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## The IT Law Observatory

### 1 The background of the IT Law Observatory

In March 1994 the Swedish Government convened a commission to foster widespread use of information technology in Sweden as a means to raise the quality of life in the nation, and to enhance its ability to compete internationally. The commission, chaired by the then Prime Minister Carl Bildt, issued its report in August 1994. Two of the key areas treated in the report were “The Legal System” and “Public Administration”. Among other things, the report set the goal that the law must not unnecessarily prevent or complicate the use of information technology. On the other hand, basic demands for rule of law, information security, and personal data protection must be met. Information technology should be used to make it easy for the citizens to learn about and gain access to legal source materials.

The social democratic Government elected in September 1994 turned the commission into a more regular Government committee, with a secretariat and with tasks set out in a formal committee directive.<sup>1</sup> The interest taken in matters of law has continued to be strong. Among other things, the Commission, in accordance with Government Bill 1995/96:38, decided to set up an IT Law Observatory in November 1996.

### 2 The tasks of the IT Law Observatory

The IT Law Observatory may be described as a sort of think tank intended to supplement the ordinary machinery for lawmaking and, more generally, for legally oriented analyses of matters of law and IT. In other words, the aim is to support work in the Ministry of Justice and other ministries as well as work of central organs in the court administration system, in law enforcement, and so forth. Proposals from the Observatory are channelled through the Swedish ICT Commission and the Commission decides what actions are to be suggested to the Government. The Observatory has strived to establish itself as a national platform for discussions and studies in the field of law and IT. It has arranged numerous seminars, workshops etc. and engaged experts to analyse and comment on various matters. The results have been presented in a report series which by now comprises more than 40 publications.<sup>2</sup>

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<sup>1</sup> Committee Terms of reference Dir. 1995:1. This commission came to be known as the Second ICT Commission (chaired by Minister Jan Nygren). It has been followed by the Third ICT Commission 1996-1998 (Dir. 1996:46) chaired by Minister Ines Uusmann,, and the present Fourth ICT Commission 1998-2003 (Dir. 1998:38) chaired by Minister Björn Rosengren (until October 2002. At present, the question of Mr. Rosengren’s successor has not yet been decided).

<sup>2</sup> A listing of reports published by the IT Law Observatory will be found in Annex 2.

### 3 The Observatory's work in practice

The IT Law Observatory has three layers of participants. The core consists of sixteen members from the public and private sectors who meet regularly to discuss selected issues, listen to oral reports by experts, prepare reports to the ICT Commission, plan the work of the Observatory, and so forth.<sup>3</sup> The second layer consists of persons with whom the Observatory has close working contacts over a short or long period. They may be employees of Government organs, scholars at universities, experts engaged in legislative committee work, etc. Such persons have often been commissioned by the Observatory to write reports on specific topics of interest. The third layer consists of professionals all over the nation who take an interest in the Observatory, study its reports, and participate in its open seminars and conferences. In particular, the third layer comprises a national network of legal scholars taking an interest in the field of law and IT.

The area of interest covers both matters of substantive ICT law (such as the protection of personal data) and applications of ICT in the field of law. For example, the Observatory has arranged a number of conferences on electronic legal information in Sweden and suggested actions and strategies in this field. Generally speaking, there has never been any lack of projects or ideas. Quite on the contrary, the recurring difficulty has been to set priorities and coordinate the work of the Observatory with other organs.

From the outset, it was clear that the Observatory should avoid duplicating work done by other parties – legislative committees, for instance. The Observatory decided early on to try to look beyond the present-day legal aspects of ICT and to engage in a “legal futurology” in a bid to dispel the criticism frequently voiced concerning legal backwardness. Summing up, the Observatory has sought to operate through a speculative, prospective consideration of new legal structures as an adjunct to the discussion of current law (*lex lata*) and argumentation for proposed changes etc. (*lex ferenda*). One can speak of *lex ponderanda* – a speculative, critical analysis of the law. This means that the Observatory has tried to stay ahead, to be proactive. However, this is easier said than done, considering the rapid changeability of ICT and its applications in society where the future and its uncertainties is never very far away. A typical example of the work pattern attempted can be found in the field of real estate law and data communications, where the Observatory, aided by experts in the field, has helped in structuring the issues and preparing the ground for an ordinary legislative committee (see further the contribution by Anders Victorin below on “electronic plumbing”). Similarly, in the fields of access to official documents, protection of personal data, intellectual property rights etc., the Observatory has supplemented the work of legislative organs by preparing reports and arranging discussions on diverse topics.

On the whole the Observatory has been successful. Negative opinions that existed here and there when its work began have faded away. Moreover, the IT Law Observatory soon became a model for the work of the ICT commission, and five other, similar observatories have later been set up for other areas.<sup>4</sup> The value of the Observatory work model has been proven in a number of ways: It has showed itself flexible and easily adaptable to changing needs and upcoming issues. It has succeeded in bringing together theoretical and practical expertise on the national level and building a useful knowledge base that has been tapped by

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<sup>3</sup> The members of the IT Law Observatory are presented in Annex 1.

<sup>4</sup> The five other areas are: Infrastructure, Information security, Democracy and citizenship, Learning and knowledge, Growth. These other observatories have now concluded their work and only the IT Law Observatory will continue until the expected demise of the ICT Commission in May 2003.

many interested parties. Finally, it has demonstrated the need for orchestrated efforts to handle the numerous legal issues of the information society. This need will persist even after the IT Law Observatory has completed its work in May 2003.