



Convergence, Privacy & Copyright

CIRCIT's seminar on *Designing a 21st Century Policy Structure for the Communication Sector* (Canberra 30 May) produced some fascinating thinking in public.

Privacy Commissioner Kevin O'Connor's perception is that four basic assumptions underpinning data privacy protection are challenged by digitisation in a networked environment. Perhaps the most fundamental difficulty will lie in identifying a person within an organisation who can be required to take effective responsibility for applying privacy protection systems. Once information becomes digital bits mixed in with other bits in a continuous stream, which is accessed by (and added to by) multiple users simultaneously, control by any one person or organisation of 'its bits' in the stream is problematical. The consequences for regulation are profound. For example, how can an organisation be effectively required to rectify data it holds on an individual, unless it is able to control access to that information?

The Office of Technology Assessment of the US Congress proposes that privacy protection should be a matter of strict responsibility in the legal sense, imposed on the network as a whole, rather than individuals or organisations accessing the network. Legally binding encryption standards should apply, with secure audit sys-

tems to track and monitor all access to the network. Liability to the consumer on the part of the network should be strict with indemnity arrangements to distribute the cost of damages among all network users.

While possibly open to criticism as merely applying a 'techno-fix', with its focus on encryption and auditing systems, the OTA approach also demonstrates that it may be the fact of intrusion and tampering with data that becomes the policy concern in the digitised environment. Kevin O'Connor wondered whether a focus on data privacy (eg data matching) would remain appropriate, when consumers will be needing personalised data to make accessing services on the network easier and faster. However, even in the new environment, the principle should remain that information should only be used for the purposes for which it had been created - which means that permissive mechanisms need to be created to deal with marketing uses of information.

Melbourne legal academic Andrew Christie's heretical rethink of copyright started from the proposition that traditional copyright protects the symbolic representation of words and images - ie the representation, not the thing itself, and identified three possible futures for the concept of copyright:

- it would add to itself new categories of protectable representations (as computer programs had been added to the classification of 'works').
- digitisation could mean the death of copyright as we know it - with the idea of the 'author' redundant, the idea of 'copying' obsolete, as ideas and images in digital form could be freely accessed by any user, with no need for embodiment in permanent form for distribution.
- the third alternative is a new legal creature, 'copyright', but not as we know it', which could start from contract ideas rather than property ideas to work out economic returns for work; or could be a sui generis scheme such as that devised for plant breeders. Copyright could transform into a right of access to information, purchased at a fee - and as such, would carry as a corollary the right to *prevent* access.

Christie's most pointed barb was to ask if we need any intellectual property rights at all. If traditional copyright protected the value of the cost of embodying the work, what future does such an economic concept have when the cost of putting the idea into circulation is minimal? □

Helen Mills

Index Gets a Facelift

The admirable publication *Index on Censorship* has, after 22 years, been revamped and expanded. The first new, fat and glossy issue (vol. 23 1/2 May/June 1994, 256pp) features writers of the calibre of Umberto Eco, Salman Rushdie and Doris Lessing.

The magazine came into being as a result of a 1968 request, from inside the Soviet Union, to poet Stephen Spender to set up a committee to dif-

fuse worldwide knowledge of censorship. Reporting on censorship remains the main activity of the *Index*, but it also ranges over many related subjects and carries contributions from all over the world.

Its list of patrons includes such names as Chinua Achebe, Yehudi Menuhin, Tom Stoppard and Australia's own Morris West. The Australian committee comprises Philip Adams, Blanche D'Alpuget, Bruce Dawe, Adele

Horin, Ken Methold, Laurie Muller, David Williamson and Robert Pullan. There are also committees in Denmark, Holland, Norway and Sweden.

Overseas subscriptions are £36 for six issues from Writers and Scholars International Ltd, Lancaster House, 33 Islington High St, London N19LH fax (071) 278 1878. □