

Interview with Marc Rotenberg



## SAFEGUARDING CIVIL LIBERTIES IN THE COMPUTER AGE

FOUNDED IN 1983 BECAUSE OF concern about the reliability of computer systems used by the military — particularly the complexity of the software that was used for missile-guidance systems — the Computer Professionals for Social Responsibility came to national attention because of its later concerns over the Strategic Defense Initiative. In recent years, it has broadened its scope to include a range of social issues related to computing, not just military concerns. Much of its recent work has been spent on civil-liberties issues, such as concerns over the development and accessibility of private and government databases containing a broad range of information on citizens.

As director of the 2,500-member organization's office in Washington, D.C., Marc Rotenberg represents the CPSR in testimony before the US Congress. He was interviewed by News Editor Galen Gruman.

**Q:** What are some of the civil liberties areas that are of concern right now?

**A:** Privacy of records systems is very important. We're collecting more information about more people, in more detailed fashion, than ever before. And what makes that possible, of course, is the technology.

The reason that it's a problem is because people enter into relationships with different organizations, different businesses, different people, for specific purposes. You go to the Department of Motor Vehicles and get a driver's license. You may need to tell them that you wear corrective lenses to get the license. The DMV needs that information to know what type of license to issue. These are personalized bits of our lives that we don't necessarily tell everybody, or expect everybody to know. They are part of the relationships that we develop with particular institutions for particular reasons.

Now that's very important to understand, because right now there's a lot of information sharing between large organizations. So you

go to the DMV and indicate that you need corrective lenses, and you get mail in the next week from an optometrist in town saying, "Dear Mr. Rotenberg, have you had your eyes inspected recently? We're having a sale this month on glasses."

Lawyers, doctors, spouses — those are all relationships that create expectations of confidentiality. And if you have an expectation of confidentiality, people tend to be more honest and more forthcoming. I'll tell someone I trust things that I might not tell someone that I don't know very well. The problem right now with data sharing is that it has a tendency to eliminate those distinctions because the information that you give your doctor goes to the insurance bureau, and it tends to lose confidentiality.

**Q:** How typical is it that agencies share that kind of information with a business?

**A:** It's certainly going on in the states. It doesn't happen as much in the federal government because of the Privacy Act. But there's a very famous incident last year, where Citibank had requested from the Social Security Administration the tapes with the Social Security numbers of all the people listed at SSA. Citibank wanted to run those tapes to get their own records — to verify, so they say — the Social Security numbers in their records. Senator Larry Pryor [a Democrat from South Dakota] said, "No, we're not going to do that." But it happened earlier with a couple of other organizations. So there is transfer between the public and private sector.

And there's a tremendous amount of transfer within the private sector. They have no real restrictions there. Very few.

There is a new product, Lotus Marketplace/Households, that is a series of CD-ROM disks containing information about 80 million American households: name, address, gender, marital status, estimated annual income, buying propensity, lots of different categories — and all this stuff is on the disk being sold. From a privacy-protection viewpoint, it's a disaster.

It's fair to say that none of the 120 million people listed in Marketplace consented to the use of their personal information in this way.

[Lotus has since cancelled the product because of public protests. —Ed.]

**Q:** But there's a mechanism [contacting the Direct Marketing Association in New York] to get your name off those lists.

**A:** It doesn't work very well. And what's happening now is that the traditional information collections are collapsing. The old way of doing this was one-time use: list transfer, where you make sure it's only used for the purpose that it was given. That's changing. Now people are just selling the underlying data. And what that makes possible is the aggregation of information about individuals, so a company can say, "We have a résumé-verification service that we will offer to em-

ployers, and if you have some doubts about the background of one of your applicants, we will go back to our database and check this out." The question is "Where did they get that information?"

**Q:** Much less, is it accurate?

**A:** That's also a question.

**Q:** Government agencies, including public university systems, are required in some states to give out the underlying information because it's considered covered by the sunshine laws in those states, by the right-to-know laws.

**A:** That's the great tension in this area. It's not a zero-sum situation — you can have both access and privacy together. Privacy laws are designed to protect personal, intimate information about individuals. Access laws are intended to provide individuals with information about the activities of government. Now those are not the same groups, although you do get into a gray area where they start to overlap. There's a famous Supreme Court case a little over a year ago involving rap sheets [criminal conviction and arrest records]. The FBI had compiled these records from multiple jurisdictions. And journalists made a request for that information under the Freedom of Information Act. And the Supreme Court said that the information need not be disclosed under that act.

**Q:** In the ruling, journalists were allowed to go to each jurisdiction and get the information separately, but the Supreme Court said that no one had to make it convenient for journalists or anybody else to get it from a central database.

**A:** And the journalists went crazy about that decision. They were not very happy. But from a privacy viewpoint, it's not a bad decision at all — particularly because it recognizes that when you take information from different sources and bring it together, it creates a heightened privacy intrusion.

You know, it sounds a little abstract to people, but I think it's going to become much less abstract in the next couple of years, because there's enormous pressure right now in the US to improve privacy protection. People are looking in particular at computerized record systems and saying that the US just has not gone far enough in preventing secondary use of personal information.

**Q:** *There's no fundamental right in the US to privacy.*

**A:** No, but we've been very successful in gaining these rights. To the extent that we've been successful it's happened in Congress and not in the courts. The Reporting Act was passed in 1970. The Privacy Act, which is a very good law, was passed in '74, and in the '80s we had several laws that focused on specific technology. We had the Cable Policy Act, Communications Privacy Act, Video Privacy Protection Act — all laws designed to protect the transactional data generated by these new technologies. So we've been doing pretty well in Congress, although I think we need to do better. In the courts, we pretty much hit a dead end in 1976 in the decision of *US v. Miller*, which basically said that when you hand information over to someone else, you lose control over how that person uses it.

**Q:** *There's no equivalent to the moral rights that other countries have.*

**A:** Right. That's an interesting issue, whether you can use a copyright argument to recapture the interest that individuals have in their own information.

**Q:** *Software companies try to use licenses to do just that. They don't actually sell the information.*

**A:** Yes. For example, my feeling is that if Lotus is interested in providing my name in Marketplace, we should negotiate an arrangement. Maybe it's worth a quarter to me every time that name is transferred. Or whatever value may exist right now, they've taken

from me and it can't really be recaptured. So the copyright approach is interesting.

**Q:** *What can computer professionals do?*

**A:** The people in the computer profession are on the cutting edge of innovation, and they are seeing the implications of these changes before anybody else does. By the time it gets back to the lawyers and the policy makers, it's already a couple years behind. There's this good line running around Washington, which is that software lags three years behind hardware, and public policy about 10 years behind that. And it's true.

Now part of what CPSR is about is encouraging people within the profession to report back to the community and, as they

move forward in their own work, to take a broader view of its implications. We don't think that every issue involving computer innovation is ripe for some political battle. It may just be an opportunity to say, "We're developing these AI systems in the medical field, and if they work, this is going to be exciting, but if they fail and we've got a thousand of these in the hospitals across the country, what are the implica-

tions of a global failure?" Traditionally, when a system breaks down, it's localized. But what about software in a thousand AI diagnostic systems? Some very serious stuff happens.

Now if one person who's involved in that process asks the questions "What about some adequate safeguards here? Could we do more testing? Maybe our company's a little tight and we're trying to get this product out, but I have the sense we haven't gone far enough." I think we've done something very important to make the profession more responsive to society, and over the long term I think it's in the interest of the profession.

**Q:** *Expert systems are a good example of the use of software to replace human skills. When do you start trusting a machine to make decisions?*

**A:** I'm very uneasy about this issue of skill replacement.

The legal profession in a lot of ways, I think, is going to be transformed by expert systems. A lot of the lower level entry and analysis work that paralegals do and clerks do is increasingly being replaced by very well-

designed expert systems. And as those systems migrate upward, then pretty soon they'll be sitting in a meeting of law partners trying to decide who gets accepted as a partner and who gets booted from the firm.

**Q:** *It's happening in the printing industry; typography is almost disappeared as an art.*

**A:** That was a big debate in England, because the typographer's union was very concerned about the introduction of more sophisticated print systems. They basically were going to be replaced. Which, of course, they were over time.

**Q:** *To what extent do you see the community being involved, and is there enough involvement?*

**A:** The community's going to be more involved. It's funny, in some ways I almost think that CPSR is going to become like the granddaddy of the high-tech political movement of the 1990s. People are going to be looking at us in a couple years and saying, "Oh God, CPSR. They never get involved in the really interesting stuff." I thought about this yesterday because I'm getting all this stuff about Prodigy [which angered many of its subscribers with its policy forbidding users to send personal letters to advertisers, which some users were doing to protest the imposition of a per-message mail fee]. They have their Coordinating Defense Committee and they're organizing 15,000 people on-line. This is unbelievable political organizing.

Or you look at Richard Stallman and the League for Programming Freedom [which protested Lotus Development's attempt to monopolize the Lotus 1-2-3 spreadsheet interface] — he's got T-shirts and the whole thing. This is like in 1960s taking over the vice president's office in the university.

And CPSR, despite the criticism that we've received about being dovish, never really got into that type of organizing. We're mostly a group of academics and people who want to be taken fairly seriously, and we didn't hit the streets with our placards. And now there's going to be a real wave of political activity as people become more aware of how they're affected by the changes.

And that comes both from within the profession, which is where it's been so far right now, and from outside. I'm afraid that it will be less positive when it happens outside of the profession because you're going to see a lot of criticism directed toward the technology and the people responsible for implementing it.

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