of the hearings on transborder data flow. Our Company is involved in this subject, since we have a "network" of operations in twenty-two countries, the dominant activity of which is factoring, a credit service we supply to commercial and industrial corporate clients. In 1979 we generated a total of \$5.6 billion in factoring volume, more than half of this "overseas". We operate our factoring offices in the United States "on-line real-time" with our Chicago data center. One European factoring affiliate now operates in this same mode with Chicago, and two more will begin in the next few months. Others have been supported on the same system but by batch processing from Chicago. The remainder of the overseas operations are self-supporting in one processing mode or another, but it is a general objective to bring as many as possible of these operations on-line on the same Chicago based system in order to provide enhanced quality and efficiency for all users through an integrated data base and system.

You ask our opinion with regard to the scope of current and future problems in this area of transborder data flows. First, it is an area of critical importance to the future efficiency of international commerce. If technological progress were to be quarantined within national borders, the result would be divisiveness and isolation. Conversely, integration of communications is another step in international understanding and identification of mutual self-interests.

Financial Services

Hon. Richardson Preyer

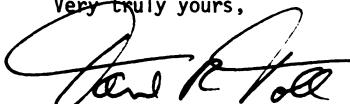
Page Two.
May 19, 1980

We view the growth of data protection laws in Canada and the EEC as potentially more harmful than protective, particularly with the possible broad definition of "persons" to include business entities as well.

Our Company has a specific problem with relation to the Federal Republic of Germany: our wholly-owned subsidiary there is regulated under bank law because of the nature of the financial services it renders, although it does not conduct traditional banking operations. Bank law has been interpreted by the German banking authorities as requiring total processing within the country, hardware and software and operations, thereby excluding the possibility of on-line processing such as we do for other subsidiaries from our Chicago data center. We understand that Canada has considered similar regulation. This results in higher expense for our German operation, and denies to it the benefits of participation in a broad network. The issue raised by the German authorities is not one of data privacy, but rather of full and immediate access to banking records. While we are complying, of course, with the German requirements, our hope is that in time this interpretation may be relaxed.

We have participated in the State Department's Advisory Subcommittee on International Data Flows, and have kept ourselves generally up to date through various subscriber letters. We feel that the type of hearing that you are conducting, and the development of an effective position and policy by our government, is the appropriate course. We will follow your deliberations with interest, and would be pleased to participate if that would be of value to you.

Very truly yours,



Daniel R. Toll
President

DRT/pk

Financial Services



2270 South 88th Street
Louisville, Colorado 80027
(303) 673-5000

Jesse I. Aweida
Chairman and President

May 19, 1980

MAY 28 1980

Representative Richardson Preyer
Chairman
Government Information and Individual Rights
Subcommittee of the Committee On Government Operations
United States House of Representatives
Rayburn House Office Building, Room B-349-B-C
Washington, D.C. 20515

Dear Representative Preyer:

I have received your letter of May 5 describing the examination by the Subcommittee on Government Information and Individual Rights into the issues of international data transfer, and your attendant requests for my views in this area.

As you may be aware, Storage Technology Corporation is a major manufacturer of magnetic tape, disk and related data storage products which attach to and support computer central processing units (CPUs). Since our involvement in the computer industry is principally focussed on local data storage, our involvement in international data transfer is tangential, in that our equipment may be used by our customers as the ultimate source or repository of the data which is transferred. Accordingly, Storage Technology Corporation has little experience in or resulting views about international data communications which would be relevant to the inquiries of your Subcommittee.

However, as the Chairman and President of a Fortune 500 company, I personally have strong views on the subject. Specifically, I believe that any attempts to regulate or control the international flow of data serve, at the very least, as a hindrance to the growth of worldwide trade and to the participation of U.S. industry therein. More serious, in my view, is the threat that such controls may be expanded (inadvertantly or otherwise) by governments to serve as another non-tariff barrier to enhance local industries at the expense of foreign firms. For these reasons, I am opposed to such regulations, except as they are necessary for the United States to reciprocate equitably vis-a-vis other governments' regulations.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jesse I. Aweida".

Jesse I. Aweida

JIA:PH

MAY 30 1980



LABORATORIES, INC.

DR. AN WANG
CHAIRMAN OF THE BOARD
AND PRESIDENT

May 20, 1980

The Honorable Richardson Preyer
The United States House of Representatives
Rayburn House Office Building
Room B-349-B-C
Washington, D.C. 20515

Dear Mr. Preyer:

Thank you for the opportunity to add my comments to your subcommittee's deliberations concerning information and data flow via national and international networks.

With the staggering increase in information volume and the public's desire to have that information more readily available, many high technology companies, including Wang Laboratories, are looking for ways to make that information accessible. The development of distributed data processing techniques forces the scattering of information which once was centrally located and available through simple means. The issues of privacy and security were, while complex, still manageable. Wang is taking a leadership role in systems designed to make people and offices more productive through the development of sophisticated Integrated Information Systems, Word Processors, Electronic Mail Systems and others, but more and more we are faced with the reality of the interconnection of systems through telecommunications networks. Much of the information maintained by Wang systems has a certain amount of sensitivity, be it with respect to proprietary corporate information or possibly even secure governmental information, and we consider it part of our responsibility to take an active role in the protection of this information.

We feel that if we are not fully informed regarding the various networking issues, then we cannot provide the proper level of consultation in the adaptation of Wang products to our customers' requirements. As systems and their interconnecting networks become more complex, a failure of the networked systems might reflect upon our liability and possibly the economic well-being of Wang and its customers. Needless to say, we are concerned.

A major problem we have is the unavailability of a standard accepted network. X.25 is being pushed by its backers; SNA is being pushed by IBM; ACS is hyped by Bell Laboratories. Now Xerox and Digital Equipment Company have joined together to promote Ethernet. We, and most other companies, have to bear the burden of being ready, willing, and able to support any and all, each with its own problems and idiosyncrasies. A national standard would be helpful. In its early days it need not be everything to everyone, but it should set the groundwork with flexibility to change and improve with time.

While we would encourage a standard and, of course, lobby for the standard that best met our goals, we would hope that the concept of free enterprise and technical creativity would not be stifled through any governmental actions. If we look at the governmentally controlled communications of Europe in England, France, Germany, Belgium, etc., we can see the effects of too much control. It is made difficult for some vendors to even participate. Equipment and use requires governmental approval. Due to the lack of competition, there is no incentive to produce better and better products.

Off-the-shelf communications services are non-existent. Long waits are common for even the simplest of requirements. The users of these services are basically held back at the will of a government agency. The issues of governmental interference are ever-present. The matter of individual privacy, so much a way of our lives, could be seriously jeopardized.

In order to promote reasonable trade and technological sharing with our world neighbors, we must develop the means of communication. We must speak the same language. We must share the same goals. Networking of our computer systems helps us toward those goals. We must encourage other nations to allow more unrestricted use of the public networks. We should encourage private competitive networks where security and privacy issues are important. We should encourage the use of networks through favorable tariffing. In this way we will maintain practical control of networks and the types of information placed on them while at the same time encourage their development and refinement for the good of all.

Sincerely yours,

WANG LABORATORIES, INC.

An Wang,
President

National
Semiconductor

2900 Semiconductor Drive
Santa Clara, California 95051
Telephone (408) 737-5000

TWX: 910-339-9240
Telex: 346353

MAY 27 1980



May 21, 1980

Hon. Richardson Preyer
Congressman
House of Representatives
Congress of the United States
Rayburn House Office Building, Room B-349-B-C
Washington, D.C. 20515

Dear Mr. Preyer:

I am responding to your May 5 letter to our Chairman Mr. Peter J. Sprague, who is not actively involved in the management of our company. You inquired about any problems we were incurring or expecting in the transfer of computerized information across international borders.

On a daily basis, we have computer to computer transmission to our Data Center. Thus far, all of our problems have been of a technical nature, with the possible exception of Germany where the Bundespost imposes archaic regulations on inter connection of data processing equipment. To our knowledge, there has been no restriction on the type of data transmitted. At some time in the future, we may wish to include personnel files, but thus far, our data has primarily concerned order entry, production control, and accounting types of data.

As you may know, National Semiconductor operates a world wide business with products manufactured in many countries and sold in a great many more. We would not like to see any restrictions on the effective transmission of data. However, I do not foresee a time where data on individuals would have an urgent priority just making it absolutely necessary to use computer-to-computer transmission. It might involve, however, conventional telex transmission, either over private networks or on public system.

I hope that this information has been of value to your study.

Very truly yours,

E. Joseph Willits
Vice President, Finance

EJW:st

MAY 27 1980



INTERNATIONAL PAPER COMPANY

220 EAST 42ND ST., NEW YORK, N.Y. 10017, PHONE 212 490-6000

May 21, 1980

Honorable Richardson Preyer
U.S. House of Representatives
Rayburn House Office Building
Room B-349-B-C
Washington, D.C. 20515

Dear Mr. Preyer:

This is in answer to your letter of May 5 addressed to Mr. Smith requesting information concerning the position of International Paper Company regarding the transborder data flow.

As of now, International Paper Company has only been operating in developed countries where it never encounters any problems connected with transmittal of information and, therefore, we cannot provide any examples of difficulties in this area. However, the potential impact of national laws unduly restricting the international data flow is a serious concern to International Paper Company; and our corporation believes that normal conduct of business would be hindered in any countries where laws are restricting transmittal of computer data or any other exchange of information between subsidiaries and the home office. International Paper Company considers that individual privacy can be protected without impairing the free flow of data necessary to conduct international business.

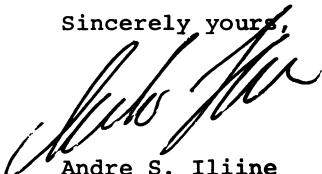
International Paper also deems that free flow of economic news should not be under government controls and that traders and investors should not be deprived of information essential for making business decisions by any barriers to free flow of data concerning a country's business and investment climate.

In the opinion of International Paper Company, the United States can effectively represent American interests in the following ways:

- participating in meetings of international organizations where international information policy is debated, in order to promote free flow of information and protection of privacy.
- promoting the inclusion in the Communication Act of a statement that transborder data flow should not be restricted by any nation except to protect its international security and privacy of its citizens.
- establishing and maintaining a comprehensive U.S. international communication policy.

Hoping that this response will be of assistance in the deliberations of your subcommittee, we remain

Sincerely yours,



Andre S. Iliine
Int'l. Development
Specialist

ASI/md

cc: F. Benson - Washington
J. J. Robinson - N.Y.



MOTOROLA INC.

May 27 1980

May 21, 1980

The Honorable Richardson Preyer
Chairman, Subcommittee on Government
Information and Individual Rights
The United States House of Representatives
Rayburn House Office Building, Room B-349-B-C
Washington, D.C. 20515

Dear Mr. Preyer:

Mr. Galvin, Chairman of the Board, has asked me to respond on behalf of Motorola Inc. to your letter of May 5 relating to the transborder data flows issue. Our Company appreciates the opportunity to raise concerns related to the issue, viz., the flow of computer data over international borders, since as you know, Motorola manufactures and markets electronic products globally and thus it relies on the continuous and free flow of information across national boundaries to be effective. For example, we have a centrally located manufacturing and ordering system used to schedule component production for world-wide shipments and to process customer orders in individual plants around the world. Our subsidiaries have terminal systems linked to the parent here, where the information is processed and stored. More direct controls/regulations on our communications might force our subsidiaries to install in-house systems or contract local services. The risk is that these alternatives might be too costly/slow for us to remain competitive in the markets concerned, and ultimately, they would jeopardize our freedom to operate in the most efficient manner world-wide.

The text below leads into a more detailed examination of the transborder data flows subject and answers the specific questions contained in your letter.

1. Our candid assessment of the range and complexity of problems in this area which may affect the operations of our Company:

The range and complexity of potential problems is enormous particularly for our Semiconductor Group.

The following items are involved:

- inventory information
- sales data
- incoming orders for end-customers and for sales between entities in the group
- payroll
- cost accounting standards
- many independent TSO applications (time sharing option) where files are shared
- product test parameters (actual programs and parameters which go into our test machines in Hong Kong)
- part characterization data
- invoices
- accounts receivable information
- production schedules.

Specific impact would be as follows:

- 1.1 The transborder information exchange is particularly critical in Europe. From a European point of view, every computerized transaction crosses at least one border as it flows into the U.S. Further, every sales office and every legal entity within our Semiconductor Group is linked into the Motorola computer network.
- 1.2 From a global viewpoint, our entire Semiconductor Group systems structure is based on the premise that we share information between operational units in an attempt to optimize the Group's position on a total basis. For example, this means that we share access to open orders and to inventories. Our latest extension of this philosophy is that we are packaging end-customer orders in Hong Kong to drop ship them directly to customers in the U.S. We plan to expand this service for more U.S. customers and to make it available to the European market.
- 1.3 Given a scenario in which we would have to set up processing operations within any country where we do business, the following major changes would occur:
 - a. Inventory would rise dramatically.

- b. The number of people required to keep manual and locally computerized records would quadruple at a minimum. (This increase in people would be in the processing area, and it would also occur in the administrative areas such as production control, finance, customer services, etc.)
 - c. Semiconductor Group would face a horrendous information consistency problem.
 - d. Receivables collection times would probably increase due to the extra handling which would be necessary in each country. This might show up as an increase in inventory instead of receivables collection times, but the effect would be the same.
 - e. Quality of service to our customers would drop. We gain better insight into market needs by pooling all marketing demand and using that as a basis for forecasting factory run rates. Without free transborder data flows we would go back to manual forecasts which are never as accurate, because people cannot adequately manage the volume of information involved.
 - f. The additional computational equipment would increase our capital expenditures.
 - g. We would have to extend the financial closing schedule each month.
 - h. Our engineers in the U.S. and Europe share access to computer-aided design programs. This ability would be impeded, and if we had to duplicate the machine power necessary to support some of the programs, the cost would be very high.
 - i. Motorola operates with very complex computer systems. Assuming we found it necessary to duplicate hardware in various countries, we might not be able to find enough talent throughout the world to keep such systems running in each location.
2. A description of any particular problems we have encountered:
Thus far, Motorola has not encountered any specific problems -

possibly because we installed a basic data network in Europe as late as 1972, and the first law concerning data flows was enacted only in 1973 (Sweden). As you know, many governments/supranational organizations are developing their positions on the issue only now. In any case, we expect to encounter some red tape with future network expansion, particularly in France.

3. Our views on existing and potential problems for American business sector groups, and our national interests:

In general, we reckon that like trade in physical goods and services, "information" (scientific, economic, political and social) is a very important component of international relations and each country's well-being, because it represents employment, economic growth and national sovereignty/security. Consequently, any barriers to transborder data flows are limiting factors on/directly affect these vital areas of our national life and interests.

In specific terms, the transborder data flows issue revolves around four major topics discussed briefly below. In most cases - and to Motorola Inc. in all the cases - this issue represents potential problems rather than actual ones.

However, the time to examine and address the issue is now - before it becomes a real problem. The timing is even more important in view of the unstable conditions currently surrounding the transborder data flows issue - leading to questioning by U.S. companies of the benefits offered by applications of computer-communications technologies. Such uncertainty is reflected in business strategic planning, which cannot identify future developments with attendant consequences for jobs and profits.

3.1 Privacy protection

Practically all current restrictions on data flows originated with country laws dealing with the protection of personal information which is collected and stored relative to an individual. Although the type and degree of restrictions vary from country to country, the intent is not significantly different from that directed to U.S. citizens under the U.S. Privacy Act of 1974. The result of such laws is generally increased administrative burden. In an extreme case, it may be required that payroll information be stored, administered, and processed within a particular country. There are several ways

to reasonably satisfy this requirement. Such laws do not, however, pose a fundamental threat to the manner of doing, or ability to conduct, business. Voluntary compliance to the extent possible is in our best interest. This is in recognition of the right of the individual, and as a good-faith effort to allay the fears of European countries, particularly concerned about the laxity of privacy protection in the U.S.

3.2 Corporate or Business Information

To date, the issue has focused on the individual, or "real" person. An increasing emphasis is being directed to "legal" persons, or corporations. Europe in particular is headed in this direction. Austria, Denmark, Luxembourg, and Norway are currently extending individual protection laws to include corporations.

Of particular concern to Motorola is France and Germany with substantial concentration of our business in the two countries, which seem to follow this trend. The implications of restrictions on "legal" persons in the area of transborder data flows might have a fundamental impact on the way multinational corporations do business, for example:

- a. A company could be required to disclose market or technology assessment data it has collected on competing corporations.
- b. Establishment of expensive data processing facilities in each country duplicating already existing facilities.
- c. The location of certain types of facilities could also be impacted, e.g., product test facilities if test and certification data cannot be shipped outside a country; or, engineering design centers if design data cannot be shipped outside a particular country.
- d. A key to our Semiconductor Group's current operation and business plans is an up-to-date and consolidated information on worldwide inventory and capacities. Such business strategies and operations would be impacted.
- e. The collection and consolidation of financial

information would be a cumbersome, expensive, and time-consuming process, which is directly counter to the objective of reduced time-frame and expenses for financial "closing."

Motorola's Communications Group's current efforts to implement an order-processing system with worldwide scope would be impacted.

3.3 Economics and Technology

The issue here arises from the general recognition of the emerging so-called "information age," the transition from industrial to service societies, and the fundamental role communication plays in a service society. Information is increasingly recognized as a resource with an established value much the same as other resources. Therefore, the thinking goes, the flow of an information resource should be tariffed/taxed in much the same way as the flow, for example, of materials, components, and equipment. This represents a sizable source of revenue as yet untapped. Impact to Motorola, of course, depends upon the size and form of the tariff/tax. In the case of cost tariffs, the impact could be the added cost. In the case of technical tariffs, the cost of compliance, verification of compliance, and increased complexity of operation could be significant.

An additional area to be considered is the technology deficit (gap) which currently exists in many of the countries in computer and communications technology. In Canada, for example, there is concern about the amount of dollars flowing to the U.S. as data processing revenues. One survey indicates that 25,000 data processing jobs will be exported by 1985. This, along with hardware purchases from the U.S., is estimated at about \$1.5 billion in lost revenue during the 1980-85 period.

Impacts to Motorola would be in locating, training, and retaining qualified personnel in these areas. This is both expensive and difficult in the current "short supply" environment. There is also the possibility of lost sales because of restrictions to purchase from "local" suppliers. This technology barrier could also very easily extend to semiconductor technology.

3.4 National Sovereignty and Independence

A growing number of countries link transborder data flow with national security and economic independence. France, for example, has stated that one of the reasons for restricting the flow of corporate financial data outside the country is national security. As corporations within France become increasingly dependent on data stored outside the country for successful operations, the susceptibility to acts of terrorism, data embargoes, or interruption of data flow increases significantly, along with the devastating effect on its economy. It has been demonstrated that foreign assets can be frozen by a country. This includes data assets. Also, in the event of war, a country that has most of its economic data stored outside is particularly vulnerable to enemies discovering weaknesses in its economy.

In a nutshell, the above section concerning problems for American business illustrates that any restrictions on transborder data flows will definitely slow technological progress and significantly increase costs of doing business for multinational corporations like Motorola. Besides, technological progress will be slowed due to the loss of ability to share, and ability to afford the required computing hardware/software which is a "must" in today's high technology business. Costs will increase primarily because we would lose the economy of scale advantage we presently enjoy; we would have to hire more people, duplicate hardware/software, facilities, and change our planning as well as management.

4. Our thoughts on how the U.S. Government can effectively represent American interests and assist American business:

It is our opinion that a satisfactory solution of the issue can only result from joint industry-government commitment to examine it and to find the necessary answers. In this respect, your hearings are a step in the right direction, since experience of and suggestions from practising executives in this country as well as overseas should carry considerable weight with governments and supranational organizations considering restrictions on transborder data flows.

Actions listed below might contribute to protecting American business interests by the U.S. Government:

4.1 Interface with appropriate authorities in Europe concerning key issues in this area, viz.:

- rates
- tariffs
- private lines

because they have rules for these right now on their drawing boards.

4.2 Approach the issue as a new form of non-tariff barrier to international trade and handle it as other trade disputes. Such treatment should enable us to join with our business allies abroad who also are going to be affected by restrictions on data flows.

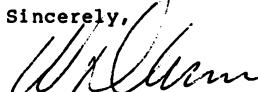
4.3 In attempting to favorably influence the parties concerned, use arguments showing the benefits of doing business under unrestricted data flow system. Conversely, enumerate the increased cost of conducting business under regulatory system in the increasingly interdependent world.

4.4 While recognizing the legitimate rights of nations to protect the privacy of their citizens, we believe that this concept should not be expanded to include the protection of "legal" persons, i.e., businesses, etc. Paradoxically, examples of Norway, Denmark and Austria show that their laws to protect "corporate privacy" actually allow access by a corporation or the Government to the files of another corporation.

4.5 Given the extraordinary pace of technological change in the information industry, the U.S. government and those of other countries should exercise extreme caution in formulation of any restrictions so as not to impede further progress or eliminate the benefits of advancement reached thus far.

Motorola Inc. believes in the need for a partnership between government and the private sector in promoting American trade and protecting U.S. interests. The transborder data flows issue is certainly an area where such partnership is especially needed.

Sincerely,



W. D. Connor
Vice President and Director
Corporate Multinational
Operations

inp

May 27 1980



2500 WALNUT AVENUE, MARINA DEL REY, CA. 90291 • 213/822-3202

TWX: 910/343-6245

May 22, 1980

Representative Richardson Preyer
Chairman
Government Information and Individual Rights
Subcommittee of the Committee on Government Operations
United States House of Representatives
Rayburn House Office Building, Room B-349-B-C
Washington, D.C. 20515

Dear Representative Preyer:

I have received copies of your letter of 5 May 1980 from both Mr. Gene White of the Amdahl Corporation and Mr. Jesse Aweida of Storage Technology Corporation, both of whom suggested that my views might be helpful to your committee.

Our company, Tran Telecommunications Corporation is a privately held American company doing business on an international basis in the field of digital computer communication networks which are a key element of the information handling technology of the future. We are in the process of merging our company with Amdahl which is at the same time merging with Storage Technology. We expect our combined companies to find ourselves significantly affected by legislation in the field of information transfer.

I share many of the concerns expressed by others of restrictions of information flow as an element of government protectionist policy. The compelling point, which should be considered relates to our society's ability to maintain and improve our overall quality of life. Unfortunately, government policy and regulatory practices in this country as well as other parts of the world have resulted in an enormous amount of non-productive activity which cannot objectively be looked on as having improved our standard of living. In fact, we are bombarded daily with statistics that point to lower future living standards because of our declining productivity.

One of the only areas where there is real promise of improving our situation is in the innovative application of information processing technology to our society's problems. Our ability to have unrestricted and unregulated access to validated information in a timely manner must be encouraged as a key matter of national policy. Lack of timely access to correct information within business



Page 2

and government organizations is clearly one of our most productivity-constraining problems. Certainly we want to protect the rights of individuals, but in our zeal to attain that goal, we must make certain that we do not overstate the impact that computer technology can have in that area. We must make sure that our society remains unfettered in its ability to apply the technology we now have available to improve the human condition of our country.

Very truly yours,

A handwritten signature in cursive ink that appears to read "JW Sanders".

Ray W. Sanders
Chairman of the Board

RWS/cdc
cc: J. Aweida
E. White



Ralston Purina
Company

MAY 27 1980
22, 1980

The Honorable Richardson Preyer
Chairman
Government Information and Individual Rights Subcommittee
of the Committee on Government Operations
Rayburn House Office Building, Room B-349-B-C
Washington, D.C. 20515

Dear Congressman Preyer:

The Subcommittee on Government Information and Individual Rights, which you chair, is conducting hearings into the matter of International or Transnational Data Flow. I offer the following comments for consideration.

The Ralston Purina Company does business in 18 countries outside the United States. We are completing installation of data processing and transmission equipment to assist the company data consolidation and decision making process. Any restriction imposed on the free flow of information vital to the internal business process will directly increase costs and indirectly make intelligent business decisions more difficult.

It is obvious that governments have the sovereign right to protect their citizens and their countries from improper use of personal data or of industrial secrets; however, this right should not be used to allow censorship of business data transmissions nor promote the use of state owned transmission facilities at the expense of other, more cost effective information services.

The OECD discussions on this matter seem to approach it as a potential risk to sovereignty and employment levels in certain countries. We believe this approach is unwarranted and appeals to the emotional, rather than practical, aspects of the situation.

We certainly believe that our country should not place restrictions on the free flow of data and communications across our borders and should attempt, through proper diplomatic and trade related channels, to encourage other nations to act accordingly. Anything less is a true restraint of trade and should be dealt with as any other obstacle which hinders the conduct of legitimate business.

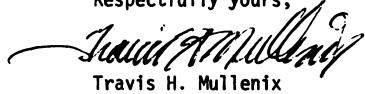
We have noted with concern the recent efforts in some European countries to control personal data flows across borders. While individual right to privacy must be protected, this must not be used as a basis to restrict or control the cross border flow of routine intracompany business information, such as financial statistics, inventory status, manufacturing data, etc.

Timely decisions based upon reasonable data are critical to the successful conduct of business worldwide. We must protect the right to accumulate data from operations around the world as quickly as modern communications services will allow in order to remain competitive.

Checkerboard Square
St. Louis, Missouri 63188

We support you and your Subcommittee in your efforts to clarify the real and potential problems and to formulate a coherent policy to deal with the situation.

Respectfully yours,



A handwritten signature in black ink, appearing to read "Travis H. Mullenix".

Travis H. Mullenix

jb

CITIBANK

Citibank, N.A.
399 Park Avenue
New York, N.Y.
10043

Walter B. Wriston
Chairman

May 23, 1980

The Honorable Richardson Preyer
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of March 5, and the invitation to express our viewpoint concerning problems in the area of international data flow. I am extremely pleased that your subcommittee has elected to focus on the broad range of economic concerns associated with developments in this area, and want to assure you of our fullest cooperation in your inquiries.

Citicorp, as a financial intermediary, is naturally concerned about protecting the privacy of its customers. We have participated in discussions on the OECD privacy guidelines at the Department of State and, with appropriate introduction by that Department, have conducted detailed discussions with European governmental agencies responsible for privacy law compliance, the OECD and the Council of Europe. We see no conflict between the stated purposes of this emerging body of law and our methods of doing business. To date, compliance with these laws has not interfered with our operations and has had only a marginal effect on our costs. The flow of financial transactions has not been inhibited.

Candid discussions with the draftsmen of several of the laws reveal a deep, abiding concern for continuing protection of privacy rights of individuals, corporations, trade associations, unions and similar organizations. In no case have we detected any evidence of a conscious, governmental effort to use these laws to restrain trade, although the licensing requirements of those laws could be abused for such purposes.

We have detected, however, some trends in communication policy and regulations and local protectionist sentiment that may alter this picture. Naturally, we are concerned about developments that tend to increase the cost or reduce the efficiency of financial transactions consummated or effected between distant points. Laws and regulations that have that effect not only inhibit the effective

conduct of business by American enterprises, as you note in your letter, but tend to disrupt the entire international financial marketplace to the ultimate disadvantage of the economics involved. They increase the costs of financial transactions to all borrowers and lenders, investors are restricted in their access to opportunities, and firms seeking capital find themselves cut off from pools of liquidity that might otherwise be available. In other words, markets are distorted and economics are made inefficient.

There is a central, underlying feature of information flow that is frequently overlooked, but to which all the other facts are intimately related. This feature is that all information flowing in the international communications network takes the physical form of a single homogenous stream of electrons; the switching centers and communications satellites neither know nor care whether the electrons they are transmitting represent a Beethoven symphony, a television show, or the ledger sheets of an international bank. A consequence of this is that such distinctions as "data flow" and "news" or "entertainment" are purely legalistic or conceptual in nature; they do not and cannot refer to separate physical qualities. Legal distinctions between financial data and other forms of information, therefore, will be exceedingly difficult to enforce unless governments choose (a) to segregate communications systems so that a complete network will have to be dedicated to one form, and only one form, of information, or (b) to establish some form of monitoring technique over the electronic messages crossing its borders. The former alternative will necessarily limit opportunities for optimizing our use of new technology; the latter would destroy the confidentiality not only of business and financial information, but of all other forms of communication, including particularly personal phone calls.

Streams of electrons are either free to cross national borders, or they are not. This, it seems to me, should be the touchstone by which we judge any national information policy. In the nature of things, we are not going to have an international electronic highway which is free of all tolls or traffic controls. But I think we must be alert to identify each tariff that is imposed on this traffic, and every standard or regulation that constricts it, and to analyze not only the effects but the true purpose of the restriction.

That is really my answer to the fourth item in your letter - how the United States Government can effectively represent American interests and assist American business. As to your first question, asking for a candid assessment of the range and complexity of problems in this area that may affect our operation as a company, I must say that the list grows daily and is seemingly endless.

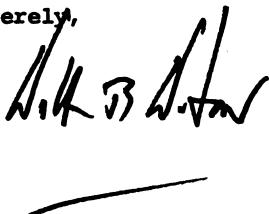
To take one item more or less at random: A development that is making control of the content of the bit-stream virtually impossible from the standpoint of governments is the progress of the art of encryption. Encryption is used to protect privacy, and it is also important in matters of national security. These two objectives, however, frequently come into conflict. Some governments, concerned about national security, prohibit encryption by private communicators. Others sometimes encourage this action as a useful measure in protecting privacy. There are conflicts in the laws and regulations affecting personal privacy and the means to effect that privacy on data lines from one country to the next.

Attempts by regulation to increase security of nonpersonal data bases, however, may have just the opposite effect. To regulate files requires knowing what is in them. If they are thoroughly encrypted in high quality code, such as the U.S. Federal Data Encryption Standard, it becomes impossible for the regulators to know what is in them. It is therefore tempting for regulators to prohibit such encryption. But this eliminates the use of one of the best protections of privacy. Recent technological developments have made encryption easier, cheaper, and more secure. Attempts to regulate such things could result in vast measures of government intrusion into operations, with only a statistical measure of success, and widespread violations. But they will undoubtedly increase costs to everyone concerned.

Related to the privacy question is the controversial issue of whether or not legal persons should be covered by data protection legislation. Congressman Goldwater, among others, has made some proposals to that effect. The issue was warmly debated in the French National Assembly before their privacy law was passed two years ago, with the result that data concerning legal persons is not covered. The Norwegian, Danish, Austrian and Luxembourg laws cover data about both individuals and legal persons. From a technological operations viewpoint it is extremely difficult to separate "corporate" data from personal data. The two often reside in the same system and are used together (e.g. a transfer of funds between banks (corporate data) may well also mention the ultimate individual payee by name - and that makes it personal data). We feel that public actions to provide for the protection and regulation of data about legal persons deserve at least as much attention as is being devoted to protecting the privacy of real individuals. To my mind, concern about protecting the privacy of individuals must appear somewhat specious in the absence of equal concern for the right of banks to protect the confidentiality of their records, for without the latter, it is not really possible to afford the former.

In summary, we share your views as to the complexities of the problems in this area and therefore suggest that the sharing of our experiences in informal discussions between those responsible for this issue at Citicorp and the members, or staff, of your Committee might be useful. Please do not hesitate to contact me or M. Blake Greenlee, Vice President (212-559-2637) if we can be of further assistance.

Sincerely,



A handwritten signature in black ink, appearing to read "M. Blake Greenlee". The signature is somewhat stylized and includes a horizontal line underneath it.

Mellon Bank N.A.Mellon Square
Pittsburgh, Pennsylvania 15230JAMES H. HIGGINS
CHAIRMAN OF THE BOARD

May 23, 1980

The Hon. Richardson Preyer, Chairman
Subcommittee on Government Information
and Individual Rights
Government Operations Committee
U. S. House of Representatives
Washington, D.C. 20515

Dear Congressman Preyer:

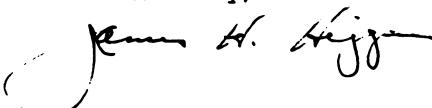
Thank you for your letter of May 5 inquiring as to our views on the broad subject of limitations on transborder data flows. The issue you raise is a timely one and, we suspect, will become a matter of increasing concern to those of us involved in international trade and finance.

Mellon Bank's international operations overseas are limited to four principal branches (London, Frankfurt, Tokyo and Hong Kong), and a number of representative offices. To date, we have not encountered any significant limitations by local authorities on current or proposed exchanges of data with our offices. However, like many other institutions, we are beginning to implement sophisticated, computer-based communications systems between the head office, our international branches and certain customers, and we are aware that in certain countries barriers are being erected which might impede the efficient, timely flow of information.

The Subcommittee's hearings, as outlined in your letter, are an important step forward in focusing attention on this important subject. However, we should also suggest that some attention be paid to the extent to which current or prospective U.S. laws might impact foreign organizations doing business in the U.S. While we do not have any detailed information ourselves in this area, we are sensitive to foreign countries' interest in reciprocity in regulation, particularly when it applies to international banking issues.

Thank you for this opportunity to share our views with you.

Sincerely,



JUN 2 1980

American Can Company

Judd H. Alexander
Senior Vice President

American Lane, Greenwich, Conn. 06830
203-552-3233

May 27, 1980

The Honorable Richardson Preyer
House of Representatives
Rayburn House Office Building, Room B-349-C
Washington, D.C. 20515

Dear Mr. Preyer:

We, at American Can, appreciate the opportunity to assist your subcommittee; however at this time, American Can is a relatively small user of International data communications. Most of our current traffic is composed of telex wires, telephone traffic and mail. We are planning to expand our use in the near future, consequently, local and national restrictions are a major concern.

Our International subsidiaries are operated as completely autonomous concerns and day-to-day operational communications are handled locally. The subsidiaries' main communications with the United States are for exceptional issues, strategic direction and monthly accounting type data.

In spite of the fact that we hardly use telecommunication for transmission of data, the legislation and trend of restriction by foreign countries poses a considerable problem. Restrictions imposed or considered by some foreign countries imply that not only transmission of data via telecommunication is impacted, but certain data processed by computer in a host country requires approval by a government agency before it can be mailed to the United States.

The data transfer needs of the American Can Company for global operations are related to business performance and plans. Data required centrally relates to the various functions of Sales and Marketing, Manufacturing, Finance and Personnel. The local needs are handled by computer and our domestic needs, as I mentioned previously, are processed by telex, mail, etc.

At this time we have not encountered any particular problem due to the nature and scope of American Can's transnational data flow.

We are however, following closely developments in this area and would like to point out possible implications to American business enterprises:

IMPLICATIONS

- Regulation of commercial and corporate data.
- Disclosure and taxation of commercial information.
- Import/customs duty on programs transmitted.
- Prescribe rules for data processing operations.
- Affect International Business Communications.
- Rules over content of information to be collected and used.
- Inhibit processing and transmission internationally.
- Open computer operations to inspection.
- Require disclosure to individuals or surveillance authorities.
- Legitimizes a reporting scheme which could be used to install government supervision over any company information holdings.
- Imposes quasi-licensing requirements on computer users.
- Requires modifications in security practices.
- DP - Employees are legally accountable for implementing data protection laws (and not responsible to corporate management (i.e. Germany).
- Trade unions in some countries are seeking to have DP employees accountable to Unions rather than to Management.
- Corporations operating in any country may be obliged to extend their compliance to every country.
- There is a growing tendency in many countries to require data files to remain in the country of origin rather than be transmitted (including mail) across national boundaries.
- New national laws give companies the right of access to files about them held by other companies or government authorities. (Planning!)

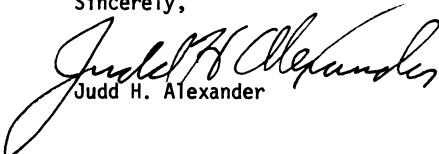
TECHNOLOGICAL IMPACT ON DATA MOBILITY

- Computers and telecommunicators, distributed processing, electronic mail, automated office.
- Threshold technologies, satellites, fiber optics, micro-electronics ... and their impact on data traffic.
- On-line data base applications.

New technology, satellite communications, promises significant potential but can be strangled in its infancy by unwise policy decisions impeding its use and artificially raising its cost. Similarly, technical optimization of hardware by processing large production runs in the United States and sending results/reports to the foreign subsidiary could be negatively impacted thus increasing our cost of operation.

Once again, thank you for the opportunity to share our concerns and viewpoints. If we can be of further help, please feel free to contact us directly or call Mr. Richard Swigart in our Washington Office (Telephone: 202 452-1252).

Sincerely,



Judd H. Alexander

ak

cc: Mr. J. N. Mathis
Executive Vice President
International Operations



NCR Corporation

D Dayton, Ohio 45479

William S. Anderson
Chairman of the Board



May 27, 1980

The Honorable Richardson Preyer, Chairman
Government Information and Individual Rights Subcommittee
House of Representatives
Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

I welcome the opportunity to participate with the Congress to define the parameters of international data flow issues requested in your May 5, 1980 letter. NCR is willing, wherever possible, to assist and participate in determining how the United States should address these issues.

NCR Corporation develops, manufactures, markets, installs, and services total business information processing systems for selected worldwide markets. These markets are primarily in the retail, financial, commercial, industrial, health-care, education and government sectors. NCR computers range from small business systems to the most powerful general-purpose processors, and are supported by a complete spectrum of terminals, peripherals, data communications networks, and an extensive library of software products. Supplemental services include field engineering, data centers, systems services and educational centers.

Because we market a wide range of products to a large customer base worldwide, we have had, for several years, a serious interest in the issues raised in the area labeled transborder data flow. We are concerned about the customer market aspects and the potential impediment of NCR's internal international information flows that are necessary to function economically as a large multinational corporation.

NCR actively participates on the Computer and Business Equipment Manufacturers Association's (CBEMA) Transborder Data Flow Committee and has been actively participating as an observer at the U.S. State Department's Working Group on Transborder Data Flows meetings.

We would like to point out that NCR values the privacy of the individual and has a Corporate policy which complies with the

Hon. Richardson Preyer

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May 27, 1980

recommendations of both the U.S. Privacy Commission Study and the Organization for Economic Cooperation and Development.

Mr. Chairman, I will now address the four areas for which you have requested assistance.

1. Your candid assessment of the range and complexity of problems in this area which may affect the operations of your company:

We see the following complex problems facing the operation of NCR worldwide:

- The additional operating costs and personnel that will be required to comply with the data regulation laws of various countries in relation to the export and import requirements for equipment, services and information such as: licenses, data registrations, data base descriptions and government approvals of computer applications and processing units.
- The increase in capabilities and resources necessary to notify and respond to customers concerning the existence or content of data on file.
- Compliance with inconsistent laws from country to country, requiring knowledgeable and highly trained personnel dedicated to data production and communications compliance activity.
- Escalated overhead costs for administration, education, monitoring, reporting and auditing functions in support of data protection legislation.
- Possible necessity for redundant files/data bases and the extra hardware and software required to maintain them.
- Potential application of taxes on data.
- Increased requirements for planning, budgeting and implementing information systems overseas.

2. A description of any particular problems you have encountered.

In one country we have had to create new policies, procedures and guidelines and absorb the associated personnel and administrative costs.

3. Your views of existing and potential problems for American business enterprises, other U.S. private sector groups, and our national interests.

Hon. Richardson Preyer

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May 27, 1980

We believe that the emphasis on particular products, such as computers, is misapplied. Some European and most developing countries appear to be using national data regulation laws to control the flow of information in and out of their respective countries by focusing on the control of computers and the data transmitted by computers, whilst in reality information flow employs the use of many electronic and communication devices other than computers. Examples would include many communications via telephone, teletext, telegram, facsimile, written, and printed matter. Obviously, the flow of information does not require the use of computers.

We are concerned that countries are on the verge of enacting data regulation legislation that will disrupt the open market place and will impede the free flow of information that is necessary for the operation of American business enterprises.

4. Your thoughts on how the United States government can effectively represent American interest and assist American business.

We feel it is important that the U.S. Department of State and its Working Group on Transborder Data Flow maintain and continue the dialogue with American business. This dialogue recently has been established by the Honorable Mathew Nimetz, Under Secretary for Security Assistance, Science and Technology.

We recommend that the Congress actively support this program of the Department of State and supplement these efforts so that the Department of State can allocate sufficient resources to its Working Group on Transborder Data Flow, to enable the Working Group to interact with American business. Thus, it could not only develop the data to be used to substantiate the claims voiced by American business, but also to influence various Governments to use a standard set of rules, particularly those Governments which have some sort of alliance such as the Common Market countries.

We believe that the United States should promote the use of standards committees as the basis for developing common standards for transborder data flow. The United States, through its participation in international bodies, should promote the utilization of these standards by various national governments and Common Market countries.

Hon. Richardson Preyer

-4-

May 27, 1980

In conclusion, I would like to emphasize that NCR will continue to support the U.S. Government's endeavor to maintain and ensure the future free flow of information across international borders.

Sincerely,



W. S. Anderson

mlk

**System
Development
Corporation**2500 COLORADO AVENUE • SANTA MONICA, CALIFORNIA 90406
TELEPHONE (213) 829-7511

TELEX 65-2358

May 27, 1980

The Honorable Richardson Preyer
Chairman, Government Information and
Individual Rights Subcommittee
of the Committee on Government Operations
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Preyer:

Your letter of May 5, 1980, contains a very accurate summary of my opinions and of my company's experience with the major problems we face in the areas of transnational information policy and international data flow. As you stated, these problems indeed threaten overseas operations of American companies. System Development Corporation itself, and many other companies, to my personal knowledge, have been damaged by barriers, by inconsistent policies (and by fully consistent, anti-American policies), and by the absence of any concerted American program to retain equivalent treatment. The effects of these problems have indeed been direct, not merely through the loss of potential markets but also through taking away existing U.S. business. The effects are also indirect by raising costs, almost to a prohibitive level, and by limiting access to information.

I feel it is unfortunate that several agencies of the U.S. Government have implemented programs which increase the difficulties of U.S. companies in coping with discriminatory programs and non-tariff barriers. In some cases, in fact, individual U.S. programs have made the situation worse. I will identify some of these programs. First, however, I would like to describe some of my company's particular problems.

System Development Corporation operates SDC Search Service, a service for online, interactive, bibliographic retrieval from databases. The May 5, 1980 issue of Fortune magazine describes the services provided by SDC, by Lockheed Corporation, and by a smaller U.S. company, Bibliographic Retrieval Services, Inc. As Fortune stated, we utilized the Tymnet network of another U.S. company, Tymshare, Inc.

For three years, until the spring of 1977, SDC Search Service users in the major capitals of Western Europe were able to access our service through the facilities of Tymnet. In 1977, however, the European Confederation of PTTs assumed control over the network by establishing access controls and by requiring the payment of user fees directly to each country's PTT. The effect on Tymshare was quite direct; these actions were equivalent to a confiscation of control of an already existing network. To SDC the effects were indirect, but were quite noticeable. In some cases the fees now levied by the PTTs were double or triple earlier rates. This, of course, reduced our business. In other cases the control of access, through the issuance of passwords, eliminated classes of users of SDC Search Service. In another country, Belgium, the control of passwords has been used to prevent SDC from offering training sessions and demonstrations to present to potential users of our service.

In 1979, the European Community was able to begin operations of Euronet, which has the avowed purpose of fostering European information services. Establishment of the network has been subsidized by the national PTTs. Unfortunately, however, the policies supporting Euronet have been to reduce competition and, explicitly, to exclude U.S. suppliers. U.S. database suppliers have applied for participation; their requests have been rejected as "not possible" at the present time. U.S. data networks, specifically Tymnet and GTE's Telenet, have requested participation or access; their requests were rejected on the grounds that there were not yet connection "standards"--a plausible argument except for the fact that interconnection was and is quite technically feasible.

The effects on SDC have, again, been indirect but painful. Differential rates have been utilized to encourage use of Euronet services, on which U.S. suppliers are banned, while discouraging direct use of U.S. services. In France, for example, the rate charged a user merely for access to SDC Search Service is approximately seven times the rate for access to Euronet. With the great price differential, which is totally unjustified by any cost differentials, European users will increasingly migrate to Euronet services, merely because of artificial rates that establish non-tariff barriers.

can access NLM data only through a national center. These agreements effectively prevent SDC from offering services in those countries, just as NLM's U.S. service prohibits competition in this country. This is the case even in participating countries which have not yet established their own national centers. Belgium, for example, has a reciprocal arrangement with NLM; Belgium has not yet provided a national center. Users in Belgium cannot access NLM or its data in a direct fashion. Belgium therefore reached agreement with Germany so that Belgian users can access NLM-produced data through an agency of the German government. The result is continuing exclusion of U.S. commercial interests.

Several not-for-profit organizations have also acted to prevent U.S. competition, even with data developed at U.S. expense. The National Science Foundation, for example, has provided significant support to the development of the Chemical Abstracts Service database. This database has been of great benefit to chemists in industry and government. Chemical Abstracts Service has, however, entered into bilateral agreements under which quasi-governmental agencies can control access to the CAS database in their own countries. SDC is able to offer the CAS database within the United States. We are effectively prohibited from offering that U.S.-sponsored database in Japan, for example, because the bilateral agreement enables the Japanese Chemical Society to require payment of a license fee directly to them.

I wish to point out that many other U.S. nonprofit organizations, such as the Society of Automotive Engineers and the Institute for Paper Chemistry, have taken great care to avoid discriminatory treatment against U.S. companies in offering U.S.-developed data.

All of us wish to avoid an international contest to see which country, or community, could establish the highest barriers against the flow of professional and scientific information. It is understandable that other countries wish to foster and to protect their own emerging industries. In many cases, however, their actions to protect have become economic protectionism. We need to use some lever to encourage more equitable handling. I do not think we need new agencies or complex new regulations to redress the balance. I think we need recognition of the problem and attention on the part of the government. Given attention, and a willingness to set objectives in the best interests of the U.S., we have the agencies, the regulations and

the leverage we need. Perhaps, to provide a controlled use of the lever, all agreements to provide or to limit international information services should be the responsibility of the Department of Commerce.

Your letter encouraged me. You, your committee and your staff obviously recognize that there is a problem. That is certainly the first step.

Thank you for soliciting my experience and opinions. I wish you success in your efforts.

Sincerely yours,

George E. Mueller
George E. Mueller
Chairman and President

cc: Robert K. Dornan
Charles McC. Mathias, Jr.
Don Fuqua

DEERE & COMPANY

JOHN DEERE ROAD, MOLINE, ILLINOIS 61265 U.S.A.



27 May 1980

The Honorable Richardson Preyer
Government Information and Individual Rights Subcommittee
Committee on Government Operations
Room B-349-B-C, Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Preyer

Mr. William Hewitt, Chairman of Deere & Company, has asked that I reply to your 5 May 1980 letter on the subject of transborder data flow. Our computer operations in the U.S. provide service to Canada and Mexico. Similarly, our computer operations in Germany provide service to a number of European countries. As a consequence, we have been aware of the issues surrounding transborder data flow for several years. To date, we have not experienced any significant restrictions in transmitting data.

We do foresee data transmission problems if nations are unable to reach agreement on consistent laws, standards or policies concerning data flow. Obviously we would prefer not to be faced with restrictions which would hinder our current methods of operation. In our view, the transborder data flow restrictions that currently exist or are being considered are actually efforts to keep computer processing in the country of data origin, rather than efforts directed at protecting individual rights.

Transborder data flow for management purposes is beneficial to the nation in which the data originates because it contributes to better management of the facility located in that nation. For example, our own Company's use of large central processing centers makes all of our application systems available to all Company operating locations. Much of this information could not be processed at local sites or, if it could, would often not be economically practical. Any restrictions on these activities is likely to significantly increase costs and make efficient management more difficult.

DEERE & COMPANY

**Page Two
Mr. Richardson Peyer
27 May 1980**

We want to encourage you in your effort to see that transborder data restrictions do not operate as trade barriers or damage the overseas operations of American companies. This is an important task and we appreciate the time and energy you are devoting to it.

Very truly yours,



**R. A. BULEN - DIRECTOR, COMPUTER SYSTEMS
mkw**



CATERPILLAR TRACTOR CO.

Peoria, Illinois 61629

May 28, 1980

Honorable Richardson Preyer
Chairman
Subcommittee on Government Information
and Individual Rights
Room B-349-B-C
Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

I've been asked to respond to your May 5 letter to Lee Morgan on the subject of transborder data flows.

We welcome your, and your committee's, interest in this subject. You've described the issues involved very well.

Caterpillar is a multinational company with extensive business relations with Europe. Our European facilities include manufacturing plants, a major sales office, parts distribution center, service training facility, and demonstration area. In addition, Caterpillar products are sold in Europe through independent dealers in all Western European countries. The information exchanged between Caterpillar in the United States and our European facilities and dealers, and among such facilities and dealers, is extensive and varied.

Caterpillar has not encountered any problems to date with respect to transborder data flow. However, we believe it is important to follow this issue closely, because it's better to avoid damage to our commerce in the first place than to try to repair damage later on.

Our basic concern is to avoid regulations that pose undue obstacles to, or unnecessarily increase the costs of, international business.

We would be especially concerned if it appeared that data controls discriminated in any way against U.S.-based companies, whatever their relationship to the data transfer process might be (manufacturer of equipment; provider of data transmission services; user of such services; etc.). Nor would we want to see restrictions that could become obstacles to continuing progress in this area of rapid technological change.

CATERPILLAR TRACTOR CO.

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In June 1978, we wrote to the U.S. State Department, detailing our views on issues arising in the course of discussions on transborder data flows within the Organization for Economic Cooperation and Development (OECD). A copy of our letter is enclosed. The views set forth in this letter would apply to any restrictions on transborder data flows, whether within the OECD or elsewhere.

Your letter invited thoughts on how the United States government can effectively represent American interests and assist American business. Your hearings will help focus attention on the subject, and that is a useful step in itself.

The State Department appears to have the lead role in the Executive Branch's handling of this issue. Owing to rotational assignments at the State Department, there is a potential risk that U.S. representatives in international meetings will lack experience and understanding of the issues involved, when compared to European or Japanese counterparts.

The Congress and Executive Branch together should:

- ensure that the State Department (or any other department working on this issue) has assigned an adequate number of people to work on this matter;
- ensure, through recruitment or training, that the people dealing with this issue understand the technical and business aspects involved, as well as the political aspects; and
- provide for continuity among the people who handle this issue, especially those who represent the United States at important international meetings or negotiations.

Thank you for your letter and for the opportunity to comment on this subject. If we can be of further assistance, please let us know.

Sincerely,



Governmental Affairs

DRNiemi
Phone (309) 675-5431
mk
enc.

CATERPILLAR TRACTOR CO.

East Peoria, Illinois 61630

June 14, 1978

Mr. Morris Crawford
OES Room 4327
Department of State
Washington, D.C. 20520

Dear Mr. Crawford:

Transborder Data Flow Comments

Caterpillar Tractor Co., as a multinational corporation and user of data processing communications that involves transborder data flow, is interested in OECD's efforts in the area of transborder data flow and the protection of privacy. We are particularly concerned that the development of international guidelines carefully evaluate existing and/or planned national regulations and statutes regarding personal data security to determine the "spill-over" impact in the nonpersonal data arena.

The following remarks are in response to your request for comments on guidelines for Transborder Data Flow.

1. The guidelines should be an agreement signed by all OECD members. Development of the guidelines must provide the business sector an opportunity to resolve transborder data flow issues with a minimum of restrictions. The guidelines should establish an environment which will promote transborder data flow growth, create a medium for the open exchange of data, and improve the common good of its members.
2. The guidelines should apply to all OECD members and those nations having transborder data flow interactions with the OECD members.
3. The definition of "personal" data must be fully and explicitly defined. The body of data required to reach a definition will need to include what it is not. The inclusion of "legal" persons into any definition of personal data would create an undue restraint of trade in the international market place.

CATERPILLAR TRACTOR CO.

Mr. Morris Crawford

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June 14, 1978

4. Control of transborder data flow should be defined in terms of what should be restricted rather than what is to be exempted. National, cultural, and economic issues can best be served by defining those areas and developing guidelines for the control of such areas.
5. The responsibility for compliance with data protection should reside with individual public/private businesses. The OECD should provide a commission to adjudicate infractions if and when requested by OECD members. Conflicting statutory requirements must be resolved to serve the best interests of the international community while respecting the sovereignty of the OECD members. This will require full participation by both the private and public sectors of all OECD members.
6. Guidelines to assure nondiscrimination of equipment vendors and systems interfacing should be to the extent that they insure open and fair competition in the market place.
7. International standards of security should provide adequate protection of transborder data flow from alteration, interruption, or interception during transmission. The business sector of all OECD members should be requested to provide significant input to insure that the translation of security philosophy to guidelines results in a workable environment within which the economic community can function without undue encumbrances.
8. There should not be any distinction between automated and non-automated data because the constant shift of data from one medium to the other would create unnecessary problems in the definition, implementation, and management of the guidelines.
9. The guidelines should require OECD members develop and/or modify national statutes as necessary to implement the international statutes defined in the guidelines. This would provide a uniform and consistent framework within which all members could function.
10. The private sector should evaluate all developments in the technology arena and provide impact reports to the OECD members. This procedure would reduce the possibility of over-regulation of technology which restricts development.
11. The establishment of international statutes and the subsequent implementation of national statutes will assure all OECD members that adequate data protection standards exist.
12. The commission established to oversee the implementation and infraction adjudication of the guidelines should have data processing and data processing user business representatives among its members.

CATERPILLAR TRACTOR CO.

Mr. Morris Crawford

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June 14, 1978

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14. A response to the question of the establishment of a U.S. authority for the implementation of the guidelines and its responsibilities would be premature at this time. We will be glad to comment on this area after the major issues concerning the structure and content of the guidelines have been developed.

As a multinational corporation, using transborder data flow techniques, the development of national and international guidelines concerning transborder data flow is of vital interest to us. We would welcome the opportunity to provide additional comments in the future. We would appreciate being informed of the developments on this issue. Will you please include the following Caterpillar Tractor Co. representatives in your mailing list.

J. C. Gagliardo
Telecommunications
Data Processing G.O. - A2
Caterpillar Tractor Co.
600 W. Washington Street
East Peoria, IL 61630

D. R. Niemi
International Public Affairs
Administration Building 1D
Caterpillar Tractor Co.
100 N.E. Adams Street
Peoria, IL 61629

Very truly yours,

J. C. Gagliardo
Manager
Telecommunications
Data Processing G.O.

JCGagliardo
Telephone: (309) 675-3866
ne LNR



LAURENCE H. SILBERMAN
EXECUTIVE VICE PRESIDENT

JUN 6 1980

CROCKER NATIONAL BANK

LEGAL AND GOVERNMENT AFFAIRS
ONE MONTGOMERY STREET, SAN FRANCISCO, CALIFORNIA 94104

May 28, 1980

The Honorable Richardson Preyer
Chairman, Subcommittee on Government
Information and Individual Rights
Rayburn House Office Building
Room B-349-B-C
Washington, D.C. 20515

Dear Congressman Preyer:

Crocker National Bank welcomes the opportunity to present its views in connection with your Subcommittee's deliberations on transnational data flow issues.

Crocker is the fourth largest bank in California and the thirteenth largest in the United States, with deposits of approximately \$13 billion. We are actively involved in international lending and other international activities and have offices in a number of overseas locations.

We are extremely concerned about recent trends both in Western and developing countries toward restrictions on the free flow of data across national borders. In our view, transnational data flow should not be subject to governmental restriction except where legitimate individual privacy concerns are involved. We believe that unrestricted transnational data flow is vital to international economic development and the exchange of scientific, medical, and other information.

As technological advances increasingly facilitate the instantaneous and inexpensive transmission of data, there is a greater danger that national governments will seek to regulate and control both the types of data transmitted and the means of transmission. In both cases, serious issues of censorship, confidentiality, efficiency, and economic viability are raised. Increased government regulation can only mean increased costs and decreased productivity, particularly for U.S. companies whose ability to compete in international markets depends in part upon efficient information management and access. Further, we submit that national regulation of transnational data flow is not in the U.S. national interest since

CROCKER NATIONAL BANK

Page 2
Congressman Preyer
May 28, 1980

information control favors the existence and growth of totalitarian governments.

It is extremely important that the U.S. government vigorously defend the principle of unrestricted transnational data flow both through bilateral efforts and in appropriate international fora. This issue deserves an internationally acceptable solution and we believe that the U.S. government should actively seek the support of other nations in achieving an international consensus.

We support the Subcommittee's interest in this complex and critical issue and urge the Subcommittee to make our views known to those agencies of the executive branch responsible for the formulation and implementation of national policy in this area. Please contact the undersigned if we can be of further assistance.

Sincerely,



LHS:bm

THE FIRST NATIONAL BANK OF CHICAGO

JUN 2 1980

WALLACE R. ANKER / SENIOR VICE PRESIDENT
WORLD WIDE BANKING DEPARTMENT

May 28, 1980

Honorable Richardson Preyer
Chairman, House Subcommittee on
Government Information and Individual Rights
Rayburn House Office Building
Room B-349-B-C
Washington, D.C. 20515

Dear Chairman Preyer:

We welcome the opportunity provided by your letter of May 5, 1980 to A.R. Abboud to discuss the issues involved in the regulation of transborder data flow by foreign nations and the economic impact such barriers may have on the operations of U.S. banks. We believe this to be a pressing problem that could severely restrict the international use of modern computer technology by the banking industry to perform one of its main functions -- the transfer of money and information. Barriers on the free flow of information, as exemplified by the "data protection laws" of Canada, Sweden, Germany and France, would seem to be counterproductive to international commerce and could threaten the overseas operations of American banks.

The range and complexity of the problems in this area are large. The problem areas suggested in your letter are just the beginning. The American Bankers Association and other interested associations have instituted study groups and held symposia on the various aspects of transborder data flow and its impact on international banking, in which we have actively participated. The study groups of the International Banking and the Operations & Automation Divisions of the ABA have gathered information from around the world and can provide your subcommittee with a clear assessment of the issues and the interests of the U.S. banking community. We believe that their conclusions should be given great attention and consideration by your subcommittee.

We applaud your Subcommittee for organizing and analyzing the multitude of issues in this area of vital concern to the United States as a whole. If we can be of any further service to you on this matter, please let us know.

Sincerely,

Wallace R. Anker
Senior Vice President

ONE FIRST NATIONAL PLAZA / CHICAGO, ILLINOIS 60670 / TEL. 312 732-6480

JUN 2 1980

Standard Oil Company (Indiana)

200 East Randolph Drive
Chicago, Illinois 60601
312-856-7945

J. P. Hammond
Vice President
Public and Government Affairs

May 28, 1980

Honorable Richardson Preyer
Chairman
Subcommittee on Government Information and Individual Rights
House Committee on Government Operations
Rayburn House Office Building
Room B-349 B-C
Washington, D. C. 20515

Dear Mr. Chairman:

Our company appreciates this opportunity to assist your subcommittee in its attempt to define the parameters of international data flow issues and to determine how -- organizationally as well as substantively -- the United States should address these issues, as described in your letter dated May 5, 1980.

The range and complexity of the problems affecting the operation of our company are extensive in the area of international information flow.

Of particular immediate concern is packet network data switching security. International access to internal United States packet networks will permit the international user with a knowledge of the internal United States network unlimited access to subscribers data files, most of which are sensitive proprietary information. The United States Government must insist on the rights of internal packet network users to establish security protocols to limit access to only that data intended for distribution.

In the Western Hemisphere an agreement must be reached between governments concerning the use of satellites for transborder data flow. We are now involved in implementing a satellite communications link into Canada that will be an integral part of a packet network in the United States that is using a satellite owned by a company in the United States. If the Canadian Government insists that their satellite be used for data originating in Canada this will necessitate the construction of additional earth stations

in the United States to utilize their satellites. Negotiations in this area must of necessity be at government levels, and an equitable agreement reached to protect the United States users. We have ordered satellite facilities between Canada and the United States from American Satellite Company who are involved in this negotiation with the Canadian Government.

It is recommended that the United States Government continue to act through the International Telecommunication Union to establish systems and equipment interface standards and policies, and that American manufacturers' interests are fully considered in the process.

Regarding the transmission of corporate data in machine sensible form, the only locations where we are transmitting substantial volumes of such data is between Calgary and Tulsa, and between Calgary and Chicago.

Smaller volumes of business data are routinely transmitted in Europe from Norway, Netherlands, Italy, Ireland, and Spain to our center in London (and vice versa). Still smaller volumes are transmitted over our own private satellite circuit between Cairo, Egypt, and Tulsa (via Houston). Fortunately, none of the above-mentioned countries have as yet taken steps to restrict the flow of electronically processed data.

Sincerely yours,



J. P. Hammond

NCNB Corporation
Charlotte, NC 28255
Telephone 704 | 374-5000

MAY 30 1980



May 28, 1980

The Honorable Richardson Preyer
Chairman
Government Information and Individual
Rights Subcommittee of the Committee
on Government Operations
House of Representatives
Rayburn House Office Building
Room B-349-B-C
Washington, D.C. 20515

Dear Congressman Preyer:

I am pleased to respond to your letter of May 5, 1980, in which you requested our assistance in determining the scope of current and future problems associated with the creation of barriers by foreign nations on the international flow of data.

NCNB's and many other banks' international banking operations are largely dependent upon transnational data flow. NCNB's international banking operations are structured on a centralized basis requiring that almost all data relating to its foreign offices and subsidiaries be communicated to Charlotte. This centralized processing structure was established because it was considered to be the most cost-efficient approach to ensuring that NCNB's international operations are operated in a safe and prudent manner and because it conforms with the requirements of the statement of policy on availability of information to facilitate supervision of foreign operations of member banks, published by the Board of Governors of the Federal Reserve System at page 449 of the 1973 Federal Reserve Bulletin.

Although NCNB's foreign operations (located primarily in London and Hong Kong) are not presently affected by laws restricting trans-border data flow, our plans for expansion into other countries may be affected by the existence of restrictive data flow barriers. It is imperative that

NCNB's international banking operations be structured on the basis of a centralized processing system.

The most significant problem presented to NCNB and other American business enterprises by the creation of barriers by foreign nations on the international flow of data would be the increased cost of doing business. This increase in cost could occur in two ways. First, transmission users may be charged for each message transmitted, resulting in substantial costs to large volume transmission users. Secondly, by restricting or prohibiting the type or amount of data that may be transmitted out of a particular country, American enterprises may be forced to process and evaluate their financial and other data within the foreign country rather than at a central site in the U.S., resulting in substantially increased operational costs.

Although the issue of individual privacy is a real and important issue and certain legislation may be necessary, it is important that all such legislation be harmonized to ensure that unnecessary and significant barriers to trade are not created. International cooperation is clearly necessary. Therefore, we suggest that the U.S. insist that this issue be placed on the agenda of the various international trade talks which are held with other countries.

Sincerely,



Thomas I. Storrs
Chairman of the Board

TIS/PP:rb

McGraw-Hill, Inc.

1221 Avenue of the Americas
New York, New York 10020
Telephone 212/997-2025

Harold W. McGraw, Jr.
Chairman and President

MAY 30 1980

May 28, 1980

The Honorable Richardson Preyer
Room B-349-B-C
Rayburn House Office Building
Washington, D. C. 20515

Dear Congressman Preyer:

We appreciate the opportunity to respond on behalf of McGraw-Hill to your inquiry of May 5 about transborder data flows as a part of the investigation being made by the Government Information and Individual Rights Subcommittee under your chairmanship.

Our direct experience with the transborder data flow problem has been almost entirely through our subsidiary company, Data Resources, Inc., to which you had addressed a similar inquiry directly. The response by Dr. Otto Eckstein, the President of Data Resources, Inc., is so full and so clear that we need to add very little to it. Though I believe he has written to you directly, I am attaching a copy of his letter for reference. We fully concur in everything he has to say.

The only other direct experience we have had is a very small one, but representative of the kinds of problems, injurious to both countries, that may arise. Another subsidiary of ours, Multi-List, Inc., is engaged in the business of providing subscribing real estate boards with a weekly book, in a sufficient number of copies for all salespersons of member companies, that lists, describes, and includes a picture of every property listed for sale in the area, with appropriate indices by size, price, location, etc. The preparation of these books is necessarily done by computers located at one or more regional centers, each serving a large number of boards. The Vancouver, British Columbia, real estate board wished to subscribe to such a service, and was denied permission by Canadian authorities unless the data were processed on a computer in Canada. The volume of business was far too small to make it practical for any company,

Canadian or American, to install a computer there for the possible market in western Canada, with the result that the project was abandoned, to the injury of Vancouver realtors and to the home buyers and sellers they serve as well as to ourselves.

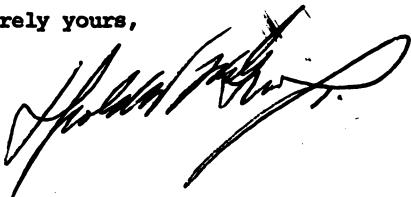
Of far greater importance are the broader problems so well set forth by Dr. Eckstein. We would like to give special emphasis to the grave injury that might result if companies not owned in the Common Market were denied fair and equal access to EURONET when it comes into being. The highly discriminatory tariffs that would result if American companies, even those with computers in Europe, were forced to use high, volume-sensitive rates of the PTT common carriers while European competitors had access to the far cheaper and doubtless far more efficient EURONET services would constitute an almost insuperable and wholly unjustified barrier to competition. It would also greatly impede efficiency in dealing with the doubtless increasingly grave and complex economic problems that will confront the whole Atlantic community.

I should also like to call your attention to a separate but related problem. The programs and the data bases on which the American advanced communications technology are based require effective copyright protection if a genuinely free market is to be sustained. It was the conclusion of the Congressionally established Commission on New Technological Uses of Copyrighted Works (CONTU) that the 1976 Copyright Act would provide adequate protection upon the repeal of its section 117. That section had been inserted specifically to make the new law inapplicable to computer-related works until the CONTU study was completed. Until section 117 is repealed, the old 1909 law still covers computer software and data bases, to which it is obviously inapplicable. H.R. 6934, to repeal section 117, is now before the House Judiciary Committee. I believe it faces no opposition; but it is very important that it not fail of action in the press of legislative matters in an election year.

The international protection of computer programs and data bases is the subject of current consideration in the governing body of the Universal Copyright Convention, and it is important that those representing the United States take

a firm position for strong protection. They will have difficulty in doing so until we put our own house in order. This is important in protecting rights in the materials and techniques involved in transborder data flows.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Harold W. McGraw, Jr."

Harold W. McGraw, Jr.

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JUN 3 1980

DATA RESOURCES, INC. 29 HARTWELL AVENUE • LEXINGTON • MASSACHUSETTS 02173

617 / 861-0165

OTTO ECKSTEIN
PRESIDENT

May 28, 1980

The Honorable Richardson Preyer
Room B-349-B-C
Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Preyer:

Thank you for the invitation to submit my views to your Subcommittee on the question of international data flows. Data Resources, Inc. (DRI), a subsidiary of McGraw-Hill, Inc., is an economic information company which provides what is probably the world's largest collection of economic and financial data through time-shared computer systems and international communications networks. Our clients in the United States include a large percentage of the major industrial and financial organizations in this country, as well as the principal government agencies working on economic problems. Our clients abroad include major industrial, financial and public organizations in Europe, Japan, Canada and Latin America.

At the present time, DRI does not encounter the international data flow problems encountered by the large multinational corporations. The information that DRI distributes on gross national product, prices, wages, production, etc., has been published, and its electronic transfer across borders has not been questioned. However, we do find that a number of countries are using telecommunications policies to serve protectionist ends in violation of the spirit, and perhaps the letter, of the GATT rules.

In Western Europe, government agencies exercise an official monopoly on the provision of telecommunications services. These agencies have been reluctant to provide usable communication lines and have priced them in a fashion designed to discourage foreign entry by firms such as ours. As examples, the cost of using the public telecommunications network is 2 to 4½ times more expensive in European countries than in the United States while at the same time, the use of direct lines to our telecommunications equipment in Brussels from outside Belgium is technically illegal. Under the sponsorship of the European Economic Community, Euronet has recently been established to operate a network linking various information sources and computers in Europe to provide data access to organizations in the various countries. At the present time, Euronet is pursuing a policy of excluding foreign vendors using computers based outside Europe and, therefore, rejected our petition to become a Euronet node for our Brussels office. This exclusion will place DRI at a major disadvantage in offering its services in the European market, since Euronet access would have provided DRI with wider communications at lower cost while European companies have access.

In Japan, the communications link (ICAS) to be provided by KDD, a Japanese public agency, has yet to become operational. According to our reports, the technical capacity for the communications link has existed for at least two years, but was delayed by litigation. Although we understand the litigation has been resolved, the communications link is still not available. Reliable data communications would permit DRI to export a variety of on-line information services to the Japanese market.

In the case of Canada, there has been some reluctance to permit use of U.S.-based computers, particularly for government work using Canadian data. However, various Canadian firms are currently attempting to develop data processing service markets inside the United States, so the resistance is not very active at this time. DRI has an excellent market in Canada.

The information and data processing services industries are still relatively small, though growing rapidly. The traditional barriers to international trade such as tariffs and quotas do not apply, so governments inevitably seek other remedies. As we look ahead over the next decade, the issues of international trade policy created in this field will become more important for the United States. Information and data processing services are another area in which the United States has blazed the trail of technology. Without active government support and recognition of the new issues of protectionism, the other industrial countries, particularly Japan and Western Europe, will erect barriers to trade which will deprive the United States of these fruits of our technological progress as they have deprived us in various other fields. Therefore, DRI would urge the Federal government, working through agencies charged with the promotion of U.S. exports, to remain alert to problems of international data flows and related telecommunications policies to provide US. business with free access to international markets.

Besides these traditional trade issues, the information field raises further questions of public policy. A regular, reliable and timely flow of information will help the economic development of the countries sharing the information flows and will strengthen the human ties of understanding and friendship. The technology of computerized information and communication has provided new opportunities to improve economic coordination and decision-making across national frontiers. Given the common problems of the industrial world vis-a-vis the energy producers and vis-a-vis the Soviet Bloc, it would be foolish indeed to ignore barriers being created against the free flow of information and to lose the opportunity to work together more cooperatively toward greater economic security.

Sincerely yours,





May 29, 1980

The Honorable Richardson Preyer
Government Information and
Individual Rights Subcommittee
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for the opportunity to respond to your letter of May 5, 1980, concerning the topic of transborder data flow. The Computer and Business Equipment Manufacturers Association (CBEMA) began focusing on the issues of international information flow in early 1977 as a privacy related matter. Since then our concerns have expanded to where we now consider transborder data flow to encompass the communication and use of information in the very widest sense, covering all forms of recorded and transmitted information in graphic, written, spoken, electronic, printed, and file form. The broadening availability of telecommunications, computers and other high technology business products have raised concerns among responsible individuals in government and industry about transborder data flow.

Our position is simple. We support the free flow of information across international borders. The consideration of barriers in the form of national laws and international codes is a recent development. In order to deal with the broad problems of transborder data flow, CBEMA divides this topic into four major issues:

- a) Privacy Aspects
- b) Indirect Marketplace Impact
- c) Telecommunication Facilities
- d) Socio-Political and Economic Aspects

Privacy Aspects

Privacy protection (or "data protection" as it is referred to in Europe) is the right that individuals have vis-a-vis the collection, storage, processing, use and dissemination of personal information about themselves in record-keeping systems in the public and private sectors. Some of the key concerns are the impact on the individual in modern society; the vulnerability of information systems to potential abuses; the quality and relevance of the information collected; and the effectiveness of national privacy laws when personal information is transmitted abroad for processing.

Increased governmental inspection and control has been the general pattern over the last several years. National laws have been passed in a number

of European countries and are in the drafting stage in many others to regulate, license and otherwise control entities which process and transfer information concerning "natural" persons within their own boundaries and internationally. Additionally, in several countries the laws extend to legal persons, thus including business enterprises and associations.

The ramifications of these laws and proposals have yet to be analyzed; however, it is feared that proprietary business information may be forced to become public information. The scope and implementation of these national laws are of sufficient diversity to cause multinational corporations operations problems from country to country.

Additionally, European concern focuses on "automatically processed data." It is important to recognize that laws should apply to all record-keeping systems. Information can be equally harmful or beneficial whether it is obtained from a manila folder, a file drawer or a computer. It should be recognized that privacy, being a social, economic and legal issue, is not confined to computers, nor controlled by manufacturers, nor solved by security or technology alone.

Indirect Marketplace Impact

Enforcement of these new data protection laws containing transborder data flow restrictions could either stimulate or impede the demand for hardware, software or other business equipment products. Even in the less restrictive countries, our members' customers who process name-linked or nationally sensitive information could be forced to change their strategies toward more country-oriented operations, tighter security, and increased internal record-keeping.

Thus, demand for our members' products could be forcibly shifted. Development and production plans must be reevaluated in light of these potential shifts.

Telecommunications Facilities

Save for the United States and Canada, national governments provide communications facilities and teleprocessing services through their Postal, Telephone and Telegraph Administrations (PTTs). Thus, these nations are concerned about maintaining and expanding revenues from telecommunications services which frequently subsidize postal operations. The concern for privacy and the scope of information to be considered private (whether to include legal persons or only individuals) may result in specific limitations as to information that can be sent over private leased lines and the type of communications systems which might be deemed to be adequately secure for sensitive data.

Some PTTs are developing public data communications networks of their own to avert continued growth of private data networks. These networks, while advantageous to the infrequent user, maximize the cost to the frequent user and

thus maximize the PTT's revenues. In addition, control of national and international traffic through operations procedures of a PTT has technical ramifications of sizeable impact. Options on the design of company owned or leased networks may be constrained. The use of telecommunications networks for certain new applications functions (e.g., electronic mail, Vue Data, facsimile, etc.) may be frustrated. Further, monitoring of telecommunications traffic by government owned or operated PTTs, to insure compliance with privacy laws, may expose company or customer proprietary information to unwanted third party disclosure.

The trend of unequal increases in charges for data communications services, particularly for inter-European or intercontinental services which are already taking place, are important factors in the transborder data flow debate. They constitute technical and economic barriers to data flows as surely as do data protection regulations and information policy based restrictions.

Socio-political and Economic Aspects

Socio-political and economic aspects of Transborder Data Flow regulations stem primarily from motives of national self-interest. The roots of this issue lie in the fears of many nations that technology offered and controlled by more advanced nations constitutes potential threats against the social, political, economic and cultural institutions of the receiving society. Some Third World developing countries have voiced their concerns on this issue. However, restrictions on communications and/or processing of information across international borders are being considered by fully developed nations.

In their broadest form, the socio-political and economic aspects of the TDF problem have been given the name of Informatics at the fora of the emerging nations. Within this context, the issues become one of power and control through ownership and manipulation of information, and include constraints not only upon electronic transfer of digital information, but also on any information that relates to national self-interest, regardless of the medium of storage or communication.

Corporate Example

You heard from some of our member companies during your March 10, 1980 hearings. Some of them relayed their experiences regarding the TDF issue; others indicated that they have not encountered difficulties to date. I would like to relay another case study which I feel encompasses many of the issues discussed above.

The particular company had sales of over \$7 billion in 1978, placing it among the 25 largest U.S. industrials. The company has traditionally favored a somewhat decentralized organization structure in which corporate control is emphasized in budget approvals and coordination of long-term product strategies.

Recently, a program has been implemented to rationalize manufacturing in its overseas plants around fewer products which are in strong local demand. Lower volume items are now produced in the United States. The volume of the company's data flows has been strongly influenced by both the tradition of operating autonomy and the recent consolidation of worldwide production schedules.

The nature of transborder data flow at this company varies, depending on application and location. It includes direct computer-to-computer teleprocessing via leased telephone lines; "diskettes", which can be mailed from a central or regional data center to be entered in local computers without further conversion; and computer printouts mailed to an originating location from a remote printing site.

There is a teleprocessing network of leased lines which connect various corporate sites to the European Regional Office in London, either directly or through intermediate locations. A transatlantic leased line connects the European Regional Office and the corporate headquarters in the United States.

In addition, the company has a private telex network between the U.S., Europe, Japan and Hong Kong dedicated to message traffic. There is also a small amount of facsimile transmission.

The smaller foreign operating units tend to transmit more personnel data to corporate headquarters than in other organizations. The Administrative Services Division in the corporate headquarters has developed and maintains a common Personnel Information System for 23 of the smaller national operating units. The reports it produces are used routinely by the personnel departments in these countries. These reports are available to the Corporate Compensations and Benefits Department as part of the corporate program to assist local management in the development and operation of salary and benefit programs.

Sales data (quantity, product type and dollar value) from each distribution location is transmitted to its manufacturing source and corporate headquarters. The manufacturing plants use the order quantity data for production scheduling. Corporate headquarters uses the sales volume data for financial reporting and the order quantity data for production coordination. The recent program to rationalize manufacturing by emphasizing volume production of individual components will require more international coordination of manufacturing data, and consequently, more transborder data flow of this type of non-personal information.

Coordination of sales data is considered vital to corporate operations. If its electronic flow were impeded, the same results would have to be achieved by mail or telex. This would, according to this company, require an additional 200 employees at corporate headquarters which would have a definite negative impact on productivity. An increase in total revenues of approximately \$15 million would be required to support an additional 200 employees with no decrease in productivity.

Transborder flow of product data consists of replenishment orders from distribution points to manufacturing locations and, in the other direction, order confirmations, shipping advices and invoices, but no personal data. Computer and teleprocessing systems shorten the replenishment cycle and have materially reduced inventories. If transborder data flow legislation disrupted them, similar functions would have to be accomplished by mail or public Telex. That would seriously affect operating and administrative efficiency without providing any benefits at all to industrial privacy.

The European computer center located in Germany performs standarized applications for corporate subsidiaries in six small European countries. In addition, a large operating unit may choose to process a specialized application at another operating unit's data center, if it is usually maintained there. For example, the data center in Germany maintains the Statistical Analysis System which is used by several other corporate national units. If use of such systems were restricted by transborder data flow legislation, then processing would be done either locally at greater expense or discontinued as uneconomical.

The most critical applications involve the computerized coordination of sales and product information with production scheduling. This type of data processing represents routine business transfers and has no impact on legal or natural persons outside the corporate structure. Yet, disruption of electronic communications in these areas would result in administrative inefficiencies, unnecessary operational dislocations, additional expense, and an adverse effect on the corporation's continuing efforts to improve productivity.

Finally, the common business systems which Administrative Services develops and maintains for many of the national operating units serve two purposes. They improve the efficiency of either program development or computer processing, or both. These transfers involve sharing of applications software. Legislative restrictions could be accommodated but at a significant increase in costs, and they would provide no benefits to individual privacy or national desires for a domestic computer services industry.

Government Organization

It is our understanding that in testimony given before your Subcommittee by the Honorable Matthew Nimetz, Under Secretary for Security Assistance, Science and Technology of the Department of State and the Honorable Henry Geller, Assistant Secretary for Communications and Information of the Department of Commerce, that there is now closer coordination and communication among the many government agencies involved in the transborder data flow debate. We applaud these new efforts and look forward to increased dialogue between the private and public sector in attempting to determine the most intelligent course of action. In the past, mutual distrust hampered development and implementation of the U.S. transborder data flow position. The private sector pointed with alarm but could provide little factual experience. The Government restricted circulation of information and documents thus reducing the ability of the private sector to provide useful advice.

Conclusion

The members of CBEMA are striving to ensure the free flow of information across international borders. As we have pointed out, privacy is only one aspect of the information flow issue. In general, the other issues have not yet reached the stage of legislative proposals. They appear in documents prepared by government committees and in statements by political figures.

Even if the privacy related aspects of the international information flow issue can be resolved without significant business impacts in the near term, the other identified aspects of this issue will not be resolved for many years. They have not yet reached the stage of concrete proposals which can be considered in an analytical manner. It is nevertheless important that both the business community and the Government remain alert to these new developments and engage in political debate to ensure that there are no adverse impacts on the international economic system.

It has been suggested that "barriers can be erected to stop information flows." In fact, information knows no country borders and should not. Barriers are simply a poor substitution for enlightened policy and responsible action.

Thank you, Mr. Chairman, for allowing me the opportunity to present CBEMA's views. We stand ready to work with your Subcommittee in its study of this important issue.

Very truly yours,


Vico E. Henriques
President

Lockheed
**MISSILES
& SPACE
COMPANY,
INC.**

JUN 3 1980

May 29, 1980

H. POTTER KERFOOT
VICE PRESIDENT

The Honorable Richardson Preyer
Congress of the United States
House of Representatives
Rayburn House Office Building
Room B-349-B-C
Washington, DC 20515

Dear Congressman Preyer:

As Chairman of the Subcommittee on Government Information and Individual Rights, you have written to Mr. Roy Anderson seeking Lockheed comments regarding international data flow. Your letter has been referred to my division for response because we have had considerable relevant experience in marketing international data retrieval services under the trademark DIALOG.

We have encountered certain problems in this product area. These are best summarized in a letter prepared by Mr. Roger Summit, Director Information Systems, who manages the DIALOG retrieval service. Your office had separately requested a response from Mr. Summit directly; his reply is attached.

It is recognized that your committee faces an extremely complex problem involving individual rights, national security concerns, and international matters such as communication frequency allocation. Consistent with such restraints, we suggest that minimum government control should be your first objective.

In view of the types of problems encountered in international marketing of data, we feel that a second worthy goal would be the establishment of full reciprocity in data transmission regulations between the modern industrialized nations. Unfortunately we do not have concrete suggestions as to how the Congress can progress toward such an objective.

Yours truly,

H. P. Kerfoot

Encl.

A SUBSIDIARY OF LOCKHEED AIRCRAFT CORPORATION

SUNNYVALE, CALIFORNIA 94088



INFORMATION RETRIEVAL SERVICE
3460 Hillview Avenue/Palo Alto, CA 94304
(415) 856-2700 TELEX 334499

May 27, 1980

The Honorable Richardson Preyer
Congress of the United States
House of Representatives
Rayburn House Office Building
Room B-349-B-C
Washington, DC 20515

Dear Congressman Preyer:

I am grateful to be provided an opportunity to identify a few problems which currently exist in the area of international information policy. Excerpts from a talk I recently gave at the National Online Meeting are attached which summarize the major issues.

Our main concern lies with the overseas marketing of our international information retrieval service known as DIALOG. The development of this service was begun in the early 1960's and it is currently offered in 46 countries, worldwide, and used by more than 10,000 customers. The service was introduced in Europe in 1975. Since then the European Community has organized a highly subsidized telecommunications service (EURONET) serving community host computers at \$5.00 per hour, whereas our customers are charged \$20.00 - \$30.00 per hour to access our service by local Postal, Telephone and Telegraph authorities (PTT's). We have applied for permission to interconnect to EURONET but were turned down with a statement that EURONET is a "private" network. European services, however, encounter no similar restrictions from U.S. telecommunication companies in distributing to the U.S.

This situation is a serious threat to our substantial overseas business, and appears to be imposed for purposes of protecting and encouraging an emerging European information services industry. One desirable step to combat this inequity would be a policy of reciprocity with regard to telecommunication pricing whereby the U.S. (through its domestic common carriers.) would impose rates for U.S. citizens usage of overseas services which are equivalent to those imposed by foreign PTT's on our overseas customers. Furthermore, if European host computers are allowed to interconnect to U.S. common carrier services, U.S. hosts should be allowed the same privileges with regard to European data communication services.

LOCKHEED INFORMATION SYSTEMS/LOCKHEED MISSILES & SPACE COMPANY, INC.

Competition called users' insurance

by Howard Karten

Special to *Information World*

As information becomes a recognized national asset, competition will be the information user's ultimate insurance policy, according to Roger K. Summit of Lockheed Information Systems.

Speaking at the keynote session of the Fourth National Online Information Meeting last month, Summit said that "the long-term interests of information users are best served by an environment that encourages competition."

In the recent past, retrieval software for online information services has been developed in the United States and government sponsorship helped stimulate the market for these services in the 1970's.

The "open telecommunications policy" promulgated by the Federal Communications Commission and Tymshare, Inc.'s use of that policy have provided both economical data communications and demand concentrations at a single host computer, said Summit. Also, Tymshare's efforts resulted in the establishment of a data link to Europe in 1975.

However, tariff barriers are impeding further advances, Summit asserted. "U.S. information service suppliers who develop European markets now find themselves in a deteriorating competitive position. Most of the important data bases offered by European hosts have been developed in the United States, often at public expense," he added.

For example, several US information service companies—including Lockheed—have applied for interconnection in Euronet, a European packet-switched network, but have been refused. Euronet's pricing, for access to U.S.-based services "results in a de-facto tariff of approximately \$16 per hour, which must be paid by the user."

A possible solution to this problem, Summit suggested, would be an "information bill of rights" (see accompanying story).

Economic concerns were echoed by Alec Tomberg, chairman of the European Association of Information Services. Tomberg, who shared the podium with Summit, implied that some governments have been making a killing on telecommunications charges.

construction costs couldn't possibly vary that much; one can only conclude that there is a "fiddle." Either one set of circuits is grossly overpriced or another is grossly underpriced.

Even with strict regulation, some European government projects "don't work out," Tomberg said. For example, it took the French government two complete failures before they got Transpac, the French packet switching network, to work properly.

[It is still not completely agreed that Transpac is currently working satisfactorily. In a random sampling of some of the 50 exhibitors at the conference, none reported problems with American networks, but several indicated problems with Transpac.]

Other packet-switched networks under development by the government Post Office, Telegraph and Telephone (PTT) agencies also seem to be experiencing difficulty, Tomberg noted. For example, the Nordic public data network in Scandinavia is still delayed, and it "remains to be seen whether the United Kingdom PSS—the national packet switched service—will, in fact, come off."

Euronet's charges are only 75 percent as much as Holland's. [Since the actual

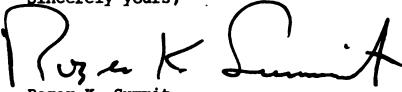
24-INFORMATION WORLD

MAY 1980

The irony of it all is that most of the important databases offered by the European host computers originate from U.S. organizations, many of them government funded or tax supported (e.g., Chemical Abstracts Service of the American Chemical Society, National Library of Medicine, National Technical Information Service). It would seem that European hosts should not be allowed to deliver services on U.S. databases at more favorable rates than U.S. vendors are allowed.

We would certainly appreciate anything you can do to facilitate equity, and to prevent our being economically excluded from disseminating U.S. information products to Common Market Countries.

Sincerely yours,



Roger K. Summit
Director, Information Systems

RKS:kir

Attachment

JUN 21 1980

INA Corporation
1600 Arch Street
Philadelphia, Pa. 19101
215-241-2891

James W. Walker, Jr.
Executive Vice President

May 29, 1980

The Honorable Richardson Preyer
Chairman
Government Information and
Individual Rights Subcommittee
Committee on Government Operations
U. S. House of Representatives
Rayburn House Office Building
Room B-349-B-C
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your letter of May 5, 1980 to Ralph Saul of INA Corporation concerning the issue of transborder data flow.

INA Corporation is among the nation's oldest commercial organizations. Its history dates back to 1792, with the formation of its principal subsidiary and the nation's first stock insurance company, the Insurance Company of North America. Today, INA operates in approximately 145 countries, offering varied products and services in property-casualty insurance, life and group insurance, health care, and investment management.

You and your Subcommittee on Government Information and Individual Rights are to be congratulated on your foresight in the perception of the transborder data flow issue as a potential problem of immense proportions. Although we have experienced no actual harm to date, ours are inherently data-based businesses, and we are very concerned about the potential impact of the transborder data flow issue on our international operations.

We believe this will be one of the major issues of the 1980s. We are confident that procedures can be developed to meet the legitimate aspirations of the countries involved, without substantial disruption in our need for

timely and detailed information from our overseas operations and subsidiaries. We will continue to work in this area as issues develop and look forward to sharing our thoughts with you from time to time as the dimensions of the problems and possible solutions become clearer.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Walker, Jr."

JWW:kh

c. Ralph S. Saul

The**TRAVELERS Insurance Companies**
ONE TOWER SQUARE, HARTFORD, CONNECTICUT 06115**MORRISON H. BEACH**
Chairman of the Board
Chief Executive Officer

May 29, 1980

Mr. Richard Preyer
Congressman, N.C.
House of Representatives
Rayburn House Office Building
Room B-349-B-C
Washington, D.C. 20515

Dear Congressman Preyer:

I am responding to your letter of May 5, 1980 on the subject of Government Information and Individual Rights in which the Subcommittee that you chair requested our assistance in determining the scope of current and future problems associated with transborder data flow.

The Travelers Insurance Companies manage and operate one of the largest integrated computing facilities in the United States. Additionally, our Company has been in the forefront in the application of computing/communication/memory storage technologies to support our information, service and productivity objectives since the early 1960s when The Travelers implemented the first nationwide teleprocessing network in our industry.

Presently, our network contains over 6,000 terminal devices supporting about 30,000 employees. During this decade, we anticipate that our network will expand to over 30,000 terminal devices, resulting in a business environment in which virtually all clerical and professional personnel in our corporation interact with computing/communications/memory storage resources to conduct their daily business.

We believe similar trends of increased utilization and dependence on computing/communications/memory storage technologies are rapidly emerging in all sectors of society. It has been estimated that 50% of the U.S. GNP and labor force is derived from or engaged in the information industry, broadly defined. It has also been estimated that nearly 20% of the total world output will be accounted for by U.S.-based multinationals by 1985. Because of the American predominance in computing/communications/memory storage industries, as well as in the utilization of these technologies, there is no question that with growing divergent trends in data-protection legislation has potential implications of significant proportions for our country.

One of the most important developments in the application of advanced computing/communications/memory storage technologies is the forecasted growth in the utilization of satellites for wide bandwidth transmission. Satellite capabilities offer great promise to improve communications and information flow as well as facilitate the achievement of the much needed high levels of productivity in the information industry.

Satellites, however, pose a unique problem within the context of international enforcement procedures. Unlike terrestrial lines, which are clearly identifiable in relation to national boundaries, most satellites exist in international territory over the equator. Additionally, satellites effectively operate in broadcast mode so that their transmissions are, at least theoretically, accessible to all earth stations, which raises the issue of security. In view of this, foreign countries could pass very restrictive laws concerning the utilization of satellites which would not only impact our national security, but also the potential for enhanced educational, scientific and cultural exchanges to facilitate better understanding and closer relations among our societies. Restrictive law would also result in a hostile rather than friendly climate for business and investment. Furthermore, when one considers that over 50% of the installed computers in the world are outside the U.S. but to a large extent are influenced by protocols, standards and technologies established in the United States, restrictive legislation could result in rigid cutbacks in the rapidly growing information sectors of the U.S. economy including computer/communications/memory storage manufacturing firms.

In the past, much of the controversy on the issue of transborder data flow has focused on the impact of data-protection legislation in other countries. More meaningful international understanding is required on all of the issues. The U.S. must be realistic about the concerns of the other developed countries who are largely dependent on our computing/communications/memory storage industries. At the same time, we must stress the benefits of unrestricted information flows so that the potential benefits of computing/communications/memory storage technologies can be realized. We should encourage developed countries to concentrate on an international agreement to safeguard the integrity of the data they feel is imperative to protect. Finally, third world nations should be encouraged to

develop a stake in the information industry rather than developing restrictive legislation to protect their perceived interests.

Sincerely



M. H. Beach
Chairman of the Board

MHB:LVC
Attachment

Addendum

The following are brief responses to the four questions raised by the Subcommittee on Government Information and Individual Rights.

1. Range and Complexity of problems in this area which may affect the operations of your company?
 - a. Expense: Complying with complex, restrictive legislation will erode benefits and productivity gains that might otherwise be achieved. Similarly, adherence to arbitrary standards and protocols will restrict innovation and opportunities to achieve productivity gains available through improved technologies.
 - b. Privacy: Foreign requirements to provide information relative to customer, producers, employees could negate U.S. privacy legislation.
 - c. Security: Requirements to identify data could negate use of encryption and open up individual and corporate privacy concerns.
2. Describe any particular problems you have encountered? The Travelers group of companies conduct an all-lines insurance business in the U.S. Except for a relatively smaller branch and subsidiary operations, principally in Canada, we have not ventured abroad directly. While Travelers can provide underwriting service facilities to policyholders in various countries and territories, this coverage is usually accomplished, not by our corporate presence, but rather through agreements of understanding with unaffiliated insurance companies incorporated in and governed by the laws and regulations of the country or territory involved.
3. Views on existing and potential problems for American business enterprises, other U.S. private sector groups, and our national interests? The increased utilization and dependence on computing/communication/memory storage technologies are rapidly emerging in all sectors of our economy. The U.S. predominance in computing/communication/memory storage industries, as well as in the utilization of these technologies vis-a-vis the growing, divergent trends in data-protection legislation, has potential implications of significant proportions for this country.
 - a. Restrictions on the flow of news, programs, educational, scientific and cultural information could obstruct the

development of closer relations and better understanding among world societies and could prolong the easing of world tensions.

- b. Restrictions could precipitate a more hostile rather than friendly climate for international business and investment.
 - c. Restrictions could bring about a drastic reduction in the broadcasting ability of institutions such as Voice of America and Radio Free Europe.
 - d. Restrictions could lead to a loss of frequencies used by defense systems and electronic based weapons. Similarly, restrictions could result in a loss of portions of the electronic spectrum used by satellites, thereby reducing vital intelligence as well as information about the world which otherwise would be available to the government and society.
 - e. Restrictions could curtail the rapidly growing information sectors of the U.S. economy including computer/communication/memory storage manufacturing firms.
 - f. Restrictions most certainly will be accompanied by increased expense, lowering of service goals, loss of productivity and opportunity for innovation.
 - g. Overseas operations of multinational firms headquartered in the U.S. will become less economic.
4. Thoughts on how the U.S. government can effectively represent American interest and assist American business? More meaningful international understanding is required on all issues. The U.S. must be realistic about the concerns of other developed countries who are largely dependent on our computing/communication/memory storage industries. We should stress the benefits of relatively unrestricted information flows so that all the potential benefits of computing/communication/memory storage technologies can be realized. We should encourage developed countries to concentrate on an international agreement to safeguard the integrity of the data that they feel is imperative to protect. Third world countries should be encouraged to develop a stake in the information industry rather than develop restrictive legislation to protect their perceived interest.

Levi Strauss & Co. Two Embarcadero Center San Francisco, California 94106 Phone 415 544-6000
Executive Offices

JUN 10 1980

May 30, 1980



QUALITY NEVER GOES OUT OF STYLE.

The Honorable Richardson Preyer
Chairman, Government Information and
Individual Rights Subcommittee
House Committee on Government Operations
Rayburn House Office Bldg., Room B-349-B-C
Washington, D.C. 20515

Dear Mr. Chairman:

Levi Strauss & Co. appreciates the opportunity to respond to your letter of May 5 and to offer its views on the issue of international data flow as it relates to individual rights and governmental restrictions on data transmission.

By way of introduction, let me explain Levi Strauss & Co.'s general philosophy on the subject of international data flow. Companies such as ours, which are heavily involved in international operations, must maintain efficient daily flow of data crucial to a variety of operations. Included are manufacturing schedules, inter-company pricing, inventory status, shipping notifications, financial information of all types, and operating information from production and distribution activities. Any disruption of this data flow inevitably would be very damaging to our business activities. Furthermore, if data flows are limited, or if modern information technology is denied to businesses, trade expansion, foreign investment, technology transfer, and all other elements necessary to provide assistance to developing nations will be dealt a severe blow. Consequently, we strongly support efforts by the U.S. Government to insure an unrestricted environment in which to transmit non-personal business data.

Stated briefly, our position on the four general areas of inquiry in paragraph two of your letter are as follows:

1. "Assessment of the range and complexity of problems in this area which may affect company operations."

Fortunately, our company has not yet experienced major data flow problems. However, to the extent that more governments are adopting unique restrictions on the transfer of data from location to location and are placing constraints on the physical methodology being used, problems should be viewed as likely to increase in the future. As this occurs, costs of compliance with such unique requirements may prevent American

companies from taking advantage of international marketing opportunities.

2. "Description of problems encountered."

The problems we have encountered resulted from the lack of adequate standards for international data transmission, and the necessity of obtaining governmental approvals in order to set up critical communication networks.

We have encountered additional minor problems when attempting to move magnetically encoded data across country borders in a "batch" mode.

3. "Existing and potential problems for American business enterprises relative to international data flow."

Such problems include:

a) Necessity to comply with widely different legal requirements relating to privacy and individual rights. Levi Strauss & Co. strongly supports protection of individual rights. However, we believe the effort associated with ensuring adequate protection of such "rights" could be greatly simplified if uniform international standards were developed.

b) Lack of adequate international standards for communications networks and physical equipment.

c) Inflated communications costs due to tariffs and restrictions.

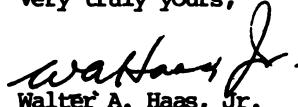
4. "U.S. Government representation of American interests and American business."

We would favor a cooperative effort by the U.S. Government and American businesses to solve the problems described in paragraph 3. above. The U.S. could exercise leadership by hosting international conferences with the specific objective of developing standards designed to protect individual rights while facilitating transmission of critical business data. Within the framework of such agreements, the free flow of data across international boundaries could be insured.

We trust these brief remarks will be helpful and we would be pleased to respond to any more specific inquiries you may have. As an expanding U.S. corporation with substantial foreign revenues,

the continuing free flow of information is vital to our business.
Thus we support the efforts of your subcommittee.

Very truly yours,



Walter A. Haas, Jr.
Chairman of the Board

THE FIRST NATIONAL BANK OF BOSTON

RICHARD D. HILL
Chairman of the Board

May 30, 1980

The Honorable Richardson Preyer, Chairman
Government Information and Individual Rights Subcommittee
of the Committee on Government Operations
Rayburn House Office Building, Room B-349-B-C
Washington, D.C. 20515

Dear Congressman Preyer:

Thank you for your invitation of May 5, 1980 to present our views on international data flow to your Subcommittee.

Although to date we have felt minimal effect from the recent and increasing international activities to regulate and control the collection, retention, movement and exportation of information, we share your concern that the current trend of governments to protect privacy has the potential to become protectionist tools to restrict the free flow of data, ideas, goods and capital, all of which are essential to the conduct of international business by U.S. companies.

First National Boston Corporation is the 17th largest national bank holding company in the United States, with banking branches, direct affiliates and subsidiaries in over 40 countries and 60 major cities around the world. The degree of information flow among our offices largely determines the degree to which we can actually manage and control our international operations. If we were prevented from moving vital information to headquarters, it could significantly impact our ability to manage the corporation as a total entity.

Our own and all our competitors' depositors and borrowers can place deposits and borrow funds at any branch or subsidiary of any bank around the world. Detailed personal financial information about our customers (depositors and borrowers) permits us to evaluate customer relationships, manage risk exposures, monitor legal lending limits, and manage the overall assets and liabilities of the corporation. As a specific example, legal lending limits require that we know and

BOSTON, MASSACHUSETTS 02110 • TEL. (617) 434-2180
A Subsidiary of First National Boston Corporation

THE FIRST NATIONAL BANK OF BOSTON

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control the total sum loaned by all our branches at any one time to any customer. We could not do this if transborder data flow (TDF) restrictions prevented obtaining detailed customer information from all offices.

Privacy is a venerable stock in trade in banking. Personal financial data is one of the most sensitive types of information. Depositors and loan customers rely on our good faith and judgment to preserve their privacy. We are equally concerned with the privacy of our own records. Thus, we do not deny the right to privacy of individuals or corporations. We are aware of the need to safeguard sensitive data and limit access to private information. On the other hand, we firmly believe privacy laws can be enacted which do not preclude the ability of bank managers to properly manage the public funds entrusted to their care. To begin with, we believe there should be a clear distinction made between customer (privacy) information and non-customer (corporate) information. Only customer information should be protected and only against outside disclosure. Other corporate information should be able to be freely communicated (transmitted) within the corporate structure. We support laws to this end.

Information is the lifeblood of any service organization, such as a bank. We rely on full and accurate information to evaluate customers and risks. They, in turn, rely on us to preserve the confidentiality of their financial data. The growth of electronic computers and transmission capabilities will not change that fundamental responsibility. In fact, the same technology that makes such transmissions possible can also protect data through the use of encryption/decryption devices and other security safeguards as needed. Properly controlled, the electronic age will not make access to privacy information easier; but it will make possible more efficient information management for the conduct of better business and the enhancement of corporate and national economic health.

Arbitrary and ill-conceived TDF restrictions can be harmful to U.S. business. Sometimes they mask, in the name of privacy, protectionist economic concerns for the loss of internal data processing revenue. Sometimes they are done in the name of stability but out of a fear of change. But, always they have the potential to stifle the conduct of free trade in the free world. As such, they must be carefully guarded against.

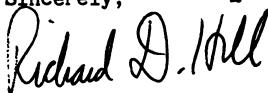
THE FIRST NATIONAL BANK OF BOSTON

-3-

We urge Congress and the Department of State, as well as other appropriate U.S. Government agencies, to become active in ongoing international discussions to promote international cooperation for the development of laws which will ensure protection of the privacy of individuals and corporations, without jeopardizing the ability of U.S. bankers to prudently manage the public funds entrusted to their care. We urge international cooperation to standardize necessary privacy laws over information flows between countries. Government, working with industry, should demonstrate by their acts an active concern for privacy and the need to protect sensitive data of both individuals and corporations; but protectionist acts of individual countries which serve no interest other than their own should be vigorously opposed.

By promoting international cooperation in the development of laws that focus truly on the rights of the individual, yet allow for the movement of necessary information within and between corporations, the Government will help to promote American interests, sound business management, protection of public funds, and the health of the American economy in general.

Sincerely,



Richard D. Hill



Irving Trust

JUN 5 1980

Irving Trust Company
One Wall Street
New York, NY 10015

The Honorable Richardson Preyer
Congress of the United States
Government Information and Individual
Rights Subcommittee of the
Committee on Government Operations
Rayburn House Office Building, RM. B-349-B-C
Washington, D. C. 20515

May 30, 1980

RE: Transborder Data Flow Restrictions

Dear Mr. Chairman,

Mr. Gordon Wallis has asked me to respond to your letter of May 5th concerning your subcommittee's investigation into international data restrictions. As a major U.S. bank operating in the international markets we applaud your interest in this topic as we strongly believe it is an area that requires greater attention by the U.S. government.

Without the free flow of data across national borders international banking is impossible. Currently, 25 countries have transborder data flow protective laws under consideration. Such legislation already exists in nine European countries. In Austria, Denmark, Luxembourg and Norway, the legislation covers "legal" as well as "natural" persons and can include financial, production and marketing data. These "Data Protection Laws", ostensibly dealing with personal privacy and national security, can be applied, interpreted and enforced to inhibit if not halt the flow of information. The underlying intent is to retain the ability to access, process, use and control vital information imported, exported and within national borders.

Banks increasingly serve as financial data intermediaries, with computers and information processors the tools of banking. Transborder information networks have become the foundation for international banking operations. They enable us to stay abreast of developments that affect our business through efficient communications - and this means



The Official
Bank of
the 1980 Olympic
Winter Games



The Honorable Richard Preyer
May 30, 1980
Page #2

moving data quickly, accurately and securely. Specifically, the free flow of data is essential to global asset and liability management, coordination of services and marketing, funds transfers, and the arrangement of trade credits. These vital international banking activities are presently threatened by tariffs, permits, discriminatory taxes, the elimination of private line circuits, the establishment of volume or speed sensitive telecommunications rates and nationalization.

The United States must develop a national policy on the free international flow of data. As this whole area is so new and so little is known it will require serious investigations such as that which you are now conducting. The development of a national policy in this area will require close cooperation between government and the private sector.

To date other governments have given the question of data flow a significantly higher priority than the United States. There is an urgent need that one department of government be designated the lead agency on this issue and that a senior person be given the responsibility. Currently the United Nations, Organization of Economic Cooperation and Development, Intergovernmental Bureau of Informatics and the Council of Europe are all considering the transborder data flow issue and all too often the U.S. government is represented by very low level officials. This should be corrected.

As a member of the ABA Operations Committee, I know that the Association stands willing to be of any assistance to your Committee as it begins its study into this complex area. If I can provide you or your staff with any additional information I hope you will not hesitate to contact me.

Very truly yours,



Anthony Rendino
Executive Vice President

TRWRUBEN F. METTLER
Chairman of the Board

May 30, 1980

JUN 10 1980

The Honorable Richardson Preyer
U. S. House of Representatives
Rayburn House Office Building
Room B-349-B-C
Washington, D. C. 20515

Dear Chairman Preyer:

Thank you for your letter of May 5, 1980 inviting our views on the subject of transborder data flows.

As you recognized in your letter, the issue of transborder data flows relates to a range of foreign government actions which could be used to hamper the activities of U.S. companies abroad and to protect foreign markets for data processing equipment and services from competition by U.S. firms. At this time, we have no evidence that foreign governments are engaging in such actions, but the importance of the data processing sector to national economies is so great that there is concern in the U.S. business community that restrictions could be imposed. Discussion of the issue generally identifies two main areas of concern.

First, foreign data protection or "privacy" laws could be used to restrict the transmission of personnel records and business-related data among company units, which in turn would impede effective planning and control of international operations. These laws could also be used to prevent a company from efficiently serving foreign markets for information services by inhibiting the transmission of data to central storage and processing facilities in the U.S. or at other locations. Finally, these laws could result in reduced exports of data processing and data communications equipment, because restrictions on international data transmissions could limit the need for American made equipment among traditional foreign customers.

The Honorable Richardson Preyer

May 30, 1980

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Secondly, foreign postal, telephone, and telegraph authorities (PTT) could impose telecommunications requirements on U.S. firms which would substantially raise the costs of managing international operations. These could take the form of higher charges for national transmission lines leased to U.S. companies for international data transmission purposes, or requirements that U.S. companies establish expensive local facilities for processing data on local citizens and businesses. Foreign PTT's could impose similarly onerous requirements on U.S. companies providing information services in their countries.

In view of these concerns, we support the Administration's current efforts in the Organization for Economic Cooperation and Development to negotiate voluntary guidelines to discourage government restrictions on transborder data flows. We also endorse the Administration's decision to strengthen the State Department's Advisory Committee on International Investment, Technology, and Development as a means of soliciting the views of U.S. business on this issue.

With best regards,

Sincerely,



RFM/mc
0435A



Jerome L. Dreyer

EXECUTIVE VICE PRESIDENT

May 30, 1980

The Honorable Richardson Preyer
Chairman, Subcommittee on
Government Information and
Individual Rights
Room B-349-B-C
Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

The Association of Data Processing Service Organizations, Inc. (ADAPSO) welcomes this opportunity to respond to your letter of May 5 in which you raise questions involving transborder data flow and transnational information policy. We are grateful for your recognition of the need for proper United States government response to the problems associated with increasing data flow across national borders and for beginning the important dialogue you describe. We are hopeful that the agenda drawn up by your Subcommittee will soon result in legislative proposals that effectively address the problems and challenges discussed below.

ADAPSO represents this nation's computer services industry and many of its members engage in international commerce. These members provide international users with a broad range of remote computing services through communications facilities. Consequently, ADAPSO has had occasion to address the issues associated with transborder data flow and the conduct of business abroad before the Organization for Economic Cooperation and Development, the Federal Communications Commission, and the Office of the United States Trade Representative. In this regard, ADAPSO is hosting the Second World Computing Services Industry Congress in June, in part, to help ameliorate the problems in international trade in computer services.

Those of our membership and industry who have appeared before your Subcommittee or have otherwise submitted information to you speak more tellingly than we of actual difficulties experienced in carrying on business in foreign

countries, especially where such difficulties may constitute "invisible" barriers to trade. Examples include the experiences of Control Data Corporation and Tymshare in Japan with the government-controlled communications entity, KDD. Examples of difficulties beyond those directly related to data flow include the rejection of foreign investments in computer services in Canada by Comshare, Inc., and other computer service firms and the denial of direct incorporation in France to Automatic Data Processing, Inc. and Comshare, Inc. Of equal concern are the difficulties that may materialize to disrupt future dealings of American computer service firms abroad. The full effect of the mechanisms described below has not yet appeared. Moreover, the legislation and national plans described below further entail the establishment of regulatory boards and commissions which have the potential for misuse, to the detriment of American computer services business abroad.

Members tell us of three principle mechanisms by which the flow of data across national borders is impeded and the conduct of their business in foreign nations otherwise disrupted. These mechanisms may often serve legitimate ends. It is when they amount to unreasonable and deliberate devices to discourage the business of American-based computer service firms in foreign nations, in favor of the promotion of the vitality and viability of their domestic counterparts, that the concern of ADAPSO is triggered. These mechanisms are privacy or data protection legislation, national telecommunications policies and national "informatics" plans.* The motivations behind these devices are not necessarily relevant to the formulation of an appropriate United States response. What is relevant is recognition by the United States government that behind each mechanism impeding American computer services abroad today, there is a national decision that a strong domestic computer services industry is vital to strategic and popular national interests.

*"Informatics" has been defined as the "national management and exploitation of information resources, according to an overall strategy implemented by appropriate policies." Remarks of F. A. Bernasconi, Conference on Transnational Data Regulation in Brussels, Belgium, at 10 (Feb. 7-9, 1978), cited in Eger, Emerging Restrictions on Transnational Data Flows:

Since 1973, foreign nations have restricted the business activities of American computer service firms abroad and have impeded transborder data flow by means of legislation designed to protect data involving individual privacy. Protection of privacy is the intended result of such legislation. The result that prompts ADAPSO concern and member frustration is where this otherwise legitimate privacy legislation is but a guise for diversion of computer service business from American companies to domestic companies and resultant enhancement of their position. Still another result of national data protection legislation that causes concern is the inevitable patchwork of obtuse, detailed and inconsistent laws that confronts any computer service firm with an eye toward international markets.

Foreign government-controlled communications monopolies (ministries of Post, Telephones and Telegraphs or PTT's) are concerned with dilution of revenue by the domestic use of private data networks offered by American computer service firms. Additionally, these government entities look for new sources of revenue. From this PTT outlook emerges government economic decree or regulation which has the effect of forcing private data network users to public data communications networks (e.g., Transpac in France, RETD in Spain, and Datapac in Canada). Forcing these users to public data communications networks can diminish the ability of American computer service firms to do business abroad and impedes their ability to offer service on a competitive basis because more often than not, these public networks are more expensive to users, less efficient and less reliable. Protocols, procurement practices, rates, schedules, taxes, duties, tariffs, contract, trade secret and immigration law, have been tools for foreign governments, allied with the PTT's, in further fashioning an environment inhospitable to American computer service

*(continued from previous page):

Privacy Protection or Non-Tariff Trade Barriers?,
10 Law and Pol'y Int'l Bus. 1055, at 1082 & n.
148. Mr. Bernasconi also stated that the
"recognition that information is a powerful re-
source with political, economic, social and cul-
tural dimensions is motivating governments to consider
regulatory or other control policies to protect or
promote their national interests."

firms. The environment is one in which American firms cannot compete on an equal basis with the PTT's either in the pricing of computer services or in their range or reliability.

National "informatics" plans of lesser developed and, increasingly, First World countries now provide the foundation upon which are built impediments to American computer services abroad. The 1978 Strategies and Policies for Informatics (SPIN) Conference in Torremolinos, Spain (Third World); the Nora Report in France, Report on the Computerization of Society; and the Clyne Report in Canada, Telecommunications and Canada, are alike in their singular message: the computer and computer services industries are vital to the implementation of strategic and popular national goals and governmental promotion of these industries is instrumental to the health, productivity and privacy of domestic constituencies.

The bases of the problems faced by American computer service firms operating abroad today and in the future, i.e., barriers derived from national "informatics" plans, compel a United States response of equal dignity. The first step in such response is a national declaration at the highest levels of government, as in France, Canada and elsewhere, of the value of the computer services industry in promoting domestic and international strategy interests of the United States. The second step in this response is the establishment of a new or existing government agency as the central and sole authority for United States domestic and international computer service, information and telecommunications policy. At present, there is no single entity in the United States government which establishes, propounds, enforces and coordinates a comprehensive domestic and international United States policy in these areas for United States users and providers of computer services and in relation to the national "informatics" plans for foreign nations. This despite the coordinated governmental response of foreign nations to American computer services abroad. The United States enters discussions, debates and participates in other fora involving international computer services with no real coordinated national policy and with many disjointed representations. As a result, independent American firms do not have the support of a unified national policy when they negotiate with foreign governments or PTT's for communications facilities or service.

The absence of a single United States entity is noticeable and damaging when American firms are the targets of trade barriers and other difficulties in doing business abroad and are left to their own devices and resources, without a supporting national policy and without a single agency with authority to accept pertinent grievances and respond in their behalf to the foreign governments and PTT's. This situation will be most noticeable and damaging to United States interests, in an area of major and global commercial importance, as the full effects and developments of the mechanisms impeding transborder data flow and the conduct of business abroad come to pass in the future as previously discussed. Similarly, international rules and policies are set by international organizations such as CCITT, OECD and various agencies of the United Nations organization without benefit of strong leadership from the United States, due to the lack of a comprehensive United States policy in the areas of computer services, information and telecommunications.

ADAPSO requests that the Subcommittee assert the need for declaration by the United States government of the value of the nation's computer services industry. ADAPSO pleads for the establishment of a single United States governmental body to set up, advocate and enforce as appropriate a comprehensive national computer services, information and telecommunications policy in the international arena. Please feel free to contact us if we can be of further assistance to your Subcommittee. ADAPSO would be pleased to provide any additional information or service you may require.

Very truly yours,


Jerome L. Dreyer

cc: ADAPSO Board of Directors
ADAPSO RPSS Board of Directors



Clark MacGregor
Senior Vice President

May 30, 1980

The Honorable Richardson Preyer
U.S. House of Representatives
Washington, D.C. 20515

Pratt & Whitney Aircraft Group
Carrier Corporation
Otis Group
Eaton Group
Hamilton Standard
Sikorsky Aircraft
Power Systems
Chemical Systems
Norden Systems
United Technologies Research Center

Dear Rich:

United Technologies is very interested in the undertakings of the U.S. Congress, the OECD and the Council of Europe, on the subject of Transborder Data Flows (TDF). Since we operate in many countries all over the world, our internal communication network is highly dependent on speedy transmittal of financial marketing and other operating information between our companies and the corporate headquarters.

There has been increased interest in this subject not only in the mentioned above, but also in national legislation of several European countries as you pointed out in your letter. Most of this legislation has been very recent and implementing regulations have not been finally put in place with the exception of Sweden, whose law was passed in 1973.

The subject does, however, present major issues which are a concern to business and financial executives including:

1. Government inspection of all data which crosses national borders which, if implemented in the guise of determining compliance with national laws, would seriously inhibit the effectiveness of the promptness of communications.
2. Added administrative expenses which would result from barriers to trade such as the requirement to file for permits to maintain personal files or to send them outside the country of origin.
3. The potential that tariffs may be applied to incoming information and data.
4. The potential of postal, telephone and telegraph company rates being based upon volume, rather than time, would significantly increase the cost of transmission of data.
5. The potential of countries requiring that nationally manufactured hardware be used thereby inhibiting the ability of a multi-national corporation from rationalizing its communication equipment and procedures.

United Technologies Corporation, 1125 15th Street, N.W., Washington, D.C. 20005. 202-785-7400 785-7418

UNITED TECHNOLOGIES CORPORATION

The Honorable Richardson Preyer
Page 2
May 30, 1980

6. Foreign government subsidization or ownership of the postal, telephone and telegraph companies which could establish their data processing network, thereby creating a local monopoly operating in an unfair competitive way.

Underlying all these issues is the erosion of the principle of free flow of information from country-to-country.

We recognize the personal privacy issue which could conflict with some of the above mentioned points. We trust that an equitable solution can be found for this conflict.

Sincerely yours,

Clark
Clark MacGregor

mkm

Standard Oil Company of California
225 Bush Street, San Francisco, California 94104

JUN 4 1980

May 30, 1980

Howard W. Bell
Director and
Financial Vice-President

The Honorable Richardson Preyer
Chairman, Government Information and
Individual Rights Subcommittee
U.S. House of Representatives
Rayburn House Office Building
Room B-349-B-C
Washington, D.C. 20515

Dear Congressman Preyer:

Your letter of May 5, 1980 to Mr. Haynes requested comments from our company on current and future problems related to the transmission of data and information across international boundaries. We consider that this is a matter of some importance to our company, and accordingly we have attempted to respond in a thoughtful and meaningful way.

The comments which are attached are somewhat long; however, I feel that this reflects the complexity of the issues involved. I do hope that our response will be of some help to the Subcommittee in addressing this important issue.

Sincerely,

H. W. Bell

Attach.

COMMENTS BY
STANDARD OIL COMPANY OF CALIFORNIA
TO
GOVERNMENT INFORMATION AND INDIVIDUAL RIGHTS SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS
U. S. HOUSE OF REPRESENTATIVES
MAY 30, 1980

The following addresses the four questions cited in the second paragraph of Chairman Preyer's letter of May 5, 1980. Questions 1 and 3 have been combined because of their similar nature.

1. Assessment of the range and complexity of problems in this area which may affect the operations of SoCal, American business in general, and our national interests.

It is our experience that problems with international data transmissions can be broken down into four categories: (1) restrictions stemming from political motivations and nationalistic feelings, (2) restrictions fostered by concern for privacy of the individual (personnel data), (3) technological limitations, and (4) concern for the security of confidentially of the transmitted data.

The free flow of data of all kinds is necessary to the efficient conduct of international business. Laws designed to protect individual privacy by restricting the flow of personnel data across international boundaries have proliferated in Europe in recent years. There is no doubt that the protection of individual privacy is a valid aim. On the other hand, legislation intended to regulate the international transmission of data in order to protect individual privacy may, in practice, restrict the export of normal commercial data. It may also severely limit the kinds of data which can be sent to the Home Office or to a third country for necessary processing. And it may, although imposing no restrictions on export, require that duplicate records be kept in the country where the data originated. All of these consequences result in less efficient operations and higher costs.

It is our opinion that many of the "privacy" constraints are more the result of a desire to assert national prerogatives than of any real desire to protect the rights and privacy of the individual. Besides making the conduct of international business more difficult and expensive, data protection laws can give rise to the following:

- a. Regulation may exceed its legitimate scope in order to serve protectionist purposes such as fostering the development of a local data processing industry.

- b. Legal conflicts may arise. Different national privacy protection standards and different national regulatory requirements, even if justifiable when looked at separately, place excessive impediments upon multi-national corporations attempting to carry out business efficiently in several countries.
- c. Although protection of personnel data has received the most attention to date, the handling of other data such as production or inventory records may well be an increasing source of controversy in the future if the scope of data protection is not carefully defined. Some countries already have laws that actually allow access by a corporation or government to the files of another corporation (Australia, Denmark, Luxembourg, Norway). It would be relatively easy to expand this concept to include ready access to any data transmitted across international boundaries.
- d. Looking slightly further ahead, it is not difficult to foresee efforts to tax information and its transmission.

Technical barriers, such as those resulting from the inconsistent standards mentioned in your letter, are also a significant problem for us. These problems often relate to the incompatibility of equipment and communications protocols used by foreign telephone systems. The quality of some services is also poorer than our domestic norm. Many of these protocol and quality problems can be overcome by company investment in additional equipment or extra charges for premium service. Although we have been able to cope reasonably well in this area in the past, equipment compatibility will become increasingly important as electronic communications become more sophisticated and critical to operations. Fortunately, it is an area where the potential for substantial progress exists if governments can work together to set common standards, employ versatile and up-to-date equipment and generally realize the benefits of fast and accurate transmission facilities.

Security in the transmission of confidential data is of the utmost importance in any highly competitive business situation where large amounts of money are at stake. Where we cannot be assured of confidentiality, arrangements such as having data hand-carried must be made. This is obviously a much slower and more cumbersome method, but sometimes necessary.

Some countries are considering laws to restrict the transmission of encrypted data. This would be a major problem for us in certain areas, including transmission of highly confidential material relating to our exploration activities. It also provides an interesting dichotomy since some of the same countries are also considering requiring encryption of personnel data to provide protection from disclosure.

2. Description of any particular problems encountered.

Europe

In 1978, Chevron Computer Services Center in The Hague supplied data processing services to the Chevron group of companies in Europe. On a regular basis, the Computer Center processed data of Chevron Germany.

Pursuant to the German Data Processing Law of January 27, 1978, German business entities which process personnel data are required to appoint in writing a data protection representative whose function it is to see that the law is observed. The person appointed must possess the requisite specialized technical knowledge to perform his duties. The data protection representative so appointed must be directly subordinate to the managing board or managing director; he must be free to use his specialized knowledge in the area of data protection at his own discretion. And he must suffer no disadvantage on account of the performance of his duties. In short, his responsibility must be to top management and his independence in performing his duties must be insured.

Under the German law the data protection representative must in particular:

- a. Keep a record of the type of personnel data stored and of the purposes and aims for which knowledge of these data are required, of the regular recipients of such data and of the type of automatic data processing facilities used.
- b. Insure that the data processing programs by means of which personnel data are to be processed are used properly.
- c. Take suitable steps to inform persons employed in the processing of personnel data of the provisions of the law and of other relevant provisions concerning data protection.
- d. Assist and advise in the selection of persons to be employed in the processing of personnel data.

To fulfill the legal obligations imposed upon it by German law, Chevron Germany entered into an agreement with Chevron Netherlands on April 10, 1978, whereby the latter agreed to adhere to the principles governing the protection of personnel data as set forth in German law. Paragraph 5 of the Agreement is noteworthy. It gives the data protection representative of Chevron Germany a right of supervision exercisable, in conjunction with the management of Chevron Netherlands, over certain aspects of the operations of the Netherlands Computer Center when processing data from Chevron Germany.

Canada

The Canadian Government published a "white paper" some years ago urging that data processing for Canadian operations be done in Canada. The Clyne Commission Report of 1979 on communications restated the desirability of restricting the export of data processing work.

Chevron's Canadian subsidiaries do a significant amount of computer processing of seismic data in the U.S. While the "recommendations" have not been enforced, Chevron Standard management has felt constrained to maintain a local data processing facility, mainly for business applications, as a quid pro quo for use of Chevron computer facilities in the U.S. All of Chevron's Canadian data processing could be done in the U.S. via communications facilities with some reduced cost to the corporation.

England

All data communications must be routed through British post office facilities. Attempts to use leased voice lines for data communication from San Francisco to London and London to The Hague caused sufficient technical and coordination problems to render the project unfeasible. Direct dial via public network from San Francisco to The Hague is now used to provide the service at some additional cost.

Indonesia

Our affiliate in Jakarta presently has a Wang Computer System, but the Indonesian government allows it to be used only as a word processor, and not as a telecommunication system.

Personnel Data

Emerging privacy trends in the United States and some European countries will have some impact on the personnel information we collect and access to this data. We are not presently experiencing major problems in this area, partly because the major portion of communications on personnel matters to and from our foreign operations is handled by the more traditional method of normal business letters. We also use telephones and telex and some small amount of facsimile transmission in handling personnel matters. Obviously, if any of the more traditional methods were to be regulated it could seriously limit our ability to conduct personnel-related communications in an efficient manner.

General

Problems in communications have arisen when seismic crews were required by local government to communicate ship-to-shore through local P.T.T. (postal, telephone, telegraph) systems in relay to a third country. Many new seismic ships are now equipped with communication units that would permit direct international contact, say, with the U.S. east or west coast via satellite, or they have modern, long-range radio equipment. Local government permission to transmit either messages or digital data across

international boundaries via such systems could speed operations in the future, especially in transmitting drilling or seismic data to a central processing or decision-making location. Although we haven't experienced insurmountable problems resulting from government regulations so far, the inability to make effective use of improved data transmission systems in the future could negate the operational advantages of direct communication — advantages translatable into lower costs or more effective programs of finding and producing oil.

It is now quite common to process raw seismic and oil well data at a location other than in the local country, often in the United States. Imposition of severe restrictions by a local government on the shipment or transmission of this data across boundaries in any form, could preclude a willingness or ability on our part to operate in such a country, especially if needed facilities were not locally available. Hopefully, this will not occur.

3. How the United States Government can effectively represent American interests and assist American business.

The potential problem facing Socal and other companies, as a result of emerging transborder information policies, is the threat to our ability to process information in an efficient and timely manner, and, more importantly, to make decisions based on that information. Since the unrestricted international free flow of information is vital to the efficient and effective management of a multi-national corporation, anything that can be done to discourage barriers to data transmission will be helpful. It seems ironic that many of the current proposals to limit electronic data transmission do nothing other than slow the communication process down. They generally do not make it illegal to transfer data — they simply make it difficult or impossible to send it electronically. Thus, slower, less efficient means such as telexes, letters, or phone calls must be substituted.

We offer the following suggestions on ways the U.S. Government might help the American public and business community address this issue. Our suggestions relate to the problems identified under item No. 1 and to the activities of various international groups now actively studying this matter.

1. Since many proposed regulations in this area of data transmission stem from nationalistic or political motivations, it might be helpful for the U.S. Government to review restrictions on information flow as trade restrictions and treat them accordingly.
2. Although the concern for individual privacy is certainly legitimate and proper, we should work to insure that restrictions based on this concern are not allowed to become the norm for all types of data transmission since the bulk of it has nothing to do with personnel data. In some countries the privacy issue is largely an excuse to control data processing rather than a legitimate concern for individual privacy.

3. Technological limitations to electronic data transmission are real. The U.S. Government should continue to support both the setting of reasonable international technical standards for data systems, and assist in any way possible with the technical development of communication systems in the lesser developed countries.
4. Privacy and confidentiality of data transmission through government communications systems needs to be the accepted standard. Our government should be in the forefront of advocating enforcing this fundamental assurance to users. This policy is also in the best interest of governments with communications systems dependent upon user-revenues. Obviously accessible and secure systems will be more fully utilized than those without these characteristics.
5. In current international discussions, the OECD (with the U.S. participating) is preparing a draft set of voluntary guidelines governing international transmission of data and the protection of privacy. The focus on the guidelines is upon personnel (individual) data.

The Council of Europe is preparing a draft convention on transborder data flow. Again, the focus is upon personnel data. If adopted and ratified, the convention would be a binding international treaty. The U.S. would not be a signatory, but the treaty could nevertheless affect U.S. interests.

A binding international treaty is unwarranted at this time. Computer communication technology is too new and experience is too limited now to permit the formulation of a sensible binding treaty. Also, the differences in national approach are too varied for such an approach to be successful. We understand the State Department opposes the Council of Europe effort, and we feel their opposition is completely justified.

The OECD effort involves as its goal the promulgation of voluntary guidelines which emphasize common principles of privacy protection rather than procedures to assure adherence to these principles. The U.S. position in respect to the guidelines should be that the international transmission of data cannot be unduly hampered by excessive restrictions put forward under the guise of protecting personal privacy. Moreover, the U.S. should do its utmost to insure that the OECD guidelines explicitly provide that they have to do with protection only of personnel data and not other business data.

Mobil Oil Corporation

150 EAST 42ND STREET
NEW YORK, NEW YORK 10017

JUN 16 1980

ALLEN E. MURRAY
PRESIDENT
MARKETING AND REFINING DIVISION

June 2, 1980

The Honorable Richardson Preyer
Chairman, Government Information and
Individual Rights Subcommittee
The United States House of Representatives
Rayburn House Office Building
Room B-349-B-C
Washington, D. C. 20515

Dear Mr. Preyer:

Your recent letter of May 5, 1980 to Rawleigh Warner, Jr. concerning transborder data flow has been referred to me in his absence.

Let me say at the outset that Mobil completely supports the principles of protecting personal privacy as expressed in the voluntary OECD draft guidelines. For this reason Mobil willingly complies with the restrictions on the processing and international transmission of data on individuals which many countries are imposing. However, we have watched with growing concern the attempts that are being made in some countries to apply similar restrictions to corporate data and to other information not related to individuals. In this connection, some legislation ostensibly designed to protect privacy in fact creates trade barriers which have the effect of protecting local industry. For example, Canadian regulations deny tax credit for the cost of computer equipment installed to transmit data abroad. We are concerned about these developments because we believe that the successful and efficient conduct of business requires the unrestricted flow of non-personal data.

In response to your request for assistance in determining the scope of current and future problems related to transborder data flow, we are providing comments numbered to correspond with the specific points listed in your letter.

Mobil

The Honorable Richardson Preyer

- 2 -

June 2, 1980

(1) Our candid assessment of the range and complexity of problems in this area which may affect Mobil operations.

Our problems will depend on the kinds of transnational data that will be affected and the extent to which the data will be regulated. If restrictions on transborder data flows are extended to information about "legal persons," which may be interpreted to include both governmental and private sector organizations, they could impede the free flow of economic and commercial information that Mobil uses in the decision-making process. Under the most stringent interpretations of some of the laws in existence or under consideration, Mobil affiliates could even be restricted in reporting on their own operations to the parent corporation, and this could severely limit our ability to compete in world markets.

(2) A description of particular problems we have encountered.

The problems we have encountered to date have been minimal because existing regulations have been applied solely to personal data. However, in addition to the potential problems arising from data flow restrictions based on privacy considerations, indicated above, we are also apprehensive about the regulation of data transmission networks, including restrictive technical requirements and tariffs, which is emerging in some countries and which could constitute further limitations on data network operations and planning. Another potential problem for us is the requirement in some countries that only nationally-manufactured computer or telecommunication equipment or software can be used, inhibiting our selection of the most effective data processing and transmission alternatives.

(3) Our views on existing and potential problems for American business enterprises, other private sector groups, and our national interests.

If governments regulate the flow of non-personal data, it seems very likely that they will acquire possession of company information that is proprietary or highly sensitive for competitive reasons, such as business performance, seismic and technical data. We feel strongly that governments must provide and enforce effective measures to protect the confidentiality of data acquired by them. Corporations should also have access to the national judicial systems to defend their interests.

Mobil

The Honorable Richardson Preyer

- 3 -

June 2, 1980

(4) Our thoughts on how the United States Government can effectively represent American interests and assist American business.

As you know, executive branch involvement in this issue has been dispersed among a number of agencies. We feel it is important that sole responsibility be centered in one department. In our judgement, this would make it possible for the government to deal more effectively with the issue, to communicate more efficiently with interested American companies, and to provide foreign data protection authorities with a central point of contact in the United States. We also believe that it is very important for the responsible department to seek periodically the views of the business community on developments in this area, and to keep companies informed of such developments. In addition, we believe business advisors should be included on negotiating teams. An Industry-Government Advisory Committee has been performing this function but only in regard to the OECD Transborder Data Flow Guidelines.

We appreciate this opportunity to express our views on this important issue.

Sincerely yours,



Allen E. Murray


**United
States
Steel
Corporation**

D.M. RODERICK
CHAIRMAN, BOARD OF DIRECTORS

PITTSBURGH OFFICE
600 GRANT STREET
PITTSBURGH, PENNSYLVANIA 15230
412/433-1101

June 2, 1980

The Honorable Richardson Preyer, Chairman
Government Information and Individual Rights
Subcommittee of the Committee on Government Operations
Rayburn House Office Building, Room B-349-B-C
Washington, D.C. 20515

Dear Mr. Preyer:

I appreciate the opportunity to comment on the problem of international data flow. Although aware of the recently enacted data protection laws and their possible economic impact, U. S. Steel has not experienced difficulties of the type mentioned in your letter since we are not structured as a multinational company.

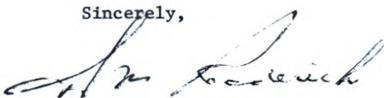
U. S. Steel is extremely sensitive to the merging requirement for mechanized data in the tactical and strategic planning and operations of any modern business. This changing emphasis comes as a result of applying technology to business information needs in order to improve corporate productivity.

Legislation or agreements which preclude the free flow of data, or which compromise the security of data, violate the concept of private ownership which is at the core of our economic system. Additionally, such laws will negatively impact the organization, management, and risks of any business or enterprise.

The U. S. Government can best represent American interests in this matter by insuring that privacy protection authorities in other countries respect the autonomy and inviolability of the corporate data resource. The objective should be to implement uniform trade and economic agreements and laws that guarantee that the sanctity of ownership applies to data in the same manner as it applies to other private property.

I support any efforts which could help create a favorable environment for the growth of private sector transborder flows of information. Please feel free to contact me if U. S. Steel can be of any further assistance.

Sincerely,





William D. Broderick
Director
Research and Analysis Office
Governmental Relations Staff

Ford Motor Company
The American Road
Dearborn, Michigan 48121

JUN 9 1980

June 2, 1980

The Honorable Richardson Preyer
Chairman, Subcommittee on Government
Information and Individual Rights
Rayburn House Office Building - Room B-349-B-C
Washington, D.C. 20515

Dear Congressman Preyer:

I am writing in response to your letter of May 5, 1980 to Mr. Henry Ford II requesting Ford Motor Company's views on the subject of transborder data flows.

Ford supports the position taken by the U.S. Council of the International Chamber of Commerce, as stated by its Vice Chairman, Mr. W. D. Eberle, in his testimony before your committee on April 21 (attached). We share the Council's concern over the potential use of transborder data flow legislation as a non-tariff barrier to trade. Ford also supports OECD draft guidelines on the subject, which would establish uniform standards for privacy of personal data, and leave the implementation of such guidelines to voluntary action by individual countries. The OECD guidelines, of course, apply only to data about individuals. As a result, we further support the ICC's policy statement (attached) which warns of the potential adverse economic and international trade impacts of attempts to control transborder flow of non-personal data, since this matter has not yet been the subject of appropriate analysis.

The issue of transborder data flows is naturally of interest to any multinational corporation, including Ford, and we appreciate your efforts in addressing this problem.

Like the issue itself, we as a company are presently in an "exploratory stage," just beginning the process of examining the subject and its implications for us. We endorse the U.S. Council's April 21 statement subject, of course, to an opportunity to examine the issue more thoroughly.

Sincerely yours,



William D. Broderick

bw

Attachments

THE
PROCTER & GAMBLE
COMPANY

JUN 4 1980

EDWARD G. HARNESS
CHAIRMAN OF THE BOARD

June 2, 1980

P. O. Box 599
CINCINNATI, OHIO 45201

The Honorable Richardson Preyer
Chairman, Government Information and
Individual Rights Subcommittee of
The Committee on Government Operations
Congress of the United States
Rayburn House Office Building, Room B-349-B-C
Washington, D.C. 20515

Dear Congressman Preyer:

This letter is in response to your letter of May 5 concerning current and future problems in the area of transborder data flows.

Legislation now in force has not yet caused serious operating difficulties for us. We recognize, however, that the goals of other countries include the protection of : privacy of their individual citizens, their competing information technology enterprises, and their cultural identity and heritage. These goals can result in legislation that seriously restricts the free flow of information. It is most important that these restrictions do not progress to the point that they interfere with the inter-country communications that are essential to our business.

New restrictions could affect our ability to administer the business in areas such as finance and personnel. There would be direct and negative cost effects if our ability to schedule production capacity and process transborder shipments of finished product is impaired. We risk a significant loss in benefit if restrictions on information flow should preclude shared multi-country efforts in areas like product research and engineering. We also believe any major impediments to transborder television and radio broadcasting should be discouraged as antithetical to reasonable exchange of information, entertainment, and commercial advertising between countries.

The United States Government can best assist in this area by:

1. Working to minimize restrictions on the free flow of data,
2. Representing U.S. need for the free flow of data by actively participating in international forums that are working toward achieving consistency where transborder data flow regulations are already being formulated,

THE BOEING COMPANY

P. O. Box 3707
Seattle, Washington 98124

June 3, 1980

The Honorable Richardson Preyer
Chairman, Subcommittee on Government Information
and Individual Rights
Rayburn House Office Building
Room B-349-B-C
Washington, D.C. 20515

Dear Mr. Preyer:

This is in response to your May 5, 1980, letter to Mr. T. A. Wilson. The issues of protecting the privacy of personal data and controlling international data flow are indeed complex and the potential for trade restrictions on the transfer of all forms of data very real. We appreciate your concern and interest.

Of course, there can be no denying the right of individuals to have certain private data protected, but our concern is that government control on the transfer of personal data will expand to government controls of non-personal data. OECD addressed the issue of the privacy of personal data in its Phase I Guidelines. These guidelines, which we understand may be ratified this summer, acknowledge the trade implications of controls. Phase II of the OECD negotiations, however, will address non-personal data. It is here that Boeing has the most concern.

We, like many other U.S. corporations, have worldwide data communications networks which support company operations. We also offer a worldwide computing service through the Boeing Computer Services (BCS) subsidiary. The problems we have faced in the past have been relatively minor: sometimes technical, sometimes political. (We faced delays in getting satisfactory telecommunications lines in Italy and approvals from the Japanese and German governments to install our networks.) Once the local authorities knew our objectives and were convinced there would be no export of computing work from their country, necessary facilities and approvals were granted. These isolated examples, however, do serve notice that trade distortion can result from government involvement in controlling transborder data flows. Our concerns cover not only traditional computing networks but also the facsimile transmission systems used to transfer business data.

Boeing believes the U.S. government should try to make sure bona fide national privacy laws are respected, but are not used as a subterfuge for trade barriers. The hearings of your subcommittee earlier this year and the recent reorganization of trade functions in the Administration (which led to the inclusion of the Office of the United States Trade Representative in transborder data flow issues) were positive steps in this regard.

BOEING

The Honorable Richardson Preyer

Page 2

During the recent GATT trade round, aerospace industry representatives to the Industry Sector Advisory Committee (ISAC #24) recommended language be added to the Agreement on Trade in Civil Aircraft which would make it a violation of the GATT to restrict the free flow of aerospace-related commercial business data. During the course of negotiations this concept was modified, weakened, and generalized to a statement in the Preamble encouraging "technological development of the aeronautical industry on a worldwide basis." It seems, however, that there is still a need to enter into an international agreement, whether through the GATT or OECD, which would safeguard national security data and private data yet encourage the free flow of all other data.

We appreciate the opportunity to comment on this important and complex topic.

Sincerely,



Luin L. Leisher, Corporate Director
National and International Affairs

EXXON CORPORATION

1251 AVENUE OF THE AMERICAS, NEW YORK, N.Y. 10020

Public Affairs Department

June 3, 1980

Honorable Richardson Preyer
House of Representatives
Government Information and Individual
Rights Subcommittee of the
Committee on Government Operations
Rayburn House Office Building, Room B-349-B-C
Washington, D.C. 20515

Dear Mr. Preyer:

I am grateful for the opportunity to express our views on the emerging problems falling within that area commonly described as transborder data flow. We agree that those emerging problems involve trade, cultural and individual rights issues.

Basically, we see these problems not as present difficulties but as issues that should be monitored by both government and industry to permit adequate advance warning when problems of substance do arise. Thus far, none of our affiliated companies have reported particular difficulties in the international transmission of data. Some additional comments are enclosed (Enclosure I). In the future, however, we believe that the expansion of foreign privacy protection legislation may give rise to the following problems:

- (1) Privacy protection legislation may involve substantial costs in compliance in registration, notification and additional record keeping.
- (2) Privacy legislation may be used as a form of protectionism. Such protectionism could take two forms:
 - (a) The national regulations and restrictions could be used to discourage the use of foreign based data process and storage facilities. Such actions could be particularly harmful to American computer manufacturers and data processors.
 - (b) Privacy protection legislation could be utilized to restrict or make impossible the normal coordination by U.S. parent companies of the activities of their foreign subsidiaries.

We believe that the U.S. government is pursuing a proper course of action in its present policy in this area. The recent statement of Matthew Nimetz, Under Secretary of State for Security Assistance, Science & Technology, to your subcommittee on March 27, 1980, appears to us to describe very well current problems and appropriate government responses.

We will continue to follow with great interest the activities of your subcommittee in drawing attention to this most important question.

Very truly yours,



D.L. Guertin
Sr. Advisor
International Issues

DLG:jms
Encs.

SUMMARY OF EXXON AND TRANSBORDER DATA FLOW

Transborder data flow (TDF) legislative activity began several years ago when concern arose for personal privacy over the large amounts of personal data that were transmitted over national borders. These large transnational data transfers developed to support the increasing interdependence of today's economic and political worlds. Telecommunications enables data to be transferred to computer centers for storage and processing. Concern over personal data, thus handled, has grown to include all types of data flows. Correspondingly, interest has grown from protection of individual privacy to the relative qualities (and quantities) of national data processing and telecommunications sectors and the economic, political, and security implications these have for sovereign states.

Almost all countries Exxon is operating in are active to some degree in TDF legislation. At the moment, we know of no problems affecting Exxon due to TDF legislation. Some of these legislative activities will probably eventually have some repercussions on Exxon. Exxon maintains several large international information transfers and these are potentially subject to TDF legislation. Exxon is naturally concerned about the possible interruption of these international data flows and the resulting implications to the Corporation. Exxon's information transfers are arranged to take advantage of the latest in computer and communications technologies. Computer centers are distributed throughout the Exxon operating environment to provide for efficient and effective processing of data. Similarly, Exxon's communications network has been developed to support these computer centers and other important data movements. TDF activities hold the potential to disrupt the current organization of Exxon's information transfers. Depending upon the exact form, purpose, and location of this transnational data flow legislation, Exxon could possibly need to relocate and/or reconfigure data processing centers and its telecommunications network. These activities will have an impact upon the efficiency of Exxon's operations by curtailing, delaying, changing, or interrupting data flows to managerial decision makers.

Exxon's interest in TDF lies primarily in assuring that Exxon is in compliance with the appropriate laws. Exxon also has an interest in these TDF developments (legislation) since any direction this activity takes may possibly have an effect upon its computer centers and telecommunications network.

It is still premature to state exactly what impact TDF will have upon Exxon. Most past or pending legislation centers upon personal data and an individual's right to privacy. The next stage of legislation will revolve around non-personal data and could have a bearing upon Exxon. However, to give a precise indication of the impact on Exxon of this legislation is impossible now because of the legislation's still unfocused nature.

CMB 17/A29

T E X A C O
I N C.2000 WESTCHESTER AVENUE
WHITE PLAINS, N.Y. 10650CECIL J. OLSTEAD
VICE PRESIDENT

June 4, 1980

The Hon. Richardson Preyer
House of Representatives
Rayburn House Office Building
Room B-349-B-C
Washington, D.C. 20515

Dear Mr. Preyer:

Thank you for your letter of May 5, 1980 regarding the matter of transborder data flow. We are concerned on the general level that issues of individual privacy will be confused with the international transmission of business data necessary for the conduct of business. Again, as a general proposition, problems or interferences with transborder data flows have not yet occurred, but the basis for possible future interferences may be in the process of being established in some countries.

Our company is implementing a Europe-wide computer telecommunication system with a centralized data base located in a major European city. By its very nature, this system will require movement of data across borders to conduct Texaco's business. Our Financial Reporting System is on a worldwide basis and requires the transmission of data to our central computer in the United States via telecommunication. This system is also vital to Texaco's business operations.

Texaco also has Regional Computing Centers in Africa and Central America which process data from surrounding countries and return to these countries completed outputs.

From this summary, it is apparent that our present operations and future plans require an open policy concerning the movement of data across international boundaries. And the introduction and development of satellite communications provide the feasibility of rapid data transmission to any country. Governmental restrictions on data flow designed to limit these flows would stifle promising technological development in a vital area.

Texaco has transmitted necessary business data internationally by other means for many years without prejudice to privacy consideration or national interests of countries where it operates. The imposition of restrictions would constitute severe retrogression from what has been a satisfactory situation for all concerned.

Texaco is a member of the National Committee on International Trade Documentation which is developing a Cargo Data Interchange System. This system, which utilizes computerized technology to expedite greatly exchanges of needed information in international trade and to produce essential documentation, has been pilot tested and found feasible. Changes and fine-tuning are now underway to make the system operational. All countries and all international businesses will have an interest in the success of this project. You may wish to contact the National Committee on International Trade Documentation as a source of information on transborder data flow matters.

We have closely followed legislation, existing and proposed, in this area. Sweden enacted its Data Protection (Privacy) Act in 1973 and it includes transborder provisions. This Act became a sort of model for later legislation in Europe - in Germany, France, Denmark, Norway, Austria and Luxembourg. The United States and Canada have privacy legislation, but without transborder provisions.

There have been indications that more restrictive legislation on transborder data flow is under consideration in some countries. There is an emerging concept of "protecting the legal person," i.e. extending to companies the same protection accorded to individuals. This appears to be a mis-application of the concept. Additional restrictive legislation has been proposed in the form of taxation, discriminatory rates on communication services, and licensing of computer applications. This would all have an adverse effect on multinational companies.

Uniform and agreed technical standards of data transmission would be desirable, but we are concerned that over-reaction in this area could seriously impair the conduct of international trade and investment.

Business can work within the limits of privacy laws so as not to impinge upon individual rights. Fundamentally, data transmission by modern technologies should be treated no differently from voice communication which is an accepted mode of conducting daily business affairs.

It is indeed timely for our government to enhance its knowledge and understanding in this area. We appreciate your interest and want to assure you that we will be pleased to assist in any appropriate ways.

Sincerely,

A handwritten signature in black ink, appearing to read "Carl J. O'meara".

CJO:aw

Johnson & Johnson

JUN 6 1980

NEW BRUNSWICK, N. J. 08903

June 4, 1980

The Honorable Richardson Preyer
Chairman, Subcommittee on Government Information
and Individual Rights
2344 Rayburn House Office Building
Washington, D. C. 20515

Dear Congressman Preyer:

This will respond to your letter of May 5, 1980 sent to Mr. J. E. Burke in which you request our views on problems relating to international data flow.

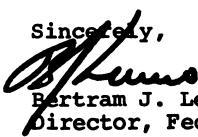
Johnson & Johnson, domestically and internationally, is a highly decentralized corporation. Each of our extraterritorial subsidiaries is encouraged to achieve the greatest amount of autonomy possible. This policy stresses development of product lines appropriate for the host country as well as management by indigenous personnel where feasible.

While we recognize the obligation of sovereign nations to protect the privacy of their citizens, we feel strongly that this goal is not inconsistent with the movement of business-related data and well-defined personnel data across international borders. Certainly, the careers of multi-national company employees may depend, in part, on the ability to transmit and review such information.

Given the decentralized structure of Johnson & Johnson, we are somewhat less potentially impacted by constraints on the flow of international data than more centralized organizations. With this understood, we would urge that the community of nations not unreasonably restrict the flow of data in international commerce.

Thank you for an opportunity to comment on this important issue. We commend the subcommittee for its involvement in this area and will be happy to discuss this and related matters with you or the subcommittee staff if desired.

Sincerely,



Bertram J. Levine
Director, Federal Relations

aw

TIME
INCORPORATED

TIME & LIFE BUILDING
ROCKEFELLER CENTER
NEW YORK 10020
(212) 841-3483

CHARLES B. BEAR
GROUP VICE PRESIDENT

JUN 10 1980

June 5, 1980

The Honorable Richardson Preyer
Chairman
Government Information and
Individual Rights Subcommittee
of the Committee on Government
Operations
B-349-B-C Rayburn House Building
Washington, D.C. 20515

Dear Mr. Chairman:

Your letter of May 5 to Andrew Heiskell, Chairman of the Board of Time Incorporated, was referred to my attention. Thank you for requesting Time's views in connection with your inquiry into transnational information and data flow issues. The news gathering and publishing activities of Time Incorporated abroad have always been operated on the assumption that any foreign government control of news flow across borders is totally inappropriate. Such interference is inconsistent with the editorial integrity which is the sine qua non of any free press. Although U.S. news organizations generally have, from time to time, experienced problems arising from a violation of this principle, I understand that the main thrust and concern of your subcommittee's hearings are elsewhere.

The marriage of global data processing capabilities and advanced American communications technology has given rise to efforts by foreign governments to control information flow across the borders, although our company has not yet been adversely affected by these trends. Our central policy objective in confronting such trends should be to assure the free flow of information in the international community while recognizing the legitimate concerns of an individual's rights of privacy and the national security interests of foreign governments.

With the remarkable advances in extra-terrestrial communication and the installation and maintenance of central data banks in foreign countries there could be increasing efforts abroad to enact local laws governing access to, use and transfer of these resources. There is no question that the high costs and inefficiencies flowing from the proliferation of inconsistent local laws could have a negative impact upon American business, and upon the larger trade and investment interests of the United States.

In my view, the Congress ought to explore whether the Executive Branch is now dealing effectively with this challenge, and in this regard I applaud your decision to hold hearings on this question. In addition, efforts should be undertaken to facilitate the development of an international set of data protection laws to replace, through international agreement, the legislation already enacted by some twenty different countries and contemplated by others. It is timely that the United States now take a more forceful role in the international debate on this issue. Working through established international organizations or convening an international conference for this purpose would be a very positive step.

Many thanks,

Sincerely,

leiberman

CBB/cg

Honeywell

M. A. LONGWORTH, JR.
Director
Licensing & Industry Relations

June 5, 1980

JUN 10 1980

Congressman Richardson Preyer
2344 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Preyer:

Thank you very much for your letter of May 5 to Mr. Spencer requesting our views related to the issue entitled "Transborder Data Flow." We have learned over the past years that the issue is far broader than the protection of privacy of individuals in the transmission of personal information across borders. We believe the issue is one of control of information and the appropriate way to participate in an information society. Some other nations are simply not willing to allow the control of indigenous information to others. Questions of external control, vulnerability, and "a new form of information colonialism" are raised.

The OECD Guidelines on protection of individual privacy have been nearly finalized. These guidelines are acceptable with the following two caveats:

1. There is a continued pressure to define an individual as a "legal" rather than a "natural" person. Under this definition the privacy guidelines would apply to corporations, associations, and other similar organizations. This would lead to competitive organizations inspecting the files of other business enterprises to the detriment of fair and open competition.

2. The guidelines are aimed at electronic or automated files. However, manual and paper files are as vulnerable to privacy infractions as those files kept by electronic data processing. After all, the invasion of privacy takes place as a result of decisions by individuals and not by the tools which are used to keep or manipulate data.

The OECD Guidelines are merely a start in the overall resolution of a large number of issues within the complex of "Transborder Data Flow." It will be several years before all the issues are fully studied, exposed, and resolved. Nevertheless, we, as an international corporation, know that it is international telecommunications which are the "glue" which holds the corporation together. Any restrictions to the free flow of information would hamper considerably the efficiency and the ability to operate as an effective international corporation.

We urge the U.S. Government to take strong, aggressive action in the many international forums to promote the interests of the United States and the U.S. business toward free flow of information. Many opportunities exist in the OECD, the Intergovernmental Bureau of Informatics, the ITU, the Multinational Trade Negotiations Under the General Agreement on Tariffs and Trade, and others.

We would be pleased to provide further information at your convenience.

Sincerely yours,

MAL Longsworth Jr.
M. A. Longsworth, Jr.

MAL:ds



PHILLIPS PETROLEUM COMPANY
BARTLESVILLE, OKLAHOMA 74004

918 661-6600

MANAGEMENT INFORMATION AND CONTROL
Information Services Division

June 6, 1980

The Honorable Richardson Preyer
Subcommittee on Government Information
and Individual Rights
Committee on Government Operations
U. S. House of Representatives
Rayburn House Office Building, Room B-349-B-C
Washington, D. C. 20515

Dear Mr. Chairman:

I have been asked to respond to your letter of May 5, 1980, to Mr. W. F. Martin relative to your concern with problems arising out of the international flow of data (transborder data flow).

Phillips Petroleum Company does have operations in a number of countries which involve data processing and data communications and is thus concerned with proposals in various nations which would restrict the international flow of information.

While the purpose of most such proposals is the protection of information concerning "persons", the definition of "person" is many times so broad as to encompass any legal entity or organization including business corporations. Such broad definitions can result in unduly restrictive regulation of commercial data with which it is most difficult to comply and which imposes non-productive additional costs in conducting business.

Range and complexity of problems. Some of the proposals would require additional segregation of data, people and data processing equipment as a means of restraining the international flow of data. Significant increased capital and administrative costs would result. In addition, the potential conflict between various national regulatory schemes could make it virtually impossible to coordinate centrally and directly business operations between such countries -- again involving an increased cost of doing business arising out of both additional direct costs and inefficiency.

Particular problems encountered. We have not yet encountered severe problems under existing laws and regulations. Most of the risk lies with the potential adoption of some of the more restrictive proposals now under debate.

Potential problems for American business. It is certainly in our national interest that American firms compete abroad. Their ability to do so in any particular country might well depend upon the level of additional costs imposed by unduly restrictive regulation and the degree to which management functions may be impaired by unnecessary restrictions on the flow of vital commercial information. The United States imposes no such burdensome restrictions on data flow; foreign companies competing in the U. S. are not at a disadvantage.

What can the United States Government do? The U. S. Government should refrain from enacting unreasonable restraints on data flow and, through its participation in inter-governmental organizations concerned with commerce and trade, should strongly encourage other nations to permit the free and legitimate flow of commercial and technical data across international boundaries where such data is transmitted by business enterprises in the normal course of business. The rights of an individual can be protected without unduly burdening commerce.

We are most appreciative of your interest in this very important subject.

Very truly yours,



Roy S. Dickson
Manager Information Services Division

RSD:P

The Chase Manhattan Bank, N.A.
900 17th Street, N.W., Suite 1018
Washington, D.C. 20006

Kay Riddle
Vice President

JUN 16 1980



HASE

The Honorable Richardson Preyer
Chairman of the Subcommittee
on Government Information
and Individual Rights
House of Representatives
B-349-C RHOB
Washington, D.C. 20515

June 9, 1980

Dear Mr. Chairman:

David Rockefeller has asked me to respond to your letter of May 5, 1980 regarding your subcommittee's work in the area of transborder data flow and specifically to respond to the questions you raised.

A function of paramount importance to a large bank is the transfer of funds from one entity to another. In the future, the ability to apply information technology to perform this function--faster, more efficiently and more conveniently for our customers -- will be the distinguishing hallmark of successful banks. The instantaneous and free flow of data through international telecommunications networks accurately and directly is especially important to an international bank.

Chase's international structure today consists of 106 branches, 25 representative offices, and 75 subsidiaries doing business in over 100 countries. Our international organization employs 13,000 people; only 1,000 of these are in the United States. We lend in over 40 different currencies and provide financial services around the world.

I have chosen to select three areas from which the wide range of issues and effects of potential and actual restriction on international data flow emerge: data protection laws, data communications policies and informatics policies.

Restrictions on the transborder transmission of data could cause many problems for an international bank such as Chase. Through Chase's cash management service, known as InfoCash, our corporate clients can retrieve balance information on their accounts in almost any country or currency in Western Europe. This provides corporate cash management officers with up-to-date information and allows them to transfer funds to insure full utilization of money. Real-time updating of customer files insures that the most current information is available. Our European customers also can retrieve descriptive reports on accounts with Chase in New York.

He may have his own portable terminal, or he may be able to retrieve his information on his local bank's terminal if it is one of our international correspondent banks. These services allow customers to more closely and accurately monitor their global cash position.

Several years ago, Chase organized its International Private Banking department to offer products to a particular market segment, the high net worth individual. This market is extremely important to Chase. Our private banking customers require services such as global investment management, international trust and estate planning or multicurrency deposits. Almost every product offered these particular customers requires the unimpeded flow of data across national borders.

Chase's international organization is concentrating on expansion in selected markets. The technology of transaction processing and management information systems makes this possible.

However, restrictions on transborder data flows, if indiscriminately enforced could restrict or eliminate the InfoCash and International Private Banking services already mentioned. There are high costs associated with bringing new financial services on line and creating new management information systems; decisions to make these investments must be made while the potentially devastating effects of data transmission restrictions remain ill-defined on the horizon.

When Robert L. Walker, Associate Corporate Counsel of Continental Illinois Bank testified before your committee on March 13, he stated the case very well when he described the need for information in order to lend money (see page 2, paragraph 2 and page 3, paragraph 3). "In short, to enable us to carry on successfully and prudently

the business of international banking, we need to have a guarantee of free flow of information and access to that information throughout the world on a very timely basis."

Data communications policies both domestically and abroad are extremely important to Chase. One of the threats or problems that we have been concerned with is the erection of artificial tariff barriers by means of increasing charges for foreign communications lines and facilities.

At Chase, telecommunications has entered a period of explosive growth paralleling the rapid increase in information needs. The products described earlier in this letter are only a few of those that require expanded and improved telecommunications facilities.

Since 1977, a corporate-wide effort to control escalating costs of communications, to capitalize on technological innovations, and to meet forecasted business requirements has been underway. Overall, the identified requirements call for voice and message service to over 30 key locations overseas with data needs still emerging and being defined.

A cost/benefits analysis produced recommendations to build several private networks. Our international Voice-Data Network in three regions of the world will provide alternate voice and data service to those key locations. The European Telephone Network was completed this spring and provides a private voice and teletype network. However, if the Postal, Telephone and Telegraph Administrations decide to restrict transborder data flow by manipulating rates, availability or usage policies, our services may have to be priced so high that we will no longer be competitive with foreign banks in their countries. This is particularly disturbing since they face no similar restrictions while doing business in the U.S.

The area of informatics policies is so recently emerging that few in the government and industry are aware of its importance. What little experience we have had with these national policies has left us concerned.

A Chase subsidiary in a South American country determined that with a particular computer which would have to be imported, the bank could expect a 40% reduction in costs. However, before making the purchase, the approval of a government agency was necessary. The request was denied, but the purchase of a domestically

available computer with a capacity far in excess of our need was approved. The anticipated savings were reduced by approximately two hundred thousand U.S. dollars.

In another situation, the request for approval to purchase and import another piece of equipment has been pending for about a year. If approval does come, it is estimated that import duties and shipping costs will triple its price.

The free flow of information can bring many benefits to the banking industry's customers and thence to the world. Banks are a paramount force in financing the future growth of the world. Severe restrictions and burdensome costs without concomitant benefits for all concerned have the potential for adversely affecting that future growth.

It is extremely important that the U.S. government commit the resources necessary to keep abreast of the nuances developing around the issues associated with restrictions on transborder data flows. It is also important that the U.S. government coordinate its programs and policies within its many affected agencies. Well-informed government employees would be of great benefit. Congressional oversight to assure the above seems to be necessary.

We hope these comments will be of assistance to your committee as it continues examining an area of such great importance to the private sector.

Best Regards,


Kay Riddle
Vice President

KR:jb

The Chase Manhattan Bank, N.A.
1 Chase Manhattan Plaza
New York, New York 10081

David Rockefeller
Chairman of the Board



CHASE

MAY 27 1980

May 21, 1980

The Honorable Richardson Preyer
Chairman, Government Information
& Individual Rights Subcommittee
of the Committee on Government
Operations
Rayburn House Office Building B-349-B-C
Washington, D.C. 20515

Dear Congressman Preyer:

Thank you for your recent letter concerning the
subcommittee's ongoing hearings on transborder data
flow.

I appreciate your giving us the opportunity to
comment, in writing, on the scope of problems which
appear to exist, or may be expected to arise in
this area. As a matter of fact, one of my associates -
Kay Riddle - has been studying this matter in detail
for some time now, and will be contacting Chris Vizas
about Chase's response to your request for information.

Thank you for getting in touch with me, and best
wishes to you in your continuing examination of this
important subject.

Sincerely,

David Rockefeller



WORLD BANKING DIVISION

SCUDDER MERSMAN, JR.

Senior Vice President

June 10, 1980

The Hon. Richardson Preyer
Chairman, Government Information and
Individual Rights Subcommittee
U.S. House of Representatives
Rayburn House Office Building
Room B-349-C
Washington, D.C. 20515

Dear Congressman Preyer:

Thank you for requesting the views of BankAmerica Corporation on transnational data flow issues. Your suggested dialogue with business is timely since international data flow restrictions pose new and complex problems for businesses with interests overseas. We welcome the opportunity to discuss off the record the problems we face as a financial institution and a multinational corporation.

Companies with overseas business are faced with restrictions on the type of technology available for their communications systems, as well as restrictions on the type of data that may be transferred out of the country. These restrictions affect the ability of a corporation to consolidate worldwide information and efficiently manage its resources. The most complicated problems, however, may arise for business when foreign national laws conflict with U.S. law in these areas.

The laws affecting the transfer of data between countries encompass four categories: 1) civil or common laws controlling third-party disclosure, 2) data transmission laws controlling information leaving the country, 3) professional secrecy laws controlling third-party disclosure, and 4) banking laws controlling intercompany and/or third-party disclosure. It may be that financial institutions are more restricted than other multinationals in that they meet the test of professionals in many countries, and are held to the same standards of confidentiality as doctors and lawyers. Additionally, banking codes may themselves impose secrecy constraints. It should also be noted that many countries make no

effort to enforce these laws, and that they are not observed by local institutions. U.S. banks in foreign countries, however, are highly visible, and therefore, more vulnerable to increased scrutiny accompanying changes in policy.

Disclosure issues occur in the following issues:

1. Aggregation of loans to one borrower. It is legally required that total outstanding loans to one borrower from operations in all countries around the world be aggregated. However, if loans are made in certain countries, the foreign bank officer may be faced with violating local law prohibiting transfer of such information out of the country, if he reports the loan to our headquarters in the U.S.
2. Funds transfer. The transfer of this sort of financial information may be illegal in some countries.
3. Credit approval. The transfer of information needed to make credit judgments is contrary to the policies of many countries.
4. SWIFT. A number of banks participate in this electronic banking service which might very well be deemed to be in violation of foreign country legislation.
5. Personnel information. Transfer of information about bank employees or job candidates may be illegal.
6. U.S. Regulatory Oversight. The Federal Reserve Board and the Comptroller of the Currency require reporting of information on loans, not just aggregate information but loan by loan information. Often it is illegal not only to transmit the information out of the country electronically or otherwise; it is also illegal for the Fed to conduct an examination of the foreign institution in the host country.
7. Tax information. Problems also arise in the case of the IRS which requests information on interest earned by all citizens abroad. Local disclosure laws often specifically restrict deposit information.

Problems also arise from conflicts between the Federal Communications Commission (FCC) regulations and foreign laws. Most controversial is

the FCC's propensity to allow sharing of international circuits while many foreign administrations oppose sharing. With full sharing, users can have the channels and/or resell them to others. However, this policy is not approved by foreign governments and may result in restrictions against buying private lines entirely.

As it stands, circuit networks are incompatible among all countries. Since we are required to use the host country telecommunications facilities, our choices are limited to the individual country's transport capabilities. This minimizes the ability to use technology efficiently and gain economies of scale. Finally, the fundamental capability of systems design is limited by foreign law. Multinational systems meet market demand because of consistencies in technologies. However, these cannot exist under the diverse and restrictive laws emerging.

We hope our comments prove to be of value. We believe, as you do, that U.S. government and business should work together closely to remedy these important problems.

Sincerely,

A handwritten signature in cursive ink, appearing to read "Ludden Norman Jr".

UNM 13 1980

*International Telephone and
Telegraph Corporation*

*World Headquarters
320 Park Avenue
New York N.Y. 10022
Telephone (212) 752-6000*

**Edward J. Gerrity, Jr.
Senior Vice President**

June 10, 1980

**Representative Richardson Poyer
Chairman
Government Information and Industrial
Rights Subcommittee of the
Committee on Government Operations
House of Representatives
Rayburn Office Building
Room B-349-B-C
Washington, D. C. 20515**

Dear Representative Poyer:

Thank you for your letter dated May 5, 1980, inviting an assessment by International Telephone and Telegraph Corporation of several transborder data flow ("TBDF") issues. The scope and complexity of any of those issues precludes an in-depth analysis in this letter. However, it is hoped that their examination in the hearings you are currently conducting will provide a working inventory of concerns for policy action.

As a large, diversified, multinational corporation, maintaining manufacturing or sales operations in more than 80 countries, International Telephone and Telegraph Corporation shares TBDF concerns with other U.S.-based companies whose foreign operations send and receive information across national political boundaries. Any laws adversely affecting these transmissions would raise significant policy, trade, and legal issues for all multinational corporations.

Among the significant, and as yet unanswered, TBDF questions we see emerging are the following:

Will nations enact legislation prohibiting or restricting the collection, storage, processing, transfer or distribution of certain types of commercial data across national boundaries?

Will volume, use, transfer, or other taxes be imposed on TBDF?

How will TBDF regulations affect the economics of international communications?

If TBDF laws create non-tariff barriers to trade, will adversely affected companies be able to obtain relief only through a Round of negotiations under the General Agreement on Tariffs and Trade?

These fundamental questions will probably be addressed in TBDF discussions within individual countries as well as within bodies and groups such as the European Economic Community, the Organization for Economic Cooperation and Development, the Council of Europe, and the United Nations. We hope that when U.S. representatives plan to participate in discussions of such proposals that these representatives will keep the private sector advised on these proposals and draw upon expertise within the private sector, e.g., trade and bar associations, to review and discuss the proposals. We hope also that the following principles will be reflected in TBDF regulations which may emerge from such discussions:

Free flow of information across national borders. Any exceptions to this principle should require the identification of abuses which will be corrected by the exception or of national interests which transcend the principle.

Harmonization of diverse national laws.

Articulation of basic TBDF rights rather than restrictions.

We hope that these comments will be useful to the Committee.

Sincerely,

E. J. Horrity, Jr.

cc: R. G. Bateson
J. L. Bumbery
J. P. Fitzpatrick
C. N. Goldman
M. E. Karp
J. B. McKinney
D. B. Pardue
J. F. Ryan



E. I. DU PONT DE NEMOURS & COMPANY
INCORPORATED
WILMINGTON, DELAWARE 19898
U.S.A.

INTERNATIONAL DEPARTMENT
CABLE ADDRESS "FOREDPONT" WILMDEL

JUN 13 1980

June 11, 1980

The Honorable Richardson Preyer
Chairman, Subcommittee on Government
Information and Individual Rights
House of Representatives
Rayburn House Office Building B-349-B-C
Washington, D.C. 20515

Dear Mr. Chairman:

Mr. Shapiro has asked me to respond to the Subcommittee's request for comments concerning the impact on our operations of restrictions on the free flow of data across national boundaries.

As Du Pont has increased its international operations, we have become heavily dependent on highly sophisticated, automated management information systems utilizing computers, telecommunications networks and satellite arrangements. Any restriction on or regulation of our ability to transmit and process commercial data freely, by the most efficient means available, is unwelcome in view of the disruption which could result, in addition to the cost and burden of compliance.

We consider restrictions on the handling and transmission of personal data to be a related but separate issue. To date, existing restrictions on the handling and transmission of personal data in the European Community have had minimal impact on our operations. We respect these efforts to protect personal privacy interests and we have found compliance to be an acceptable administrative responsibility.

We are concerned, however, that a restrictive policy created to protect legitimate personal privacy interests may establish a precedent for regulation of non-personal data. Presently, many nations and international organizations are actively studying the regulation of data flow for economic, employment, national security and cultural reasons.

It is not clear what the outcome of these studies may be, but to the extent that they may be implemented to limit the availability of information systems or the ability

of an international company to transmit and process commercial data freely, we would find our daily operations disrupted and our management capabilities severely handicapped. The impact has been felt already. The uncertainty surrounding the future availability and accessibility of communications networks has made planning for our long-term information needs on an international basis more difficult.

A variety of complex issues have been identified as components of the data flow area. Of particular interest to Du Pont is the harmonization of national privacy protection policies and practices without the imposition of restrictions on data processing technology or the free flow of data. It is on this issue that we would respectfully suggest that the United States Government can effectively represent the interests of American business by participating in on-going multinational efforts.

Very truly yours,



Robert M. Aiken

RMA:blb

JUN 13 1980

**MARINE MIDLAND BANK**

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Buffalo, New York 14240

Government Affairs

June 11, 1980

Honorable Richardson Preyer
United States House of Representatives
Rayburn House Office Building
Room B-349-B-C
Washington, DC 20515

Dear Congressman Preyer:

I apologize for the tardy response to your letter of May 5 to Mr. Duffy, Chairman of Marine Midland Bank, N.A., but because of the issue's complexity, Mr. Vizas assured us that responding shortly after the May 30 date contained in your letter would not present any difficulties.

We will confine our comments to four general areas dealing with the issue of international transborder data flow.

1. We have analyzed to some degree legislation in other countries equally concerned about the issue. Generally it involves either individual concerns or corporate concerns. In the context of this letter, we will more or less confine our comments to the exchange of data regarding corporations. Clearly, any constraint on corporate financial data would be an impediment to international business activity. Multi-national corporations which may be headquartered most anywhere are global in concept requiring global lines of credit, trading positions, etc., all of which are dependent upon the accurate and timely transmission of sensitive corporate data from one location to another regardless of national borders. Any restrictions placed upon the flow of such data would have a negative impact on such a company and its capacity to function in the world-wide market place. The actual processing of information to the degree that there are limitations in place inhibiting decision making by management would add to processing costs thereby making corporations less competitive and perhaps seeking markets elsewhere. It would seem to us that whatever the United States does should generate reciprocity. If the Congress were to place heavy restraints on the international transmission of data, it may give rise to similar restraints in other countries. Conversely, we would suggest the free exchange of information is likely to encourage

able Richardson Preyer
11, 1980
Two

the free exchange elsewhere.

2. Two countries with extremely tight legislation regarding the international transmission of data are South Korea and Singapore. We believe that South Korea requires that all information physically be retained in South Korea while Singapore requires that written permission from a customer must be obtained prior to the transmission of data. Both restrictions inhibit the free exchange of confidential and sensitive data which frequently must be transmitted without the customer's knowledge. Both countries, by the restrictive nature of their laws, inhibit the decision making process and adds substantially to the cost of doing business.

We have noticed a trend in Canada which is disturbing as it places a protective tariff against the transmission of data which is designed to protect the jobs of people employed in selected processing industries rather than privacy. This, however, appears to be an issue different from that being examined by the Committee.

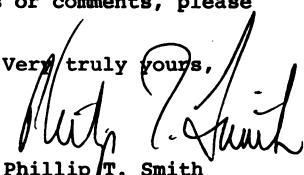
3. It would seem to be in the Committee's interest to examine the issue of centralizing data. The centralization in one place of data used in the decision making process would, in our view, insulate such data from political and economic upheaval when dealing with countries with unstable governments. It would tend to insulate the credit requirements and various trade and corporate agreements against political action and general unrest. This would seem important when considering multi-national companies that are doing business in Third World countries.
4. We think the Committee should give serious consideration to making certain that the flow of data from one nation to another is as free and as open as is possible. It would be in the best interest of U.S. business and the growth of export activity if corporate data were to flow as freely internationally as it does domestically.



Honorable Richardson Preyer
June 11, 1980
Page Three

If it is in the Committee's interest, we are prepared to research this issue in greater detail and present such information at a public hearing. Should you have any questions or comments, please feel free to call me at 716-843-2911.

Very truly yours,


Phillip T. Smith
Vice President

PTS:nd

Monsanto

SAM PICKARD
Regional Vice President

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June 12, 1980

Congressman Richardson Preyer
Chairman, Government Information
& Individual Rights
House of Representatives
Congress of the United States
Rayburn House Office Building
Room B-349-B-C
Washington, D. C. 20515

Dear Congressman Preyer:

Your letter of May 5 to Mr. John W. Hanley has been directed to my attention for reply.

Monsanto Company is well aware of the significance and broad implications of the Transborder Data Flows issue, and we support the U.S. Government's position to give this issue high priority in terms of rationalizing this country's interests with those countries which have already implemented legislation as well as with regional groups, such as OECD, who are currently developing guidelines.

In order for your subcommittee to understand Monsanto's position, let me first address the specific questions posed in your letter, and then conclude with an overall summary of the issue and recommended action.

1. Assessment of the range and complexity of the issue which may affect the operations of our company;

The potential affect on our company resulting from legislation in certain European countries is not yet clear. While we support the intent of the legislation, to protect the privacy of individuals, we perceive a possibility within these countries to use their new legislation to create non-tariff barriers and to restrict the free flow of trade, investment and information by multinational companies which could negatively impact our productivity and ability to conduct business across country borders.

In addition, we anticipate that similar actions by developing countries, to use TBDF flow legislation to preserve local customs or traditions or to suppress human rights or intellectual development, could result in effectively cutting off the technology desperately needed by these countries.

2. Description of problems we might have encountered:

Since the legislation is still quite new, our operations have not, as yet, been negatively impacted.

3. Views on existing or potential problems:

In addition to the comments in item 1, above, which are relevant to this item as well, let me make the following observations.

It has been said that "one-tenth of the world's population possesses 95 percent of the world's technological, scientific, and economic information." A truly inter-dependent world cannot allow this situation to be perpetuated. The free flow of information is absolutely critical to the world's inter-dependence.

4. How can the U. S. Government effectively represent American interests?

- a. Encourage the U. S. Special Trade Representative to the GATT negotiations to articulate a U.S. position which rejects the use of TBDF legislation as a restriction to international trade or the free flow of information across borders.
- b. Support the U.S. State Department's representatives to OECD which is currently examining the issue of Trans-border Data Flow of non-personal information.
- c. Focus greater attention on UNESCO which is expected to initiate action on this issue on behalf of the developing countries.

In summary, Monsanto's position with regard to TBDF is:

1. We endorse legislation which protects the privacy of individuals.
2. We reject the extension of TBDF legislation which is directed primarily at regulating business or at creating non-tariff trade barriers to protect domestic business.

3. We encourage the U.S. Congress and administration to place high priority on this issue, and to influence development of guidelines or regulations which promote the legitimate flow of information across geographic borders.

Yours truly,



Sam Pickard

/ed

Xerox Corporation
Xerox Square
Rochester, New York 14644

JUN 19 1980

XEROX

16 June 1980

The Honorable Richardson Preyer
Government Information and Individual Rights Subcommittee
House of Representatives
Washington, D.C. 10515

Dear Congressman Preyer:

In response to your May 5th letter to Mr. McColough, we appreciate the opportunity to comment on the issue of international data flows. In light of the abundance of recent and provocative information made available on that subject through conferences, trade and professional associations, the media and government agencies, it is timely and appropriate that the Congress assess the issue and attempt to put it in a proper context.

There are several aspects of our company that make the questions you have asked relevant to our interests. I would like to describe them briefly in order that the rest of my response can be properly interpreted.

First, Xerox conducts its business operations in all corners of the globe through a variety of subsidiary arrangements. In 1979, \$3.28 billions or 46.7% of total revenues were derived from international operations. We anticipate that percentage will grow in the next decade. Thus, we are today and will be in the future dependent on a flow of certain types of business information.

Xerox has, however, traditionally operated in a manner where considerable control and authority is vested in local operating units - as contrasted to highly centralized corporations. Therefore, the flow of operating information across international borders (particularly to and from the United States) is limited in scope of application and volume.

Second, Xerox is in the "Information Business". Seventy five percent of current revenues are derived from our copier/duplicator products. However, we also manufacture and sell a wide variety of other information products such as telecopiers, educational materials, intelligent terminals and typewriters, computer peripherals and interactive computing services.

Additionally, an important factor lies with our recent merger with Western Union International (an international telecommunications record carrier) and our announced plans for providing responsive inter and intra city office communications with XTEN.

While copier and duplicator products will continue to be the mainstay of Xerox' business for the next decade, we look to these additional product centers to grow at an accelerated rate during the same period. Moreover, we expect certain synergies to evolve, such as communicating office products and groups of various products, integrated systems-wise in both contiguous and dispersed geographic areas. The ability of our customers to use these products to enhance their operations in a cost efficient manner is the key to our own success in offering them. Thus, open channels for information flow are of considerable interest to Xerox.

Having described the nature of Xerox' business, I would like to switch to a brief discussion of the issue you posed in your letter.

Transborder Data flow (TBDF) - the most widely used terms of reference - does not adequately define the range of problems we may be dealing with. However, since it has had such common usage, I will continue to refer to it in this response.

Xerox has monitored the TBDF issue for the past two years. Members of our staff and operating units are active in several of the professional and trade associations dealing with parts or all of the issue - e.g., the US and Canadian Computer and Business Equipment Manufacturers Association, various national committees of the International Chamber of Commerce, and the US State Department Advisory Committee on Transborder Data Flow.

We have also studied in considerable detail the previous testimony of those who appeared before your committee. We agree that the concerns they have expressed are real. In particular, the delineation of challenges listed on pages 7 and 18 of Secretary Geller's testimony is very comprehensive.

In the interest of not being repetitious and in aiding your committee in its task of evaluating the short and long term severity of these issues, I would like first to offer some tentative conclusions.

- 1) Transborder Data Flow is a composite issue involving protection of human rights, potential trade restrictions, various tariff and non-tariff barriers to information flows, and a variety of associated cultural, sociological and political security issues. Of these, the most pervasive and potentially damaging to our business are the possibility of trade restrictions and tariff or non-tariff barriers to information flow.

- 2) The guarantee of human dignity through protection of personal information on individual citizens by governments, business and other individuals is not an objective with which we take issue. The issue that does arise out of this simple humanitarian objective is the type and extent of governmental regulation which might be imposed to insure accomplishment of that objective.
- 3) The rationale for governmental protection of non-personal information (e.g., on "legal persons" or other business operating information), so long as it is collected through legal procedures and is germane to the business objectives involved, is clear only insofar as it has proprietary value to the organization that collects it. Constraints on the flow of such information through measures such as registration, taxation or other inhibiting actions between business or governmental entities whose fundamental operations depend on it is contrary to the basic principles of free enterprise.
- 4) In regards to the protection of personal information, some industries are potentially affected to a greater degree than others by virtue of the manner in which they are organized, their geographic pattern of dispersal, the products and services they offer, and the types and volume of data they process. I strongly suspect that banking and insurance companies are more heavily impacted by laws regulating the flow of personal information than are equipment manufacturers.
- 5) A number of the subordinate issues of TBDF are hidden trade issues and have little to do with international flows of data and information; e.g., where actions by governments would enhance local industry's competitive advantage, but not impede the flow of data. Such issues should be dealt with by US industry and government through manufacturing and marketing initiatives, trade negotiations, or other alternatives which are well understood and effective.

- 6) If, on the other hand, a US multinational corporation is confronted with unfair competition or trade restrictions by a foreign government under the guise of data protection provisions, such as incompatibilities between US and local privacy laws, etc., this becomes a valid TBDF issue. Examples might include:
- o A US data processing service organization is denied opportunity to market its service, even though it can prove adequate security procedures.
 - o A US computer or business product manufacturer is denied marketing rights under the premise that the very nature of the products pose an unwanted exposure to personal or non-personal data protection objectives.
 - o A US firm located abroad must make extraordinary provisions to process its business transactions because it is denied access to telecommunications connection or service.

Similarly, if US provided products or services are denied to local consumers through arbitrary steps to make them incompatible with locally imposed interface standards, this also becomes a valid TBDF issue. In all of these instances, I am not convinced that our existing institutions in government and/or industry are adequately prepared to deal with them.

With these initial conclusions as a background, I would like to tell you about our current experiences with TBDF related issues in Xerox.

Personal and Non-personal Privacy Protection

Xerox has traditionally practiced great discretion in protecting its business information - particularly in the area of employee records. A key element of Xerox management philosophy is privacy of the individual. For several years, such information has been accorded a special classification and has been physically separated from other files. In 1975 we offered our employees in the US an opportunity to inspect their personal records, and the response to this offer was very sparse.

We have traditionally avoided pervasive pre-employment actions such as pretext interviews, outside investigators, lie detectors, etc. To my knowledge, no complaints are on record of mistreatment of personal information. Thus, you might conclude we do not have a "privacy" problem.

Yet we are intimately aware of the Presidential Privacy Commission's recommendations, the recent legislative actions that have taken place in Europe, and the Carter Administration's privacy package sent to Congress in 1979. Therefore, we are currently expanding our Corporate Policy and Procedures to be effective worldwide.

Concurrently, the Rank Xerox organization is in the process of registering its applications with the Data Protection authorities in Germany, France, Austria, Norway, etc. We do not know yet whether the nature of those laws or the manner in which they are implemented will seriously impact the company, either from a cost or operational viability standpoint. We hope the prior emphasis and current actions to re-enforce our controls in this area will meet the intent of those laws. However, we will not know for some time to come.

Some aspects of European privacy laws are a bit more unsettling. We are not aware yet, for instance, whether the legal persons provisions of the laws in Norway, Denmark, Austria and Luxemburg will apply to our customer and supplier files. If they do apply, we may have to initiate special procedures for processing them - and this would involve additional administrative expense.

For instance, when the Swedish Privacy Law was enacted in 1973, we were compelled to transfer the processing of payroll information from the Xerox owned data center in London to a Service Bureau in Stockholm in order to comply with Swedish protection requirements. The impact was small and the result effective. However, were this action to become a widespread precedent for other forms of business information, the impact could become serious.

Marketing of Products and Services

As I mentioned earlier, the bulk of our foreign revenues are currently derived from sale or lease of copier/duplicator products, supplies and service. We have not experienced any discernible impact of data flow constraints on the marketing of these products.

We have had to react to unique health and safety and electronic interface standards in certain countries - such as those recently introduced in Germany. However, so far, we feel these requirements are well within our engineering and manufacturing capabilities. Where such actions result in incremental product costs, they are necessarily passed on to the consumers in the country in question.

Within our copier/duplicator product line, we have not experienced to any great extent what so many other multinational corporations are apparently concerned about; that is, unfair competition through preferential treatment of indigenous product manufacturers by government subsidies. Nor have we experienced the effects of non-tariff trade barriers, such as limiting the use of copier/duplicator products for the reproduction of personal or non-personal business documents. Were either of these to occur, clearly there would be a high potential for reduction in the marketability of those products.

In foreign markets the penetration of our office products, with the exception of telecopy machines, is still in its infancy. To date, we are not aware that any of the privacy or trade restrictive TBDF actions imposed by foreign governments have affected the marketing of these products. We are aware, however, that concerns have been expressed by European customers over this potential; e.g., 1) Will the transmission of business letters containing personal (or company) information between communicating typewriters across foreign borders constitute a potential violation of personal privacy laws? 2) Will the existance of a local record system in a branch office on personnel, customers or suppliers ---- which is stored and processed on a modern office work station that regularly transmits those data to a central data processing utility for summary purposes -- be directly affected by Data Protection regulations? If so, how?

These are pertinent questions -- to which we currently do not have answers. The current trends in European legislation and regulatory actions are certainly not encouraging. Again, it is too early to tell.

Acquisition and Sales of Telecommunications Services

Xerox is in the unique position of being both a buyer and seller of telecommunications services. At this time, it is useful to treat the telecommunications aspects of TBDF separately for each activity.

In the former instance, we are highly dependent upon effective data communications services in support of business operations in the continental US, Canada, Europe and, to a much smaller degree, in Latin America. To give you some idea of the magnitude of dependence, our total telecommunications costs for internal business operations in 1979 were \$96.5 millions; of that amount 21% were for data communications. While total expenditures are expected to increase at a compounded rate of 10%, the increase for data communications is 16%, or double the current spending by year 1984.

The question arises, is this increased spending the result of an actual increase in transaction volumes, or does it represent inflation? In the case of data communications internal to the US, it reflects significant increased volume and includes a healthy savings in cost/message transmitted resulting from deregulation of, increased competition between, and productivity improvements by US carriers.

The European situation is not similar. While we do expect increased data communications traffic, we also anticipate increased tariff rates of 30-40% over the plan period. A number of the European PTT's are actively considering volume sensitive tariffs, which might further increase our costs. Additionally, denial of certain services currently in use (e.g., private leased lines) in favor of PTT owned packet switched networks, or refusal to allow connection between internal network and international carriers (as in the recent case of the German Bundespost) could frustrate certain operational objectives. Finally, it has been suggested on a number of occasions that the telecommunications systems of one or more countries may become a source for monitoring compliance with Data Protection laws.

While the inflationary costs are the only major impacts felt internally to date, we are naturally concerned at the prospects of these added potential barriers - particularly in a business climate void of the competitive aspects we enjoy in the US.

As to the experience of WUI as an international records carrier, I have been assured that our business relationships with the PTT's are very harmonious. We, of course, support the stated U.S. position on open competition and free information flow. If WUI's customers were to experience arbitrary constraints in meeting their business objectives, we would naturally be concerned. To the best of our knowledge, that has not happened.

Cultural, Sociological and Political Issues

We cannot provide your Committee substantive information in this area at this time. We are aware of the alarmist nature of certain national positions, such as that contained in the Clyne Committee report of Canada, the Nora-Minc report of France, the Swedish Vulnerability Study, and the expressed interests and aspirations of the emerging nations.

If protection of human dignity is a prime foundation of Xerox' social conscience, recognition of the principles of national self interest in the countries in which we operate is corollary to that foundation. We take extraordinary measures to maintain harmonious relationships with the governments and people of the countries in which we operate - and will continue to do so in the future. We have not experienced a vast number of problems because of this posture and, where we have experienced problems, we have dealt with them quietly and effectively through the appropriate government channels.

Summary

In closing, I would like to emphasize three items of possible action by the Congress. First, the laws governing transborder data flow in Europe are new. Not only have we not totally understood their impact, but also it is clear that the authorities who must enforce them are struggling with the process of implementation. Only one, to my knowledge, (the Swedish law) has had the test of time and interpretation in the courts.

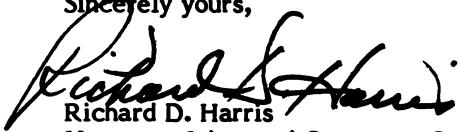
Second, Transborder Data Flow is an issue poorly named and even more poorly defined. It seems to have become the "in-basket" for all of the problems of the telecommunications and information industries.

Third, notwithstanding whatever other constraints nation states may choose to place on free exchange of information across borders, open channels for telecommunications are absolutely essential to survival of our economic system in the electronic age.

I believe the Congress can aid US industry on all three counts; one, by causing the implementation of European Data Protection Laws to be closely monitored (e.g., by State or NTIA) and, where major problems arise, causing information on the details of those problems to become available to the private and public sectors; two, by separating the TBDF issue into meaningful parts and causing the right government agencies to focus on them in their international deliberations; and three by providing solid support to Secretary Geller's call for concerted action on development of international standards and cooperation in the electronic communications arena.

Thank you again for the opportunity to comment on this issue, and
please do not hesitate to advise us of further needs in this area.

Sincerely yours,



Richard D. Harris
Manager, Advanced Corporate Systems

RDH:mc

B. P. Kelly
President

ESMARK

June 18, 1980

Esmark,
Inc.

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Telephone 312 431 3620

Mr. Richardson Preyer
Chairman
Subcommittee of the Committee
on Government Operations
Rayburn House Office Building,
Room B-349-B-C
Washington, DC 20519

Dear Mr. Preyer:

In your May 5, 1980 letter, you asked us to advise your Subcommittee as to the problems we have encountered with regard to prohibitions on the transmission of data across national borders.

The problem for us is prospective. In the context of laws already implemented abroad, we do not expect any immediate impact for at least the next year or two. Of course, this could change if the laws themselves become more restrictive.

We are, therefore, concerned with the increasingly unfavorable aspects of the legislation being adopted overseas. Much more than the protection of an individual's right to privacy seems to be at stake, since (i) corporations are increasingly being included as protected "persons" in these laws; and (ii) foreign legislative bodies appear to be focusing their attention solely on the teleprocessing communications of data, not on other methods by which data could be transmitted--that is, mail, voice, etc. Our conclusion, similar to that voiced by several U.S. commentators on this topic, is that such legislation seems to be aiming more and more toward nationalistic goals--the development and protection of data processing industries within each separate country.

The result is a growing threat to the availability of data in form available for computer driven systems. The whole purpose of computer driven systems is to process data efficiently and make it readily available on a timely basis. In the event of either time delay or the outright prohibition

of the collection of certain data in computer available form, multinational companies will be prohibited from operating on a truly global basis; they will be forced to manage their operations on a location-by-location basis.

We recommend that the United States be represented and actively participate in those organizations, particularly the International Telecommunications Union of the United Nations which define technical standards and discuss the social and political aspects of telecommunications. U.S. representation should include members from both government and industry. The absence of participation will result in recommendations (which could become the standards adopted by various countries) that will negatively impact the ability of U.S. multinational companies to operate efficiently and may adversely affect the United States technology base as well.

Very truly yours,

D. P. Kelly
D. P. Kelly

DPK:jm



151 Farmington Avenue
Hartford, Connecticut 06156

Lauraine M. Dombo
Counsel
(203) 273-4931

June 19, 1980

Hon. Richardson Preyer
Government Information and Individual
Rights Subcommittee of the
Committee on Government Operations
Rayburn House Office Building
Room B-349-B-C
Washington, D.C. 20515

Dear Congressman Preyer:

Mr. Filer has asked me to respond to your request for our thoughts on the scope of problems, both current and future, caused by foreign countries' restrictions on transborder data flow.

We are pleased to have the opportunity to comment on this issue as it raises complex political, social and economic concerns. We have monitored the proliferation of these laws, primarily in European countries, for the last few years and are aware of the activity in this area by the OECD and the Council of Europe. We also understand that part of the impetus for the laws arises from other than a concern over personal privacy protection, that is a desire to promote local growth of data processing facilities.

Our comments are made from a fairly limited vantage point as most of our insurance and non-insurance business is conducted in the U.S. We do have separate insurance subsidiaries in Canada and Australia. Further, some of our U.S. based reinsurance operations do business overseas. We also have an investment in a non-insurance company that operates on an international scale as well as passive investments in a number of foreign countries.

To date, none of these operations have encountered any significant difficulties as a result of restrictions on transborder data flows. This is true for several reasons. For the most part, these operations are autonomous, and accordingly, do not require substantial communication flows between countries. What communication exists consists mostly of business information while most of the current laws are aimed at personal information transfers. Furthermore, most of it is not accomplished through computers.

It is difficult to predict whether these laws will hamper our operations in the future. The answer lies in the extent to which our operations expand, whether more sophisticated communications will be utilized and most importantly, whether the laws will focus on the transfer of business, rather than personal, information. We may also experience some indirect negative effects to the extent that multinational concerns with which we do business are adversely impacted by data flow restrictions.

In monitoring this issue over the years, one thing we have noted is the number of parties involved from the U.S. government, including the State Department, the Commerce Department and the Office of the Trade Representative. This lack of a central focus may work against development of a coordinated U.S. policy. Accordingly, we endorse one of the suggestions made during your March hearings that U.S. government responsibility be consolidated within the Office of the U.S. Trade Representative. In addition to providing for a more coordinated effort, this reorganization would signal our intention to the European countries to review these guidelines and laws from the perspective of their trade protectionist impact as well as their personal privacy protection implications.

We applaud your efforts in this area and would be happy to assist you in any way possible. We plan to continue our monitoring efforts in this area and will bring any future problems to your attention.

Very truly yours,

Lauraine M. Dombi (jml)

Lauraine M. Dombi
Counsel

LMD/jml

CBS

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Washington, D.C. 20036
(202) 457-4501

William Lilley III, Vice President

Dear Mr. Preyer:

June 20, 1980

CBS welcomes the opportunity to submit these views in connection with the examination by the Subcommittee on Government Information and Individual Rights of emerging international restrictions on the free flow of information.

We appreciate your leadership in bringing experts from the private sector and key government officials before your committee to address international data flow questions and to assess the impact of emerging non-tariff trade barriers on American information businesses abroad. We have been following your hearings with great interest. The hearing record and the subcommittee report will be valuable resources for us and for everyone concerned about these matters.

CBS is a major producer of information and entertainment software in a variety of formats, with extensive international operations. Perhaps we are best known for our world-wide news gathering efforts with news bureaus in 11 countries, which are making increasing use of satellites to transmit stories back to the United States. We also are actively involved in international record and book activities. CBS Records International markets, produces and manufactures recorded music in 56 countries, and our publishing division serves the professional, college and general book markets in 13 countries.

With this background, let me outline some of our general concerns about problems that could arise from restrictive information flow policies abroad.

News Feeds: attempts by foreign governments to control the content of news feeds sent via their telecommunications facilities, or to restrict access to those facilities. We should not allow other governments to decide what news is acceptable to transmit, and what is not.

I might also mention that late last month, the United States State Department blocked CBS News from transmitting a report on economic conditions in Cuba via the Intelsat satellite because that story was not — in its view — a "specific event of immediate international importance." While we have been assured that the policy rationale for this decision is being reviewed, we are deeply disturbed by the insensitivity to the principles of free flow of information shown by our own government in that case.

Business and Employment Data: unnecessary restrictions by foreign governments on data transmission, or excessive inconsistencies between laws and regulations of different countries, can affect our ability to use sophisticated computer and data transmission techniques to maintain necessary business and personnel information.

Content Restrictions: foreign tax laws, such as those in Canada for example, which restrict the amount of U.S. content or U.S. advertising in publications and television programs in the Canadian market.

Business Laws: excessive taxes, license fees, ownership restrictions, or other unnecessary business restrictions designed to prevent or restrict involvement by U.S. information businesses in foreign markets.

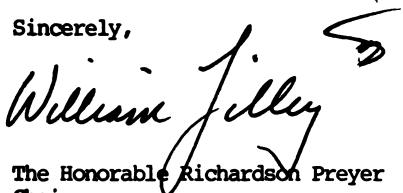
Future Technology: foreign restrictions which could impede our ability to experiment with, develop, and market information and entertainment products abroad through new technologies. CBS, along with other information companies, is experimenting with a number of new technology products, such as videodisks and video cassettes. We have also announced the formation of new divisions to produce cable television programming and films for theatrical presentation.

Your Subcommittee has asked what role the various U.S. government agencies should play in protecting American interests abroad in the information flow area. We feel that the emerging efforts of the United States Trade Representative to compile data on services and information industry problems, and to begin a process leading to international negotiations, is most worthwhile.

Many of these problems can properly be addressed as trade questions. However, we also agree that there should be active efforts by, and strong coordination among, other U.S. departments and offices, including the State Department, the Department of Commerce, the Federal Communications Commission, the National Telecommunications and Information Administration, and others.

Once again, we commend your active interest in exploring these vital questions, and hope that these perspectives of a software information producer are useful to you.

Sincerely,

A handwritten signature in black ink, appearing to read "William J. Filly". The signature is fluid and cursive, with a small upward flourish at the end.

The Honorable Richardson Preyer
Chairman
Subcommittee on Government Information
and Individual Rights
Rayburn House Office Building, Room B-349-B-C
Washington, D.C. 20015

Gulf Science and Technology Company

Zane Q. Johnson
President

Gulf Building
Pittsburgh, Pa. 15230

June 20, 1980

The Honorable Richardson Preyer
Chairman, Subcommittee on Government
Information and Individual Rights
of the Committee on Government
Operations
Rayburn House Office Building
Room B-349-B-C
Washington, D.C. 20515

Dear Mr. Preyer:

Your letter to Jerry McAfee concerning international data flow has been directed to my attention.

Gulf appreciates this opportunity to share its views on this important issue with the members of the Subcommittee on Government Information and Individual Rights.

In general, Gulf supports the principle that individuals, including consumers, have certain rights regarding information about them that is collected and used by businesses or other organizations. However, many data protection laws -- which have been established to protect individual privacy -- can be used to promote the host country's economic interests by making it difficult, if not impossible, for a foreign company such as Gulf to do business in a country.

For example, Sweden's 1973 data law requires a new Data Inspection Board to approve any export of files or personal data. Similar laws have been passed in Belgium, France, and at the provincial level in Canada. Such laws can be used as an important control to either encourage or restrict multinational corporate investment by regulating what types of information a firm can transmit to its home office or to other affiliates.

If the United States government were to pass legislation or create an agency such as the Federal Information Practices Board to regulate international data flow, these actions could have a similar negative impact on American economic interests.

United States regulatory programs could undermine American business' ability to compete, especially when other international companies are not similarly restricted. Also, such programs could create additional costs of doing business.

DATE 6/20/80 FROM Zane Q. Johnson TO Hon. Richardson Preyer SHEET NO. 2

Finally, if proposals were adopted requiring additional segregation of data, people and data processing equipment as a means of restricting the flow of data internationally, conflicts could arise between United States' laws and regulations and those of other countries.

To protect individual and consumer rights concerning information maintained in the private sector, Gulf recommends the establishment of voluntary programs by business. It opposes more federal regulation and the creation of any new federal regulatory agency. The United States government could act through these voluntary programs to set up any needed systems and equipment interface standards and policies.

I hope that this discussion of our position will be helpful to your subcommittee. Thank you for thinking of Gulf.

Sincerely,

Zane Q. Johnson

obb



MERCK & CO., INC.

P.O. BOX 2000
RAHWAY, NEW JERSEY 07068

THOMAS L. OSTERBRINK
EXECUTIVE DIRECTOR
MANAGEMENT INFORMATION SYSTEMS

June 23, 1980

The Honorable Richardson Preyer
Chairman, Government Information and Individual Rights
Subcommittee of the Committee on Government Operations
House of Representatives
Rayburn House Office Building, Room B-349-B-C
Washington, D. C. 20515

Dear Chairman Preyer:

I have been asked to respond to the letter you addressed to Mr. Rudolph J. Anderson, Jr., requesting our assistance in defining the parameters of the international transborder data flow issue and in determining the manner in which the United States should address this issue. In recent years, the regulation of transborder data flow has evolved as an issue affecting all who transact business and exchange scientific or cultural information across national borders, and we welcome this opportunity to express our concerns relating to it.

Merck & Co., Inc. is a worldwide organization engaged primarily in the business of discovering, developing, producing, and marketing products and services for the maintenance or restoration of health. The Company is dependent on the use of efficient and unimpeded manual and automated international data networks in the majority of its corporate functions, e.g., research, business planning, marketing, manufacturing, distribution, finance, accounting, personnel, administration and education.

The restriction and potential taxation of our international data networks may adversely impact our ability to conduct business on an international basis. For example, we develop new products through an integrated domestic and international clinical research program. We use the data gathered from the program in support of applications for health product approvals both in the U.S. and in foreign countries. After an approved product has been added to the line, we need market data from all the countries in which it is to be sold in order to set up rational production and distribution programs. Restrictions on data flow may result in a costly duplication of efforts and a reduction in productivity, may require the disclosure of competitive information and may inhibit the flow of corporate subsidiary and/or branch communications. They may also escalate the uncertainty regarding the ownership and protection of data, international copyrights and computer software; augment the difficulty of planning, budgeting and implementing foreign information management systems; and increase the overhead costs in support of data protection legislation.

The Honorable Richardson Preyer - 2 -

June 23, 1980

In addition to corporate needs, the regulation of transborder data flow is equally important to other international activities. News, agriculture, transportation, banking and finance, accounting, insurance and law enforcement, as well as every government function from security and national defense to weather prediction and disaster relief, continue to be increasingly dependent on computer and telecommunications technology. These uses necessarily require the transmission of data across national borders and the establishment of data banks for the storage of such information.

In response to recently enacted and proposed foreign data protection legislation, the United States should develop a privacy policy incorporating certain international reciprocal standards. This policy, while not including protection for legal persons, should set standards for the protection of information relating to individuals, including foreign nationals. It should establish a voluntary private sector program and designate a department within the present governmental structure to receive data complaints and to address the transborder data flow issue on a worldwide basis.

We trust these comments will be of assistance to you. If we may be of further service, please contact me.

Very truly yours,



Thomas L. Osterbrink

dg



PENNZOIL PLACE • P.O. BOX 2967 • HOUSTON, TEXAS 77001 • (713) 236-7829

June 24, 1980

JUL 3 1980

RICHARD J. HOWE
Vice President
Corporate Communications

The Honorable Richardson Preyer
Rayburn House Office Building
Room B-349-B-C
Washington, D. C. 20515

Dear Mr. Preyer:

This is in reply to your letter of May 5, 1980, to Mr. J. Hugh Liedtke, the Chairman and Chief Executive Officer of Pennzoil Company. Mr. Liedtke is traveling abroad, and I have been asked to respond to your letter.

You asked for our views on a number of issues which have recently developed in connection with restrictive practices some foreign governments have placed on the international transmission of financial business and personal data. Your specific concerns were: (1) Our assessment of the range and complexity of the problems in this area which may affect the operations of Pennzoil Company; (2) a description of any particular problems Pennzoil Company has encountered; (3) our view of existing and potential problems for American business enterprises, and other U. S. private sector groups, and the national interest; and (4) our thoughts on how the United States Government can effectively represent American interests and assist American business in these areas of mutual concern.

Pennzoil Company is a natural resources company, extensively engaged in the discovery, production, refining and processing of petroleum products, and such raw materials as copper,

sulphur and molybdenum. The bulk of our operations are conducted in the United States, but the range and extent of our foreign operations are increasing. However, our foreign operations are not so extensive as to have encountered the problems that other American companies have experienced with international data flow. Therefore, I cannot say that our company has experienced any particular problems with the transmission of business data.

On the other hand, the international scope of American energy and raw materials industries is bound to be affected by the policies of foreign governments which restrict the free flow of information and, consequently, the ability of American companies to secure access to natural resources overseas. For instance, our timely evaluation of data supplied by exploratory drilling overseas could be adversely affected if a foreign government exercised its power to control the transmission of this data to the United States.

Our review of the record produced before the House Subcommittee on Government Information and Individual Rights suggests that American based international record carriers and data processing companies are now experiencing the most immediate data flow problems in competing for business overseas. Unless the United States Government takes effective measures to protect American business in these vital matters, such adverse trends can only accelerate. The fact that many of our governmental agencies are seriously looking into these problems is an encouraging development, for which you and the Subcommittee are to be commended.

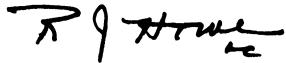
Although Pennzoil Company cannot, at the present time, provide the detailed information you are seeking, we are keenly interested in the proceedings of the Subcommittee, and I request that you keep us abreast of the latest developments in this area. Our Director of Government Relations L. Andrew Zausner, will be pleased to receive any

additional information your Subcommittee develops
and to provide additional assistance in the future.
His address is:

Mr. L. Andrew Zausner
Director, Government Relations
Pennzoil Company
1155 15th Street, NW., Suite 602
Washington, DC 20005

Please let me know if we can be of further
assistance.

Sincerely,



RJHowe

Signed in Dr. Howe's Absence
To Prevent Delay in Mailing

cc: Mr. L. Andrew Zausner

CHEMICAL BANK20 Pine Street, New York, NY 10005
Tel. (212) 770-3516Donald C. Pietton
ChairmanJUL 7 1980
June 30, 1980

The Honorable Richardson Preyer
 Chairman, Government Information and
 Individual Rights Subcommittee
 Rayburn H.O.B., Room B-349-B/C
 Washington, D. C. 20515

Dear Congressman Preyer:

Thank you for the opportunity to comment on transborder data flow issues. Although we at Chemical Bank have not encountered major difficulties in this area, we recognize the potential impact of such regulation and welcome the chance to address these important matters.

As the sixth largest commercial bank in the United States, with about \$39 billion in assets, Chemical is a major international bank and is, therefore, concerned with any matter that could impede international trade and finance. We have welcomed the development among the world's international banks of less restrictive and more professional competition. To the extent national regulations might restrict ability to react quickly to market developments, they would involve a competitive disadvantage for the affected institution.

While we do not wish to engage in alarmist speculation, we are concerned in general terms with the negative implications of regulations in the area of data flow. Basically, such laws could set back the clock in international finance by limiting the enormous benefits of systems-generated data flow. Laws that would impede the free flow of data across national borders could also result in restrictions on services and in redundancy, both of which would involve higher costs for banks and ultimately their customers. For example, corporate customers using our cash management service would be less able to accurately assess cash positions and effect timely funds transfer. One result would be higher financial costs from inefficient cash management. It is also conceivable that requirements for local processing could eliminate the feasibility of offering certain financial services in countries where the costs of compliance would not justify the expense involved.

At Chemical Bank, our International and Operations Divisions have not experienced significant restriction on international data flow. In the few instances where we have encountered temporary difficulties, they have been quickly resolved, once we have explained our activities and purposes. In the area of regulation to protect privacy, our foreign operations have not, to date, been unduly hampered for the following reasons. First, our policy is to comply with all applicable regulations. We accord our international banking customers the strictest confidentiality and take great care not to violate these relationships. It is obvious that indiscriminate use or sale of confidential information by a banking organization would be entirely inappropriate. Second, customer

...continued...

The Honorable Richardson Preyer
Chairman, Government Information and
Individual Rights Subcommittee

2.

information that is generally regarded as sensitive concerning individual privacy, such as political affiliation, marital status, or religious beliefs, is not routinely collected by commercial banks. The remote possibility does exist that such information could prove material for a specific trust or loan, but the individual in such a case would volunteer the information and authorize its use. Furthermore, most of the laws on privacy protection are still in a formative stage, either in the process of enactment or as yet not fully promulgated or enforced. As a result, our business has yet to encounter their full impact.

Chemical Bank does have reservations about the possibility of future restrictions on data transmissions, particularly when they would impede information flow, raise operation costs, or compromise confidentiality. The timeliness of financial information is critical to international banking. Our Foreign Exchange Traders, for example, must be able to respond instantly to changes in the world's currency market. Timeliness is also crucial in arbitrage and in funding or lending decisions to respond to momentary conditions in markets.

Chemical Bank has been especially concerned about the movement by some governments to revise the definition of individuals that require privacy protection to include corporations. Depending upon the nature of the restrictions involved, this change would cause difficulty, since most international business is conducted by corporations.

We are also concerned that the desire of certain countries to develop domestic computer and data processing industries may be expressed in needlessly restrictive requirements for local data processing and equipment specifications. It should be clear that such measures would result in redundancy and incompatibility and, at a minimum, would increase operating expenses while diminishing the range and quality of services provided. This condition is aggravated where there is no conformity among nations adopting such restrictive measures. The competitive position of international banks would be impaired to the extent of their dependence on advanced technology.

The absence of a "champion" on data flow issues in the United States Government is also disquieting. Several European governments have established specific commissions or directorates to coordinate national policies, while comparable decision-making in the United States remains fragmented among various agencies and departments. We would hope the United States government will be able to represent and protect the interests of United States corporations in foreign countries on data flow issues.

Chemical Bank believes that the United States government should promote the principles of free flow of information among nations, while recognizing the legitimate rights of nations to protect the privacy of their citizens. However, countries should not be allowed to restrict international data flows in broader areas for reasons of economic protectionism. In particular, the United States government can communicate to other nations the view that their data laws should treat "natural persons" (individual citizens) and "legal persons" (corporations) differently. It

...continued...

The Honorable Richardson Poyer
Chairman, Government Information and
Individual Rights Subcommittee

3.

can encourage other nations to consider the implication of their actions fully, to weigh carefully the costs of any restriction, as well as the benefits.

The United States government can also promote coordination of national data laws by international organizations. We at Chemical Bank favor guidelines similar to those drafted by the Organization for Economic Cooperation and Development (OECD), which were intended to minimize the inconsistencies among national laws and foster free trade.

Finally, Chemical Bank shares the position, expressed by various corporate witnesses at your hearings in March, that international data flow concerns are trade matters and not technical issues. We are willing to wait to ascertain whether various initiatives to improve governmental direction, such as those proposed before your subcommittee by the Department of State, will be successful. If these measures prove inadequate, we would join others in recommending that the Office of the Special Trade Representative be designated as the government unit responsible for coordinating data flow issues.

Sincerely,



AUG 7 1980

THE CONTINENTAL CORPORATION

EIGHTY MAIDEN LANE, NEW YORK, N.Y. 10036

OFFICE OF THE
EXECUTIVE VICE PRESIDENT

212-440-2266

August 4, 1980

The Honorable Richardson Preyer
 Government Information and
 Individual Rights Subcommittee of the
 Committee on Government Operations
 Rayburn House Office Building
 Room B-349-B-C
 Washington, D.C. 20515

Dear Congressman Preyer,

Since acknowledging your letter of May 5, calling for comments on transborder data flows, transnational informational policy, and international data flow, I have had a chance to brief myself more fully on the issues involved and the work done by trade organizations that have taken an interest in this area.

We are aware of a number of recent - or proposals for - legislation that is concerned with protecting individual privacy by restricting transnational data flow. The danger is that some of this legislation may have the effect - either explicitly, or by interpretation - of disrupting the flow of information for the conduct of ordinary business transactions that do not threaten individual privacy. The best way to state our position in this matter at the present time is to associate ourselves with the work of the Working Party on "Transborder Data Flows" of the International Chamber of Commerce, 38 Cours Albert 1er, 75008 Paris - of which we are a member. In particular, the draft statement by the Working Party (document no. 372/1, dated 11-19-79) is a good summary of the issues as we know them and the best way of approaching them. I have not included a copy of this document with this letter, as it may have been developed further, and so I urge your committee to contact the ICC in Paris if they have not already done so.



If there are further questions you would like to direct to us, please write to Mr. H. Donald Lindell, Senior Vice President, International & Reinsurance Division, at this address. Mr. Lindell is our representative on the ICC and familiar with these issues.

Very truly yours,



V. Lee Barnes
Executive Vice President

VLB/pc
cc: H.D. Lindell

APPENDIX 4.—CORRESPONDENCE REGARDING FEDERAL COMMUNICATIONS COMMISSION DECISION TO CONSIDER RESALE AND SHARED USE OF TELECOMMUNICATIONS SERVICES AND FACILITIES TO THE INTERNATIONAL MARKET

REPRESENTATIVE, P.A., CHAIRMAN
ROBERT F. CROMPTON, MEMBER
CLIFFORD SPENCE, MEMBER
DAVID W. STONE, MEMBER
PETER H. DOMINICK, MEMBER
TED WILSON, MEMBER

THOMAS M. RICHMOND, MEMBER
MEL CALDWELL, MEMBER, V.P.
JOHN H. GOLDBECK, MEMBER
225-3741

**NINETY-SIXTH CONGRESS
Congress of the United States**

House of Representatives

**GOVERNMENT INFORMATION AND INDIVIDUAL RIGHTS
SUBCOMMITTEE**

OF THE

COMMITTEE ON GOVERNMENT OPERATIONS

**RAYBURN HOUSE OFFICE BUILDING, ROOM B-349-B-C
WASHINGTON, D.C. 20515**

July 21, 1980

Mr. Matthew Nimetz
Under Secretary of State
for Security Assistance,
Science and Technology
Department of State
Washington, DC 20520

Dear Mr. Nimetz:

On June 20, the Director of the CCITT in the International Telecommunications Union, Mr. Burtz, wrote to the Office of International Communications Policy in the State Department and expressed his "surprise" and "deep disappointment" with the decision of the Federal Communications Commission to consider extending the domestic United States policy of resale and shared use of telecommunications services and facilities to the international market.

In his letter, Mr. Burtz raises a serious question of the conflict of United States agreements and obligations at the international level with the actions of the Commission in this matter. Of equal importance, a constant element of the testimony in the four days of hearings held by this subcommittee on problems of international data flow was the concern that we not simply apply the policies and practices of the domestic market internationally. As you are aware, for example, the United States has authority over only one half of an international circuit; in order to adopt any reasonable and effective policy regarding use of international circuits, we must understand and respond to the interests of the nation at the other end of the line. To act otherwise would be unreasonable and, as our hearing record amply established, would have unfortunate consequences for both American providers and users of telecommunications services.

In order to help the subcommittee better understand the implications of the action by the Commission, I would appreciate your response to the concerns raised in Mr. Burtz' letter, as well as some additional information to assist the subcommittee in the exercise of its oversight functions and in its continuing inquiry into problems of international data flow. To what extent was the Department of State consulted by the Commission regarding the potential conflict

(786)

between our international agreements and obligations and the current Commission action? To what extent has the Department brought any concerns it may have about the Commission action to the attention of the Commission or to the attention of any other executive agency? Please provide the subcommittee with correspondence, memoranda, reports, and other materials which document either the Department's consideration of potential conflicts or its consultations with the FCC and other agencies.

I look forward to your response. Should you have any questions or problems, please contact Christopher Vizas of the subcommittee staff at 225-3741.

Cordially,

Richardson Preyer
Chairman

cc: Mr. Arthur Freeman

REINHOLDSON, PETER, JR., CHAIRMAN
ROBERT J. DODD, JR., VICE CHAIRMAN
CLIFFORD C. COLEMAN, JR.
DAVID W. EWING, JR.
PETER H. HERTZHAUER, JR.
TED WEISS, AT.

Chris
THOMAS H. RICHARDS, CHIEF
M. CALDWELL BUTLER, JR.
JOHN H. DELAHAYE, JR.
222-3741

NINETY-SIXTH CONGRESS
Congress of the United States

House of Representatives

GOVERNMENT INFORMATION AND INDIVIDUAL RIGHTS

SUBCOMMITTEE

OF THE

COMMITTEE ON GOVERNMENT OPERATIONS

RAYBURN HOUSE OFFICE BUILDING, ROOM B-349-B-C

WASHINGTON, D.C. 20515

July 21, 1980

The Honorable Charles Ferris
Chairman, Federal
Communications Commission
Washington, DC 20554

Dear Mr. Chairman:

On June 20, the Director of the CCITT in the International Telecommunications Union, Mr. Burtz, wrote to the Office of International Communications Policy in the State Department and expressed his "surprise" and "deep disappointment" with the decision of the Federal Communications Commission to consider extending the domestic United States policy of resale and shared use of telecommunications services and facilities to the international market.

In his letter, Mr. Burtz raises a serious question of conflict of U. S. agreements and obligations at the international level with the actions of the Commission in this matter. Of equal importance, a constant element of the testimony in the four days of hearings held by this subcommittee on problems of international data flow was the concern that we not simply apply the policies and practices of the domestic market internationally. As you are aware, for example, the United States has authority over only one half of an international circuit; in order to adopt any reasonable and effective policy regarding use of international circuits, we must understand and respond to the interests of the nation at the other end of the line. To act otherwise would be unreasonable and, as our hearing record amply established, would have unfortunate consequences for both American providers and users of telecommunications services.

In order to help the subcommittee better understand the actions and intentions of the Commission, I would appreciate your response to the concerns raised in Mr. Burtz' letter, as well as some additional information to assist the subcommittee in the exercise of its oversight functions and in its continuing inquiry into problems of international data flow. To what extent was the potential conflict with international agreements and obligations considered before the current Commission action was initiated? To what extent did the Commission consult,

before initiating action, with the Department of State, other executive agencies, foreign postal, telephone and telegraph authorities, the International Telecommunications Union, the providers of international telecommunications services, the users of international private line services, or the users of international telecommunications services generally? Please provide the subcommittee with any correspondence, memoranda, reports, meeting agendas, and other materials which document either the Commission's consideration of conflicts or its consultations. For your convenience, a copy of Mr. Burtz' letter is enclosed.

I look forward to your response. Should you have any questions or problems, please contact Christopher Vizas of the subcommittee staff at 225-3741.

Cordially,

Richardson Preyer
Chairman

Enclosure

CC: ~~members~~ Commissioners of the
Federal Communications Commission

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C.OFFICE OF
THE CHAIRMAN

August 1, 1980

Honorable Richardson Preyer
Chairman
House of Representatives
Committee on Government Operations
Government Information and Individual Rights Subcommittee
Rayburn House Office Building, Room B-349-B-C
Washington, D.C. 20515

Dear Mr. Chairman:

Your recent letter to me raises some questions regarding the FCC's Notice initiating a rulemaking proceeding to consider policies on the resale and shared use of international communications services provided by carriers subject to our jurisdiction. You expressed concern, in light of a letter from Mr. L. Burtz, Director of the CCITT, to Mr. Arthur Freeman of the U.S. State Department, that the FCC's action instituting CC Docket 80-176 was not consonant with recommendations adopted by international consultative bodies in which the United States has been an active participant. In addition, you inquired about the Commission's consideration of international agreements and the views of various interested persons prior to deciding to pursue the issues raised in this proceeding.

It is precisely because of our direct participation in, and continuing commitment to, the CCITT that I am somewhat bewildered by the "surprise" expressed by Mr. Burtz with regard to our Notice. In my view, the considerable publicity which has surrounded the general distribution of Mr. Burtz' letter has generated much confusion about the status of the resale and shared use issue at the FCC. Thus, I think it is important for me to clarify where we now stand on this matter.

At the outset, I believe it is important to put the recently issued notice in perspective. We began our examination of the lawfulness of tariff provisions by which U.S. carriers restrict the resale and shared use of their communications services and facilities six years ago, in 1974, when we issued a Notice of Inquiry and Proposed Rulemaking calling these restrictions into question. A diverse cross-section of government agencies, users, and carriers filed comments in that proceeding. At its conclusion in 1976, the Commission found that resale and shared use restrictions on both domestic and international private line services were unlawful under Sections 201(b) and 202(a) of the Communications Act of 1934. On reconsideration, we decided that further evaluation of any special considerations applicable to international communications would be appropriate before deciding whether a policy requiring unlimited resale and shared use should be applied to international services and

Honorable Richardson Preyer

2.

facilities, and stated that we would conduct a separate proceeding for this purpose. Because interest in this matter has continued in the interim, the Commission has now initiated a rulemaking specifically designed to obtain public comment on the application of resale and shared use to the international services provided by U.S. carriers.

There is no reason why our decision to provide a public forum in this country for consideration of the international resale issue should come as a surprise to any active member of CCITT Study Group III, such as Mr. Burtz. For many years the U.S. has worked at the CCITT to bring about greater flexibility in rules affecting customer use of services and facilities. During the 1973-76 plenary period, Study Group III, chaired by Mr. Burtz, considered the recommendations to which he refers in this letter. When the current recommendations were adopted, the United States, having recently adopted the decision on resale discussed earlier, put the CCITT on notice that international resale and shared use was under continuing study. A footnote to the CCITT recommendations was added by the United States which states: "There is a continuing discussion in the United States of issues related to the dedicated use of customer private leased circuits, and we are pleased this will be the subject of further study in Study Group III during the coming plenary period." The purpose of that statement was to let the CCITT know that we might have further input at the next meetings of Study Group III concerning the possible benefits of resale and shared use. On the basis of this observation and other ongoing efforts to ease restrictions on customer use of facilities and services, the U.S. delegation clearly indicated to other participating administrations that there would continue to be interest in the U.S. in pursuing certain policies addressed in our present rulemaking. The Commission has also discussed resale and related topics with the Department of State, the National Telecommunications and Information Administration, and representatives of European and Canadian Telecommunications entities, in the course of meetings between members of the North Atlantic Consultative Process in 1979 and 1980.

It has in no way been our practice to ignore the views, supportive or adverse, of any of the government agencies or other interested persons mentioned in your letter. At this point we have merely set forth proposals for public comment; no policies are implemented simply by the procedure of issuing a notice of proposed rulemaking. In fact, the very purpose of using a rulemaking procedure is to give all persons with an interest in U.S. international telecommunications policy a full opportunity to inform the Commission of their views on the policies being considered. We expect that our Notice will result in participation by a broad cross-section of parties involved in the area of international telecommunications.

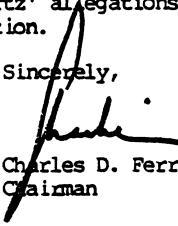
Honorable Richardson Preyer

3.

We are aware that other sovereign nations do not always subscribe to the same international telecommunications policies we have adopted. Nevertheless, we have sought through informal conferences as well as through organizations such as CCITT to ameliorate our differences. Support of the CCITT should not, however, preclude the United States or any other country from pursuing those policies which best serve its own interest. While our decisions must naturally take into account the views of the foreign correspondents, our obligation under the Communications Act requires that we give high priority to the welfare of the U.S. consumers who use and pay for international communications service. To give due attention to the interest of this nation's consumers, we must be free, without preclearing our proposals with the CCITT, to engage in open debate concerning new policy issues and to investigate the various rules and conditions under which international service is rendered. If we permit existing CCITT recommendations to preclude an open inquiry into the benefits which could potentially flow from the elimination of U.S. carrier tariff conditions which limit the use of low cost facilities only to large users, it may perpetuate an inefficient and unnecessarily expensive international telecommunications system for a majority of small users. I believe that our paramount concern should be the welfare of U.S. consumers; that is not necessarily a matter of concern to CCITT or its other member nations.

I have also written to Under Secretary Matthew Nimetz of the U.S. State Department concerning Mr. Burtz' allegations, and am enclosing a copy of that letter for your information.

Sincerely,


Charles D. Ferris
Chairman

Enclosure

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 20554

AUG 1 1980

OFFICE OF
THE CHAIRMAN

Mr. Matthew Nimetz
Under Secretary for Security
Assistance, Science and Technology
Department of State
Washington, D.C. 20520

Dear Mr. Nimetz:

I have just reviewed the letter of Mr. Burtz, Director of the CCITT, to Arthur Freeman of your Department. I felt it important to convey to you my reaction to Mr. Burtz' letter.

Because of our commitment to, and direct participation in, the CCITT, I would be less than candid if I did not express to you my surprise at Mr. Burtz' conclusion that the initiation in the United States of a public review, pursuant to procedures mandated by U.S. law, of a matter of importance to U.S. international communications consumers may be equated with "sapping the moral authority of the CCITT." I would also be less than candid if I did not note my profound irritation at the apparent broad distribution of the letter to the press and others prior to a receipt of a copy by the FCC. In truth, I personally expect the observance of normal diplomatic courtesies in the handling of such matters.

In view of the broad distribution of his letter and the press accounts of Mr. Burtz' views on this matter, there is considerable confusion about the status of the resale and shared use issue at the FCC. Thus, I think it is important for me to clarify where we stand on the issue. Since Mr. Burtz is extremely critical of what he states as our failure to coordinate U.S. policy with CCITT recommendations, I think it is also worthwhile to review some of the history of the resale issue in the United States and the evolution of the current CCITT D.1. recommendations to which Mr. Burtz refers. Finally, I am concerned enough about the implications of this letter to recommend that we should give some thought to the proper role of CCITT.

The CCITT has for many years played an important role in facilitating international telecommunications. It has provided an essential forum in which countries can come together and develop technical standards for the interface of facilities. The United States has played an active role in the CCITT, and the FCC, through the auspices of the State Department, has devoted considerable staff time to the development of our national participation in CCITT. Indeed, a staff member of our Common Carrier Bureau serves as the Chairman for U.S. CCITT Study Group A. I believe this enormous devotion of time and talent is indicative of our commitment to the CCITT.

One of the objectives of the United States in the CCITT has been the liberalization of rules for the offering of services. As far back as 1969, and Mr. Burtz certainly is aware of this since he was Chairman of CCITT Study Group III from 1969 to 1976, the U.S. Delegation favored liberalization of all CCITT recommendations dealing with customer usage of communications services. For example, between 1969 and 1972, at various Study Group and Working Party meetings, the United States was able to convince Study Group III that leased circuit services should be accorded a higher priority than formerly existed. We have also been successful in getting the CCITT to adopt a provision whereby leased circuits could be connected to data processing centers. During the 1973-76 plenary period, Study Group III, still chaired by Mr. Burtz, considered the recommendations to which he now refers. When the current recommendations were adopted, the United States put the CCITT on notice that resale and shared use was under continuing study. A footnote to the CCITT recommendations was added by the United States which states: "There is a continuing discussion in the United States of issues related to the dedicated use of customer private leased circuits, and we are pleased this will be the subject of further study in Study Group III during the coming plenary period." This statement made it clear to the CCITT that we might be seeking during the next plenary period modification of these CCITT recommendations.

No one knows better than Mr. Burtz that CCITT recommendations are very important as guidelines to all members of the CCITT; but they are simply that -- recommendations. They are formulated, used, modified, changed and perhaps eliminated in favor of new or different recommendations.

I would also note that in addition to the above-described work by the United States in the CCITT some discussions of these and related topics have taken place between the Commission, the Department of State, the National Telecommunications and Information Administration and representatives of European and

Canadian telecommunications entities. During the October 2 and 3, 1979, Senior Level meeting of the North Atlantic Consultative Process, a brief informal meeting took place at which the representatives of the Commission proposed to expand the range of subjects on which information and views are exchanged among the United States, European and Canadian telecommunications entities with responsibilities for international communications. As is indicated by my October 31, 1979, telexes to the European and Canadian telecommunications entities further defining the Commission's proposal, we suggested that the topics on which such consultations take place include new U.S. carriers and new international services. In that correspondence I noted the actions that the Commission had taken with respect to these issues in our domestic services and the benefits which flowed from those actions. I also noted that applications which had recently been filed would require the Commission to address these same questions with respect to international services. Since it appeared that there may well be differences in the policies of the United States and Europe, the Commission believed that consultations on those topics could provide a useful means for exchanging information and views just as consultation had aided the planning of North Atlantic facilities over the past few years.

On February 20-21, 1980, a meeting was held in Ascot, United Kingdom, to further explore establishment of consultations on these and other topics. During that meeting, views were exchanged on a number of subjects including additional U.S. carriers, new services, resale, shared use and value added carriers. I noted that we expected to address international resale in the near future. The European and Canadian entities expressed their views on these topics as well.

The Commission's examination of the lawfulness of tariff provisions by which U.S. carriers restrict the resale and shared use of their communications services and facilities goes back to 1974 when we issued a Notice of Inquiry and Proposed Rulemaking into resale and shared use. Private line services were the focal point of the proceeding. A cross-section of carriers, government agencies and users filed comments in that proceeding. At its conclusion in 1976, the Commission found that resale and shared use restrictions on private line services, both domestic and international, were not in the public interest.

On reconsideration of that decision, we decided not to apply the policy at that time to international services. Instead, we pledged to institute a separate proceeding to consider the lawfulness of resale and shared use restrictions in international tariffs. Interest in the matter continued, and on May 19, 1980,

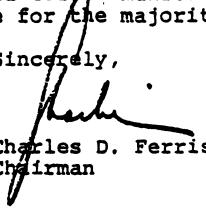
we initiated the proceeding in CC Docket No. 80-176. This proceeding is specifically designed to obtain public comment, including input from the Department of State, the National Telecommunications and Information Administration, and any international organization, on the application of our domestic resale and shared use policies to international services.

This history recites our handling of the resale and shared use issue over the past six years. In view of that history and our record of domestic and international discussion on the matter, I am dismayed at Mr. Burtz' criticism of the United States for conducting pursuant to its express statutory mandate a review of current tariff restrictions on international circuits. As you know, the United States has had under general review the work of all agencies which regulate the range and price of domestic and international services. We have come to realize that in many cases these regulations serve the interest of common carriers to the detriment of consumers. The FCC has moved over the past couple of years to eliminate unnecessary regulations, having found that they were not in the public interest. In contrast, Mr. Burtz' letter indicates that the CCITT intends to assume a strong role in establishing and enforcing rules which relate to the offering of telecommunications services, as distinct from what we all regard as the important role for the CCITT in designing technical and operational standards. I believe that such a far reaching regulatory role for the CCITT with respect to the terms and conditions of services offered to the public may not be the most appropriate role of the CCITT.

I am fully committed to supporting the work of the CCITT. However, the FCC is obligated under the Communications Act to regulate U.S. domestic and international telecommunications. Our decisions must naturally take account of the views of the foreign correspondents of U.S. carriers; but we must also give high priority to the welfare of U.S. consumers who must depend on, and ultimately pay for, those services. To effectuate its statutory mandate, the FCC must be able to investigate the various rules and conditions under which international service is rendered. We must also be able to discuss such issues as

resale and shared use both within the framework of U.S. regulatory procedures and in bilateral and multilateral discussions with foreign telecommunications entities. The existence of CCITT recommendations should not preclude an open inquiry into the potential benefits which may flow from the elimination of U.S. carrier tariff conditions that limit the use of low cost facilities to large users. We must also assure that the international telecommunications system is efficient and cost effective for the majority of small users.

Sincerely,


Charles D. Ferris
Chairman



DEPARTMENT OF STATE

Washington, D.C. 20520

AUGUST 21 1980

Dear Mr. Chairman:

I am replying to your letter of July 21 to Under Secretary Nimetz drawing attention to the proposed rulemaking by the Federal Communications Commission on the resale and shared use of leased international services. Mr. Nimetz has received a similar letter from Congressman Staggers and my reply to him will be similar. You mention a letter to the Department from Mr. Leon Burtz, Director of the International Telegraph and Telephone Consultative Committee (CCITT) in which he points to relevant CCITT Recommendations. The Department has replied to Mr. Burtz' letter; a copy is enclosed for your information.

Substantial business and government interests are affected by the proposal to preclude tariffs covering the lease of international circuits that carry restrictions on the resale and shared use of leased circuits. In our reply to Mr. Burtz we indicated our objective of ensuring that such actions as the Commission might take should improve, and not jeopardize, telecommunications services available to the subscriber.

The Commission did not consult with us prior to adopting its proposed rulemaking. Had it done so, we would have drawn attention to the relevant work carried out in the CCITT, and cited the need to ascertain the views of those foreign telecommunications administrations which cooperate with us in the provision of leased circuits as to the workability and economic attractiveness of the proposal. We still believe that it would be useful for the Commission to have such views available to it, so that they might be taken into account in the Commission's further consideration of the issues. Therefore, we have put at the disposal of the Commission the services of the Department's overseas posts. A copy of our letter to the Commission in this regard is also enclosed for your information.

The Honorable
Richardson Preyer,
Chairman,
Subcommittee on Government
Information and Individual Rights,
Committee on Government Operations,
House of Representatives.

Finally, your letter and the issues it raises prompt me to mention concern expressed by the Department during the several recent attempts to revise the Communications Act of 1934. The Act gives the Commission a degree of independence which hampers Executive Branch attempts to formulate international communications policy within the framework of overall foreign relations. As an independent domestic regulatory agency, the FCC is not in a position to determine the foreign policy and national security implications of plans for international facilities and services. Moreover, the quasi-judicial nature of FCC procedures for approval of agreements means that neither the Executive Branch nor private carriers can conduct required negotiations with foreign communications authorities other than on a tentative basis. Once agreement is reached, the required FCC approval may give the appearance of FCC regulation over foreign entities, some of which are governmental. For these reasons, the Administration has supported the creation by the Congress of an Executive Branch/Carriers Task Force to undertake consultative planning with foreign communications authorities.

Sincerely,

J. Brian Atwood
Assistant Secretary for
Congressional Relations

Enclosures:

1. Letter to Mr. Burtz,
dated July 14.
2. Letter to Chairman Ferris,
dated August 12.



DEPARTMENT OF STATE

Washington, D.C. 20520

July 14, 1980

Mr. L. Burtz
Director
International Telegraph and
Telephone Consultative Committee
International Telecommunication
Union
Place des Nations
Geneva, Switzerland

Dear Mr. Burtz:

I am replying to your letter of June 20, 1980 in which you speak to the relationship of CCITT Recommendation D.1 to the proceeding recently initiated by the Federal Communications Commission to consider whether the tariff restrictions on resale and shared use of international facilities and services should be eliminated. I understand your concern to be that the implementation of resale and shared use of international leased circuits would place the United States in the position of ignoring a Recommendation which it participated in developing, thereby undermining the credibility of the United States within the CCITT.

You may recall that at the time the VIth Plenary Assembly was considering the report of Committee B (Temporary Doc. 46), the Chairman of that Committee drew attention to a footnote inserted by the United States with regard to the further examination of Recommendations D.1, D.2, and D.3. That footnote reads: "There is a continuing discussion in the United States of America of issues related to the dedicated use of customer private leased circuits, and we are pleased this will be the subject of further study in Study Group III during the coming Plenary period." I want to assure you that we are studying Recommendation D.1 to ascertain the extent of potential conflict with policies that the Commission might adopt. Our objective will be to ensure that such actions as are taken improve, and not jeopardize, the telecommunications services available to the subscriber, and lend support to the exceptional international cooperative effort that characterizes CCITT deliberations.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Arthur L. Freeman".

Arthur L. Freeman
Director
Office of International
Communications Policy

DEPARTMENT OF STATE

Washington, D.C. 20520



August 12, 1980

The Honorable
Charles Ferris, Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Chairman Ferris:

I am writing with respect to the notice of proposed rulemaking adopted April 22, 1980 in the matter of Regulatory Policies Concerning Resale and Shared Use of Common Carrier International Communications Services.

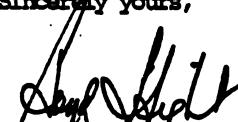
The proposed rulemaking looks toward the elimination of tariff restrictions on resale and shared use of international facilities and services. These services, as the proposed rulemaking recognizes, are governed by operating agreements with foreign entities not subject to the Commission's jurisdiction. Although the proposed rulemaking expresses the Commission's view that resale is a workable concept and is potentially advantageous to these foreign entities, we believe that the views of these entities are important to the Commission's consideration.

In your letter of August 1 to Under Secretary Nimetz, you referred to the June 20 letter to the Department from Mr. Leon-Alfred Burtz, Director of the CCITT, in which he expressed his concern that implementation of the proposed rulemaking would place the United States in the position of ignoring CCITT Recommendation D.1, which it participated in developing. We pointed out to Mr. Burtz in our letter to him of July 14 that in connection with the adoption of Recommendation D.1, the United States explicitly noted that this subject would be studied further. We would nevertheless be concerned if a departure from the Recommendation were to occasion any loss of confidence in the United States as a reliable partner in the work of the CCITT. Moreover, in the February 1980 discussions at Ascot, England, with various CEPT countries and Teleglobe Canada, the subject of resale met a cool reception. We understand, however, that further discussions are tentatively planned for the fall.

The Department's views on this notice are influenced not only by our desire that the U.S. be perceived as a reliable negotiating partner but also by the fact that the Diplomatic Telecommunications System is dependent, to a large degree, on private line leases. Elimination of such service would complicate the expeditious and secure transmission of U.S. diplomatic correspondence and could have a severe cost impact.

In view of these initial reactions and the necessity of foreign concurrence if the proposed rulemaking is to be effectively implemented, we urge that the Commission consider carefully the views of affected foreign entities before concluding its rulemaking. This consideration should include both those views on the substance of the proposal and also, if the substantive views are adverse, the operational effect of foreign opposition to the proposed rule. We will be pleased to provide the assistance of this Department in ascertaining the views of the affected foreign entities.

Sincerely yours,



B. Boyd Hight
Deputy Assistant Secretary
for Transportation and
Telecommunications

APPENDIX 5.—SELECTED REFERENCES ON INTERNATIONAL DATA FLOW

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APPENDIX 6.—“THE 1979 WORLD ADMINISTRATIVE RADIO CONFERENCE”, A REPORT PREPARED FOR THE SUBCOMMITTEE ON GOVERNMENT INFORMATION AND INDIVIDUAL RIGHTS BY THE CONGRESSIONAL RESEARCH SERVICE, LIBRARY OF CONGRESS



Congressional Research Service
The Library of Congress

Washington, D.C. 20540

THE 1979 WORLD ADMINISTRATIVE RADIO CONFERENCE:

ISSUES CONCERNING U.S. PREPARATORY ACTIVITIES
FOR ITU CONFERENCES

Report Prepared at the Request of
Subcommittee on Government Information and Individual Rights
Committee on Government Operations
U.S. House of Representatives

Marcia S. Smith
Specialist in Aerospace and Energy Systems
Science Policy Research Division
December 16, 1980

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THE 1979 WORLD ADMINISTRATIVE RADIO CONFERENCE:
ISSUES CONCERNING U.S. PREPARATORY ACTIVITIES FOR ITU CONFERENCES

I. INTRODUCTION

Since 1865, the International Telecommunication Union (ITU) and its predecessor organizations have been responsible for parcelling out the radio frequency spectrum for various uses such as commercial radio and television, satellite services, aeronautical and maritime communications, and radar. Accommodating the radio service needs of all countries has become increasingly complex as both the variety of radio services and the number of countries wanting access to those services have grown. In September 1979, the ITU, a specialized agency of the United Nations, convened a general World Administrative Radio Conference (WARC-79) to reassess the allocations it had made in the past, as well as to reevaluate administrative and regulatory aspects of the Radio Regulations.

WARC-79 was the first meeting in 20 years to look at the whole range of radio services, although seven WARC's had been held in the interim to consider specific services--two on space, two on aeronautical, two on maritime, and one on broadcasting satellites in the 12 gigahertz (GHz) band. Although WARC-79 lasted for 11 weeks (1 week longer than originally planned), there was insufficient time to deal with all issues and several of the most politically contentious (including high frequency broadcasting and space services planning) were deferred for consideration at specialized conferences between now and 1986.

Although WARC-79 is over, the impact of the decisions made there has yet to be felt. The final agreements will have to be approved by the Senate and signed by the President before they become applicable in the United States, and will not enter into force until January 1982 in any case. Some of the changes in allocations will be phased in over 10 or 15 years.

ITU decisions, and postponements of decisions affect every activity connected with use of the radio frequency spectrum, from television, to citizens band radio, to telephone communications, to national security radar and telecommunications systems. Consequently, the "success" of the United States at ITU conferences is of considerable importance. A critical factor in this success is the adequacy of preparatory activities. Therefore, even though WARC-79 is over, a number of issues remain relating to how the United States prepared for the conference and whether or not that procedure should be used as a model for preparing for future ITU conferences. WARC-79 was only the beginning of a process that will span at least the next 6 years and probably longer, since some of the most controversial issues were deferred for final resolution to specialized conferences scheduled through 1986. This paper identifies issues which Congress might wish to consider relating to U.S. preparations for ITU conferences. The broader issues of Government reorganization for improving the development of international telecommunications policy and of providing technical assistance to the less developed countries are outside the scope of this report, and are mentioned only as they specifically relate to WARC-79. This report is not intended to serve as a basis upon which the Congress can reach a decision on whether or not to consent to the ratification of the WARC-79 final acts, or whether or not to add reservations to that document.

II. OVERVIEW

A. U.S. Preparatory Efforts for WARC-79

The ITU allocates frequency bands to various radio services, while the assignment of specific frequencies to stations is performed by individual countries. 1/ In the United States, the Federal Communications Commission (FCC) regulates private use of the radio frequency spectrum, while the National Telecommunications and Information Administration (NTIA) handles Government use. For nearly 5 years prior to WARC-79, the FCC and NTIA 2/, in cooperation with the State Department, developed recommendations for United States positions at the 1979 conference. Nevertheless, as the United States entered WARC-79, there were concerns about the adequacy of preparatory efforts particularly whether all appropriate viewpoints had been heard and all likely issues considered.

1. FCC

The FCC used its public rulemaking procedures to acquire input from non-Government users, issuing nine notices of inquiry from which 2,000 comments were received. 3/ The process began in 1975 and concluded with the issuance of the final report and order on December 28, 1978. The FCC established an

1/ Except in the case of AM broadcasting, where assignments are now also made at ITU conferences.

2/ NTIA was created when the Office of Telecommunications Policy (OTP) within the Executive Office of the President was abolished by the President's Reorganization Plan No. 1 of 1977. Some of the OTP's functions, including WARC-79 preparations, were transferred to the newly created NTIA within the Department of Commerce, while other responsibilities were transferred to other governmental entities such as the Office of Management and Budget, the National Security Council, and the Office of Science and Technology Policy. Executive Order 12046 (March 27, 1978) implemented these changes.

3/ WARC '79: The Haves vs. the Have-Nots. Broadcasting, Jan. 1, 1979: 54.

internal steering committee, as well as 24 service working groups through which the private sector could comment.

Despite this effort, there has been criticism of FCC preparatory efforts. For example, according to WARC-79 delegate David Honig from Howard University, only one consumer group and one minority organization, the National Black Media Coalition in each case, filed comments or otherwise participated in the FCC planning process.^{4/} In addition, Richard Gould, President of Telecommunications Systems, charges that the FCC final report and order contained two very important proposals which had never been seen previously (regarding power flux density limits for fixed satellites and the decision to move the broadcasting satellite service out of the 11.7-12.2 GHz band). Gould also asserted that because the report and order was issued so close to the time the U.S. proposals were due in Geneva, there was no opportunity for additional comments on these new items. He attributed the problem to a lack of adequate planning by the FCC.^{5/} An FCC spokesman stressed that even though these items may not have appeared in the formal notices, the issues had been widely discussed for a considerable period of time outside the FCC's formal procedures.^{6/}

Another concern was that because of the FCC's process, the telecommunications common carrier and manufacturing industries had too great an influence

^{4/} Honig, David E. Lessons for the 1999 WARC, *Journal of Communication*, Spring 1980: 53. The Public Interest Satellite Association, which could be classified as a consumer group, also participated in the proceedings.

^{5/} Personal communication with Richard Gould, October 1980.

^{6/} Telephone conversation with Ed Jacobs, FCC, September 1980.

on WARC-79 proposals 7/, particularly since that industry was also represented on the State Department's Public Advisory Committee (see below).

2. NTIA

In January 1974, the Office of Telecommunications Policy began preparations for WARC-79 on behalf of Government users. This responsibility was transferred to NTIA when it was created in 1978. NTIA received input through the Inter-department Radio Advisory Committee (IRAC) which consists of representatives from 18 Federal agencies (the FCC has a non-voting liaison representative on the committee).

Requirements for the various agencies were discussed within IRAC and decisions made as to what proposals to make to the State Department. Where disputes between agencies could not be resolved within IRAC, the head of NTIA would make the decision, which in turn could be appealed to the Secretary of Commerce. The State Department was the final route of appeal, and made its determination in consultation with the Office of Science and Technology Policy, the National Security Council, and other appropriate agencies. (Ultimately, of course, the President could have been asked to rule on an issue, although this did not occur).

3. State Department

As the prime foreign policy agency in the U.S. Government, the State Department was the lead agency for WARC-79 preparations and deliberations. The State Department's role was as arbiter between IRAC members and between NTIA and the FCC, as final reviewer of international policy positions, and as shaper of policy to ensure that foreign policy concerns were integrated into the WARC-79 proposals.

7/ de Sola Pool, Ithiel. The Problems of WARC. Journal of Communication. Winter 1979: 194.

In September 1976, the State Department set up a high-level policy group comprising the Director of the Office of Telecommunications Policy (later NTIA), the FCC chairman, the State Department's assistant secretary in charge of telecommunications, and senior officials of other key agencies.

a. Bilateral meetings. In 1977, the Department instituted a program to obtain foreign views and other details about preparations for WARC-79, culminating in a series of bilateral exchanges with 48 developed and developing countries (listed in Appendix A). The United States also participated in multilateral forums, such as NATO's Allied Radio Frequency Agency, the Conference of European Postal and Telecommunications Administrations, and the Inter-American Telecommunications Conference (an arm of the Organization of American States), and in three technical conferences (one in each of the ITU regions) to help explain how ITU conferences work to less experienced nations.

The utility of the bilateral negotiations has been questioned, particularly with regard to the developing countries. One industry representative who participated in three of the bilateral exchanges charges that the U.S. Government representatives went to the LDCs expecting that once these countries heard the U.S. proposals, they would agree with us and drop their usually less technical and more political arguments. When this approach failed, according to this industry source, the U.S. representatives were unprepared to engage in any substantive negotiations, and simply packed up and went home. 8/

Glen Robinson, chairman of the U.S. delegation to WARC-79, offered his assessment of the utility of the bilaterals in congressional testimony prior to the conference, stating that the meetings confirmed earlier estimates showing that although the LDCs were "unlikely to be unanimous or single minded in

8/ Private Communication.

supporting or opposing any single U.S. position," they would expect a "greater flexibility and a greater accommodation from the developed nations in general and from the United States in particular." ^{9/}

b. Public Advisory Committee. Another action taken by the State Department to broaden the perspective on which U.S. WARC-79 decisions were based was to establish a Public Advisory Committee (PAC) to permit input from the private sector outside of the FCC's service working groups. The PAC was established in May 1978 and set up five working groups: International Broadcasting and Other High Frequency Allocations, Domestic Broadcasting and Mobile Allocations, Satellite Allocations, Notification and Coordination Procedures, and Special Problems of Lesser-Developed Countries.

Although the establishment of the PAC was significant, there is considerable debate over what role it actually played in overall U.S. preparatory activities. The committee had been set up at least partially in response to complaints by Members of Congress that the preparatory efforts had insufficient input from women and minorities. Charges were later heard that the group was simply "window dressing" and its products were not being given due consideration. Glen Robinson reportedly commented that "there was nothing much new under the sun for the group to suggest." ^{10/} Thus, it has been argued that although the PAC may have broadened the perspective for WARC-79 preparations, "by the time it got underway it was too late; the U.S. positions had been essentially determined by the FCC and NTIA." ^{11/}

^{9/} U.S. Congress. House. Committee on Interstate and Foreign Commerce. Subcommittee on Communications. 1979 World Administrative Radio Conference—Oversight. Hearing. 96th Congress, 1st session, April 4, 1979. Washington, U.S. Govt. Print. Off., 1979. p. 6.

^{10/} WARC '79: The Haves and the Have-Nots. Broadcasting, Jan. 1, 1979: 54.

^{11/} Honig, p. 53.

In addition, the question remains as to whether or not even the PAC provided opportunities for input from all appropriate groups. As noted earlier, there is some criticism that user groups were not adequately represented (although this depends to some extent on the definition of users). When recently contacted, representatives of the two largest communication user organizations in the United States (the International Communications Association and the Tele-Communications Association) were unaware of the existence of the PAC and the fact that the State Department, through the Biden amendment funds, is authorized to provide money to facilitate the participation of groups who are unrepresented or underrepresented in State Department activities. 12/

Another problem with State Department preparations was the apparent compartmentalization of international functions at State, which in the view of WARC-79 delegate Sharon Nelson, resulted in "an unfortunate lack of preparedness" in some areas which she termed "unduly confident, or perhaps, just sloppy." 13/ Glen Robinson has since suggested better intra-departmental and interagency coordination for international communications policy, although he recommended that it not be tied to a single event like WARC. 14/

Another question concerns whether or not the State Department should be the lead agency for ITU negotiations. According to those who support the contention that ITU meetings are technical, not political, a technically-oriented agency like the FCC may be a more appropriate leader in developing

12/ Personal Communication.

13/ Nelson, Sharon. Report on WARC 1979. Washington, Consumers Union, [n.d.]. Monograph. p. 6 and 7.

14/ U.S. Congress. House. Committee on Foreign Affairs. Subcommittee on International Operations. Testimony of Glen O. Robinson. July 31, 1980. Unpublished statement, p. 10.

U.S. proposals 15/, with an advisory role for State. Conversely, as noted earlier, others contend that the communications industry has too great an influence in ITU deliberations through the FCC, a problem which might well be exacerbated if FCC were the lead agency for ITU negotiations. Also, the FCC is an independent regulatory agency, not part of the executive branch, and thus is not appropriately situated to make U.S. policy.

B. Pre-WARC Congressional Concerns

Congressional concerns over U.S. preparatory activities in support of WARC-79 were prompted primarily by the lack of success in achieving U.S. objectives at the 1977 WARC on broadcasting satellites. The problem encountered by the U.S. delegation at the 1977 WARC (and at several previous ITU conferences) is connected with the call for a New World Information Order (NWIO) by the LDCs. As far as ITU deliberations are concerned, the NWIO is manifested in attempts by the LDCs to acquire technical assistance for communications programs from the developed countries, and by attempts to get the ITU to adopt planning schemes for use of the spectrum and of geostationary orbit (GEO) satellites 16/ which will ensure LDCs future access to these finite natural resources.

1. Technical Assistance to the LDCs

The issue of technical assistance programs for the LDCs for communications centers on when, how and whether the United States will honor its promises made over the past several years. Delivery of U.S.-funded assistance has been delayed because of a dispute over how much funding should be provided and through

15/ WARC Restricts U.S. Options. *Satellite Week*, Dec. 3, 1979: 1.

16/ Geostationary Earth orbit (GEO) or the geostationary satellite orbit (GSO) is located 35,800 kilometers above the Earth's equator. A satellite placed there will maintain a constant position in relation to any point on Earth.

what agency or program it should be channeled. The United States insists that funding come only from voluntary contributions made through the United Nations Development Program, rather than from the assessed budgets of the United Nations and its specialized agencies. The LDCs want funding through both channels. Although the United States has defeated LDC attempts in the past to obtain direct assistance through the ITU, the LDCs are expected to raise this issue again at the 1982 Plenipotentiary Conference.

2. Planning Schemes

Regarding the issue of planning schemes for use of the spectrum and GEO, the LDCs are concerned that the developed countries, with their advanced technology, will take all the "good" frequencies and orbital locations for themselves, so that when the LDCs are ready to put their own systems into service, there will be no room. The planning schemes advocated by the LDCs are called a priori plans, and allot frequencies and/or orbital slots (depending on the service) to all countries regardless of their capability or intent to use them. As a result, the number of frequencies and orbital slots available to the developed countries is significantly diminished.

The United States has opposed a priori planning for broadcasting satellites, as well as for most other radio services. 17/ The problem with this type of planning, according to the developed countries, is that it hinders technological growth by freezing technical standards for systems at a certain point in time without the flexibility to accommodate technological advances. In addition, the argument is made that a priori planning is contrary to the ITU's requirement for efficient use of the spectrum and GEO, by giving frequencies and orbital slots to countries that may never use them. According

17/ The United States has accepted a priori planning for some aeronautical mobile and maritime mobile applications, and for AM radio broadcasting.

to this view, future technical advances will both increase the amount of spectrum available for use and make better use of the spectrum now available, so the LDCs need not worry about whether there will be room for them in the future. For these reasons, the United States supports the existing scheme of allotting frequencies/slots on a "first-come, first-served" basis.

3. 1977 WARC on Broadcasting Satellites

The previous pages outline the situation as the United States prepared for the 1977 WARC on broadcasting satellite downlinks (space-to-Earth) in the 12 GHz band. Although the United States opposed a priori planning, some other developed countries (for example, Britain) were willing to accept it for this limited purpose because of the need to plan for terrestrial services which share the same frequency band. Given the LDCs desire for a priori planning, by the end of the conference Regions 1 and 3 18/ had adopted a priori plans, allotting 947 television channels/orbital slots to the countries in those two regions. Although the United States managed to avoid an a priori plan for Region 2, the alternative "interim arrangements" that were adopted were unsuitable for the long term.

Commonly referred to as "arc segmentation", these arrangements divided the geostationary arc over Region 2 into four segments. Two of the segments would be used for the broadcasting satellite service (BSS) while the other two would be used by the fixed satellite service (FSS). Such a division would have severely limited the number of each kind of satellite that could be placed in GEO for reception in the various Region 2 countries. Although the United States managed to avoid a priori planning in 1977, what

^{18/} The ITU divides the world into three regions: Region 1 is Europe, including all of the Soviet Union (including Mongolia) and Africa; Region 2 is North and South America; and Region 3 is Asia and the Pacific.

it achieved was not in the best U.S. interests. The ultimate question of how to allot frequencies/slots for this service was left for consideration at a special Region 2 conference in 1983. (One of the most important tasks for the U.S. delegation at WARC-79 was to change the arc segmentation arrangement, a task which was accomplished.)

The poor performance of the United States at the 1977 WARC was blamed partially on a lack of preparedness of the U.S. delegation for political, rather than technical, issues. The U.S. delegates apparently were certain that their technical arguments against a priori planning would prevail over the arguments of the LDCs. But the LDCs were unconvinced by U.S. reasoning and unwilling to maintain the status quo.

4. Preparing for WARC-79

Alerted by what happened at the 1977 conference, Congress wanted to ensure that preparations for WARC-79 included political as well as technical issues. With the growing role of the LDCs in international forums, including the ITU, some experts began to argue for less reliance on technical experts, and the inclusion of economists, lawyers, public interest group representatives and diplomats in both the preparations for ITU conferences and as members of the delegations to these meetings. Partially as a result of congressional pressure, the State Department established the Public Advisory Committee described above for WARC-79.

Congress took several formal actions prior to WARC-79 concerning the conference. In addition to hearings held by the House Interstate and Foreign Commerce Committee, the House Foreign Affairs Committee, and the House Science and Technology Committee, Congress also included a requirement in the 1979 Foreign Relations Authorization Act (P.L. 95-426, section 601) that the President submit to Congress by January 20, 1979, a report describing the

procedures he had established to develop and maintain a comprehensive U.S. policy regarding international communications and information issues, and the goals and positions of the United States regarding anticipated international meetings which would address communications and information issues (such as WARC-79). In addition, the Congress exempted industry members of the U.S. delegation to WARC-79 from the State Department's conflict of interest guidelines (P.L. 96-60), since in some cases industry representatives might be more competent to explain the U.S. position on technical issues.

C. U.S. Performance at WARC-79

The degree of U.S. success at WARC-79 is difficult to measure and depends on one's point of view. While a claim can be made that the United States achieved 95 percent of its objectives at the conference and was therefore quite successful, a counter argument can also be made that since the most controversial issues were deferred for later consideration, no measure of success can be meaningful until these issues are resolved. Since a successful showing at WARC-79 implies an adequate preparatory process, this is a critical issue when assessing whether or not changes should be made in U.S. preparations for future ITU conferences.

1. The U.S. Delegation

The United States sent a delegation of 69 persons, including two Members of Congress ^{19/}, to WARC-79, the second largest delegation there (the French Delegation was larger). Of these, two-thirds were from the Federal Government, while the remainder were from the private sector. The members of the delegation were not actually selected until May 1979, 4 months before the conference,

^{19/} Congressman Wyche Fowler (D., Ga.) and Congressman Charles Rose (D., N.C.).

although most had been involved in the preparatory efforts. Private sector representatives were chosen in part from membership on the Public Advisory Committee, and Government representatives had generally been involved in the WARC preparations through their agencies for several years.

The chairman of the delegation, Glen Robinson, was a law professor from the University of Virginia and a former FCC commissioner. He was chosen for the position in January 1979, but did not take on the duties full time until the spring of 1979, leading to some criticism that insufficient high-level attention was being paid to the preparatory efforts.

a. Composition. In congressional testimony, Robinson explained the criteria on which delegate selection was based, which he admitted were not entirely compatible: full representation of the different economic and social interests, and different users of the spectrum; a balanced delegation comprised of technical, legal, economic and political people; a technically competent delegation; and "full and reasonable representation of women and minorities." ^{20/}

Although Robinson made the recommendations for delegation membership, the State Department was the final authority for the selection. There has been some criticism of the composition of the group; for example, that there were too many technicians and not enough representatives from fields such as economics, law, foreign relations, geopolitical history, statistics, and policy planning. ^{21/}

^{20/} U.S. Congress. House. Committee on Interstate and Foreign Commerce. Subcommittee on Communications. 1979 World Administrative Radio Conference--Oversight. Hearing. 96th Congress, 1st session, April 4, 1979. Washington, U.S. Govt. Print. Off., 1979. p. 4.

^{21/} See for example: Nelson, Sharon. Report on WARC 79. Washington, Consumers Union, [n.d.]. Monograph. Armstrong, Anne A. Was WARC a Victory for the U.S.? Information World, Feb. 1980. Honig, David E. Lessons for the 1999 WARC. Journal of Communication, Spring 1980.

Another problem was the selection of non-Government delegates. According to the State Department, several hundred requests for accreditation on the delegation were received, and not everyone could be accommodated (in fact, the State Department had hoped to limit the size to 50). The goal was to achieve a cross-section of all parties interested in the WARC-79 deliberations. This goal appears to have been accomplished with the possible exception of the user community and the public service/development communications sector.

b. Foreign language fluency. Another criticism concerns the lack of delegates with fluency in foreign languages. The three official languages of the ITU are English, French and Spanish. The U.S. delegation included only a handful of members who spoke French and none who spoke Spanish. The latter is of particular relevance to U.S. interests because so many of the other countries in Region 2 with whom we must reach consensus are Spanish speaking. Delegate Sharon Nelson noted that "Such lapses may be petty but they are symbols of U.S. ethnocentrism which must appear unforgivably smug, causing predictable results when votes occur." ^{22/} The suggestion has been made that if delegates do not speak other languages they should attend the State Department's intensive foreign language classes. Language fluency would assist in informal negotiations where translators might not be available.

c. Biden amendment delegates. Another issue that developed during WARC-79 concerned the four delegates funded under the "Biden amendment." According to an amendment sponsored by Senator Joseph Biden, which became section 113 of P.L. 95-105, the State Department is authorized to reimburse individuals

^{22/} Nelson, Sharon. Report on WARC 1979. Washington, Consumers Union, [p.d.]. Monograph, p. 6.

or organizations for their costs of participation in State Department activities if such persons represent an unrepresented or underrepresented interest in the proceedings and otherwise could not afford to participate. Sharon Nelson, a Biden amendment delegate from Consumers Union, reported that her role was never clearly defined, and that other delegation members seemed to treat the Biden delegates as though they had not earned the right to be on the delegation, and were there only to fill out some "vague statistical requirements for special interest, racial, or sexual representation on the delegation or to lend the delegation an air of credibility." 23/ Nolan Bowie, another Biden amendment delegate who represented the Citizens Communications Center, reflected a similar opinion, stating that the Biden delegates were chosen merely to "enhance the credibility of the U.S. delegation both at home and at the conference . . . , not to provide substantive input. 24/

d. Industry representation. Concerns about industry representatives serving as spokesmen for the U.S. Government had led to a new interpretation of conflict of interest provisions of the United States Code (sections 203, 205, 207 and 208 of Title 18) prohibiting private sector employees from serving as spokesmen for the U.S. Government at international meetings. Private sector representatives to WARC-79 were concerned that this might restrict their role, arguing that at a technical meeting like WARC, they might well be better qualified than Government people to discuss technical aspects of the U.S. position. This situation was remedied by an amendment to the 1980 Department of State authorization bill (P.L. 96-60) by Senator Harrison

23/ Nelson, p. 14.

24/ Bowie, Nolan A. *Third World Countries at WARC: Positions and Achievements.* Presented at the Conference on World Communications: Decisions for the Eighties. Annenberg School of Communications, University of Pennsylvania, Philadelphia, Pa. May 13, 1980. Monograph, p. 30.

Schmitt which exempted industry representatives to WARC-79 from the Title 18 restrictions. Attempts were underway in the 96th Congress to make this exemption permanent for telecommunications conferences. The concern about industry representatives is that they might promote the interests of their companies over official U.S. policy, and some problems with "maverick delegates who promoted their own agenda" were reported at WARC-79 (although they were not specifically identified as industry delegates.) 25/ Thus, the question of whether or not to permanently exempt industry representatives from the conflict of interest provisions might bear careful consideration.

e. Assessments of delegation performance. Overall, the U.S. delegation received mixed reviews from its own members. While the delegates earned praise from fellow delegate David Honig, "for their diplomatic conduct at the microphone and their openness behind the scenes," he also criticized them for failing "to recognize potential allies on certain issues early enough in the conference to take full advantage of their support." 26/

Sharon Nelson was particularly critical of the performance of the delegates, observing that U.S. spokesmen "often simply stated the U.S. position with no embellishments, no attempt to disclose to developing countries the value of our proposal to them, no explanation of underlying technological rationales." She suggests future delegation spokesmen be selected with their "energy and willingness to argue the U.S. case publicly and persuasively" in mind. 27/

The performance of Robinson as chairman of the delegation also received mixed reviews. Some reported that "in terms of leadership and day-to-day

25/ Nelson, p. 8.

26/ Honig, David E. Lessons for the 1999 WARC. Journal of Communication, Spring 1980: 55.

27/ Nelson, p. 1 and 11.

management, the delegation was impressive" 28/ and Robinson was given "high marks" for leadership by Senate staffers visiting the conference and for "toughness and fairness" by LDC representatives. 29/ Others complained that the delegation was too rigidly hierarchical, and situations were created where working group spokesmen were "instructed at the last minute on changing U.S. policy." 30/ In addition, Sharon Nelson reported that "several private sector delegates" had disclosed to her that they were unhappy with intra-delegation management, complaining that although they were able to make their views known to delegation management, "they often had difficulty discerning if their views were heeded or [in] what direction U.S. policy positions were heading." 31/

2. Interaction with the LDCs

The expectation that there would be confrontation rather than co-operation between the developed and developing countries turned out to be overstated. Although the conference began on a contentious note when a dispute erupted over who would chair the proceedings, a candidate backed by the developed countries or one proposed by the LDCs, a compromise candidate was chosen after 4 days of deliberation and the conference began. Through the remaining 10 weeks, cooperation was much more evident than confrontation, as both sides recognized that compromises would have to be made. U.S. delegation chairman Glen Robinson noted that there was "tension" between the two sides

27/ Honig, p. 52.

28/ Why the Sky Didn't Fall at WARC. Broadcasting, Dec. 17, 1979: 52.

29/ Nelson, p. 19.

30/ Ibid., p. 15.

throughout the conference, but ultimately the LDCs recognized that any attempt to impose unreasonable sacrifices on the developed countries would be futile, and the developed countries realized that they would have to make certain sacrifices to accommodate the interests of the LDCs. He concludes, in fact, that the ITU "may even have been made stronger" because of the mutual recognition for the need for compromise. 31/

On the other hand, it is true that the most controversial issues were deferred for consideration at later conferences, such as high frequency allocations and planning schemes for the space services, and discussions relating to the scheduling of these conferences was quite politicized. Consequently, whether or not the degree of cooperation evident at WARC-79 will reappear at these later conferences is questionable.

D. Post-WARC Congressional Concerns

Congress has shown a continuing interest in ITU matters following WARC-79. The House Foreign Affairs Committee held a hearing on July 31, 1980 to assess U.S. performance at WARC-79, and the House Science and Technology Committee held a series of hearings in May 1980 on communications research and development, which peripherally discussed the results of WARC-79. In addition, a move was underway in the 96th Congress to permanently exempt industry representatives to telecommunications conferences from the State Department's conflict of interest guidelines, as was done for WARC-79. 32/

31/ House Foreign Affairs Committee, Robinson testimony, July 31, 1980, p. 3.

32/ H.R. 7305 and S. 2727, Authorizing Additional Appropriations for Fiscal Years 1980 and 1981 for the Department of State and the Board for International Broadcasting. Both bills were reported from committee (H. Rept. 96-971 and S. Rept. 96-738) but did not reach the floor.

The decisions made at WARC-79 will have to be submitted to the Senate for its approval. The State Department now hopes to have the ratification process completed by the fall of 1981. 33/ The ITU conferences scheduled through 1986 (see Appendix B) include several with an importance at least equal to, if not greater than, WARC-79, including the 1982 Plenipotentiary Conference, the 1983 Region 2 broadcasting satellite conference, the 1983-84 high frequency broadcasting conferences, and the 1984-85 space planning conferences. U.S. preparations for these meetings may well deserve close congressional scrutiny. At the same time, attention might also be paid to related issues such as Government organization for developing international communications policy, technical assistance programs for the LDCs in communications, and research and development programs to achieve technical advances in utilizing the spectrum, all of which impact decisions made at the ITU. The next chapter identifies specific issues which might be of congressional concern.

33/ Private conversation with Richard Shrum, Department of State.

III. ISSUES FOR CONGRESSIONAL CONSIDERATION

Although WARC-79 is over, several issues remain concerning: the make-up of the WARC-79 delegation and advisory groups, U.S. preparations for the conference and whether those activities should serve as a model for preparing for future WARCs, U.S. interaction with the less developed countries that comprise a majority of the members of the ITU, and non-allocation methods of dealing with frequency/orbit congestion. These issues are presented below.

A. Issues Concerning U.S. Delegations to ITU Conferences

1. Representation on the Delegation

The question of what groups should be represented on U.S. delegations to future ITU conferences is made particularly acute by the debate over whether these are "technical" or "political" conferences. Those who argue that they are technical, and should remain technical, correspondingly argue that the delegation should be composed of technical experts and chaired by a technical expert rather than a lawyer or diplomat. Those who claim, conversely, that the meetings have become increasingly political, argue that the delegation should include representatives with a variety of backgrounds, including technical, legal, economic, diplomatic, and public interest. The WARC-79 delegation was composed primarily of technical people, with a few State Department and public interest representatives.

How effective were the public interest group representatives at WARC-79? Did they contribute significantly to the mission of the U.S. delegation? If not, was this because they were not prepared for the conference as fully as the technical and State Department representatives, most of whom were from the Federal Government and had been part of the preparatory process for a longer period of time? Would the inclusion of public interest representatives earlier in the preparatory process enhance their positions on U.S. delegations to ITU

meetings, or is there simply no role for them to play in such issues? Should Congress promulgate guidelines on when to include public interest group representatives on delegations, and how vigorously the State Department should seek to ensure that all interested parties are in fact represented?

Some criticism has been heard that user groups (other than equipment suppliers and the broadcast industry) and the field of development communications were not adequately represented on the delegation, even though some had been included as part of the State Department's Public Advisory Committee. Did the State Department make an adequate effort to include representatives of all groups with interest in the WARC-79 deliberations on the delegation?

2. Selection of Delegates in a Timely Manner

Although the preparatory efforts for WARC-79 spanned five years and the chairman of the delegation was chosen in January 1978, the other members of the delegation were not chosen until May 1979, four months before the conference. Should the State Department be required to select delegation members sooner than four months before an ITU conference if at all possible? Did the short time that the delegation existed as a cohesive entity contribute to some of the perceived management problems of the delegation? What time schedule does the State Department have for choosing chairpersons and delegates for upcoming ITU conferences?

3. Qualifications of Delegates

In addition to the requisite qualifications for delegates relating to expertise in their particular fields, should the State Department seek individuals who are either fluent in official languages of the ITU other than English or at least willing to attend intensive foreign language classes to assist in negotiating with other countries in an informal setting without the need for translators? Should the State Department place greater emphasis on seeking out people with the "energy and willingness to argue the U.S. case publicly and persuasively" as suggested by one WARC-79 delegate?

4. Role of Industry Representatives

For WARC-79, Congress perceived that industry representatives to such a technically-oriented conference might be better able to present the U.S. position and therefore exempted industry representatives from certain conflict of interest guidelines, on a one time basis. Should this exemption be extended to all ITU conferences, as is now being attempted in Congress, or are there valid concerns about industry representatives advocating the interests of their companies when such views might conflict with overall U.S. policy? What problems of this nature arose at WARC-79, if any? Does industry have too great an influence on U.S. proposals to ITU conferences as some critics have charged? Conversely, if industry is the best watchdog of its own interests, should it have a greater role in developing such proposals?

B. Issues Concerning U.S. Preparatory Efforts for ITU Conferences

The schedule of future ITU conferences concerning Region 2 now runs through 1986 and involves a number of meetings with a significance potentially equal to or greater than WARC-79. Thus the United States has considerable work to do in preparing for these conferences and ensuring input from all interested groups.

1. Personnel Requirements/Priority

From December 1980 to 1986, nine conferences have been scheduled which involve Region 2, excluding regular meetings of ITU bodies such as the Administrative Council and the CCIR. Are there adequate personnel resources at the various Federal agencies responsible for preparing the U.S. positions for these conferences? This could be of particular concern at the State Department, which is the lead agency for conference preparations, and which has been criticized in the past for playing too small a role in developing U.S. positions, leaving

technical experts from other agencies to develop the primary component of U.S. foreign policy at these conferences. If there are inadequate personnel resources at the State Department, should additional budgetary slots be allocated for ITU preparatory activities? Alternatively, if the argument that ITU conferences should focus on technical rather than political issues is accepted, should the lead role be transferred to another agency? Who should be responsible for interagency coordination?

The scheduling for these conferences is outside the control of the United States since they are scheduled by the ITU itself. Recognizing the demanding schedule, is adequate priority and level of authority being given to conference preparations and to insuring that all interested groups have a chance to participate in the preparatory efforts?

2. Need for Public Advisory Committees

WARC-79 was the first time the State Department used a Public Advisory Committee (PAC) to obtain the views of a broad spectrum of public and private sector groups in preparing for a major ITU conference. The State Department has not yet decided whether or not to use PACs for future ITU conferences. 34/

Should Congress require the State Department to set up PACs for any or all of the ITU conferences? Should the ultimate utilization of PAC reports and/or recommendations be clearly explained by the State Department to assist in evaluating how effective and useful the PACs are, and whether adequate attention is paid to their input?

The establishment of the WARC-79 PAC was criticized for having been set up too late to have any real input into the U.S. WARC-79 proposals. Should the State Department be required to specify when PACs will be established for the various

34/ Personal communication with Richard Shrum, State Department

conferences? Should the State Department be encouraged by the Congress to more vigorously ensure that all groups are adequately represented on any future PACs? Would it be advisable for the State Department to set up one permanent PAC for all the upcoming ITU conferences rather than individual PACs for each conference? Should Congress assist the State Department in defining the role of the PAC and the role of public interest group representatives on the committee, some of whom complained that their roles in the WARC-79 PAC were never clearly defined? Should the State Department seek feedback from the WARC-79 PAC Members on how to make such a committee more effective and useful?

3. Controlling Misperceptions

Several misperceptions about WARC-79 may have added to the initial aura of confrontation at the beginning of the conference. A chief example is the allegation that such meetings are held only once every 20 years, which may have heightened anxieties about ensuring that everybody "got their share" at this conference. Another example was the use of the 1974 maritime WARC as an example of the "absurdity" of a priori planning (championed by the LDCs) because land-locked countries were given frequencies for ship-to-shore uses. In fact this service had been under an a priori plan for two decades, and the very few landlocked countries who were given ship-to-shore frequency allotments were primarily developed, not developing, countries (such as Switzerland). These allotments were also given with the proviso that if they were not used in five years, they would be returned to the general pool of available frequencies for all nations.

Did these misperceptions add to the problems of the U.S. delegation at WARC-79 by increasing anxieties and hostility? If this was a factor, what can be done to control such misperceptions in the future? Should

the State Department seek out persons to serve as the head of and members of ITU delegations who are familiar with the history of ITU deliberations and can correct such misperceptions? If additional personnel were assigned to preparatory activities, could they counteract misperceptions?

4. Coordination on Related Communications Matters in International Forums

The ITU conferences are only one segment of international activity on matters which affect telecommunications. Other U.N. groups, as well as international organizations such as the International Standards Organization, the Organization for Economic Cooperation and Development, and the Intergovernmental Bureau for Informatics, consider related issues. For example, the scheduled 1982 U.N. conference on outer space, called Unispace '82, will consider issues associated with the exploration and exploitation of space. As in the case of WARC-79, the United States is claiming that this is a technical meeting, not a political one, although it appears likely that many of the LDC concerns about equitable access will arise, together with specific issues related to direct broadcasting satellites and remote sensing of the Earth from space. Thus Unispace '82 may have a very direct connection with issues which will be discussed at the 1983 Region 2 conference on broadcasting satellites and the 1984/85 Space WARC.

Is there adequate coordination between Government preparations for the ITU conferences and Unispace '82? What coordination mechanisms exist both within the State Department's various offices and between the State Department and other Federal agencies like the National Aeronautics and Space Administration for developing U.S. positions to be presented at these conferences? What other U.N. and international activities could similarly benefit from a strong coordination of efforts with other U.S. Government activities in support of the United Nations?

C. Issues Concerning Interaction with the Less Developed Countries in Planning for ITU Conferences

The role of the LDCs in ITU decisions has become of increasing significance now that they comprise more than 100 of the 154 member nations of the ITU. As a result, the relationship between the United States and LDCs can have a crucial impact on the success or failure of U.S. proposals at ITU conferences, as well as in other international forums.

1. Need for Continuing Bilateral and Multilateral Exchanges

The State Department conducted bilateral discussions with 48 countries and several multilateral organizations prior to WARC-79 in an attempt to determine what positions these countries were likely to take at the conference, and to explain the U.S. proposals. What impact did the WARC-79 bilaterals have in reducing areas of dispute between the United States and other countries?

Does the State Department have an adequate program for continuing bilateral and multilateral talks in relation to the upcoming ITU conferences? Is additional support (money, personnel, etc.) required for these activities? What countries are or should be regularly included in these types of discussions?

If the State Department does not have such a program, should Congress require the Department to develop one in order to provide a better foundation on which the United States can base its proposals to the ITU, and possibly expedite the decision making process? For example, the United States is reportedly close to abandoning its opposition to a priori planning for broadcasting satellites in the 12 GHz band because it realizes that the majority of other countries in Region 2 will insist on such a plan at the 1983 regional broadcasting satellite conference despite U.S. opposition. If the United States had decided to abandon its opposition to this approach to frequency allotments prior to the 1977 broadcasting satellite WARC, where the rest of the world adopted a priori plans for

this purpose, there may not have been a need for the 1983 conference. Not only could expense have been saved in terms of preparing for and attending the 1983 conference, but a more favorable climate for the development of broadcasting satellite services in this country might have been created (although there are problems unrelated to frequency allocation which also affect development of such systems). Could the present situation have been avoided by better bilateral negotiations prior to the 1977 WARC that could have shown U.S. policy makers that other Region 2 countries were not willing to compromise on this matter?

2. Technical Assistance Programs for LDCs in Communications

As part of the demand for a New World Information Order, LDCs have called for technical assistance from developed countries in a number of areas, including the development of communications systems and assistance in preparing for conferences such as those held by the ITU. A number of resolutions were adopted at WARC-79 relating to providing technical assistance to the LDCs; the ITU has been providing such assistance on a small scale for nearly a decade.

The United States has promised technical assistance for communications to the LDCs in the past, but delivery of this assistance has been delayed by a dispute over how such programs should be funded. The LDCs, for example, want U.N. organizations such as the ITU to fund technical assistance programs through their regular assessed budgets, as well as through voluntary contributions made available through the United Nations Development Program (UNDP). The United States has steadfastly insisted that funding for technical assistance come only from voluntary contributions. In 1973, the ITU adopted language stating that technical assistance programs would not be funded from the ordinary budget of the organization, although since that time comparatively small amounts of money have been made available from the regular ITU budget (approximately \$1 million in each of the past three years, compared to a total ITU budget of approximately

\$40 million) to augment money obtained through UNDP. In 1977 an attempt was made to overturn the 1973 language, but this effort was opposed and defeated by the United States (and other countries). Nevertheless, there appears to be a very good chance that the LDCs will raise this issue again at the 1982 ITU Plenipotentiary conference.

What is the current U.S. position regarding providing technical assistance to LDCs through the regular assessed budgets of the U.N. and its agencies, such as the ITU? Is the United States working to counteract LDC efforts to raise this issue at the 1982 Plenipotentiary? What other avenues does the United States use, or plan to use, for providing technical assistance for communications to the LDCs? Specifically, what funding has been and is being provided by the United States through UNESCO, the World Bank, and UNDP, as well as USAID for these purposes? Are there other avenues through which such funding is channeled? What coordination exists within the U.S. Government to insure that efforts are not duplicated by these different agencies? Would an increase in technical assistance to the LDCs by the United States enhance our relationship with these countries on telecommunications matters? If so, should the United States increase efforts to provide technical assistance in order to develop better relationships with the LDCs prior to the next ITU conference?

D. Issues Concerning Technical Solutions to Frequency/Orbit Congestion

The issues connected with WARC and the ITU hinge on the fact that the electromagnetic spectrum is a finite natural resource, as is the geostationary orbit 35,800 kilometers above the equator. If the spectrum and GEO were infinite, and every part of the spectrum could be used for the same purposes, with the same technology, and at the same cost, then there would be little, if any, difficulty in apportioning the spectrum. With these constraints, however, countries become concerned about getting their "fair share" of spectrum and orbital positions for the various radio services.

At the present time, the radio spectrum is only utilized up through approximately 20 GHz. From there to the end of the radio spectrum, 275 GHz, the frequencies are only used experimentally because the technology is not yet ready to make operational use of that part of the spectrum. If the amount of available spectrum could be extended into the higher ranges, then the frequency congestion problem might be alleviated. In addition, advances in technology might enable more efficient use of the spectrum already available.

1. Space Services

Since the dawn of the space age, more and more services have begun to utilize satellites to relay or broadcast signals. The state-of-the-art in satellite technology advances rapidly, and many developed countries, especially the United States, have tried to allay the concerns of the LDCs about access to frequencies and orbital slots by assuring them that with expected advances in satellite technology, there will be plenty of both for everyone in the future. Nevertheless, the LDCs have insisted on insuring their rights through establishment of a priori plans for various services. For the space services, this has already affected plans for broadcasting satellites at 12 GHz, and in 1984 the ITU will begin a two-session WARC to look at all the space services to determine which should be planned. The United States insists that a priori plans could hinder technological growth and do not support the ITU requirement for efficient use of the spectrum and GEO because frequencies would be allotted to countries who may never use them.

Is a priori planning as bad as certain U.S. interest groups would have it appear? Some developed countries (for example, Britain) supported a priori planning for the broadcasting satellite service while the United States opposed it, so not all developed countries seem to agree with the U.S. position on this.

Have any studies been performed by either the U.S. Government or industry to demonstrate the exact effect a priori planning would have on technological growth in satellite systems? The United States supported across-the-board a priori planning for all radio services in the 1940s and early 1950s.

Why did the United States change its position on this issue?

NASA has an ongoing program of research and development for communications satellites in the 20/30 GHz range. Is this program sufficiently funded to make as rapid progress as possible in this area? Should the Federal Government support additional programs to advance technology for communications satellites, such as in multipurpose space platforms with on-board computer switching to enable reuse of frequencies? What are the barriers to industry conducting this research? Should incentives be provided to private industry to conduct such research?

2. Terrestrial Services

Donald Jansky of NTIA has called for a terrestrial counterpart to the NASA communications R&D program. Is such a program necessary, or should private industry be expected to fund terrestrial communications research? If a Government-funded program is required, what Federal agency should be mandated to do the work?

APPENDIX A

COUNTRIES VISITED AS PART OF WARC-79
BILATERAL NEGOTIATIONS

Algeria	Liberia
Argentina	Mexico
Australia	Morocco
Brazil	Netherlands
Cameroon	New Zealand
Canada	Nigeria
Chile	Norway
China, People's Rep. of	Pakistan
Colombia	Panama
Denmark	Peru
Egypt	Philippines
France	Saudi Arabia
Germany, Fed. Rep. of	Senegal
Ghana	Singapore
Greece	Spain
India	Sudan
Indonesia	Switzerland
Iran	Turkey
Israel	U.S.S.R.
Italy	United Kingdom
Ivory Coast	Uruguay
Japan	Venezuela
Kenya	Yugoslavia
Korea, Rep. of	Zaire

SOURCE: State Department

APPENDIX B**ITU CONFERENCES INVOLVING REGION 2 CURRENTLY SCHEDULED**

<u>MEETING</u>	<u>TENTATIVE DATE/DURATION</u>
AM Broadcasting (Region 2) Second session	November 9-18, 1981
Mobile (agenda limited to Distress and safety systems)	March 2, 1982 for 3 1/2 weeks
ITU Plenipotentiary	October 12 - November 9, 1982
High Frequency Broadcast First session	January 10, 1983 for 5 weeks
Broadcast Satellite (Region 2)	June 13, 1983 for 5 weeks
Space First session	March 12, 1984 for 6 weeks
High Frequency Broadcast Second session	October 1984 for 7 weeks
AM Broadcasting (for new frequencies allocated at WARC-79)	April 1985 for 4 weeks
Space Second session	November 1985 for 6 weeks
Mobile (with broader agenda than 1982 meeting)	October 1986 (no duration decided)

APPENDIX C
FREQUENTLY USED ACRONYMS

BIB	Board for International Broadcasting
BSS	Broadcasting Satellite Service
DOD	Department of Defense
FCC	Federal Communications Commission
FSS	Fixed Satellite Service
GEO	Geostationary Orbit
GHz	Gigahertz (1 billion hertz)
ICA	International Communication Agency
IRAC	Interdepartment Radio Advisory Committee
ITU	International Telecommunication Union (a specialized agency of the UN)
KHz	Kilohertz (1 thousand hertz)
LDC	Less Developed Country
MHz	Megahertz (1 million hertz)
NASA	National Aeronautics and Space Administration
NTIA	National Telecommunications and Information Administration (part of the Department of Commerce)
RARC	Regional Administrative Radio Conference
UNDP	United Nations Development Program
UNESCO	United Nations Educational, Scientific and Cultural Organization
USAID	United States Agency for International Development
WARC	World Administrative Radio Conference



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