BARRIERS TO INTERNATIONAL EXCHANGE OF DATA-RELATED SERVICES: ECONOMIC PROTECTIONISM VS. PRIVACY ISSUES

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Abstract

Transnational data flows are increasingly being hindered by governmental controls. There are three main reasons for imposition of these limitations: (1) individual privacy, (2) economic, and (3) national security. While large MNC's are affected the most, in the long-run small domestic firms may also suffer from such controls. Future prospects for these sorts of controls promise to make things more difficult for the marketers of data related services, as they affect export and import of television productions, movies, music, and other services. This article discusses the development of transnational data flow limitations, its reasons, and marketing influences of such limitations.

Introduction

Data communication functions within firms have been increasingly automated during the last two decades. During this period, companies in search of a more efficient marketing and management information system, have allowed their computers to communicate through available telecommunications network (i.e., telematics). Today, both domestic and international firms, large and small, are increasingly relying on information flows between various departments, divisions, and subsidiaries to accommodate their marketing research, product planning, strategic planning, market surveillance, and implementation functions. However, since the early 1970's an increasing number of developed and developing nations have attempted to control the flow of information (transnational or transborder data flow -- TDF) across their national boundaries. Multinational corporations (MNC) are among the first group of companies that are being affected by these regulations. Others, including strictly domestic firms are also affected to varying degrees depending on their size, scope of operation, industry membership, and whether they are in the high-tech category.

TDF Developments

In general, nation states regulate TDF to protect (1) privacy rights of their citizens, (2) economic development and independence, and (3) national security. Countries that originated the TDF movement were largely industrialized nations (e.g., Austria, 1978; France, 1978; Germany, 1977; Sweden, 1973) that sought to protect the rights of their citizens through TDF regulations. Developing countries followed suit quickly to control their national and economic interests. Since 1973, over sixty countries have either passed or considering legislation that directly or indirectly will affect TDF. Among developing nations, Brazil has aggressively pursued regulating TDF. Brazil's TDF policies, for example, are designed to "maximize the amount of information resources (such as computers, software, data bases, technical and managerial skills) located in Brazil; to acquire and maintain national control over the decisions and technologies relating to Brazilian industries; to enable the Brazilian society to have universal access to information; and to enhance generally Brazil's internal and external political structure as well as its cultural milieu through the appropriate use of information resources (Transborder Data Flows and Brazil 1983, p. 3).

Individual Liberty

Most of the regulations that address the privacy issue are concerned with transmission of information about individuals. The aim of such regulation is to give equal rights to individuals and enable company personnel to examine their files for accuracy and make certain that the information is not misused. The privacy aspects of TDF regulations have limited impact on conduct of marketing functions at the present time. However, this is an area which is rapidly changing. Therefore, marketers must anticipate potential changes that might affect their marketing programs. For example, it is quite conceivable that transmission (or reception) of local consumer research data to the headquarters or other subsidiaries will become illegal in parts of the world. If so, then companies may be forced to establish local marketing research departments or hire local consulting firms to do data analysis and reporting tasks that could normally be handled by the the headquarters. Naturally, firms that are not involved in any type of international transaction will not be directly affected by the national privacy protection rules.

Economic Independence

While the original intent of regulating TDF may have been one of privacy protection, economic issues are clearly gaining in significance and scope. This is clearly demonstrated in the statement of national objectives of the Brazilian TDF regulations. Developing nations are seeking access to all available resources that are needed for development. They fear that if TDF was left unregulated, their nations would not be able to develop their own computer hardware, software, and related industries, develop commercial data bases, or train human resources. If transmission of marketing research data is interpreted as invasion of privacy of citizens, local consulting firms and trained personnel stand to benefit from this sort of protection. In addition, TDF regulations are aimed at increasing the autonomy of MNC subsidiaries. It is assumed that increased control at the subsidiary level will increase the country's leverage in economic decision making. France's Secretary General of Commission on Data Processing supports this view and has suggessted that "information is power and economic information is economic power" (Sanger 1981, p. 1). However, to believe that compiling, storing, and processing data locally will lead to decision making at the local level is merely a myth. Duplicate data files or reports can be sent to the headquarters through electronic and/or conventional means. The headquarters can then call the shots as they previously had. That is, an ethnocentric management team at the headquarters is not likely to be discouraged and change its management style because of TDF policies of other nations. Realistically, MNC's give more autonomy to their subsidiaries in developed countries than they do to their units located in developing nations. A chemical firm, for example, requires only summary reports from its units in developed countries. Subsidiaries in developing countries, on the other hand, are required to submit data bases ("U.S. Firm Configures DDP for European Offices" 1980, p. 50). Indeed, developing nations are generally considered suppliers of this type of data.

National Security Concerns

TDF regulations for preserving national security do not directly inhibit marketing activities. Such laws are concerned with the protection of "sensitive data" bases and the ability of foreign intelligence to access such information from telecommunications traffic. However, depending on how "sensitive data" is defined, many products and services (particularly information services) can be affected.

Marketing Influence Of TDF Regulations

It is difficult to precisely predict the effects of TDF regulation on the practice of marketing because of rapid developmens in the field. However, many firms have already felt the impact of red tape and higher expenses associated with such regulations. The cost of regulating TDF to tens of thousands of firms in terms of lost opportunities, increased operating costs, duplication of manpower and equipment, and inability of firms, particularly MNC's, to work as a "system" can be enormous. The following are four ways through which marketing functions can be affected:

- Access to on-line data bases may become increasingly difficult and more expensive

There are currently some 1,100 commercial data bases available. The nature of these data bases vary significantly; some provide market and economic data, while others provide licensing and technology information. The first implication of such a limitation is that companies seeking to market their products and/or designs through on-line data bases will find fewer buyers because of potentially limited reach of such services to heavily regulated markets. The second implication is that acquisition of certain types of information (such as economic forecasts and market information) might require more time which can put the MNC at a competitive disadvantage vis-a-vis local firms. Third, limited access to on-line data bases can be an impediment for the 'strictly' domestic firm. Let us assume that a firm is seeking to automate or otherwise modernize its production facilities. If access to on-line data bases originating in other industrialized nations is possible (i.e., those bases that are likely to be affected by TDF regulations) for them, then the company can have a greater number of plans and technologies to choose from. Concurrently, the domestic firm is aided by quick access to patents granted in other countries through on-line data bases. Competitive advantage and financial rewards of manufacturing a new product developed elsewhere for the local market, improving an existing product, or perhaps conceiving a new product by using foreign patents can be enormous. A fourth implication of this limitation is that the company may not be able to access RFP (request for proposals) and international "wantads" as readily, easily, or economically. Some data bases provide information about firms wishing to buy products and services or companies that are seeking to enter a licensing agreement. TDF constraints of on-line data bases will clearly impede their market growth. Finally, marketers of on-line data bases will find the going rough in regulated markets, thus adding to their marketing costs.

- TDF regulation can impede the ability of MNC's to work as a system and maximize their effectiveness

TDF regulations can limit the ability of MNC's to use their world-wide resources to improve their performance. This has rather significant implications for the marketer, particularly in the area of product development. Ford, for example, was able to save $180 million in designing a car by linking its engineering staff in different countries using their computer network (Transnational Corporation and Transborder Data Flows: A Technical Paper 1982). A superior and less costly design coupled with a shorter product development cycle can translate to increased profit margins and a better competitive edge for the firm.

A number of developed and developing countries, such as Japan, have attempted to protect their domestic firms by making it more difficult and expensive for the MNC's computers to be linked together. Digital Corporation, for example, found that KDD, Japan's long distance company, would not allow it to use its leased line to link its Japanese computers with its global network, i.e., switch from one system to another (Sanger 1981, p. 1). In effect, Japan is protecting its telecommunications industry. Also, coordinating world-wide marketing programs (e.g., price levels and deals or promotional programs) may prove to be more difficult if the company is unable to routinely receive its subsidiaries' data files via telematics.

- Access to personnel records for selecting qualified individuals from MNC's global network for involvement in marketing activities at the headquarters or other subsidiaries may be limited

Nation states, in their attempt to protect the individual's right to privacy, have made it difficult to transmit personnel related data via TDF. As such, optimum decision making for placement of the qualified marketing (or other) personnel where they are needed has become more cumbersome. Burroughs Corporation, for example, was not allowed to transfer its Personnel Resource Inventory and Management Evaluation (PRIME) system from Germany to other locations (Block 1981, p. 108). A main objective of industrialized countries is preservation of privacy of their citizens. Developing nations, on the other hand, can make it more difficult for foreign concerns to export their qualified human resources for use elsewhere by using similar TDF regulations.

- Marketing programming may be hindered if TDF is taxed

Several nations, including France are considering the possibility of taxing TDF as a form of commodity. Efforts on the part of the French government to assess data based on its intrinsic value has not resulted in any action at the present time. In a similar move, the government of India has taken Time Magazine to court for "profiting" from the stories that originated from its Indian office (Sanger 1983, p. D-1). The $100,000 law suit has been in the courts since 1975. While this sort of practice has not been common, it demonstrates the seriousness of the issue. Taxing TDF will increase the cost of doing business abroad, thus giving an unfair advantage to local firms. Increased market and consumer research costs will undoubtedly affect MNC's marketing effort. As yet unanswered, however, is how nations will decide on fair and equitable basis for TDF taxation. Such items as computer software which are easily defined are currently subject to customs duties in many countries, thus affecting marketing costs of software exporters.

Future Prospects

The implications of transnational data flow limitations are so far reaching that many large firms have begun studying the problem and examining the role that they should play in this development. Indeed, many corporate officials believe that managing international information flows is as important as managing the company's assets or its production (Bushkin 1981, p. 10).

The marketing practitioner can lessen the effect of TDF regulations by closely monitoring TDF developments in markets in which they operate. To the extent possible, MNC's should participate in policy formulation by presenting their interests to local governments. However, in order to play an effective role with policy making bodies, research in the area is needed. Specifically, the relationship between TDF controls and market development is not entirely clear. This type of research might be helpful in releasing firms from certain TDF restriction. Also, the extend to which TDF controls affect marketing functions and their costs should be examined. In short, a balance must be reached between TDF policies that lead to economic independence and growth and accommodation of international business transactions. However, existing evidence seems to suggest that regulation of TDF has become so complex that the situation might get worse before it improves.

References

Block, Victor. "Barriers to the True Flow of Information," Infosystems (September 1981), p. 108.

Bushkin, Arthur A. "The Threat to International Data Flows," Business Week, (August 3, 1981), p. 10.

Transborder Data Flows and Brazil. New York: United Nations Centre on Transnational Corporations, 1983, p.3.

Transnational Corporation and Transborder Data Flows: A Technical Paper. New York: United Nations Centre on Transnational Corporations, 1982, p.34.

"U.S. Firm Configures DDP For European Offices." Computerworld, (January 1980), pp. 50-55.

Sanger, David E. "Waging a Trade War Over Data." New York Times, (March 13, 1983), p. D-1.

Sanger, David E. "Multinationals Worry as Countries Regulate Data Crossing Borders," The Wall Street Journal (August 26, 1981), p.1.