

N O N E O F Y O U R B U S I N E S S !

THE RIGHT TO PRIVACY IN THE INFORMATION AGE

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by

C. Kenneth Powers II

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In mid-December last year, Chicago Tribune columnist Mike Royko recounted what he described as one of the worst cases of phone harassment, involving a young woman whose husband had died suddenly and unexpectedly. He reported:

Even before the funeral was over, the calls started coming to the woman's home from a man who made cruel and sordid jokes about her loss. It was obvious that the man had known her husband and hadn't liked him. But the dead man had been in a business that brought him in contact with hundreds of people. Some were competitors. Some were people he had fired or hadn't hired. A few were disgruntled customers. So the police said it would be almost impossible to track down the vicious caller. The calls went on for several weeks. Not every day. He'd stop long enough so that she thought he'd finally gone away. Then they'd start again. Sometimes in the morning, before she left for work; sometimes late at night, awakening her.

She got an unlisted number and for several weeks there were no harassing calls. Then they started again; somehow the creep, as Royko described him, had found her new number. She changed it again and connected an answering machine that instructed callers to leave a message at the tone. Some callers would just hang up. No one knows whether the hang-up calls were from those who, for a variety of reasons, are unable or unwilling to leave a message on an answering machine -- or from the abusive caller whose perverse pleasure was frustrated in having to talk to a recording. Royko continued:

Fortunately, he became tired of the sick game. Or moved away. Or, even better, stumbled in front of a fast-moving truck. Whatever the reason was, she hasn't been bothered again. . . . In briefly telling her story, it's impossible to describe the emotional pounding she endured. Her fear that he might be capable of something more violent than a phone call; that he might show up at her home some night. She had never held a gun in her life, but she bought a pistol and learned to use it. (It's impossible) to describe how the fear turned to hatred. She had always been a gentle person. But she learned to hate this stranger for his

cowardly cruelty. She once casually mentioned that she actually hoped he would come to her home, try to break in, do something threatening, so she could pick up her gun and kill him. And I don't doubt that she would have. . . . I've rehashed her story because of the debate over a new telephone service called Caller ID that's been introduced in several states. . . . For a modest monthly fee, a device is attached to your phone. When your phone rings, the number of the calling telephone appears on the device. A wonderful invention. Had it been in existence during the many months that young widow was being tormented, I doubt if the creep would have made more than one phone call. She could have simply said: "Your phone number is _____. So that knowledge means I'm one small step from giving it to the police. And the next step is my signing a complaint, and you will be standing in front of a judge. Care to dial again?" It's impossible to estimate how many people, especially women, have been abused by panthers, heavy breathers, dirty talkers, threat makers and other verbal degenerates. The phone companies say it regularly runs into the thousands. And those are just the victims who report the calls. There are probably as many or more who simply hang up and tell no one. But in a few states that have introduced the ID service, the creep-calls have dwindled. Even women who don't have the service are being bothered less because the callers can't be sure; they might have it. You might think that this technology would be widely applauded. But, no, there are politicians and others who, in some strange twist of logic, say that Caller ID is an invasion of privacy. Whose privacy? The callers' privacy. That's right. They say that when someone phones your home, that person has the right to be just a voice on a phone line, and you have no right to know who has phoned you or where they are phoning from. Or, as has been pointed out dozens of times, it's like someone knocking on your front door, your asking "Who's there?" and the person on your porch saying, "None of your business."

However, there are legitimate circumstances under which the calling party's location probably should not be revealed -- such as when a battered wife must call her husband from wherever she has found refuge. Even in the ordinary course of events, many may find themselves in circumstances where they are reluctant to give a phone number -- such as when they call a used car salesman to inquire about some deal at his lot. In fact, there are even

situations when it may be appropriate to mislead the called party as to the identity of the calling party -- such as when an undercover policeman calls a drug dealer.

Privacy Issues in the 1990s

The controversy surrounding Caller ID -- achieving some kind of balance between the rights of callers and the rights of those they call -- is what columnist William Safire has termed "the first great personal privacy issue of the Nifty Nineties." But it's just the tip of the iceberg. The computer technology that underlies the advances in telecommunications has broader implications with the dawning of the Information Age.

Computers allow governments and business to collect and organize vast amounts of information about their citizens and customers. The marriage of computer and telecommunications technologies allows those mountains of information to be disseminated via on-line databases and information services. As a writer in the New York Times observed last October, "One need not be pathologically paranoid to be worried about the security of all the personal data that we have given, deliberately or otherwise, to computers over the years."

For example, at South Central Bell, the billing process is computerized and the typical monthly statement includes a listing

of long distance calls including each number called, the date and time each call was placed, the duration of each call, etc. With a copy of someone's bill and access to a reverse directory -- printed or electronic -- imagine the conclusions that could be drawn about that person's affiliations. In fact, that's why a court order is required before South Central Bell will disclose anything about a customer's account to anyone other than the customer or his authorized agent. The computers used by retailers and credit card companies keep similar records of purchases such as clothing, travel, entertainment, and on, and on. The perpetual absence of broccoli on computerized receipts from the grocery store might reveal the members of the Bush league. Computerized records of transactions at book stores and video stores might reveal a Marxist reading list or a penchant for soft-core pornography. To all that, add credit records, Social Security records, medical records, military records, tax records -- and as the New York Times said:

It becomes clear that computers contain an incredibly detailed picture of (a person's) life, including occupation, income, family, health, relatives, nationality, education, criminal record, buying habits and so forth. All the information was gathered innocently enough. Viewed from the perspective of its original intent, it seems innocuous. But in light of the publicized break-ins of supposedly secure national computer systems, the potential for that information to be obtained and cross-referenced with other databases, and to be used for purposes wholly unrelated to the original intent, is frightening to many people. Most of us have no way of knowing all the databases that contain information about us. In short, we are losing control over the information about ourselves. Many people are not confident about existing safeguards, and few are convinced that they should have to pay for the benefits of the (Information) Age with their personal freedoms.

What's happening is that as technologies change, so do the ways in which we deal with others. The American Civil Liberties Union contends that as new technologies become available, a tension is often created between existing societal values and expectations, and the commercial opportunities posed by those advances. People care deeply about their privacy, and cherish the ability to control personal information. Even if they have done nothing wrong, or have nothing to hide, most people are offended if they are denied the ability to keep certain personal information confidential. Crucial to one's sense of self is the right to maintain some decision-making power over what information to divulge, to whom, and for what purpose. Many fear that the uses of new technologies threaten to overtake current law, leaving society without a new set of laws and social mores to limit and define the extent to which new devices can be used to know all we can about each other, often without regard to each other's wish to keep information private.

Eight years ago, analyzing the results of a survey on new technology and its consequences for American life, Louis Harris & Associates concluded, "Particularly striking is the pervasiveness of support for tough new ground rules governing computers and other information technology. Americans are not willing to endure abuse or misuse of information, and they overwhelmingly support action to do something about it."

Two years ago, a survey by Trends and Forecasts found that 70 percent of the respondents considered their personal privacy very important, with many expressing fears that their privacy was in jeopardy. Half of the respondents said that new laws were needed to protect privacy.

Last year, another Harris poll found growing public demand for privacy legislation, with an overwhelming majority expressing fears that their privacy was in jeopardy. The survey also found that 79 percent of the respondents would add privacy to the list of certain inalienable rights to "life, liberty and the pursuit of happiness" if the Declaration of Independence were rewritten today.

The Right to Privacy

At a hearing conducted by a House of Representatives subcommittee last September, the legislative counsel for the American Civil Liberties Union testified:

"The right to privacy -- as embedded in the U.S. Constitution and numerous federal and state statutes -- is the central principle that limits, as well as fosters, the use of new technologies. The right to privacy encompasses fundamental values of liberty and autonomy, including both "the right to be left alone," as Justice Louis Brandeis defined it, and the right to control the dissemination of personal information. Although the word "privacy" does not appear in the U.S. Constitution, the U.S. Supreme Court has interpreted the Constitution to grant individuals a right of privacy, based on the First Amendment freedom of association and expression, the Fifth Amendment privilege against self-incrimination, the Fourteenth Amendment's guarantee of "ordered liberty," the unenumerated rights guaranteed by the Ninth Amendment, and most principally, in the Fourth

Amendment protection of persons, places, papers and effects against unreasonable searches and seizures. The scope of the Fourth Amendment once hinged on property-based notions of liberty that linked people's privacy rights to their relationship to certain places. However, in 1967, in United States v. Katz, the Supreme Court expanded its interpretation by ruling that the Fourth Amendment protects people, not places. In Katz, the Court held that warrantless wiretapping is unconstitutional, and created a standard for determining constitutionally protected "zones of privacy" in the conduct or information disclosed. Central to the Katz formulation is whether the individual takes certain measures to preserve his or her privacy. In practice, the Katz "reasonable expectation of privacy" standard has often been used to weaken privacy protections. The objective "expectation" model can only reflect, not prevent, deterioration in societal respect for privacy. Applying Katz, the Court in later cases determined that an individual's privacy has not been violated by certain intrusions because society's "expectation of privacy" has been persistently lowered by the circumstances of modern existence. The Court's rulings are not surprising since many people can no longer claim to "reasonably expect" privacy even in the most intimate activities of their lives.

In response to the Supreme Court's rigid interpretation of the Constitutional right to privacy, Congress has enacted legislation that gives people expectations of privacy in certain information held by others, including credit, education, financial, cable and video records. In the area of communications, following Katz, Congress passed the Wiretap Act of 1968, which limits severely the government's ability to intercept and record communications. And, in 1986, Congress passed the Electronic Communications Privacy Act to update the Wiretap Act to cover the interception of new forms of electronic, non-aural communication.

Caller ID and the Right to Privacy

Last year, as the Kentucky Public Service Commission considered General Telephone's proposal to offer Caller ID in the state, the expert witness hired by the Attorney General, when asked about the problems that Caller ID poses, replied:

Caller ID is a unique type of service. Unlike most other telephone services, the mere availability of Caller ID imposes social and economic costs on all subscribers, even those who do not want the service, while it provides benefits to some others. The costs stem from the customer's loss of control over his or her telephone number. Patterns of telecommunications have been built on the assumption of anonymity. There are a host of situations in which the average person seems to want to place a call without revealing his or her telephone number. When Caller ID robs them of that ability, the social costs imposed are a disruption of communications patterns and the economic costs are the expense to consumers of restoring their privacy and anonymity.

The Attorney General's witness identified four broad categories comprised of 20 specific types of problems with Caller ID, including:

Disruption of Routine Communications

- Requests for consumer information would be foregone when consumers choose not to call rather than disclose their telephone numbers in commercial transactions.
- The revelation of one's location could undermine delicate social relationships (e.g., a call from a lawyer's or doctor's office).

- The location of people could be revealed as they move about their business, conveying information the calling party may not wish revealed.
- Identification of callers might reveal vital information about their plans.

Commercial Abuses of Telephone Numbers

- Identification of the calling telephone number could result in its inclusion on more lists and in annoying call backs.
- Combining the phone number with other data could compromise personal information.
- Services triggered by a telephone call could be mistakenly offered to someone possessing a number incorrectly taken from a Caller ID register.
- Businesses could choose to not answer calls from specific exchanges based on the social, economic, racial or other characteristics of those exchanges.

Special Situations

- Organizations such as hot lines, tip lines, political organizations, government agencies, etc., require strict anonymity to induce callers to seek help or offer information.
- The location of certain organizations requires secrecy for the protection of residents.

- Certain professions require working from home and the revelation of their location could undermine their ability to conduct business.
- Highly visible public persons could be subjected to annoying or harassing calls should their number become available.

Interpersonal Problems

- Valuable calls from unfamiliar locations might mistakenly go unanswered (such as a wife calling from a gas station).
- The information about an incoming call for one household member would be available to other household members for whom it was not intended, compromising private relationships.
- The person who answers the telephone at a number obtained through Caller ID may not be the same person who placed the original call, causing problems of mistaken identity.
- Mistakes happen in dialing and a Caller ID subscriber who misdials the number of a perceived annoyance caller can create an even greater annoyance.
- Many perceived annoyance calls are innocent mistakes, such as wrong numbers, and Caller ID may result in an innocent misdialer being harassed by an angry Caller ID subscriber who feels wronged.
- Some harassing calls are dialed randomly, and if Caller ID is used to dial the harasser back, the number would be revealed and a prolonged exchange of calls may be initiated.

- Reverse directories may be out of date, leading to mistakes in associating numbers with addresses.
- The cost of Caller ID and subterfuges to protect one's privacy would result in lower-income households being less able to afford those services and enjoying less privacy.

South Central Bell, on the other hand, sees considerable public benefit in making Caller ID available to customers and will soon file a tariff to offer the service in Kentucky. Caller ID would offer residential and business customers alike the ability to control the calls they receive and other features that have not been available since operators handled all calls. Residential customers would benefit from the ability to screen incoming calls, fewer annoying calls and better public safety services such as Universal 911 Emergency Reporting Service. Businesses would benefit because the delivery of calling telephone numbers could be used to improve customer service and increase productivity.

Residential Customer Benefits with Caller ID

In terms of reducing the number of annoying, harassing and obscene calls, with Caller ID and the delivery of all calling telephone numbers, everyone would benefit because the calling party would have no way of knowing who subscribes and who doesn't -- and the possibility that the caller might be identified should

be reason to think twice before placing a harassing call. For the occasional harassing call, South Central Bell believes that Caller ID would better serve customers than existing complaint procedures or other new services such as Call Trace and Call Block. When the number of harassing calls is limited, the called party generally is not interested in prosecuting the calling party. In many cases, the callers are disgruntled family members, coworkers, children or neighbors. With the number of the calling party in hand, rather than prosecute the caller, the customer could respond reasonably to have the harassing calls stopped.

Caller ID also would allow customers to screen their incoming calls to determine which ones they wish to answer. Just as one can look through the peephole at home to determine whether to answer the door, a subscriber with Caller ID could look at a telephone number to determine whether to answer the phone. As with a peephole, customers would recognize some callers and be able to make a fully informed decision on whether to take the call. When they did not recognize the calling party's number, they still would have some information to help determine whether to take the call and to hold unknown callers at least partially accountable for their actions.

Caller ID also can serve as a valuable supplement to Emergency 911 services. When direct calls to police, fire and ambulance

are not relayed through a 911 system, Caller ID could provide life-saving information in a crisis. In small towns which otherwise could not afford 911 service, Caller ID could play a pivotal role in meeting the minimum needs of the community. Also, the number of false alarms to fire departments and other emergency agencies should fall with the introduction of Caller ID. Similarly, Caller ID could play a significant role in reducing the number of bomb threats received by schools and other organizations.

Business Customer Benefits with Caller ID

While South Central Bell anticipates that Caller ID predominately would be a residential service, small businesses also would benefit from the service. Caller ID could be particularly helpful in increasing productivity, improving customer service and verifying customer orders. The latter would be especially beneficial to businesses that make local deliveries, such as restaurants and florists. Industry experts have estimated that pizza delivery firms, for example, could significantly reduce the number of bogus orders (currently 25 percent of all orders) with the use of Caller ID. In addition to reducing the expenses associated with fraudulent orders, Domino's has testified that Caller ID would be a significant deterrent to robberies which are set up through false orders.

Businesses also are interested in how Caller ID and similar services could be used to provide more-customized services to their customers. By accessing the information associated with established accounts as they received customers' calls, businesses could increase the productivity of their employees while customizing and enhancing their service to their customers. American Express has estimated that Caller ID could increase productivity as much as 20 percent while increasing customer satisfaction.

While Caller ID would provide consumer benefits as a stand-alone service, the value of the service would be even greater when combined with other telecommunications products and services. For example, by screening the telephone number on incoming calls, a business with a single advertised number could direct calls from new customers to the closest office and those from existing customers to pre-assigned service representatives. South Central Bell is now working to develop a record-retrieval service to provide customers such advanced capabilities. By recognizing the number of the calling party, the service would simultaneously route data from the business's database and the customer's call to the appropriate service representative.

Caller ID also would benefit businesses by improving corporate security. Computers and telecommunications networks could be programmed to accept calls only from a pre-established list of

numbers, significantly reducing opportunities for hackers to gain access. Caller ID also could be used to possibly identify those who attempted to gain unauthorized access. Under other arrangements, the calling number could be used by firms, with the agreement of both parties, to place, ship, expedite or cancel orders for goods and services.

Privacy Implications of Caller ID

On the other hand, the privacy implications of Caller ID are not as great as some believe. Caller ID and similar services in no way change the privacy of the communications between the calling parties. What would change with the introduction of Caller ID would be the loss of the calling party's anonymity guaranteed by the previous limitations of telecommunications technology. However, in the vast majority of calls, anonymity is not an issue. To benefit from a conversation, it is generally in the caller's best interest to be identified. Typically, callers willingly identify themselves; only in limited instances is the calling party truly concerned about being identified.

South Central Bell believes that the public interest would be best served by achieving a balance between the privacy concerns on both sides of a call. Caller ID would allow the called party to exercise some informed control over telephone usage. Because of technological limitations, not regulatory decisions, such

control has not been available to telephone users since operators set up all calls. The introduction of new technology through Caller ID returns some degree of balance between the privacy interests of both parties involved in a telephone call.

Blocking the Delivery of Calling Numbers

Some have proposed that the availability of Caller ID should give callers the ability to block the delivery of their telephone numbers. They believe that the right of the calling party to remain anonymous outweighs the right of the called party to know who is calling. In support of their arguments, they cite the needs of law enforcement agencies, "hot line" callers and professionals, such as doctors. They believe that the called party retains control even when blocking is allowed because they can refuse to answer blocked calls.

What blocking proponents fail to address is the proposed retention of an unbalanced system. If general blocking were allowed, the person placing the call would retain significant privacy advantages over the person receiving the call. In such an unbalanced situation, the value of the service to subscribers would be significantly reduced because the ability to screen calls and match the numbers with existing information would be reduced. Perhaps even more important, general blocking would reduce the public value of Caller ID to extent that harassing

calls, obscene calls, false alarms and bomb threats would not be discouraged.

Despite the significant social benefits of delivering all numbers to Caller ID subscribers, there are times when it would be inappropriate to deliver the numbers of callers who might be endangered by the delivery of their numbers. South Central Bell recognizes and is committed to meeting the legitimate anonymity needs of customers such as undercover police officers and spouse abuse shelters. However, the company believes that those special needs can be addressed without jeopardizing the value of Caller ID by allowing general blocking.

In other instances where anonymity is required, pay telephones offer a high degree of privacy. Although the calling number of a pay phone is delivered, the ability to relate the number to a location is extremely limited. Subscribers also could maintain their anonymity by placing calls through an operator. Likewise, the origin of a call could be masked by placing it through a third party, such as an answering service or an office PBX. While such options could entail some inconvenience and additional cost to the calling party, the limited number of calls requiring such options would make such concerns relatively minor for those who truly need such anonymity. However, the inconvenience and the cost would act as deterrents against using such options to place harassing or obscene calls.

For larger public service agencies and their employees, where calling volumes may be significant, other options to protect the calling parties would be available. For example, out-dial-only service could be linked with an unpublished number to make a line untraceable by the general public. RingMaster service, which assigns distinctive rings to two or more numbers on a single line, could be used to identify return calls to a number disclosed by Caller ID.

South Central Bell is committed to working with all public groups on a case-by-case basis to meet their anonymity needs. South Central Bell believes that options are available or can be developed to satisfy the safety and security needs of special groups in a manner equal to blocking, without undermining the value of the service to the general public.

Abuse of Caller ID Information

The concerns of other Caller ID critics go beyond the disclosure of calling telephone numbers. Some are concerned that businesses could use Caller ID to obtain personal telephone numbers and combine them with economic and demographic information to build "sales prospect" databases.

While Caller ID conceivably could be used to broaden such profiles, in reality it would not greatly expand currently

available information. Caller ID transmits only the telephone number, which is already available to mass marketers through other more accessible means. The limited data available through Caller ID generally would not be favored by telemarketers because they have access to much more information at much cheaper rates through data marketing firms.

Some customers have also expressed concern about follow-up sales calls from businesses that might be called simply to get some information. In some cases, such follow-up calls might be received. However, most customers realize that the businesses they frequent already have their numbers -- as a result of making catalog purchases, paying for in-store purchases by check and providing information to open charge accounts -- which the businesses can use as they wish, and presumably do in a manner consistent with their company policies.

While South Central Bell cannot control how Caller ID subscribers would use telephone number information, experience to date where the service is available indicates that those privacy concerns have failed to materialize.

In fact, Caller ID might actually serve as a valuable tool in reducing abusive telephone sales tactics. By giving customers the ability to screen their incoming calls, they could control the number of sales calls they receive. In addition, by

obtaining the telephone numbers of telemarketers who mislead, harass, frighten or threaten subscribers, consumers would have identifying information which they could forward to appropriate agencies for corrective action.

Caller ID and "Hot Line" Calls

Some individuals also have expressed concern that Caller ID without blocking would significantly reduce the number of calls to emergency hot lines and help lines. Suicide lines, rape lines, police "tip" lines and medical information lines have been mentioned in various forums as examples of services that could be hurt by Caller ID.

Discussions with hot-line providers have confirmed that confidentiality is a critical factor in their dealings with the public. For that reason, hot-line providers have stressed for years that callers remain anonymous, even when technology would not allow them to identify the calling party. In discussions with industry groups, hot-line providers have said that with their past success in assuring the public of callers' anonymity and with continued emphasis on the issue, Caller ID would not reduce the number of calls they receive. In addition, some managers of those services have said that their hot lines would benefit from fewer crank and bogus calls with Caller ID. To

date, there is no indication that calls to hot lines or help lines have been affected where Caller ID is available.

Caller ID and Unlisted Telephone Numbers

Unlisted telephone numbers have traditionally been used by customers to restrict access to their telephone numbers by the general public. Customers have paid an additional charge to ensure that their telephone numbers were not included in telephone directories or available through directory assistance. Unlisted numbers were not intended to provide customers with an additional grant of anonymity when placing a call. To give unlisted customers additional anonymity options not available to the general public would be inappropriate.

Caller ID and the Affordability of Telephone Services

Some consumer groups, such as the Consumer Federation of America, have questioned the price of Caller ID in relation to the value of the service. Because Caller ID is a fully regulated service, the public service commission in each state must review the costs of providing the service in that state and approve the rates charged the consumers in that state. Final tariff approval is somewhat dependent on the commission's goals and regulatory policies such as universal service.

Regardless of the rates approved by a state commission, Caller ID should be considered a discretionary service. Caller ID is not essential in providing telecommunications service to the general public. Thus, Caller ID should be one of the many services from which customers can choose those that best meet their needs. The final assessment of the propriety of Caller ID rates should be formed by the public in relation to the prices for other discretionary goods and services.

Conclusion

South Central Bell believes that the overall privacy interests of telephone users would be best served by Caller ID, with the delivery of all calling telephone numbers. That position is based on the company's interest in balancing the interests of both parties -- those making calls and those receiving calls. Previously customers placing calls could easily control their outward phone usage. With the introduction of new technology, Caller ID offers customers the unique capability to make an intelligent decision regarding the need to answer or return a particular call. Giving the calling party the option of blocking the calling phone number takes away that ability and gives the calling party advantages in the context of privacy.

In embracing a policy of delivering all numbers, however, South Central Bell does recognize that there are instances when

customers have legitimate needs to remain anonymous or to keep their location unidentifiable. For those who need to make an occasional anonymous call, reasonable options exist to place such calls. However, access to such options should not be so easy as to negate the value of the service.

For specifically identified customers whose personal property or personal safety could be jeopardized by the delivery of their number, such as undercover police and spouse abuse shelters, South Central Bell is willing to work with those groups to develop alternatives which will meet their more extensive anonymity needs.