

Law Quadrangle (formerly Law Quad Notes)

Volume 13 | Number 1

Article 3

Winter 1969

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Arthur R. Miller

University of Michigan Law School

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Recommended Citation

Arthur R. Miller, *Impact of Computers on Credit Bureaus*, 13 *Law Quadrangle (formerly Law Quad Notes)* - (1969).

Available at: <https://repository.law.umich.edu/lqnotes/vol13/iss1/3>

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Impact of Computers On Credit Bureaus

by Professor Arthur R. Miller

Statement before the Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary of the U.S. Senate, December 11, 1968.

I am deeply honored by the invitation of this Subcommittee to participate in these important hearings on credit bureaus. Although the invitation was tendered less than a week before this statement had to be submitted, which gave me virtually no time to prepare adequately, I feel that the subject matter of these hearings is so important that I am pleased to be here to offer what little assistance I might give to this body despite the pressures of time.

I am compelled to begin with a disclaimer. I admit to being a professor of law at the University of Michigan Law School; but I deny having any special competence in the fields of antitrust or monopolization or economics. My last—indeed, my only—exposure to these subjects was as a student at the Harvard Law School in 1958 in a course offered by Professor Donald F. Turner. Nor do I claim any expertise in the areas of credit, credit bureaus, or commercial law.

Unless I have badly misconstrued the Subcommittee's invitation, I assume that I have been asked here because of my deep involvement during the past two or three years in the field of computers and the law. By this I mean the study of the ways in which modern computers and the allied information transfer technologies will impact and challenge vital aspects of our business, cultural, social and private lives so as to require a reaction and perhaps a doctrinal adjustment by our legal system. The areas in which I have been active include the interaction of computer technology and personal privacy, copyrights, patents, education, and, to a lesser degree, communications and judicial administration. In this connection, I have had the privilege of appearing before the Senate Subcommittee on Administrative Practice and Procedure during its investigation of computers and privacy and the Senate Subcommittee on Patents, Trademarks, and Copyrights during its hearings on the question of computers and copyrights. In addition, I have expressed my views on these subjects in articles in the Michigan and Minnesota Law Reviews, the Atlantic Monthly magazine, and a number of other publications.

Thus, I perceive my function as being primarily one of offering a few observations as to the impact that computers and related technologies will have on the ways in which credit bureaus will function in the future and the form that industry may take a decade or two from now. I assume that one of the basic concerns of the Subcommittee is the possible effects these transformations of the credit bureau industry may have on competition. Thus,

with apologies for my limited appreciation of antitrust law and policy, I will try to suggest ways in which a computer-based credit bureau industry may raise serious questions under existing principles and philosophies of competition.

The Computer and Its Applications

All too often computer technology is viewed simply in terms of its ability to process, store, and retrieve data. We are all well aware of the enormous capacity of computers to reduce large quantities of information to miniaturized electronic notation and to reproduce selected portions of that store almost instantaneously. It is now a common cliché to note that the entire informational content of the

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Library of Congress can be reduced to machine readable form, stored in a small bedroom-sized room, and retrieved by the typing of a command on a computer terminal.

If I can convey but one essential fact to the Subcommittee this morning, it is the following: the computer is not simply a sophisticated indexing or adding machine, or a miniaturized library. It is also the keystone for a new communications medium whose capacities and implications are today but beginning to be perceived. When localized computer systems are interconnected by one or more of the modern communications vehicles (telephones, microwave relays, satellites, and lasers), we will have the technological ability to move large quantities of informa-

Prof. Arthur R. Miller



tion over vast distances in units of time (anoseconds) that are so imperceptible they are difficult to comprehend. A number of people who seem to have the gift of perceiving the future believe that these innovations are as significant as the invention of movable type. In the future, information may not be thought of in terms of alphabetical imprints in a book but rather as holes on punch cards, magnetic fields on tapes or discs, electrical impulses moving through the memory core of a computer, and, perhaps radiations generated in vats of complex chemicals. Given these possibilities, it is peculiarly appropriate for this Subcommittee to be examining the future shape of the credit bureau industry—an industry that is entirely dependent on the ability to manipulate information.

In addition to the communications characteristics of computer technology, two other aspects of the new machines should be noted as potentially relevant to the Subcommittee's study. First, the increased speed and versatility of the new computers, combined with drastic reductions in cost, permit users to gather and store quantities of information and to undertake the kind of analyses of data that were never feasible before. One esoteric example of this new capability is the computerized formulation of complex models of our environment based upon large numbers of variable characteristics, which permit scientists to predict behavior and phenomena with high degrees of accuracy. "Multivariate" analyses of this kind, however, create a need for detailed information rather than the types of summaries that social scientists and other information users have traditionally employed.

It is now possible to use the same basic data again and again for difficult analytic purposes. From the point of view of analysis, the original unaggregated microinformation offer [sic] greater potential than tabulations of a more aggregative nature. Where relationships of data inherent in the basic reporting unit are important, aggregate tabulations often hide more than they illuminate. (Report of the Committee on the Preservation and Use of Economic Data to the Social Science Research Council (April, 1965) (the Ruggles Report).)

Given this increasing demand for "microdata," and the demonstrated tendency of organizations to gather and exchange more information as their data-processing capabilities expand, the inevitable result will be a heightened ability to use data for variant purposes. The implications of this for the credit bureau industry will be described in a later section of this statement.

Another, and perhaps even more significant, development in computer technology is the widespread use of "time sharing" systems in which a central memory unit is linked to a number of remote terminals. The economic factors leading to this development are not difficult to discern:

Under the traditional batch-processing method, access to the computer was limited to one user at a time, although even the most complex scientific problems consumed less than 10% of the

computer's capacity. This kept data processing charges high and limited the market for computer services. Multiple access computers make it possible to soak up this excess capacity. Indeed, computer power may experience such drastic cost reductions that it will be priced as low as, say, electricity. (Irwin, *The Computer Utility, Competition or Regulation?*, 76 Yale L.J. 1299 (1967).)

Although the bulk of this on-line data processing currently is transmitted over lines leased from telephone companies, it would be fallacious to regard the data processors and the common carriers as discrete entities even at the present time. The remote-access, time-sharing computer system possesses the capability of switching the messages among several different customers, which is a hallmark of the communications common carriers; at the same time, computer firms are considering the feasibility of using private microwave systems to connect data centers. To complete the circle, the telephone system is beginning to convert its electro-mechanical switching devices to electronic equipment, which will give it the capabilities of a data center, and Western Union is establishing computer centers in order to provide customers with data-processing services. This pattern of agglomeration and growth has been termed an "almost biological" development of a natural monopoly, similar in kind and magnitude to the past networking of railroads and telephone systems. These movements in the data-processing and transmission industries have been the subject of considerable concern to the Federal Communications Commission during the past year (F.C.C. Notice of Inquiry, Docket No. 16979) and I will return to them and their relevance to this Subcommittee's hearings at a later point.

Because of their flexibility, the use of modern computer systems has been proposed for a wide variety of private and governmental functions. In addition to proposals for a federal National Data Center to consolidate government statistics programs, a number of state and local governments and the Federal Bureau of Investigation have begun computerizing a variety of records, frequently in systems that permit remote access from multiple terminals. In the private sector, computerized information systems have been adopted by hospitals, a variety of businesses, and educational institutions; future applications of the new technology are a fertile field of speculation, particularly when the possibilities of mating computers with other communications media and various kinds of remote sensing devices are considered. It is against this constantly accelerating trend toward computerization and more sophisticated utilization of the technology that we must view the implications of the computer on the credit bureau industry.

A Computerized Credit Bureau Industry

At the risk of repeating what earlier witnesses may have presented to the Subcommittee, I would like to indicate some of the ways in which the new information technologies currently are being utilized by the credit bureau industry and how they may be employed in the future. It is obvious that the genius of the new computer technology is peculiarly well suited to the needs of an information

gathering, processing, and disseminating business such as the credit bureau. The basic stock in trade of these companies is the acquisition of large quantities of data that can be readily manipulated so that particular items from the information store can be made available in a relatively short period of time. Thus, it is not surprising to learn that the credit bureau industry has been active in the field of computerization for several years.

As early as September, 1965, Credit Bureau Data Corporation inaugurated a large scale, on-line computerized credit information system in California. In 1967, that company tied its Los Angeles and San Francisco offices together to provide, in effect, a statewide computer credit network. During the same year, Credit Data opened a computerized center in New York City and plans are under way for a computerized center in Detroit. Credit Data uses IBM equipment and responds to telephone inquiries from subscribers by reading the print-out of the computerized record on the potential borrower. The response time averages two minutes.

At present, Credit Data serves an area with a population of over 35 million people and, according to its President, Dr. Henry C. Jordan, has credit information on over 20 million Americans already in computer storage and is adding new files on approximately 50,000 Americans each week. It is interesting to note that Credit Data's original data base was secured by convincing a number of California banks to turn over their credit apparatus to them; Bank of America alone gave Credit Data 8 million items. It seems clear that Credit Data Corporation will continue to develop regional credit notes and interconnect them by wire or microwave relay to establish a national credit data network. It also seems reasonable to forecast that large subscribers to Credit Data's services will be provided with remote access to terminals to gain direct entry into the computerized files of the bureau in order to reduce the cost of responding to inquiries. Thus, a request for information at one point in the system would provide access to relevant data maintained anywhere in the system.

The Associated Credit Bureaus of America has been working on computerization since August, 1965, when research began on a real-time computer system for member credit bureaus. The ACB system has been installed in Dallas and Houston, Texas, and another operation exists in Chicago. There currently are more than 2,000 credit bureaus in the association, serving 365,000 credit granters, and maintaining files on approximately 100 million Americans.

In September of this year, ACB announced that it had signed an agreement with International Telephone and Telegraph Corporation to provide ACB members with computerized credit reporting services. The new ACB-ITT system will offer local credit bureaus the option of computerizing their own operations without bearing the heavy financial burden of buying or leasing computer equipment and developing their own data processing systems and programs. According to Harold S. Geneen, President of ITT: "ITT is currently accelerating its programs for the establishment of an international system of data processing service centers, supplementing existing operations in England, Sweden, Germany, and France."

Mr. John L. Spafford, Executive Vice-President of ACB, added: "This system will combine the most advanced communications and computer technologies through the use of 'third-generation' computers, standard communications lines, and a variety of typewriter-like or visual display terminals." At the moment, computerization by individual bureaus within the association is contemplated. However, given the resources of a company such as ITT, the raw data available in the files of the more than 2,000 credit bureaus that are members of the association, and the inexorable march of computer technology in terms of increased speed and capacity and declining costs, the networking capacity and the implications of the ACB-ITT operation seem obvious.

Further documentation of the movement of the credit bureau industry toward computer-based operations seems unnecessary. Suffice it to add that other companies have plans under way for providing credit services and an organization known as Hooper-Holmes, which seems to maintain a file of derogatory information, also has developed a computer base for its operations. Other likely candidates for computerization are Retail Credit Company, which apparently does more than simply provide credit data and maintains dossiers on 42 million Americans, and Credit Bureau Reports, Inc., which operates as a mechanism for switching distant requests to local bureaus.

Implications of a Computerized Credit Bureau Industry

At this juncture, I would like to suggest some *possible* implications of the trend toward computerization of credit information. I have underscored the word "possible" in the preceding sentence simply to remind the Subcommittee of my earlier disclaimer of any expertise in the fields of antitrust or economics and to emphasize the fact that at present we are not dealing with actualities but rather are engaging in crystal ball gazing. Thus, I fully recognize that I may be guilty of having a vivid imagination or perhaps being obsessed by the Buck Rogers quality of the new technology, and I certainly do not wish to make any claim to clairvoyance. I simply will try to suggest several possible implications for the future in the area of competition within the credit data industry. The pressures of time and space necessitate a rather sketchy presentation.

I will not deal with what is the most obvious implication of an expanded and computerized credit bureau industry—the threat to individual privacy. That subject has been dealt with at length by other Subcommittees of both Houses of Congress and my views have been presented there and in law journals and other periodicals. Of course, should members of the Subcommittee desire to speak to that issue, I would be most happy to pursue the subject and to respond to any questions.

Perhaps the most striking potential consequence of the trend toward computerization is centralization of power within the industry. The incredible growth of Credit Data Corporation since it began to operate on a computerized basis just a few years ago and the implications of an on-line national computer network operated by the Associated Credit Bureaus of America indicate the possible emergence in the future of but a limited number of

credit reporting services or networks. The realities of the situation are that the costs involved in acquiring and operating the capital equipment needed for a computer network, coupled with the cost of developing the massive data bases necessary to operate in this field, let alone the data bases that will be necessary to compete five, ten, or twenty years from now, will make access to the industry an extremely difficult thing to achieve. Moreover, it must be recognized that storage capacity, speed of response, and the ability to transmit data over large distances, are essential to successful credit bureau operation, which means that a computer-based system is likely to be the only way to survive competitively in the future. Thus, although there now are numerous independent and unaffiliated credit bureaus, there is a serious question as to whether they will be able to continue to operate in a field dominated by one of a few national computerized credit data networks.

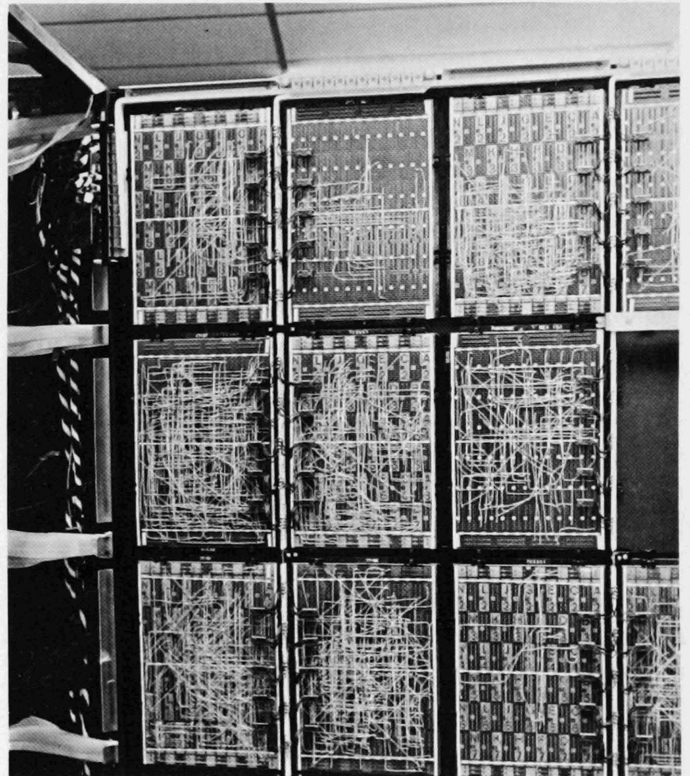
There is a natural and close affinity between those who possess raw information and those who control the technology needed to manipulate and disseminate that information.

Of course, sheer size or centralization of power in a limited number of competitors is not necessarily an evil, if efficiencies and economies are the result and these are passed on to the network customers. Given a credit bureau industry operating on a network format, an oligopoly structure seems natural and, from the perspective of allocating communications resources (e.g., transmission lines or band widths), desirable—as long as uniform pricing and unduly high profit levels are not the result.

There are manifestations of this aggregation of power in the credit data industry that clearly represent a potential danger, however. Close attention must be given to the interrelationships not only among the computer-based credit bureaus themselves but also among the bureaus and the common carriers who will transmit and disseminate the data, the computer manufacturers and systems companies who prepare the hardware and the software that will make the network function, and the credit granting agencies who will be the primary, although not the exclusive, users of the credit information. Mergers and contractual relations within this vertical complex deserve close scrutiny.

There is a natural and close affinity between those who possess raw information and those who control the technology needed to manipulate and disseminate that information. The recent spate of marriages between computer manufacturers and book publishers offers what may be a prevision of the possible future structure of the credit information industry. In the computer-publisher context, we can expect the development of fully integrated information systems—the publishers, through their vast array of author-publisher contracts and ever-increasing library

of copyrighted works, controlling the raw material for the nation's literature and the computer companies controlling the modes of disseminating that literature through a new medium of communication. By the same process, a small number of credit networks may be able to secure virtual control over the sources of credit information, because of 1) their special relationship and leverage with the credit granters (the Credit Data-California banks experience), and 2) the possible future barriers against entrance into the credit bureau industry. The panorama can be made even starker if you add the possibility of cooperative action between the credit bureaus and the communications companies (the ACB-ITT model).



Another potential concern stems from the likelihood that the capacities of the new technology will cause credit bureaus to acquire higher levels of information about individual and corporate borrowers than they have in the past. If we assume that the cost of storing, retrieving, and transmitting a unit of information will continue to decline, we also can assume that credit data networks will tend to obtain more information. In addition to the obvious threat to privacy inherent in the existence of credit bureaus maintaining extensive dossiers on individual Americans, it seems clear that the enlarged information pool of the future may be used for commercial purposes beyond traditional credit granting, especially if some aspects of the information become tangential or remote from what has hitherto been regarded as typical financial data.

The credit network of the future may be used by insurance companies, bill collectors, all levels of government, employers in a variety of industries, and anyone in need of specialized mailing or solicitation lists. What

today generally is a simple service for credit granters may tomorrow emerge as a full time, all purpose information gathering and reporting network. Some indication of the growth in functions of credit bureaus is found in Credit Data Corporation's computerized credit card charge authorization program.

The possibility of this transformation taking place would be increased if either the common carriers or the computer manufacturers entered the credit data field. Since computer hardware and leased communication lines are substantial elements in the cost of a computer network, the independent credit networks might be forced to offer a greater variety of information services to get maximum utilization of their data bases in order to offset the natural cost advantages of the computer manufacturers and common carriers. This in turn might encourage a further increase in data accumulation by the credit networks, which might be accompanied by a great deal of information interchange (coercively or voluntarily) between the network and each of its clients, many of whom may not be credit granters. The spectre of this type of centralization of information in an unregulated private company or group of companies is not a particularly attractive one. Variant information services that today are performed by a large number of independent companies and investigators may someday be performed by one or a small number of large capital aggregations.

As a practical matter, the decision whether to grant credit to a particular customer may be made, or at least affected, by the credit bureau network if it acts not only as a conduit of credit information but also as an information evaluator or provides recommendations to its subscribers.

A computerized credit bureau industry also may have some ramifications on the decision-making process of credit granters. A tendency toward centralization in the information gathering and supplying field will tend to reduce the number of sources to which the credit granter is able to refer during the decision-making process. It also might have the correlative effect of increasing the credit granter's reliance on the data supplied by his credit bureau. In addition, a computer based network—among ACB members, for example—will create a pressure toward uniformity as to the information collected and uniformity in the manner in which information is recorded and reported. A degree of uniformity will be necessary to insure that a computer language and format is employed that is compatible with the equipment used by all network members so that the information can be transmitted and reproduced in a meaningful form at each of the terminals on the network. Indeed, the ACB already has developed a credit-reporting language that is suitable for computer use.

Thus, the possibility exists of an agreement among network or association members that only certain types of information will be collected or supplied to subscribers. An agreement of this type, although defensible in terms of economies of operation, would seem to have the same type of anti-competitive tendencies as an industry or association agreement that only products of a certain description would be manufactured—a practice whose legality seems doubtful under Standard Sanitary, 226 U.S. 20 (1912). The possibility also exists that standardization of credit reporting will be employed as a device for securing uniformity in a number of other areas of network activity, including pricing.

Another consequence of standardization is that all of the credit granters who are considering lending money to a particular borrower are likely to receive precisely the same information even though they make their inquiries of different members of the network. Furthermore, if, as suggested earlier, the credit bureau industry of the future will offer only a few sources of credit information, it is unlikely that one potential credit granter will procure markedly different information from that obtained by any of the other potential granters even when different systems are used. If all potential credit granters have identical information at their disposal, their decision making may well follow a similar pattern, thereby reducing competition among the credit granters. Furthermore, as a practical matter, the decision whether to grant credit to a particular customer may be made, or at least affected, by the credit bureau network if it acts not only as a conduit of credit information but also as an information evaluator or provides recommendations to its subscribers. Credit guides and blue or black books already are a commonplace. In addition, practices of this type may well be necessary in the future if the accumulated information about consumers increases to the point at which the mass must be distilled for the user by the network.

A final note about the potentially undesirable aspects of the computerized credit bureau network of the future. Other than Credit Data Corporation, which is an individual company, future computer networks in this industry are likely to develop on a cooperative or association basis. The ACB is an illustration of this. The ACB is a trade association, which, on the basis of cases such as Associated Press, 326 U.S. 1 (1945), may be prohibited from refusing to deal with or acting in a discriminatory manner toward nonmembers insofar as utilization of the network is concerned. Indeed, it is my understanding that the ACB already is subject to a consent decree. As a trade association, the ACB and any other network of computer bureaus must be viewed with a degree of concern and their practices with regard to standardization, information exchange, and self-policing kept under scrutiny. All I am expressing at this point is a general cautionary note about trade associations and a particular concern about the possibility of an association's denying access to its network to another member of the industry.

Before closing, I would like to state unequivocally that

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anything so pervasive and so important to the general practice of law as this project. If we can, and *if* we use the resulting new law intelligently, we'll have our answer and that of the public to the probate avoidance controversy. If we cannot, we won't block changes in probate law and practice. Present trends, if unchecked, dictate that *probate avoidance* will become the main road with wills and intestacy becoming infrequently encountered by-ways. Present trends also suggest that estates law and lawyers will become increasingly irrelevant to the ordinary person's estate problems. Our failure to agree on a useful new Code won't change these trends. It will prove only that lawyers as a group are so incapable of constructive reform that they cannot even agree on changes which seem necessary to the perpetuation of the profession as we have known it. I, for one, am not ready to believe that this will be the case.

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although this statement might contain what some would term a "parade of horrors," it is not intended in any way to suggest that I oppose or even have reservations about the desirability of computerization in the credit data field. The obvious efficiencies and economies in time

and money that will accrue should benefit all users of credit information. Moreover, I firmly believe that one consequence of the recent debate over computers and privacy will be a recognition of the need to develop procedures for exploiting the new technologies while at the same time safeguarding the fundamental right of a citizen to be let alone. Thus, I have every confidence that the credit data network of the future will more adequately protect individual Americans from unwarranted invasion of their privacy than the existing information systems seem to do. My objective in this statement simply has been to explore the possibilities of the future and highlight those sensitive areas that require continued vigilance by this Subcommittee and the other governmental organizations charged with the development and enforcement of this nation's antitrust and related policies.

In conclusion, I would like to reiterate my gratitude to the Subcommittee for its invitation to appear here today and voice what I admit to be highly tentative observations about computers, credit bureaus, and competition. I hope that in some small measure I have contributed to these extraordinarily worthwhile hearings, which to me represent a very desirable recognition by the Congress of the need to study the manifold ways in which the new technologies affect our society.