



Lotus' Schimmel: Data on income and spending habits for the masses.

GLOBE PHOTO / PAM BERRY

IS THIS MAN INVADING YOUR PRIVACY?

A solution is sought
to close gap between
technology and law

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The American Civil Liberties Union is drafting what it hopes will become a model for legislation that limits the freedom employers have to spy on their employees.

A Boston attorney is preparing to sue federal law enforcement agencies, claiming their crackdown on computer "hackers" is violating the First Amendment rights of electronic media like computer bulletin boards.

Gov. Dukakis has endorsed a proposed computer crime bill that provides for a first-of-its-kind expert panel that will study the issues of computer crime, privacy and free speech, and whose findings could form the basis for additional legislation.

Each of these actions is part of what legal specialists say is a long-overdue response to advances in computers and telecommunications that have passed by laws designed to protect the constitutional rights to free expression and privacy. "There is a tremendous gap between the new digital world and the government's understanding of it or the courts' understanding," says Harvey Silverglate, the Boston lawyer suing law enforcement officials.

This gap raises many questions. Are computer-driven

TECH, Page 29

Solution is sought to close gap

■TECH

Continued from page 25
communications like electronic mail shielded from prying just as conventional mail or telephone calls? Is a publication that exists only as bits and bytes stored on a computer network protected by the same First Amendment rights afforded newspapers? Should the government and corporations be able to collect and sell information about our spending habits or driving records?

The specialists say there are no simple answers to such questions. And history suggests that finding widely acceptable solutions, which balance the rights of individuals against the needs of government and business, can take years. In the 1920s, for example, lawyers for a group of bootleggers argued that the police use of wiretaps — which were unusual then — violated Fourth Amendment restrictions against un-

reasonable searches. The defense failed and strict guidelines for tapping telephone lines were not adopted for another 40 years.

Today, a company can keep close tabs on its workers, even to the point of eavesdropping on business-related phone calls and reading private computer messages, says Lou Maltby, an ACLU attorney who is proposing legislation that would restrict workplace surveillance.

But even the staunchest defenders of privacy and free speech do not suggest turning back the clock on technology. "The answer is not to block technology or products, but to offer them in ways that don't violate" civil rights, says Marc Rotenberg, Washington director of Computer Professionals for Social Responsibility, a nonprofit group. A look at some new products and services, however, shows this is easier said than done.

Consider the static caused by telephone service dubbed caller identification, which allows the receiver of a phone call to see the phone number of the caller on a special screen.

Phone companies are eager to offer the service, seeing a big market among companies with large customer service operations. An electric utility, for instance, could use the incoming phone number to activate its customer database, routing the caller's file to a service representative's computer terminal at the same time the call is being answered. Caller identification is also touted as an effective way to prevent harassing or obscene phone calls.

But privacy advocates and some lawmakers argue that the service made possible by new switching systems and software, is an invasion of the caller's privacy. They say it could discourage anonymous tips to police

between technology and the law

or calls to hotlines for battered women. There is also fear it could be turned into a tool of discrimination. A possible scenario: a cab company uses use caller identification to screen the origin of pickup requests and ignore those from unsafe neighborhoods.

"Caller ID is open season on phone numbers, an attempt to make them a universal identification number" like Social Security numbers, says Evan Hendricks, publisher of Privacy Times, a Washington-based journal.

New England Telephone & Telegraph Co. provides caller identification in parts of Vermont and Maine and hopes to launch it in Massachusetts by April. After discussions with subscribers — and to avoid challenges — it decided to give callers the option to block release of their phone numbers. Jerry Malette of New England Telephone says that the call-block-

portraits to new parents.

Of course, federal and state governments have long maintained computer files on individuals. And computerized mailing list renters have been around for 30 years, though the price and need for expensive mainframe computers has limited their appeal to large businesses. Nonetheless, privacy advocates see Marketplace, priced at \$695 for the basic software and geared directly for small businesses, as an unwanted expansion of an already egregious manipulation of private data. James B. Rule, a sociology professor at the State University of New York at Stony Brook, says Marketplace just makes it cheaper and easier for businesses to collect, collate and sell data that should be controlled by individuals.

"The data can flow more and more easily without the cooperation of the people concerned," Rule con-

This is clear in the case of Prodigy, an online news, shopping and entertainment network operated by International Business Machines Corp. and Sears, Roebuck & Co. On Oct. 30, Prodigy canceled without warning the accounts of about a dozen subscribers who had been organizing a protest against its decision to begin charging for previously free e-mail.

Prodigy said the dissidents had been harassing other subscribers by "bombarding" them with e-mail messages soliciting their support. Some e-mail also went to advertisers, whose paid ads appear on subscribers' screens and generate a good chunk of Prodigy's revenue.

The disconnected subscribers have blasted Prodigy's action, which also included banning all discussion of the e-mail price hikes on its public bulletin boards. They say that they