THE LAW AND ECONOMICS OF RIGHTS IN VALUABLE INFORMATION: A COMMENT

DENNIS W. CARLTON*

Professor Kitch's paper raises many interesting issues in the area of commercial privacy.¹ I will restrict my comments to the last section of the paper.

First, it is important to emphasize the distinction between an adaptation to circumstances and a response that overcomes an externality. It is undoubtedly true, given the absence of property rights in certain types of information, that firms will adapt by adopting production and management techniques whose value is heavily dependent on information secrecy. Yet, there is no reason to believe that these adaptations overcome the information externality. The observation that many adaptations are possible is not sufficient in itself to allay concerns that laws governing individual privacy or commercial secrecy may be inefficient—just as observing that shopping centers are a response to traffic congestion does not reduce one's concern with congestion. As Kitch states in his paper, welfare properties are extremely difficult to establish when dealing with information problems.

Second, I wish to draw attention to Kitch's observation that firm organization is a preferred alternative to contractual negotiations in a world with no property rights in information. The point seems to be even more general; firm organization, the existence of an organized market, and the existence of imperfectly organized markets are closely intertwined and their presence or absence can be explained by appealing to information considerations. To have an organized exchange, one needs a lot of traders and a homogeneous good. The more idiosyncratic the use of a good, the more likely firms will want to deviate from a common quality good and the less organized will be an exchange. The less organized a market is, the harder it is for an individual with superior knowledge to utilize the "market" to profit from his knowledge because of a limited ability to trade. Often the most efficient way for a person to take advantage of information is to enter the business. For example, if I know that the price of wheat will rise, I can profit from that information by buying long on the organized future wheat market. In con-

* Professor of Economics, University of Chicago.

trast, if I know that the price of paper clips will rise, I cannot buy long in the organized paper clip market because there is none. Instead, I buy paper clips to resell them later. I become a paper clip supplier. In the paper clip case, unlike the wheat case, the firms in the industry will be there precisely to take advantage of their information.

The more idiosyncratic the demand for a product is, the more likely are imperfectly organized exchanges and vertical integration and the more likely the industry will be composed of firms that differ in their knowledge of future conditions, resulting in very different firm sizes. We can also bring in the choice of technology. Knowledgeable firms are likely to have more flexible technologies than less knowledgeable firms so as to adapt production quickly in response to new information. Although I have only sketched the bare essentials, I think it should be clear that the important common element in understanding which markets exist, how they are organized, and how firms in these markets are organized is the ability of an agent to overcome an information externality and take advantage of superior information in the most profitable manner.