Nurturing the Global Information Commons: Public Access, Public Infrastructure

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Electronic Highway v. Information Highway

I have been asked to speak on the topic of "Public Access, Public Infrastructure," in relation to the Conference's theme "Cyber-Access: A Call for Action." This could be considered a somewhat broad, not to say vague (!), topic.

Let me begin, then, by defining my focus. I understand "Cyber-Access" to be mean public access to "cyperspace." The term "cyberspace," I understand to mean the communications milieu often referred to as the "Electronic Highway" or "Information Highway."

This brings me to my first main point. The terms "Information Highway" and the "Electronic Highway" are often used interchangeably. But I think that there is a very, very important difference between them. The term "Electronic Highway" emphasizes the hardware and software -- the wires and switches -- that *enable* communications. The term "Information Highway," on the other hand, emphasizes the *communications* itself.

Obviously, we can't have the one without the other. But, let's be very clear about the difference between them. The "Electronic Highway" is built by engineers. The "Information Highway" is built by communicators.

The distinction between the Electronic Highway and the Information Highway is particularly important when one thinks about public access and public infrastructure. Public access to the

Electronic Highway refers to wires and fibre optic cables, to issues such as phone company wires versus cable company wires. Public *infrastructure*, in relation to the *Electronic* Highway, refers to who *owns* the wires and the switches, who pays who for the use of what.

It is no coincidence that the recently approved Accord in B.C. is called the "*Electronic* Highway Accord" -- not the *Information* Highway Accord. The origin of the Accord is in issues regarding wires and switches. A key example is the agreement to accelerate the replacement of party telephone lines with single party lines. The government describes the Accord as the product of two years of discussions. But it was only in the last few months of that time, when community groups were allowed to participate, that the discussion came to the community's *use* of these new telecommunications facilities.

Three Key Issues

Issues regarding the *Electronic* Highway are very important, but they are not my focus here. Instead, I will focus on the *Information* Highway, in terms of public access and public infrastructure. In particular, I see four key issues at this point:

1. the pricing of government information in electronic form;
2. the government's use of the Information Highway; and
3. the public's use of the Information Highway in relation to government matters.

Pricing of government information

The issue here arises from the difference between treating government information as a public service and treating it as a corporate asset. Computerization greatly facilitates the commoditization of information. Once information is in electronic form it is relatively easy (e.g, cheap) to package it and to distribute it. Also, it is easier to make it useful (e.g., valuable) to a much wider array of potential users (e.g., customers) than the users for whom the information was originally created.

This trend is exacerbated by the recent tendency of almost all Western governments to explore cost recovery and entrepreneurial activity in an effort to reduce unsustainable deficits and debt loads. A common chain of thought in government circles goes something like this: we're short of money, our information is a valuable asset, in computerized form it's especially easy to sell, people are asking for computerized information so we'll have lots of customers, we're computerizing our information anyway, for our internal purposes, therefore, let's *sell* our computerized information in order to get more money.

I see some major problems with that logic.

First, as a practical matter, governments typically overestimate the actual profit that can be made by selling their information. They *underestimate* the cost of doing business, by not counting their overhead and information collection costs. And they *overestimate* the government's net revenue by including sales to other government bodies. (For one government body to charge another

government body for information may be useful for accounting and budgeting purposes, but it certainly does not address the government's overall shortage of money.)

Second, in many cases, government agencies are a *monopoly* supplier of the information they are selling or are considering selling. For example, anyone can do a market survey and sell the results, but only the government owns the results of the official census. Statutes, regulations and policies are similar in this respect. Using short-term thinking, people in government often assume they can simply set prices in order to maximize profits, like any rational, monopoly seller. What they forget is that this is exactly why utilities commissions were established to regulate *traditional* government-sanctioned monopolies such as B.C. Hydro. No corporate body, whether private or government, can expect to exercise a government-sanctioned monopoly without eventually its prices coming under the supervision of a government-sanctioned body. In the information selling area, this will become more and more obvious to the extent that government agencies impose unreasonably high prices for information for which they are a monopoly supplier.

A third problem with government sales of computerized information has to do with *how* prices are set. Total revenue is the product of the price and the number of units sold. The same amount of revenue can be generated by a high price and a small number of units sold as by a low price and a large number of units sold. For a variety of reasons, governments have tended to adopt the high-price, low-volume approach. In particular, this approach is convenient because there is no need to market the product beyond a small circle of easily-identified, must-purchase customers such as other government agencies and large corporations. What makes this a problem is that (a) from a practical viewpoint, there is little potential for expansion of sales, and (b) from a public policy point of view, it shuts out all non-commercial potential users of the information, and all but a few medium or small commercial users of the information.

For example, the B.C. government charges $600 per file for digital maps that cover less area than the paper topographical maps that sell for under $10. Granted, the digital maps contain a lot more information than a paper map, but it's obvious that at that price customers will be limited to logging and mining companies and government agencies. Meanwhile, what about environmental groups, members of the public, academics, students, local governments, etc.? They don't get the information, so we lose a wonderful opportunity for promoting rational land use planning, education, software development and so on, and meanwhile the government doesn't gain a dime in revenue from these potential users of the information. In short, what's needed is some form of fee waiver for public interest, non-commercial use of the information.

This is precisely the issue in an inquiry now being conducted by the B.C. Commission of Information and Privacy. The Western Canada Wilderness Committee requested free or reduced-fee copies of some of these digital maps in order to help it plan its wilderness protection activities. The government refused, and said the *Freedom of Information Act* does not apply, because the information is available for sale. The Committee complained to the Commissioner, and the government challenged the Commissioner's jurisdiction even to look into the matter. Commissioner David Flaherty received written arguments, including interventions by the B.C. Civil Liberties Association and the B.C. Freedom on Information and Privacy Association in support of the Commissioner having jurisdiction. In the result, the Commissioner rejected the

government's position. He concluded that although the Act does allow a government department to refuse to disclose information that is available to the public for sale, the Commissioner still has jurisdiction to inquire into whether the government's use of that exemption is reasonable. The Inquire itself is now scheduled for November 23. The main issue will be whether there should be some form of fee waiver provision for public interest information users for whom the commercially-based price is a barrier to access.

This raises the fourth problem with the sale of computerized government information, which is the fundamental public policy question of whether the distribution of government information should be treated as a source of revenue or as a public service.

I have already mentioned how this policy issue is being raised now under the B.C. *Freedom of Information and Protection of Privacy Act.* It is also worth looking at how the B.C. *Electronic Highway Accord* deals with the issue. The Accord reaffirms that "An informed public is essential to democracy." In relation to the pricing of government information on the electronic highway, the Accord states, "Government information must be disseminated for free to public access points, where it is in the public interest to do so." (p.4) Presumably, it is the responsibility of the newly formed office of the Chief Information Officer to spearhead implementation of this commitment.

The *Final Report* of the federal Information Highway Advisory Council stresses a business-oriented approach to the information highway. However, the Council does stress that the government should act as a "model user." It states that the government should "lead by example by...ensuring that government works are broadly and routinely distributed." The Council also specifically addresses public access to information such as statutes. It states,

Some argue that on the Information Highway certain works should be made widely available, particularly such public information as laws, regulations and statistics. However, given the importance of safeguarding the integrity of such works, users should not be able to modify them. Thus, the public interest lies in both the free availability of such works and in their remaining intact with their sources clearly identified. The issue of access to public information is more appropriately addressed in the context of Crown copyright.

Then, regarding Crown copyright, the report recommends that:

The Crown in Right of Canada should, as a rule, place federal government information and data in the public domain...

It adds,

Where Crown copyright is asserted for generating revenue, licensing should be based on the principles of nonexclusivity and the recovery of no more than the marginal costs incurred in the reproduction of the information or data.

In my view this represents a very important endorsement of what is becoming, with fits and starts, quite a progressive trend in governments' use of the Internet to make information freely available to the public.

For example, regarding statutes and regulations (Yahoo!!) federal statutes are now available in full text on the Internet. The promise is that federal regulations will soon follow.

Regretably, most B.C. statutes are NOT available on the Internet, with some exceptions. The Ministry of Environment has posted some environmental statutes on its WWW site. And, WCEL has posted unofficial copies of dozens of environmentally related statutes on *ELIB*, its WWW site. Also, I am told that the Commission on Resources and Environment will release within a few weeks a free CD-ROM containing CORE documents plus the full text of relevant statutes.

B.C. regulations are NOT available on the Internet. Interestingly, however, consolidated versions of key environmental regulations ARE accessible on the Internet ONLY TO GOVERNMENT EMPLOYEES WHO HAVE THE PASSWORD!! It is the Queen's Printer's exercise of Crown copyright that is behind this antediluvian -- and, I trust, temporary -- state of affairs. To its credit, the Queen's Printer does have a WWW with free access to bills introduced into the legislature and related information.

Government's use of the Information Highway

As I've already made clear, I believe that governments' use of the Internet is a critically important element of developing strong public participation in the Information Highway. There are a lots of positive steps:

- The federal government and all the provincial government now have WWW sites.
- In addition to tourism promotion materials and the like, these sites are beginning to carry significant quantities of more serious information.
- As an example, the North American Commission for Environmental Cooperation has posted on the Internet a summary of environmental law in Canada, Mexico and U.S., in English, French and Spanish, with hundreds of direct links to other sites on the Internet for the full text of statutes, treaties and other information.
- At least in the environmental realm, statutes are increasingly mandating the creation of public information registries, and these are popping up like mushrooms on the Internet: federal environmental assessment, provincial enviornmental assessment, etc.
- Another example is that governments are beginning to use the Internet as a forum for public consultation on draft statutes, regulations and policies.
- Last, and probably the most important, at least in the short term, is that more and more civil servants are using Internet e-mail addresses for communications with the outside world. For years, many government bodies used e-mail quite extensively, but only recently have at least some of their systems been connected to the Internet.

Not surprisingly, there is lots of room for improvement, though. Some minor but perhaps indicative examples:

- Inquiry B.C., which provides civil servants' phone numbers to the public won't give out e-mail addresses, saying they are confidential.
- A media release from the Council of Canadian Ministers of the Environment meeting in Whitehorse this week said a key document was being released for public comment and that it is available on the Internet. Great!, but actually it wasn't posted until a few days after the media release.
- The B.C. environmental assessment public registry has a WWW site, which offers an unprecedented opportunity to be able to find out instantly about any of 80 or 90 assessments that are now underway in the province. Unfortunately, it's not up to date.

Use of the Internet in relation to government

The Information Highway is well on its way to becoming a very real community -- not just the "virtual community" as it was once described. Some examples:

- The Vancouver Sun listed half a dozen WWW sites regarding the Quebec referendum, including the Yes Committee, the No Committee, the Montreal Gazette, the Globe and Mail National Issues Forum, the Quebec political news group, the Canada political news group, and Online Direct pollsters.
- A recent environmental conference focussed on grassroots activism using the Internet.
- The Canadian Environmenal Network's Toxics Caucus has a WWW site regarding the federal government's response to the Parliamentary Committee on Environment and Sustainable Development's recommendations on the five-year review of the *Canadian Environmenal Protection Act*. It features a mechanism that allows a user to type in a lobbying message that is then faxed to ten key federal cabinet ministers.
- Participants in political events like the Chiapas uprising in Mexico and the Gustafson Lake occupation here in B.C. are using the Internet to disseminate their views instantly to a world-wide audience.

Conclusion

Public access and public infrastructure regarding the Information Highway is really a matter of building a community. It is the content of the communications and the social relationships among the communicators that are important.

The Information Highway is neither inherently good nor inherently bad. The media pendulum is swinging from 'the Internet is a modern miracle' to 'the Internet is nothing but hype.' But I think it is vitally important that we separate the wheat from the chaff, the valid reasons for concern from the misconceptions. The most consistently useful way to evaluate what is said about electronic communications is to apply the comment to written-on-paper communications and then examine our historical experience. For example, in the Times Colonist last week there was a large column on the editorial page lambasting the Internet for all manner of sins, including robbing people of face-to-face contact. Well, the same could be said about writing letters and the development of the Royal Post Office. But that's another issue...