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# Opening Comments on Electronic Commercial Filings and the National Information Infrastructure

Vance K. Opperman\*

Vice President Albert Gore has called the information industry "the most important and lucrative marketplace of the 21st century."<sup>1</sup> The United States is the undisputed leader of this market, which is expected to grow to an astounding \$3.5 trillion annually by the early twenty-first century.<sup>2</sup> For example, America's information services account for fifty-six percent of all commercial databases in the world, compared to thirty-two percent for Europe and only two percent for Japan.<sup>3</sup> In fact, America's information industry derives approximately thirty-five percent of its revenues from Europe and Japan,<sup>4</sup> precisely because we offer the most diverse, advanced, user-friendly, cost-effective range of products and services in the world. No one else comes close.

Now the United States has embarked on the quest to build a National Information Infrastructure (NII) to ensure that we keep our information advantage in the twenty-first century. The NII also provides unique opportunities for strengthening our business sector by revolutionizing the way we file and track commercial filings in this country and eventually around the world. Before I address these opportunities, however, allow me to provide some background on the NII.

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\* President, West Publishing Company. Mr. Opperman presented this paper as a dinner address at the *Minnesota Law Review's* Article 9 Symposium.

1. Graeme Browning, *Search for Tomorrow*, NAT'L J., Mar. 20, 1993, at 674, 675 (quoting Vice President Albert Gore).

2. *Id.* (citing John Sculley, chairman and chief executive officer of California-based Apple Computer, Inc.).

3. INTERNATIONAL TRADE ADMIN., U.S. DEP'T OF COM., 1991 U.S. INDUS. OUTLOOK 27-2.

4. INTERNATIONAL TRADE ADMIN., U.S. DEP'T OF COM., 1994 U.S. INDUS. OUTLOOK 25-3.

## I. OVERVIEW OF THE NII

In recent years, American businesses have invested more than \$50 billion annually building the foundations for an NII,<sup>5</sup> with no attempt to coordinate their efforts. Now the time has come to tie this work together. To accomplish this task, we must understand each element of the NII:

*It is National.* The NII springs from the soul of America's historic mission of making ourselves ever more one nation. From the Pony Express to the Golden Spike to the Interstate Highway system, Americans have always sought new ways to bring and bind ourselves together. Indeed, within a free and democratic economy, we have raced one another to do it.

*It is Information.* Thomas Jefferson called information the currency of democracy.<sup>6</sup> Throughout history, the first act of every revolutionary democratic government, including our own, has been to free and protect information. Totalitarian governments instantly subjugate, limit, and control it. The simple reason for this is the same principle that forms the touchstone of the NII—*information is both powerful and valuable*. No decision—personal, political, or commercial—can be meaningfully measured and made unless it is well-informed. Information stands with or without the NII, but the NII, without information, is worthless.

*It is Infrastructure.* The worn comparison of NII to America's superb highway system does not do it justice. The electronic web of information creation, storage, and transmission is far more complex. It involves networks transmitting voices, data, graphics, and multimedia over wire, cable, fiber, and electromagnetic frequency spectra using sophisticated switching systems. The NII, with all of its capabilities for transmitting information through various media, may even surpass the human nervous system in complexity.

## II. THE GUIDING PRINCIPLES OF THE NII

As a truly American effort, the NII must be defined by two strong guiding principles. First, it must be universally accessible and affordable. The NII must connect all of us with one another regardless of race, gender, age, income, or other

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5. The Information Infrastructure Task Force, *The National Information Infrastructure: Agenda for Action*, DAILY REP. FOR EXECUTIVES (BNA), Sept. 16, 1993, at M178.

6. THOMAS JEFFERSON, *THE POLITICAL WRITINGS OF THOMAS JEFFERSON* 93-94 (Edward Dumbauld ed., 1955).

differences. Second, it must be information rich. The NII must be full of information created and used by people who are confident that they are guaranteed all of the free speech protections of the First Amendment.

Our right to freedom of expression—digital, audible, or in print—must be reaffirmed in the new Information Age. An important part of this reaffirmation includes adequate copyright and intellectual property protections. Creative expression and the incentive to create are protected not only by the First Amendment, but also by society's guarantee that the products we create are respected as ours and that we are entitled to be compensated for our creative efforts. Finally, the NII must ensure every user's right to privacy. Americans do not want millions of neighbors and government officials reading their e-mail or tracking the databases they search. Indeed, reports of such occurrences may chill the free exchange of information more quickly than any other single factor.

### III. INCREASING OUR PRODUCTIVITY AND COMPETITIVENESS WITH ELECTRONIC COMMERCIAL FILINGS

The *U.S. Industrial Outlook* states that America's information industry contributes "significantly to productivity, efficiency, competitiveness and employment in the United States."<sup>7</sup> More than 25,000 information services companies employ more than one million American workers and generate billions of dollars in business each year.<sup>8</sup> The same characteristics that have led to the success of the information industry can help to improve the commercial filing process and benefit the businesses that depend on it.

There are several significant advantages of electronic filing:

*Speed.* First, electronic filing is faster than traditional manual filing. It does not require trips to a filing office or use of the postal service. The manual processes associated with receiving and storing the filings can be fully automated and completed almost instantaneously. The filings will not only be recorded faster, but they will also be available to be searched much earlier than under existing methods.

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7. INTERNATIONAL TRADE ADMIN., U.S. DEPT OF COM., *supra* note 4, at 25-1.

8. *Id.*

*Reduced costs.* Transaction costs can also be reduced. The entire filing process can be simplified to make it less expensive to prepare a filing, send it, and have it recorded. The less paper that must be handled over and over again, the lower the costs of filing.

*Increased accuracy.* Electronic templates and error correction programs can be built to increase accuracy, which will result in significant cost savings.

*Uniformity.* Electronic filing can help create more uniform filing procedures and can facilitate multiple jurisdiction filings which will better protect secured parties.

*Broader range of filings.* Present filing systems are cumbersome, and because of this, filing covers fewer types of transactions. The advent of electronic filing systems will overcome many of the shortcomings of the present systems and make it possible for additional types of interests, such as leases or bailments, to be filed and searched. This in turn will enable users to obtain a much clearer picture of a borrower's financial status and other creditors' interests.

The net effect of greater speed, reduced costs, increased accuracy, uniformity, and the potential for a broader range of filings is a more productive, competitive business climate in our country. It will cost business less to obtain faster, more reliable commercial information than ever before, which itself will lead to a more robust economy.

#### IV. ROLES OF GOVERNMENT AND THE PRIVATE SECTOR IN ELECTRONIC FILINGS

Vice President Gore's NII Task Force has said that "the private sector will lead the deployment of the NII."<sup>9</sup> Similarly, I suggest that the effective implementation of electronic filings can best be accomplished by the private sector.

Although both the NII and electronic filing will require large investments, government cannot and should not pretend to be the venture capitalist of these projects. As the NII Agenda for Action points out, the ratio of private to federal investments in the information infrastructure is already running as high as fifty to one.<sup>10</sup> Government should not divert billions of dollars of public money in order to duplicate services that private industry can provide in a more efficient, cost-effective manner.

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9. The Information Infrastructure Task Force, *supra* note 5, at M178.

10. *Id.*

While America's information industry is abundantly competitive, government cannot and should not be the competition. Rather, government should make the rules, set the standards, pioneer research, and then get out of the way. It is bad social policy and unworkable economic policy to involve government in creating information services. Worst of all, it is dangerous information policy to put government, any government, in control of information.

### CONCLUSION

Our country's future is dependent on a strong information infrastructure. Developing effective electronic filing systems will play a crucial role in our future economy, and the nation looks to your leadership in making this happen. Best wishes for a successful conference.

