

ELECTRONIC RECORDING OF PERSONAL DATA

SIR, — I enclose a memo* sent some time ago to some of our Supreme Court Judges and our Minister of Justice, as well as to a solicitor friend involved in actions resulting from a search and confiscation of a large number of *medical files of confidential nature* by our Police.

The Appeal Court has just ordered return of these files and actions for "Conversion" and "Breach of copyright" are now likely to follow against both individual Officers involved and the Crown.

I have for long considered that the difficulty met in attempts to provide protection for personal privacy arises from the defective presumption that property in data

runs with possession of its vehicle. I feel that the confusion can be cut through by a realistic presumption that personal data is private property of its subject.

In common with British, Canadian, U.S. and some other jurisdictions, the decisions probably to be made here may well have effect as precedents over a large part of the human world.

In this age of technological efficiency, I feel that "Secret Trial" is permeating all our activities, not merely the obvious situations. This is absolutely incompatible with human liberty, and poses one of our most urgent problems.

Yours faithfully,
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* See this page.

Property Rights in Personal Data

PETER CUMMING

Postulated: that the data of human memory are private property and remain so irrespective of ownership and location of store.

If this is recognised by appropriate Court Decision or by Legislation, it could resolve very simply most of the difficulties delaying provision of protection for privacy of stored data in all present and possible forms. It could also provide guides for conduct without violating those just needs of society tested and established over the years in our laws relating to ownership and private property rights.

Some probable consequences

- * Offence of *conversion*, which requires no evidence of further harm, and for which belief of legality is no defence, would arise.
- * Theft would arise, even though victim may not be aware of compilation or its taking, and despite the intangible nature of the goods stolen.
- * Unauthorised dealing would constitute "Trafficking in stolen goods" and receiving.
- * Use or disclosure by owner or employee of any data store would

equate similar misconduct or felony by those of Banks or Safe Deposits. Owner's ignorance would aggravate offence.

* Entry to a file would constitute a form of "Breaking and entering", even if data conversion or theft did not take place.

* Negligent storage permitting disclosure in any form would constitute a *breach of trust* established by the acts of compilation or of storage.

* Right of access and of rectification would follow automatically for the owner of the data though for no other except by Court Order after proper legal process, and would constitute an effective restraint of frivolous, wasteful, malicious and unverified data compilation and storage.

* Copyright could be established.

* Self incrimination would have about the same conditions as apply at present to the contents of personal organic memory, i.e. our present means of *trying to enforce* disclosure of memory contents should remain in force over the "extended exterior memory" of

the witness or other parties. We should also respect the Nature-given capacity of the human person to resist such pressures on specified pains should this be his assessment or his value judgement of his situation. Taking of the contents of his file without free consent contains the essence of our objection to judicial torture and "brainwashing".

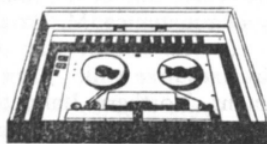
* Police search for evidence in data files would be subject to requirement of specific "address" identification in Search Warrants. "Blanket" search of clusters of personal files should require at least a special Warrant only issuable by Judges of Supreme Courts after due process and in extreme cases. Unwarranted search would constitute the whole gamut of crimes and actionable Civil Torts listed above plus probably some others.

* As our Courts must be presumed to have perfect memory and recall over all their past actions, they would have of course total access to their own files for their own legal purposes, though for no others.

* As the proposed recognition of the ownership of data would only apply to material identifiable with owner as "address" or with him personally by indirect means, no restriction of any data recording that is *both* useful and just could arise. Data compilation and recording would simply be made fully responsible both to society and to persons with actionable consequences for abuses of responsibility.

I feel that it is already the common feeling of informed persons, the basis of our Common Law, that such limitations and protections of privacy of personal data are both justified and needed, urgently.

The overlooking of this simple approach has been due to the long standing presumption in favour of ownership of all types of data by



its collector and/or the owner of its physical vehicle. It is the extreme efficiency of electronics that has forced our attention to the defects of this legal presumption.