AN EMERGING FRAMEWORK FOR OCCIDENTAL-ORIENTAL INFORMATION SOCIETY LAW

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ABSTRACT

As societies around the world move into the Information Age, careful study of the legislative vagaries of those that preceded them can help these newly "informationizing" societies avoid many problems experienced by those that went before. This paper describes several categories of legal issues that must be grappled with when developing laws for an information society. It concludes by proposing a researchable, three-dimensional model of information law that can guide legislators in their efforts to generate regulations appropriate for an information society.

Keywords: Information systems, international law, society

INTRODUCTION

In *The Road Ahead*, Microsoft's Bill Gates wrote that the 21st Century would be the information century. Referring to the 1967 movie, *The Graduate*, in which the main character was told that "plastic" is the word of the future, Gates suggested that if the dialogue were rewritten today the word would be "information" [1]. Indeed, human civilization does seem to be entering a new phase; in the Darwinian metaphor, we seem to have progressed from natural selection based primarily on physical traits through natural selection based on deliberately chosen and practiced behaviors toward natural selection based on the quality of our information. Humanity has entered the Information Age. The difference between mere survival and success is no longer who we are or what we can do; although these are necessary prerequisites, the determining factor is more and more what we know [2].

Nowhere is this more evident than in China's emerging information society. China's appearance on the Internet began in early 1994 and has been accelerating since then. For example, the number of Chinese Internet users grew from 620 thousand in October 1997 to just over 2 million by the end of 1998; at that same time, over 18,000 domain names and 5,300 Web sites were registered to residents of China [3]. Although Japanese scholars defined the Information Age as early as 1964 [4], humanity in general and China in particular have not yet settled smoothly into it. Quite to the contrary, controversies have arisen with which the human race has never before had to wrestle on the present scale. This paper aims to identify a few of these controversies as they appear in China at the turn of the millennium, describe some assumptions underlying them, and propose a researchable model for developing public policy to address them.

INFORMATION BENEFITS AND COSTS IN INFORMATION SOCIETIES

To save space, this section has been abbreviated: only an outline is printed here. Please see the full paper at http://cc.USU.edu/~Hilton/IACIS2002.htm.

"Informationizing" [8] a society makes

- information (rather than food or manufactured goods) the basic force for change,
- information technology (rather than agricultural or manufacturing technology) the most valuable infrastructure,
- information work (rather than farming or factory work) the largest sector of the economy, and
- Information exchange (rather than more physical exchanges) the dominant avenue of human interaction.

Benefits of Informationizing

- Coordination. The more developed the information economy, the more people can cooperate to develop the industrial economy.
- Supplementation. Information work can add jobs beyond those available in the industrial economy.
- Substitution. Information can sometimes function as a substitute for tangible resources when it results in efficiencies that save unnecessary use of materials, energy, etc."

Costs of Informationizing

- Information secrecy versus public access.
- Information scarcity versus information overload.
- Public use versus commercial profit.
- Information freedom versus information security.

ASSUMPTIONS UNDERLYING INFORMATION LAW

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Fundamental Assumptions of Information Law

- Information as a tool of human relationships: Neither information nor information technology should be regulated for its own sake but only as needed to regulate some social relationship.
- Distinguishing information from technology and people: Information laws will be most broadly applicable that are about the role of particular information in particular social relationships but not about particular persons or technologies.
- Describing information appropriately: The vocabulary of information societies is highly fluid; legislators must therefore be extraordinarily careful to define any terms pivotal to the meaning of information law.

- Transnational nature of information law:
  - The scope of information law is almost always transnational to one degree or another and should be written with this in mind.
  - Legislation in information societies will almost certainly be more widely read than laws in manufacturing or agrarian societies and should be written with this larger, more diverse audience in mind.
- Information as the Basic Currency of all Relationships: Information founds every type of human relationship, and so information law can be studied and developed effectively only in subspecialties defined by conjunction with another category of law.

Stakeholder Views of Information

Developer view. Developers often view information as something that "flows" through electronic hardware-software systems.

Author view. Information authors view information as progressing through a life cycle of sorts: inception, definition, development, revision, distribution, evaluation, and eventual obsolescence.

Regulator view. Regulators would tend to categorize information into micro, medium, and macro regulatory levels.

User view. As opposed to regulators, users are concerned not with controlling information but with finding the information they need to make the decision at hand.

A FRAMEWORK FOR STUDYING AND DEVELOPING LAW IN INFORMATION SOCIETIES

In this paper, the authors have described three dimensions of information societies that intersect in the development of laws for those societies. These three dimensions are

- social controversies of information usage and the founding postulates that grow from them,
- traditional categories of legal study and specialization, and
- The views of information held by various stakeholders in society.

The authors hope it is now clear that these three interacting dimensions must be harmoniously addressed together in every effort to develop law in an information society. Figure 1 illustrates this concept:

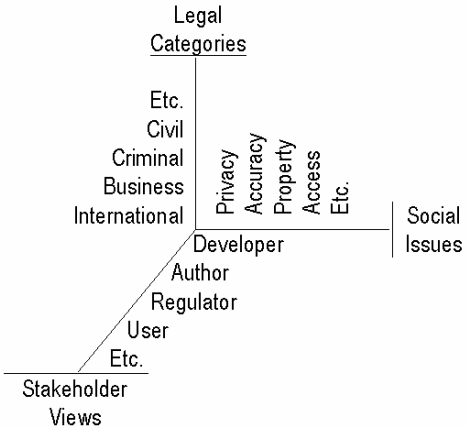

Figure 1. Dimensions of Law in an Information Society

Figure 1 shows that any particular legal issue in an information society would be categorized in this three-dimensional space and addressed from the perspectives thus identified. For example, the issue of protecting people from exposure to pornography on the Worldwide Web would be located at the intersection of the accessibility issue, the criminal law category, and the user system view. With such a categorization scheme in place, the development of law in an information society can be much more orderly, comprehensive, and ultimately beneficial to the society's members. If such a multi-

dimensional categorization of legislative efforts is not used, societies evolving into the Information Age will stumble into the same limitations of perspective and utility as those who preceded them.

For instance, at the beginning of the Information Age the US Congress enacted The Telephony Act of 1947 to regulate the nation's budding information infrastructure that then consisted solely of telephones. That act specified things that were illegal to do with a telephone, which was perfectly appropriate at the time. However, this law became obsolete when telecommunications outstripped mere telephones, thus necessitating the Telecommunications Act of 1996. More recent US legislation that has also suffered from an overly narrow conception of information technology includes the Telecommunications Decency Act of 1998, the Child Online Privacy Protection Act of 1999, and the Digital Millennium Copyright Act of 2000. Each of these laws has proved to be at least partially unenforceable after court challenges, arguably because their framers neglected one or more of the three dimensions of information law noted above.

IMPLEMENTING THIS RESEARCH FRAMEWORK

Now is the time to implement a research framework such as this. Research into information law is just starting in China. In March 1997, the "First Conference on Chinese Information Law", sponsored by the Legal Mission Committee of the Chinese People's Congress, Office of Information Development of the State Council, and Legal Bureau of the State Council, was held in Beijing. In May, 1996, the Office of Information Development of the State Council was set up to create better policy and manage the environment for the development of information law systems. The Department of Information Management at Peking University has recently established a course, "Science of Information Law," as a required course for undergraduate students [11].

On a global scope, information law and information policy are "hot" topics and constitute an important research area. On June 1, 1991, the first "International Information Law Conference" was held in Holland. It was initiated by
the Institution of Information Law Science, University of Amsterdam [11]. Perhaps information law science soon will be like information economics, with its own research society and a Nobel Prize winner for information law studies.

The building of Chinese information law has gotten a good start. In 1997, China's criminal code was revised to include two new criminal offences: "intellectual property crime" and "computer information system crime" [37]. [Also, information regulations have begun to emerge in recent years such as the Temporary Provisions for Computer Information Networking and Internet Management, implemented in 1996 [38, p160].

The Standing Committee of the National People's Congress of China has passed a resolution to require that every citizen acquire information law knowledge in a planned way. In an information society, widespread knowledge of information law has profound practical significance. Therefore, organizations are now beginning to develop literature, training, and other guidance on information law knowledge for their members/citizens.

With these developments in mind, the authors recommend the following measures for implementing the three-dimensional research model proposed above.

Foster a Proletarian Debate

Create forums where the three dimensions of law in an information society can be discussed, debated, and changed. The evolution of the Information Age must be matched by the evolution of the model. Internet-based discussions via e-mail list servers, Web sites, chat rooms, and other media can help greatly in this effort. However, since information exists independently of any particular medium, more traditional communication channels such as TV, radio, newspaper, and magazines should be used as well. As the above model is debated and modified, it can become a common denominator of discussions about law in an information society.

Establish an Information Society Law Emphasis in Law Schools

Starting an information society law emphasis could make training of lawyers for information societies standardized and systematic. At present, many universities have a major of technology law in the law school [11]. If we transform this major into information society law, it will not only continue to give full play to the technology law major, but also provide a good environment for the development of legal education in information societies. The curriculum could be based on the three-dimensional model proposed in this paper. Also, we should try to recruit information society law students who majored in information-management-related fields at the undergraduate level. This could be an effective way to address the shortage of information lawyers and researchers.

Aligned with this, we should also encourage undergraduate students majoring in information management or computer science to get a minor or a second major in information society law. The benefit of this is the fostering of professionals who not only know information technology but also appreciate the related legal issues.

Draft Legislation based on the Model

With a growing public awareness of the foundations of information society law and with a growing corps of legal professionals equipped to address the intricacies of such legislation, it would be appropriate to draft laws based on the three-dimensional model of information society law proposed in this paper. This, of course, would be the real test of the model. If nascent information societies are able to more effectively avoid the pitfalls and reap the benefits of the Information Age than were the societies that went before them, then the model will have been a success. Again, however, it is important to understand that the authors do not regard the model in its present form as complete or entirely correct; rather we see it as a starting point for evolving a foundation for information society law that will probably keep evolving as long as the Information Age lasts.

REFERENCES

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