

narrow majorities to keep alive the legacy of the Warren Court and its core notion that the Constitution was a living document that could and should be interpreted aggressively.

There is no individual in this country, on or off the Court, who has had a more profound and sustained impact upon public policy in the United States for the past 27 years, said an article in the conservative journal *National Review* in 1984, and it is hard to disagree with that assessment. Justice Brennan was the author of 1,350 opinions, many of them landmark rulings that altered the political and social landscape.

He left his mark on a wide range of issues. *Baker versus Carr*, in 1962, asserted the one-person-one-vote doctrine that transformed democracy and, through reapportionment, the composition of the Nation's legislatures. His famous first amendment ruling in *New York Times versus Sullivan* in 1964 reconfigured the law of libel to give breathing space for free expression and the robust debate of public issues. In *Goldberg versus Kelly*, a 1970 ruling of which he was particularly proud, Justice Brennan initiated what turned out to be a steady expansion of the 14th amendment's guarantee of due process by ruling that a State could not terminate a welfare recipient's benefits without a hearing.

Over all, Justice Brennan's greatness was rooted in his vision of the law as a moral force and his understanding that the genius of the Constitution would be betrayed if the court insisted on the narrow, static doctrine of original intent, the notion that the Constitution can best be interpreted through the eyes of the Framers. This unique feature of the Constitution, he argued instead, was the adaptability of its great principles to cope with current problems and needs.

That vision and driving passion are not thriving in today's court. Like Justice Brennan himself, they are sorely missed.

I had the occasion, Mr. Speaker, to know Justice Brennan. He was a remarkable man. He will dearly be missed. He is one of the truly great Justices and great people of our times and we send our condolences and our best to his family.

USE OF THE INTERNET

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Minnesota [Mr. VENTO] is recognized for 5 minutes.

Mr. VENTO. Mr. Speaker, today I rise to speak with regard to the matter of personal privacy and the absolute vulnerability and risks and abuses that are taking place with regard to personal privacy. I specifically want to reference the use of the Internet, the Internet system, the online service providers and web sites that exist on the Internet. The Internet, of course, is accessible through our computers and the online services that we purchase.

Earlier this year, in fact last year, in 1996, I first introduced legislation that would require an affirmative action by the individual Internet user, the subscriber, to permit the use of personal information; that is to say, the telephone numbers, the e-mail address, and the profile that is possible. A service provider or for that matter a web site can in fact, through the information and activities that an individual uses on the Internet, can in fact make almost a complete profile of all the web sites that you visit and utilize.

They can do this, quite frankly, without the knowledge of an Internet user; that is, a subscriber or web site can in fact do that. It is as if you are walking down the street with \$100 bills sticking out of your pocket and you are not aware of it. That is to say, we as individual Internet users are very vulnerable.

Of course, as I introduced that bill last September and reintroduced it this past January, H.R. 98, I hope some Members will join me in terms of requiring affirmative approval of a service provider or a web site to use personal information about an individual that is using the Internet.

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And this had been the subject this past June, and I might commend Commissioner Varney of the Federal Trade Commission for the work she had done at that time, she has since left the FTC, but this June she had a seminar and a series of meetings on, in fact, personal privacy on the Internet.

At that time some of the service providers, namely Netscape, the one that we use, incidentally, in the House of Representatives, and Microsoft pointed out they were going to make efforts to provide for personal privacy and some security. But 7 weeks after that, this week we picked up the paper, the *Washington Post* here yesterday in Washington, DC, and it says America Online, one of the service subscribers, will share the users' numbers for telemarketing.

Eight and a half million individuals are customers of America Online, and they were going to share their personal telephone numbers, and I assume their E-mail addresses, for sale. They were going to receive money back for this information. They were going to receive \$150 million back for sharing the personal information, sharing the privacy, selling for profit the personal privacy of the users to the tune of \$150 million.

Well, that is wrong. And the fact was that after this became public, this has been out for some time that they were going to do this but they did not share it, it was like looking for a needle in a haystack trying to discover what America Online was doing, but after that, after this happened, America Online, I am pleased to report, has backed off their plan to give out phone numbers.

I think what this does point out in living color and in graphic detail is the

vulnerability, as suggested in the legislation I have introduced, H.R. 98, of individual Internet users to have the abuse, the involuntary sharing, even being unaware sharing of their personal information.

It is really unbelievable, as I said yesterday, that America Online would be cashing in for profit by selling the personal privacy of their users. The fact is that we need to correct this problem. We need to have some standards.

I think most of us are very leery of any type of censorship with regards to information. We do not want to thwart the development and limit the development or the availability of information, or the development for that matter and use of the Internet, but the risk we run here is that the Internet is going to be filled or be a great wasteland in the fact that it will not have any type of security.

There will not be the type of credibility and certainly not the responsibility on the part of the Internet user. We will not know when we purchase something whether we are participating in a transaction, whether, in fact, a communication or message, or just a complete absence of security or personal privacy.

So I urge my colleagues to join in sponsoring H.R. 98 after they have seen this graphic example of abuse by America Online with regards to personal privacy.

Mr. Speaker, I provide for the RECORD two articles covering the issue I have just been discussing.

[From the *Washington Post*, July 24, 1997]
AOL WILL SHARE USERS' NUMBERS FOR TELEMARKETING: CONSUMER GROUPS, PRIVACY ADVOCATES CALL SUBSCRIBER NOTIFICATION INADEQUATE

(By Rajiv Chandrasekaran)

America Online Inc. plans to disclose the telephone numbers of its 8.5 million subscribers to certain business partners for telemarketing purposes, a decision that industry specialists say could generate a financial windfall for the online service but anger many of its customers.

AOL said it will make the subscriber information available to companies such as consumer-services firm CUC International Inc., which signed a \$50 million marketing arrangement with AOL last month. Such agreements, which industry analysts say could become more common because of the telephone list, are an increasingly important source of revenue to AOL as it seeks to reduce its dependence on monthly user fees.

The new policy is outlined in AOL's revised user rules, which were posted online earlier this month and become effective on July 31. The policy allows users to request that their phone numbers not be disclosed to telemarketers.

The company's decision, however, has outraged consumer advocates, who say AOL members have not been adequately informed of the new policy, which as of yesterday evening had not been mentioned on any of the screens a user sees when logging on.

"Their disclosure is not good enough," said Jean Ann Fox, the director of consumer protection at the Washington-based Consumer Federation of America. "This sets a new low in turning subscribers into a commodity."

Although it is a fairly common practice for companies to sell customer information—

AOL has long offered the names and addresses of its subscribers to direct-mail marketers—disclosing phone numbers is a rarer practice, industry experts said. "It's not at all common in the online world," said Patrick Keane, an analyst at market-research firm Jupiter Communications in New York.

AOL's decision comes just as the company largely has repaired customer relations frayed by widespread busy signals that occurred on the network in the winter and spring because the company failed to anticipate the demand a flat-rate pricing plan would generate. The new policy, some analysts said yesterday, risks re-opening old wounds.

"They're walking a fine line with a customer base that already has been nettled," Keane said.

AOL officials played down such concerns, saying they believed most subscribers would welcome the solicitations. "We're telemarketing to our members goods and services we see as benefits of their AOL membership," said spokeswoman Tricia Primrose.

Primrose said AOL does not plan to publicize the new policy before July 31, but will notify members before they begin to receive calls. "We're going to give them every opportunity to get off this list," she said.

Privacy advocates contend, however, that AOL customers should be asked in advance if they want to be on telemarketing lists. The advocates also say that as an online service, AOL should be held to a higher standard in protecting customer information than companies that don't do business in cyberspace.

"Many people who subscribe to AOL like the feature that they have a certain distance between their use of the keyboard and the outside world," said Robert Ellis Smith, editor of Privacy Journal in Providence, R.I. "They don't have to give out a physical address or a home number. Now AOL is suddenly exposing these customers to intrusions at home during the day."

Initially, AOL plans to offer the phone number to two companies, CUC and Tel-Save Holdings Inc., a long-distance company with which AOL signed a \$100 million marketing agreement earlier this year, Primrose said. CUC and Tel-Save do not plan to start telemarketing until later this year, she said.

AOL plans to screen the telemarketers' solicitations, Primrose said. The company now monitors mailings that are sent to its customers by firms who purchase its subscriber mailing lists, she said.

AOL's mailing lists include members' names and addresses, as well as demographic profiles, with information such as household income and past buying habits, that the company says it obtains from outside marketing databases.

[From the New York Times, July 25, 1997]

AMERICA ONLINE BACKS OFF PLAN TO GIVE OUT PHONE NUMBERS

(By Seth Schiesel)

Responding yesterday to consumer outrage and mounting concerns about privacy in cyberspace, America Online, the largest online service provider, abandoned its plans to begin providing lists of its customers' telephone numbers to telemarketers and other direct-sales peddlers.

The reversal came less than 24 hours after the plan became widely known through news accounts and on-line postings. America Online drew immediate fire from politicians and privacy-rights groups for the telemarketing venture, in part because the company for years had assured subscribers that it would not release their phone numbers and other personal information to outside parties.

Because America Online's eight million subscribers are already besieged by "junk"

electronic mail, customers bemoaned the prospect of some of those same advertisers, or different ones, ringing the phone at home.

"That's the most obnoxious form of solicitation," said Camilla M. Herlevich, an environmental lawyer in Wilmington, N.C., an America Online subscriber. "They always call at dinner time. We call it the arsenic hour."

But the controversy goes beyond telephone numbers—and transcends America Online, for that matter.

For consumer-privacy advocates, the case illustrates the need for increased Government oversight of the buying and selling of the copious consumer information gathered in the course of everyday commerce. Savvy companies already mine the trove of available credit card information to find buying patterns that might lead to one more sale.

But with the advent of cyberspace commerce, marketers are able to track their quarry even more easily—tracking each click of the mouse, in some cases, as a user surfs the World Wide Web. So far, such efforts typically can identify no more than a user's computer, and not the identity of the individual operating the PC.

Experts predict, however, that personal identification will eventually be possible, making privacy difficult to protect—whatever the stated policies of companies collecting such data.

Like magazines and other businesses with valuable subscription lists, America Online has already been selling lists of its subscribers' names and addresses. But those lists do not include the corresponding E-mail addresses or customer phone numbers. A few weeks ago, however, America Online quietly proposed changing its longstanding policy to begin selling its telephone lists.

Privacy advocates said that adding phone numbers to the mix would allow marketers to cross-tabulate with additional sorts of information that people might not be aware they were exposing by simply signing up to an on-line service.

"The phone number is used as an identifier the way that the Social Security number is," said Evan Hendricks, the editor of Privacy Times, a privacy-rights newsletter. "They can use the phone number to look up the name and address and then you can find out about their house and how many kids they have."

Telemarketers and other direct-sales organizations have resisted Government regulation by agreeing to self-imposed privacy-protection guidelines that typically include provisions allowing consumers to request that their personal data not be sold to third parties. But the America Online episode is certain to raise new questions about whether the industry can continue to police itself.

"It's unbelievable really, that AOL would be cashing in for profit by selling the personal privacy of their users," said Representative Bruce F. Vento, Democrat of Minnesota, who has introduced a bill to regulate the use of consumer information on line. "It just boggles the mind that they would do it quite this boldly."

America Online would not reveal how many of its members called, faxed or sent electronic mail to the company to vent their displeasure. America Online executives insisted that they did not intend to "rent" the phone numbers. Instead, they said, America Online would provide the numbers to companies only as one part of an overall marketing deal.

"The only calls we intended for you to receive would have been from AOL and a limited number of quality-controlled AOL partners," said Stephen M. Case, the company's chief executive in a letter to subscribers yesterday.

Those partners would have included Tel-Save Inc., a discount long-distance telephone company that reached a \$100 million marketing pact with America Online in February, and CUC International Inc., a telemarketing giant that made a \$50 million deal with America Online last month.

America Online officials said yesterday that those pacts were broad based and would not be affected by scrapping the plan to share telephone lists.

"We said, 'It's so insignificant, just drop it,'" said Robert W. Pittman, chief executive of America Online's operating subsidiary. "For it to get this blown out of proportion says we really screwed up the communication."

"At the end of the day we didn't want to soil our reputation or confuse our members."

The members were certainly confused, or at least angry. Internet bulletin boards were ablaze with irate missives about the company, some of them profane. Many of the complaints stemmed from the fact that America Online had tucked its only notice of the proposed policy shift in an obscure corner of the service. The notice had been posted on July 1, but did not come to widespread attention until Tuesday.

"Unless you stumbled across it you wouldn't know unless you saw it on the evening news," said David Cassel, a freelance writer in Berkeley, Calif., who runs an Internet mailing list about America Online that has 12,000 subscribers. "People thought it was exploitative, deceptive and intrusive. People were outraged."

The Federal Trade Commission has been investigating marketing practices in cyberspace since last summer, most recently holding a series of four "workshops" with industry groups last month.

Yesterday, noting that credit card companies often pitch services to their customers based on analysis of spending patterns, Commissioner Christine Varney said: "The difference in perception is that people believe that AOL knows a whole lot more about them or has the capacity to know a whole lot about them than American Express does. Presumably they can see where you go, what you do, where your email comes from, who you're sending it to."

Earlier this month the commission's staff sketched the outlines of a regulatory structure for Internet advertising when it determined that a World Wide Web site called KidsCom had probably engaged in deceptive practices when it collected personal information from children and used the data for marketing purposes without the consent of parents.

But the commission has not issued any regulation on Internet marketing aimed at adults, and is still leaning toward allowing the industry to police itself.

"It's about creating a dialogue with industry, and this marketplace is not going to work unless consumers have confidence in it," said Victoria Streitfeld, a commission spokeswoman. "The real effort has been to really not have Government come down on this emerging technology but to raise the issue."

ON ENERGY AND WATER APPROPRIATIONS BILL AND WHAT IT MEANS TO COMMUNITIES; TRIBUTE TO BISHOP N.H. HENDERSON, SR.; AND SYMPATHY TO FAMILY OF JUDGE NORMAN BLACK

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas [Ms. JACKSON-LEE] is recognized for 5 minutes.