

CONDITIONS OF WORK DIGEST ON WORKERS' PRIVACY - MONITORING, SURVEILLANCE AND TESTING IN THE WORKPLACE

The Digest is one of a series published by the International Labour Office of the International Labour Organisation (ILO) devoted entirely to issues relating to protection of employees' private life and more specific personal data. PL&B Newsletter No. 23 (June 1993 p.24) reported on Part I of the Digest, which covers legislation and policies on the protection of personal data. Parts II and III of the Digest focus on some of the other most commonly alleged invasions of employees' privacy. Part II addresses monitoring and surveillance practices, while Part III investigates the issues of testing in the workplace related to alcohol and drug use, HIV/AIDS status, genetic makeup (see p.23), psychological characteristics and honesty.

Both Part II and Part III of the Digest are well researched and compiled and have many useful references. They constitute a comprehensive source of information for enterprises, employer and employee organisations and governments in dealing with question of employees' privacy in the workplace.

Part II - Monitoring and Surveillance in the Workplace examines the legal approaches adopted by industrial countries that regulate or prohibit monitoring and surveillance which infringe employees' privacy. It contains recommendations by various groups for further action.

The introductory section identifies the nature and extent of employees' monitoring and surveillance, summarises the arguments for and against, examines whether the law can keep up with technological developments in this area, gives a comparative analysis of legal approaches to this issue in 19 countries and

reviews relevant international instruments and policies.

The second part of the Digest also contains comprehensive national reports from 19 countries including Western Europe, North America, Australia, New Zealand and Japan. Each national report provides an overview of the right to privacy and employees' privacy in that country and sets out the relevant legal provisions covering monitoring and surveillance in general and specific categories. These include telephone monitoring, interception of communications, computer-based performance monitoring, video surveillance, locational devices and searches. It also examines the policies and practices of employee and employer organisations, government agencies and other concerned groups, such as human rights organisations and privacy advocates.

Part III - Testing in the workplace aims to raise the issues of most concern to those involved in the testing of job applicants and employees. It identifies approaches and trends in restricting testing and protecting employees from unwarranted and intrusive testing practices, as well as pointing out situations where testing is legally required or authorised.

The introduction covers testing in the workplace. It provides a comparative analysis of the situation in 18 industrialised countries on testing to detect alcohol and drug use or abuse, HIV/AIDS status, genetic traits, psychological characteristic and honesty. It gives details of the legal framework and scope, as well as the manner in which these tests are carried out.

The second section gives an overview of international instruments and policies on each type of testing. Their sources include the ILO and other United Nations bodies, regional international organisations, such as the Council of Europe and the European Union, as well as non-governmental organisations which include employers' and employees' associations.

Finally, research findings are shown on a country by country basis with national reports from 18 countries included. All these reports outline the types of legal provisions, both of a

general and more specific nature, which affect the legality of testing practices in the workplace. This section also examines, where possible, the existing policies and practices of governments, employer and employee associations, enterprises and other concerned groups.

Conditions of Work Digest - Workers' Privacy, Part II: Monitoring and Surveillance in the Workplace (Vol. 12, No. 1, 1993), pp. 374 ISBN 92-2-108740-9 and *Part III: Testing in the Workplace* (Vol. 12 No. 2, 1993), pp. 361 ISBN 92-2-108746-8 are available at the price of £19.80 each plus 10% p&p from the International Labour Office, Vincent House, Vincent Square, London SW1P 2NB, UK.
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MANAGING DATA PROTECTION

Since its first publication in 1987 (PL&B November 1988 p. 25), with the arrival of the second edition in 1992, and with the publication this year of a paperback edition, this book, written by Dr. Chris Pounder and Freddy Kosten, has provided a valuable and comprehensive contribution to managers and legal practitioners dealing with the issues and requirements of the UK Data Protection Act 1984. In addition, the book helps data users to understand the changes which might be incorporated into UK law in the near future when harmonisation of European data protection laws is finally achieved.

The book contains eleven chapters and six appendices. Emphasis is given to providing "practical advice, guidance and ideas in an intelligible, ready to use and effective form." Data protection procedures under the UK Act, compliance with the eight data protection principles, how to tackle registration, how to ensure staff compliance and training are only a few of the topics covered in the book.

Chapter *one* provides a useful historical background to the UK Data Protection Act. It then describes the five parts of the Act.

Chapter *two* concentrates on the role of Data Protection Officers and their responsibilities as data users. It provides an outline for managers on the work that needs to be done to comply with registration and an understanding of the registration process.

Chapter *three* focuses on the policies, problems and pitfalls of the registration process such as errors to avoid, amending and correcting registration, once it has been accepted by the Registrar, and criminal offences associated with registration.

Chapter *four* covers the data protection principles, their interpretation and practical examples. It lists the "procedural review" questions needed to ensure compliance. It also contains separate sections on data subject access (the Act's 7th principle) and case studies applicable to the principles.

Chapter *five* comments on several relevant sectoral Codes of Practices such as direct marketing, police and personnel. Comparisons are made, where appropriate, with the Council of Europe Recommendations on these issues.

Chapter *six* focuses on basic, specialist and advanced training for all users of personal data within an organisation. Advice is given on training for Data Protection Officers, managers, programmers, housing staff, health and social workers, police officers etc.

Chapter *seven* explains the meaning of each exemption under the Act.

Chapter *eight* deals with computer security. The discussion in this chapter is limited to computer bureaux and their obligations regarding the Act's 8th principle. Attention is also given to other related legislation such as the Computer Misuse Act 1990 and the Police and Criminal Evidence Act 1984. Advice is given on security training for all staff and managers.

Chapter *nine* offers a critique of the Act and examines proposals for changes by the UK Registrar, the Home Office and the European Union (EU).

The appendices provide extracts from the authors' quarterly Data Protection News,

guidance on the disclosure of personal data, the role of the auditor, data protection and software design, data protection census forms and transborder data flows.

A list of Data Protection Authorities, which is likely to need updating and inclusion of further countries, is provided in appendix six.

With the advent of the EU Directive and its impact on national data protection laws, the UK Act included (see p.8), we expect that a third edition of *Managing Data Protection* will be on the market in the not so distant future.

***Managing Data Protection*, by Dr. Chris Pounder and Freddy Kosten. Published by Butterworth-Heinemann Ltd in association with Hoskyns. First Published 1987. Second Edition 1992. Now available in paperback at the price of £19.95. 458 pages. ISBN 0-7506-0355-0.**

DATA PROTECTION IN THE EUROPEAN COMMUNITY - THE STATUTORY PROVISIONS

This loose-leaf collection constitutes a comprehensive compilation of legislation relating to data protection in the European Union. The compilation covers both European national laws and the Community initiatives in the field. It presents the draft proposals for a Directive regulating and harmonising the processing of personal data, the Council of Europe's 1981 Convention (a benchmark for data protection laws) and relevant Council of Europe Recommendations.

The collection is well presented with quick access to the text facilitated by dividers. Legislation is presented mainly in the original text plus, in most cases, English, French and German. A few texts are not fully translated. However the editors promise to fill the gaps shortly when supplements will be available.

The reader is in safe hands as editors Simitis and Dammann have unmatched experience of leading roles in German federal and Land Data Protection Authorities since the early 1970's.

At present, the countries covered are: Belgium, Denmark, France, Germany (Federal and *Landers*), Ireland, Luxembourg, The Netherlands, Portugal, Spain, and the United Kingdom (including legislation in Guernsey, Jersey, and the Isle of Man). Data protection laws are awaited in Italy and Greece. Thus, it is expected that forthcoming supplements will fill in the existing gaps and give up to date information on the latest developments in national laws.

This collection is to be welcomed. It provides useful, readily accessible information. However, one must bear in mind that once the EU Directive is finally agreed, setting the pace for harmonisation among the Member States, national laws will need to be amended in order to conform with the new requirements. Although the objectives of the EU Directive are to provide and develop common principles to be followed by the Member States, they will still have jurisdiction over their data processing activities. This will have a considerable impact on national data protection laws in the near future.

The editors of this comprehensive and well organised work will provide regular supplements so that readers can keep abreast of the latest developments. According to the publishers, updates will be issued three times a year.

***Datenschutz in der Europaeischen Gemeinschaft, Gesetzessammlung/Data Protection in the European Community, the Statutory Provisions/Traitement des données personnelles dans les Communautés Européennes, Recueil des lois*, by Simitis/Dammann/Körner (editors).**

Publishers: Nomos Verlagsgesellschaft mbH & Co. KG. - Waldseestrasse 3- 5, Postfach 610 - 76484 Baden Baden, Germany.

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Price 298 DM, loose-leaf reference book. Supplements will cost 3,20 DM per sheet (16 pages). ISBN 3-7890-2858-0. 1993.

HANDBOOK OF PERSONAL DATA PROTECTION

This book's broad scope includes the relevant aspects of several national laws and, in addition, discusses the work of international organisations' attempts to harmonise legislation in this complex field. Bearing in mind that it was published in 1992, the book provides an excellent starting point for those wishing to become familiar with data protection and privacy issues and to understand the history and complexity of data protection.

Part One relates, in general, to aspects of data protection in several regions and countries, highlighting the initiatives and development of data protection in each. In addition, the author explores international efforts and proposals of the main international organisations including the Council of Europe, the European Community, the OECD, the United Nations and Amnesty International.

The first chapter is a brief introduction to some issues concerning data protection and privacy. Chapter two highlights the Western European initiatives where the work of the OECD, the Council of Europe, and the European Community is summarised. The Schengen initiative is also briefly described in this section. Initiatives of European countries are also briefly mentioned. Chapters three and four describe the Eastern European initiatives and the approach of the USA to data protection. Chapter five covers data protection developments in Australia, Canada, and New Zealand. Chapter six describes initiatives in Japan and Hong Kong. Chapter seven covers data protection development in Asia, Africa and Latin America, and the last chapter reports on international efforts and proposals for data protection.

Part Two presents as many national and international laws as possible, in a valiant effort by the author to provide the legal instruments to enrich our knowledge of such laws. At the time of publication, some laws, such as the Belgian and the Swiss legislation, were still being drafted, therefore, they appear only in draft form. Among the bills which have been

presented to the national legislatures, we note that the Greek bill is missing (although the Greek initiative is mentioned in chapter two), but the Italian bill is published. Spain's law is also missing, even in its draft version (although the Spanish initiative is mentioned in chapter two). Part Two also gives international resolutions and guidelines from the above mentioned international organisations. However, for example, the October 1992 revised proposal for an EC Directive on data protection is missing.

The book contains a list of abbreviations and acronyms, some useful tables and statistics, application form models and general information spread throughout the appropriate chapters. It also has a glossary, addresses and telephone numbers of data protection agencies, a concise bibliography (references appear in each chapter) and a helpful index.

Subject to the reservation that the book was published in 1992, it fulfils the expectations of being a useful guide and reference for those wishing to understand the main national and international data protection legislation.

***Handbook of Personal Data Protection*, by Wayne Madsen, Published by Macmillan Publishers Ltd. ISBN 0-333-56920-2. Price £85.00. 1026 pages. Available from Globe Book Services, The Macmillan Press Ltd, Houndmills, Basingstoke, RG21 2XS, UK. Tel: +(44) 256 817245.**

THE LAW OF PRIVACY IN A NUTSHELL

This concise book is written by Robert Ellis Smith, lawyer and publisher of *Privacy Journal*, this year celebrating its 20th anniversary. This is a new book on the right of privacy and its legal limits. It is intended for lawyers, law libraries, students, consumer advocates and non-lawyers in need of an introduction to the legal perimeters of "the rights to be let alone."

***The Law of Privacy in a Nutshell*, 57 pages, paperback, \$14.50 from Privacy Journal, P.O. Box 28577, Providence, Rhode Island 02908, USA. Tel: (401) 274 7861.**

PRIVACY LAW AND POLICY REPORTER

Privacy Law and Policy Reporter is a new journal devoted to privacy issues in Australia and New Zealand. It is edited by Graham Greenleaf, Professor of Law at the University of New South Wales. Its aim is to monitor the legislation, case law, self-regulatory instruments and various policy measures in this area. Also, the Reporter will follow privacy developments in the Asia-Pacific region and international instruments affecting this region, such as the EU Draft Directive and the OECD Guidelines.

The inaugural issue of the Reporter was published in March of this year and mainly focuses on public sector issues. Among other issues, it addresses data matching, reviews the latest judicial decisions and gives insights into the 1993 New Zealand Privacy Act and the Australian Privacy Commissioner's role in parliamentary inquiries. Future issues will feature reports on Australia's credit reporting amendments, search warrants, the Medicare and Pharmaceutical Benefits Programs, smart cards, telecommunications and the effect of international privacy instruments in Australia.

The Reporter is a useful source of information and point of reference for all those who are interested in data protection and privacy developments in Australia and New Zealand. It gives a comprehensive picture of the main developments in this field. Its uniqueness is that it is the first newsletter to concentrate on this region and contains reports, submissions and other relevant official documents which are not always easily accessible.

Privacy Law & Policy Reporter, Vol. 1, No. 1, March 1994, pp. 20, general editor Graham Greenleaf, published by International Business Communications, Level 11, Carlton Centre, 55 - 63 Elizabeth Street, Sydney NSW 2000, Australia.

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Subscription for 10 issues per year including binder and index - \$345.

INTERNATIONAL JOURNAL OF LAW AND INFORMATION TECHNOLOGY

This Journal includes articles in two fields. Firstly, in *computer and communications law*, covering software protection and licensing, computer misuse, distribution of hardware, software and information products, liability for defective systems, and the legal implications of emerging technologies. Secondly, in *the application of information technology in the law*, covering litigation support, document assembly, expert systems, communications and case flow management.

The editors' intention is to bring together the two fields of information technology and law, and to highlight for practising lawyers who use technology, the legal implications of such usage. The journal is primarily aimed at practising and academic lawyers internationally as well as users and suppliers of technology products and services.

The journal takes great care in blending academic and practical issues in both fields. This is an excellent approach as it should satisfy both pure academics and practising readers. Although the editors particularly welcome contributions that bring the two fields together, it is reassuring for those who are interested in one *or* the other that the "journal will, of course, publish articles that fall squarely within one or other of these two fields."

The participation of international leading figures in information technology law and their contributions highlights the editors' intention to provide an international flavour to the publication.

International Journal of Law and Information Technology, ISSN 09670769, is available from Oxford University Press, Walton Street, Oxford, OX2 6DP, UK, Tel: + (44) 865 56767.

Subscription for 3 issues per year - £95 in UK and Europe, US\$185 worldwide.

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