

## NEWS FROM AROUND THE WORLD

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**The Commission of the European Communities** has appointed Marie Georges to be responsible for the data protection framework draft directive. She was formerly a Chargée de Mission Spéciale at the CNIL, France's Data Protection Authority, with responsibility for telecommunications policy. She brings with her an insight into how France's law, based on strong privacy principles, is interpreted in practice - valuable experience for her new post. She replaces Jean-Arnold Vinois who has taken another post with the Commission and Ulla Ihnen, who has been appointed as the Brussels representative of Mecklenburg-Vorpommern, one of the five East German Lander.

**Canada's** Privacy Commissioner, Bruce Phillips eloquently argued the case for giving Canadians explicit constitutional privacy protection by including a new provision in Canada's Charter of Rights and Freedoms. He made his presentation to Parliament's Special Joint Committee on a Renewed Canada on December 9th. The text of his speech and his written submission are both available in English and French from the *Privacy Laws & Business* office.

**Québec's** government and opposition have agreed on the principle of adopting general privacy legislation to include both *public and private sectors*. A bill could be tabled in Québec's National Assembly as soon as summer 1992, writes Paul-André Comeau, Québec's Access to Information Commissioner.

This announcement came at the end of public hearings by the Assembly's Committee on Institutions on proposals to revise Québec's access to information and privacy law (PL&B Oct '91 p. 21). Comeau presented the Commission's proposals to the Committee on November 26th.

The full text of the Commission's recommendations for the extension of Québec's law to the *private sector* is now

available in French only from the *Privacy Laws & Business* office. Its title is: *Mémoire Concernant la Protection de la Vie Privée eu Egard aux Renseignements Personnels Détenus dans le Secteur Privé.*

**Denmark** has from December 1 1991 a new director of the Registertilsynet, its Data Protection Authority. He is Torsten Hesselbjerg, formerly the head of the legal department at the Ministry of Justice, who replaces Ove Jespersen now a judge at Eastern Denmark's High Court.

**Jersey's** new Acting Data Protection Registrar is Val Palmer whose office has a new address (see p.26). Former Registrar, Ray Sidaway, has now retired.

**The United Kingdom's** Data Protection Registrar published two Guidance Notes in December which give detailed advice to data users on how the Registrar interprets the Data Protection Act. Their status is such that any persons ignoring or acting contrary to these interpretations should be prepared to defend themselves before a court or the Data Protection Tribunal which has supported his approach on the Data Protection Principles. The Guidance Notes are available from the Office of the Data Protection Registrar (see p.27).

*Guidance Note 25* explains the meaning of Principle 4 which states that "*personal data held for any purpose shall be adequate, relevant and not excessive in relation to that purpose or those purposes.*"

The Registrar's general approach to the principles is that:

1. a data user has to comply with all the principles. Information may comply with one principle but be in breach of another. For example, although the data may be 'fairly obtained' (principle 1), it may be both excessive (principle 4) and out of date (principle 6).
2. Each principle must be read and complied with as a whole.
3. The Registrar's legal test is "the objective view of the reasonable man

knowing the data user's purpose, his use of personal data and the relevant circumstances. The test is not the subjective view of the data user.

4. The Data Protection Act does not distinguish between types of data user in relation to the principles. For principle 4, the purpose is the most important consideration.
5. The principles deal with the data actually held, not categories of data.
6. "Personal data" means information which relates to a living individual who can be identified from that information or that and other information in the possession of the data user, and includes expressions of opinion.

When discussing points specifically relating to Principle 4, the Registrar includes the following advice:

1. The data user must ensure that the personal data held is adequate, relevant and not excessive for the purpose in respect of *each individual data subject*.
2. The question of whether data is adequate, relevant and not excessive is one of fact in each case.
3. In most cases, the erasure or addition of particular defined items will cure the defect of excessiveness, inadequacy or irrelevance.
4. It is not acceptable to hold personal data on the basis "that it might come in useful one day" without a view of how it will be used for each individual. This is to be distinguished from holding information for a particular foreseeable contingency which may never occur, for example, holding blood groups of employees engaged in hazardous occupations.
5. Personal data's compliance with Principle 4 may change over time so that data which was originally adequate may become inadequate.
6. Where a data user is able to identify a certain item of personal data as being

relevant to particular individuals only, then the item should be held only in relation to those individuals.

The Registrar also outlines his approach to compliance and enforcement (PL&B no.16 p.20).

*Guidance Note 5*, published at the same time, covers Registration of Local Education Authority Maintained Schools in England and Wales.

**The USA's Automated Telephone Consumer Protection Act** (S1462), which was signed by President George Bush on December 21st, gives the Federal Communications Commission responsibility for controlling the conduct of telephone marketing, reports Robert Ellis Smith's *Privacy Journal*. The new law's main provisions are:

1. the requirement that anyone making a telephone marketing call should first consult a list of individuals who do not wish to receive "cold" telephone marketing calls at home and respect their wishes.
2. A telemarketer who called a person on this list would be fined up to \$1,500.
3. Telemarketing calls may be made by automated equipment, only if a human operator conducts the conversation. An exception would be if an individual gave consent for receiving such automated calls, or in an emergency.
4. There is a ban on unsolicited direct marketing by fax between states. (Some states also ban unsolicited direct marketing by fax within that state).

Although the new law gives the Federal Communications Commission supervisory control over the list, the method for accomplishing this goal is left open which could give a role to the Direct Marketing Association. It was this flexibility which perhaps persuaded President Bush to withdraw his expected veto, as it moves the legislation towards the DMA's preference for self-regulation.