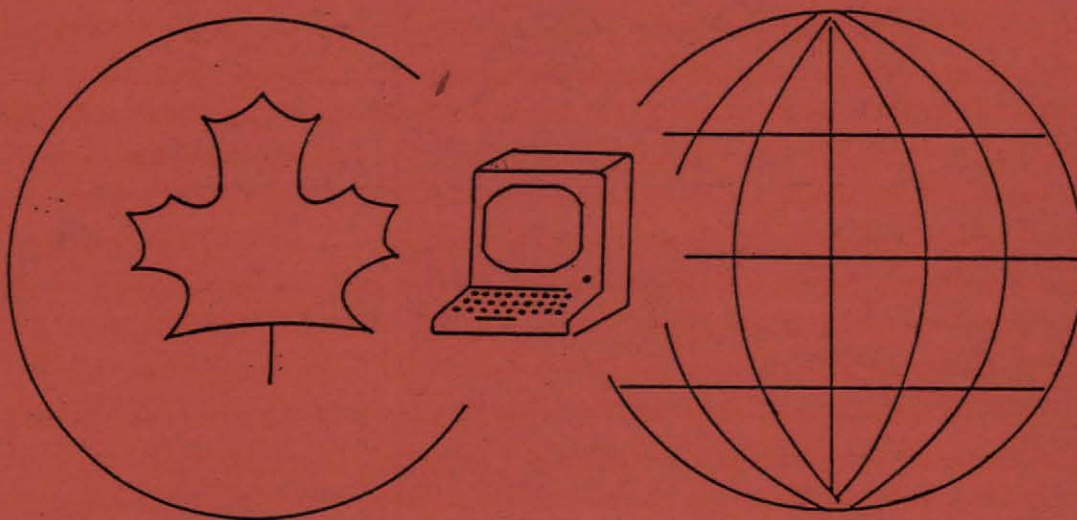


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INTER-DEPARTMENTAL TASK FORCE ON TRANSBORDER DATA FLOW

TERMS OF REFERENCE
MANDATE AND WORKPLAN



Department of Communications
Ottawa
1981

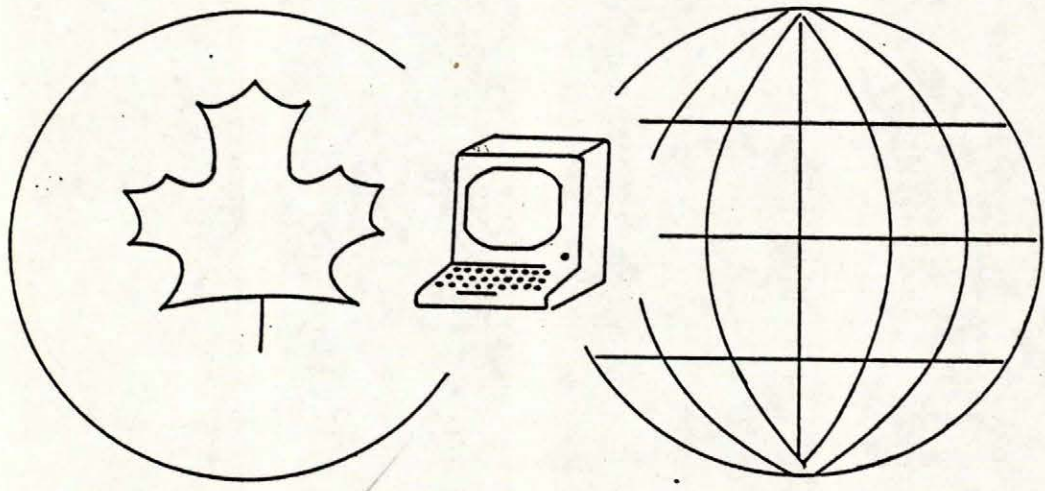
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Revised May, 1982

INTER-DEPARTMENTAL TASK FORCE ON

TRANSBORDER DATA FLOW

Table of Contents

	<u>Page</u>
Terms of Reference	2
Structure of Task Force	3
TBDF Definition and Limitations	4, 5
Working Group Assignments	
1) Working Group on Economic Aspects	6 - 10
2) Working Group on Sovereignty Aspects	11 - 15
3) Working Group on International Aspects	16 - 19
Composition	
Appendix I - Members of TBDF Steering Committee	20
Appendix II - Members of Industry Advisory Committee	21

TERMS OF REFERENCE

TO PROVIDE THE INTERDEPARTMENTAL MECHANISM FOR JOINT PLANNING AND COORDINATION OF FEDERAL POLICIES AND PROGRAMS RELATING TO ACTIVITIES AFFECTED BY TRANSBORDER DATA FLOW, IN PARTICULAR THE SOVEREIGNTY AND ECONOMIC IMPLICATIONS, AND TO ADVISE THE GOVERNMENT ON THESE MATTERS THROUGH THE MINISTER OF COMMUNICATIONS.

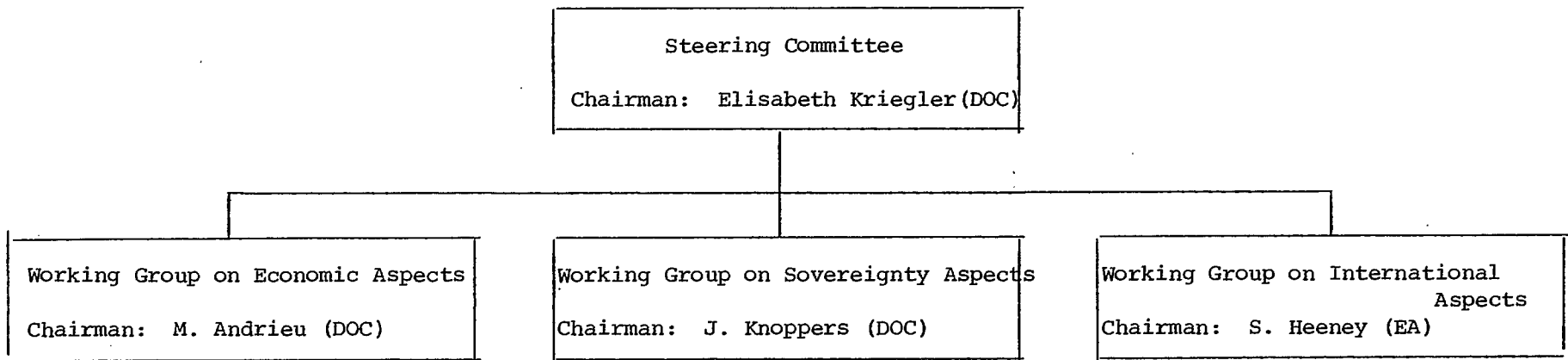
TO DISCUSS AND EXCHANGE INFORMATION ON THE RESEARCH PROGRAMS AND PROJECTS, ACTIVE OR PLANNED WITHIN THE GOVERNMENT AND OTHER AGENCIES, AND TO CONSIDER THE TRENDS IN OTHER COUNTRIES AND THEIR EFFECT ON CANADA.

TO UNDERTAKE JOINT INTERDEPARTMENTAL RESEARCH EFFORTS DESIGNED TO ESTABLISH THE NECESSARY FACTUAL AND CONCEPTUAL BASIS FOR THE DEVELOPMENT OF RELEVANT POLICY RECOMMENDATIONS.

TO DEVELOP THE NECESSARY PROCESSES OR MECHANISMS TO ENSURE AN ADEQUATE DATA BASE ON VARIOUS ASPECTS OF TRANSBORDER DATA FLOW AND TO RECOMMEND ADDITIONAL RESEARCH AS REQUIRED.

INTERDEPARTMENTAL TASK FORCE ON TRANSBORDER DATA FLOWS

STRUCTURE



WORKING DEFINITION OF TBDF

The task force definition of TBDF is "Electronics or Machine-readable data or instructions which are transmitted or moved across national boundaries for purposes of processing, storage or retrieval, in most cases utilizing Computer/Communications systems and Interfaces.

LIMITATIONS

In the context of the work undertaken by the Task Force and in consideration of other activities currently underway in the federal government, certain TBDF issues are not being addressed at present by the Task Force. The exclusions are:

Video and Voice

Although video and voice transmissions are part of TBDF they have been excluded from our studies at this stage because the federal government is well advanced in the process of developing new broadcasting, cable TV and satellite use policies.

Privacy

One of the most active TBDF areas is that of confidentiality of data flows and data use and in particular, data on or about individuals i.e., privacy. The federal government has introduced new Privacy legislation (Bill C-43 or the Access to Information and Privacy Act) to amend the privacy provisions currently in force under Part IV of the Canadian Human Rights Act. Even though this legislation applies only to personal information held by the federal government, it was deemed inappropriate for the Task Force to study privacy prior to the passage of Bill C-43. In addition, the Minister of Justice is in the process of preparing a response to a report by the Privacy Commissioner on the use of social insurance numbers and data linkages.

Culture

Finally, the task force is only taking a very limited view of the cultural aspects. A much broader study is being conducted on the implications of culture and information by the Applebaum-Hébert Commission.

INTER-DEPARTMENTAL TASK FORCE ON TRANSBORDER DATA FLOW

WORKING GROUP ON ECONOMIC ASPECTS

MANDATE AND WORK PROGRAM

U L

Economic Aspects Working Group

Mandate

To undertake joint interdepartmental research efforts designed to establish the necessary conceptual, factual and analytical basis required for the development of relevant policy recommendations pertaining to the economic and industrial aspects of TBDF.

By investigating:

- ° the potential threats which may arise from increasing trade imbalances in open market transactions in the computer-based services.
- ° the possible migration of in-house EDP and the related functions of multinational corporations outside Canada.

By analyzing:

- ° the potential positive economic implications of TBDF in terms of productivity gains resulting from more sophisticated use of information flows.
- ° the international growth opportunities which may arise for Canadian industries in the fast growing world market for computer-based services.

Membership of Working Group

The Working Group on Economic Aspects is composed of representatives from the Ministry of State for Economic Development, the departments of Communications, Industry, Trade and Commerce, Supply and Services, Finance, Statistics Canada and the Canada Employment and Immigration Commission. It is chaired by M. Andrieu, A/Director General, Communications Economics Branch, Department of Communications.

Issues to be Addressed by the Working Group

The growth in the international flows of computer-based services raises a number of broad economic issues at the international level which can be formulated as follows:

- ° What impact TBDF will have on the balance of payments, employment, the competitiveness of Canadian service bureaus and software houses, costs and benefits to firms, the industry structure, the international division of labour, and the corporate organizational structure?.

- ° Do increased international flows of computer-based services and related changes in the operations of firms result in significant productivity gains to these firms?
- ° Will these productivity gains and related changes result in over-all economic benefits at the world level? That is, does the sum total of benefits outweigh the sum total of the possible negative effects?
- ° If there are over-all benefits associated with international flows of computer-based services, how are these benefits distributed among nations? Will some countries enjoy net positive benefits at the expense of others?

A number of specific concerns related to these fundamental issues arise for Canada. On the one hand, it has been hypothesized that Canada may suffer a substantial loss of economic activity related to increasing importation of computer-based services, such as, data processing, packaged software and information retrieval services. On the other hand, the trend towards increased use of computer-based services could present important growth opportunities for the Canadian computer services industry. A major concern is that Canada fully participate in this growing international market. It is also important that Canadian users take full advantage of the productivity gains offered by the use of computer-based services, in order to enhance their competitiveness both at home and abroad.

Work Program

Due to the complexity of the issues and the reporting requirements established for the Task Force the work program includes a short term plan, a medium term plan and if judged desirable by the working group longer term activities could also be identified.

The short term work program is intended to develop a better understanding of what TBDF are, the present situation, the trends, causal factors and implications for economic activities.

On the basis of the results of the first phase of the work program and of the findings of the other working groups a medium term work program will be formulated with a view to identify policy options and investigate their economic implications.

In conducting the various projects the working group requires input from industry to fill information needs and to provide a better understanding of industry concerns. This input can be obtained through the submission of industry briefs or during interviews which are scheduled as a part of the data collection phase. The working group would also like the various industry associations to identify resource persons whose expertise can be called upon as required.

Expected Reports

Following is a short description of the five specific projects which have been formulated in the short term work program:

Project 1: Open Market Data Processing Activities
Lead Department: Statistics Canada

The primary purpose of this study is to provide an assessment of trends in trade flows and the balance of trade in computer services, to the extent feasible using existing data.

Project 2: Canadian Software Industry
Lead Department: Department of Supply and Services

The purpose of this study is to provide a descriptive qualitative profile of the software industry in Canada, as well as an order of magnitude assessment of its size and growth trends.

Project 3: Computer Management Service Function in MNEs
Lead Department: Department of Industry, Trade and Commerce

The purpose of this study is to increase government's awareness of trends in the use of information goods and services by companies that operate internationally.

Project 4: Information Retrieval Services
Lead Department: Department of Communications

The purpose of this study is to provide a descriptive qualitative profile of Information Retrieval Services, together with an order of magnitude assessment of the size and growth trends of these activities.

Project 5: Skilled Manpower Supply and Constraints
Lead Department: Canada Manpower and Immigration Commission

The purpose of this project is to find out whether there are likely to be critical skill shortages in Canada; i.e., shortages of workers whose general educational development, specific vocational preparation and job experience are such as to make necessary a long lead time (several years) to adjust supply to demand.

Working Group Report

An overall assessment of the economic aspects of transborder data flows will be prepared in the form of a Working Group Report. This Report will draw on the specific project reports, background studies on computer/communications technologies (prepared by Supply and Services Canada) and on telecommunications (prepared by the Department of Communications), discussions within government and with industry, briefs presented to the Task Force as well as other pertinent data as it becomes available.

Interdepartmental Task Force on Transborder Data Flows

Working Group on Sovereignty Aspects

Mandate and Work Program

Sovereignty Aspects Working Group

Mandate

To study the implications of the nature and growth of transborder data flows on Canadian sovereignty by:

- ° developing a conceptual basis and approach;
- ° establishing an analytical framework;
- ° identifying broad subject areas of concern and vital considerations;
- ° collecting and analyzing available information,

as a prerequisite for the development of any policy recommendations or actions related to jurisdictional, cultural, social, technical and vulnerability aspects of sovereignty.

Membership of the Working Group

The Working Group on Sovereignty Aspects is composed of representatives from the Ministry of State for Science and Technology, the Departments of External Affairs, Justice, Consumer and Corporate Affairs, Communications, Finance, Public Archives, National Library, Supply and Services, National Defense as well as the Privy Council Office, the Foreign Investment Review Agency, Treasury Board, Canada Council, Emergency Planning Canada, the Canadian Institute for Scientific and Technical Information and the Royal Canadian Mounted Police. The Chairman of the Working Group is Dr. Jake Knoppers, a private consultant contracted by the Department of Communications.

Issues to be Addressed by the Working Group

The growth of transborder data flows and the unique nature of these flows have raised a number of broad sovereignty issues both internationally and domestically. These include:

- ° concerns related to questions and problems of jurisdictional, legal and regulatory nature raised by these electronic data flows and the supporting technical infrastructure. For example, what is the impact of these flows and associated technical developments on the ability of the government to ensure compliance with its laws and regulations? Or how applicable are the current legal and regulatory frameworks to data flow and data location?
- ° concerns related to the cultural impacts of transborder data flows in the form of new electronic information products and services and the formation of an electronic cultural heritage.
- ° a general set of concerns about possible vulnerabilities associated with increased reliance by Canadian society on a computer-communications infrastructure and data flows intricably linked with those of other nation-states.

Work Program

In view of the time and resource constraints of the Task Force and the fact that the issues addressed are very diverse and complex, the work plan developed consists of several phases with opportunity for review and reconsideration after the completion of each phase.

The purpose of the first phase is to develop on a short term basis, an analytical framework and overview, to identify specific problems and to undertake focused investigations so as to gain a clearer insight into various aspects of TBDF and related computer-based activities, current and anticipated trends and their relation to various sovereignty aspects.

The first phase of the work program should determine to which extent a conceptual consensus and factual basis can be established which in conjunction with the findings of the other working groups will allow for the formulation of policy options and specific information needs.

The working group has established a number of project groups to prepare a number of in-depth background reports. In its work, the working group relies heavily on the consultative process not only within government but especially with industry. The consultation with industry takes several forms, namely:

- ° interviews with selected firms in order to collect data and obtain a thorough understanding of the operations of industry and key TBDF factors;
- ° submission of briefs by industry associations in order to identify specific concerns;
- ° review by industry of draft reports in order to ensure accuracy and relevancy of the factual basis.

Expected Reports

A number of specific projects were established as part of the short term work program. A short description of each follows.

Public On-Line Information Retrieval Services

Lead Department: Communications

This study, which should be considered as first step in the analysis of network information services, is a joint project with the Economic Aspects Working Group. The primary purpose of this study is to provide a descriptive qualitative profile of the public on-line information retrieval services not only in terms of order of magnitude assessment of the size and growth trends but also of legal concerns of the industry and possible cultural impacts. Pertinent developments of this industry in the U.S. and Europe will also be investigated.

Data Retention and Data Storage

Lead Department: Communications

The purpose of this study is to identify current federal government data retention requirements and in particular whether the location of the data was specified. The question of how records are stored in light of the requirements of the Canada Evidence Act, the possibility of data retention requirements allowing for data storage in machine-readable form with remote access and resulting TBDF implications will also be examined.

Finally, the review of data retention requirements will include an analysis of existing records retention requirements of a TBDF nature. Close liaison will be sought with the Office of the Coordinator of Regulatory Reform.

Legal and Jurisdictional Aspects

Lead Departments: External Affairs and Justice

The purpose of this study is to examine some of the legal questions associated with the issue of transborder data flows including domestic legal issues associated with the use of the computer in the areas of criminal law; existing legislative requirements concerning evidence and records; "proprietary" rights; "liabilities"; patent and copyright; and specialized areas such as banking and securities law. Other areas which will be investigated include potential international aspects of domestic legal issues; concepts such as "sovereignty" and "jurisdiction" and the implications of TBDF for traditional formulations of these concepts; the rights of states under international law to control information beyond their borders or to control the flow of information from their territory; and potential relevant international legal instruments.

Cultural Impacts

Lead Department: Communications

The study plans to analyze current government policies and mechanisms designed to protect, ensure the survival of and stimulate those Canadian cultural products and heritage and their relevance to computer-communication-based cultural entities. In particular, the status of the electronic cultural heritage, i.e. machine-readable data files and electronic cultural products, i.e. on-line public data bases are examined in detail. Current cultural support mechanism and their applicability to electronic cultural products in light of TBDF will also be investigated.

Vulnerability Issues

Lead Department: Communications

The purpose of this project is to examine the characteristics of advances in computer and communication technologies in terms of their vulnerability to misuse. Specific items include computer security, network reliability and robustness, and contingency planning in relation to TBDF questions. Other areas to be examined include the role of information as a valuable resource and vital cog in the delivery of services, increased interdependencies between national, international computer/communications systems and dependencies on data flows and integrated systems and new services as well as an analysis of the role of national boundaries in computer/communications networks.

Working Group Report

An overall assessment of sovereignty aspects of transborder data flows will be prepared in the form of a Working Group Report. This Report will draw on the specific project reports, background studies on computer/communications technologies (prepared by Supply and Services Canada) and on telecommunications (prepared by the Department of Communications), discussions within government and with industry, briefs presented to the Task Force as well as other pertinent data as it becomes available.

Interdepartmental Task Force on Transborder Data Flow

Working Group on International Aspects

Mandate and Work Program

MANDATE

- ° To advise the Task Force on the implications for the formulation of domestic policy of developments or activities concerning TBDF in international fora (e.g. Organization for Economic Co-operation and Development, Inter-governmental Bureau on Informatics, UN Centre on Transnational Corporations, International Telecommunication Union, GATT, etc.) and in other countries, such as:
 - guidelines, conventions, laws, etc.;
 - new policy trends and proposals;
 - positions taken on TBDF and related issues;
 - the North-South dialogue.

- ° To consider the impact and to provide appropriate input to the other working groups of possible Canadian TBDF policies on aspects of Canada's bilateral political and economic relations, in particular:
 - Canada/USA relations;
 - relations with the industrialized countries.

- ° To ensure that the work of the Task Force is taken into account in establishing positions on TBDF issues for Canadian representatives at multilateral meetings and in bilateral discussions and, in this connection, to serve as liaison with the interdepartmental committee on the ICCP.

° To assess the international legal implications of TBDF, such as:

- the extraterritorial application of domestic laws;
- national sovereignty issues (in close liaison with Working Group on Sovereignty Aspects).

MEMBERSHIP OF WORKING GROUP

The Working Group on International Aspects is composed of representatives from the departments of External Affairs, Communications, Industry, Trade and Commerce, and Finance. It is chaired by S.H. Heeney, Director, Science, Environment and Transportation Policy Division, External Affairs.

ISSUES TO BE ADDRESSED BY THE WORKING GROUP

International considerations arise in conjunction with Canada's bilateral relations with its trading partners as well as its participation in international organizations dealing with various aspects of transborder data flows. The issues of concern are the implications of international developments for domestic policy formulation and the development of Canadian positions regarding foreign policies of TBDF. This Working Group will also provide the formal link between the Transborder Data Flow Task Force and federal government representatives to intergovernmental organizations on issues and activities related to TBDF.

WORK PROGRAM

The Working Group is preparing a background paper on the international TBDF environment. The proposed outline is attached. The purpose of this paper is to provide the task force with information about activity concerning TBDF in international fora and about the positions and policies taken by other countries on these issues.

The Working Group also services as a resource centre for obtaining and providing information on international developments to the other Working Groups, in order that this can be done in a coordinated fashion.

In addition, the Working Group acts in an advisory capacity to the task force concerning Canadian participation in international meetings on TBDF. This is an ongoing activity.

EXPECTED REPORTS

The International Aspects Working Group report to the TBDF task force will include an introduction describing the growth of interest in TBDF issues at the international level, policies and actions taken by International Organizations and Foreign Governments, International Legal Questions, and assessment of the implications of these International developments for Canada.

INTERDEPARTMENTAL TASK FORCE ON TRANSBORDER DATA FLOWCompositionList of Members

CHAIRMAN: ● Elisabeth Kriegler, Director General
 Broadcasting and Social Policy Branch
 Department of Communications
 (previously with Communications Economic Branch)

MEMBERS: ● Department of Communications
 ● Consumer and Corporate Affairs
 ● Ministry of State for Economic Development
 ● Employment and Immigration Canada
 ● External Affairs
 ● Department of Finance
 ● Foreign Investment Review Agency
 ● Department of Industry, Trade and Commerce
 ● Department of Justice
 ● Labour Canada
 ● Privy Council Office
 ● Ministry of State for Science and Technology
 ● Statistics Canada
 ● Supply and Services Canada
 National Library of Canada
 Public Archives Canada
 National Defence
 ● Treasury Board Canada
 Science Council Canada
 Canadian Institute for Scientific and Technical
 Information
 Royal Canadian Mounted Police
 Emergency Planning Canada

● Indicates member of Steering Committee

Interdepartmental Task Force on Transborder Data Flow

Industry Advisory Committee

Industry Members: Canadian Manufacturers Association
Canadian Independent Computer Services Association
Canadian Bankers Association
Canadian Business Equipment Manufacturers Association
Canadian Telecommunications Carriers Association
Canadian Information Processing Society
Canadian Council of International Chamber of Commerce
Data Processing Management Association
Canadian Business & International Advisory Committee
Canadian Association of Data Processing Services Organizations
Canadian Advanced Technology Association

