



Israel amends privacy law

On 12th March 1996, the *Knesset*, the Israeli legislature, passed a series of far-reaching amendments to the country's 1981 Protection of Privacy Law. Among the many changes is the requirement for data users to appoint data security officers, which has already entered into force, and strict new provisions on direct marketing, which will enter into force in April 1997. Advocate Roy Sage, explains.

The fundamental principle of the Protection of Privacy Law, 5741 - 1981 is stated in Article 1 of the Law: "No person shall infringe the privacy of another without his consent." The Law seeks to accomplish this goal by regulating both direct invasion of privacy, such as publishing intimate information on a person, and indirect invasion of privacy, such as the computerised processing of databases containing personal information. The recent amendment significantly expands the Law's provisions on indirect invasion of privacy by strictly regulating direct marketing and databases used for such purposes. Both civil and criminal liability can attach to infringement of privacy.

Direct invasion of privacy

The first part of the Law defines several acts as infringing the privacy of an individual. This part of the Law remained largely untouched by the March amendments. However, the criminal sanction for wilful infringement of privacy has been increased from a one year to a five year term of imprisonment, and/or a fine.

Perhaps the most commercially significant restriction in this part of the Law is contained in Article 2(9), which makes it an infringement of privacy to "use, or pass.... on to another, information on a person's private affairs other than for the purpose for which it was given." This provision would appear to make it an infringement of privacy for enterprises such as banks, telephone companies and online service providers to use information they collect for billing and operational purposes to create "data profiles" on their customers, and use such profiles for marketing.

Acts which are deemed to infringe privacy include, among others, spying on a person; listening-in (a separate law deals in more detail

with listening-in); photographing a person while he or she is in the private domain; copying or using without permission the contents of a letter or any other writing not intended for publication; and publishing anything obtained through an infringement of privacy. The right to privacy is not absolute, and certain exemptions apply in circumstances where there exists a justifiable overriding interest to protect.

Indirect invasion of privacy via databases

The second part of the Law subjects certain computerised databases to compulsory registration. Among the details which the owner must supply for registration is the purpose for which the database is established. Data subjects have the right to inspect most data regarding themselves and to have it amended if the information is inaccurate. It is an offence to use an unregistered database if it is eligible for registration, or to use a registered database other than for its registered purpose.

Prior to the March amendment, all computer-based databases containing personal information were subject to compulsory registration. Now a new definition of "database" excludes databases for personal use only, as well as databases containing only names, addresses and contact details, when such information cannot be collated with information in other databases held by the same owner.

In addition, a database need now be registered only if:

1. the database contains information on more than 10,000 individuals;
2. the database contains certain sensitive personal information;
3. the database contains information on individuals when the information was not given by such individuals or with their consent (except where such information is public by law);
4. the database belongs to a public authority; or
5. the database is used for direct marketing purposes.

The Registrar may order the registration of otherwise exempt databases, and may refuse to



register a database for a specific purpose if he or she has reason to believe that the database may be used for illegal purposes or that it contains information that was gathered illegally.

The amendment also extends the law enforcement powers of the Registrar, by creating a database inspection unit, and increases the penalty for unauthorised disclosure of data from imprisonment for a term of one year to a term of five years. From 11th October 1996, computer bureaux, banks, financial institutions, and public authorities must appoint a data security officer.

Stricter rules on direct mailing

Possibly the most significant change introduced by the March amendment is a new section dealing with direct mailing. The new section will enter into force on 11 April 1997. Direct mailing is defined as, "individual communication to a person, on the basis of his belonging to a group of the populace that has been determined in accordance with one or more profiles of persons whose names are included in a database."

"Communication" is widely defined and covers contacts "in writing, in print, on the telephone, by facsimile, [and] by computerised or any other means," and would thus also cover the growing use of "junk e-mail."

Any person has the right to demand that information regarding him or her be struck off a direct marketing database or that information regarding him or her not be given to "a person, a class of persons, or specific persons" for a determinate or indeterminate period. The keeper of the database must confirm in writing that such a demand was acted on appropriately.

To ensure that individuals can indeed exercise their rights of inspection and removal, the new provisions impose significant limitations on the keepers of direct marketing databases that go well beyond compulsory registration.

1. The keeper of a direct marketing database must keep records tracking not only the source from which each collection of information was received, but also the identity of the person to whom information was transferred.
2. Each direct communication must conspicuously inform the recipient that the communication is a direct mailing and that

the recipient has a right to be struck off the database, and must indicate the registration number of the database from which the recipient's name was taken and the contact information for making requests to be struck off the database.

3. The sender must disclose to the recipient the identity and address of the owner of the database according to the information in which the communication was sent, *as well as the sources from which the owner received such information.*

Non-compliance with the provisions of the new section on direct marketing, as well as many other provisions of the law, is now a strict-liability offence with a penalty of imprisonment for a term of up to one year, and/or a fine.

Information held by public bodies

The Law regulates the conditions under which public authorities may keep, deliver, and exchange information on individuals. These provisions were not significantly affected by the recent amendment. However, breach of a provision contained in this part of the Law is now a strict liability offence, punishable (as before) by imprisonment for a term of one year.

Conclusion

The recent amendment of the Israeli Protection of Privacy Law introduces significant new restrictions on the use of databases for direct marketing purposes. Under the new rules, individuals should theoretically be able to monitor and curb the use of personal information about themselves for direct marketing purposes – probably the economic activity for which personal data is the most valuable. However, it remains to be seen what effect these new rules (and the stricter penalties for criminal breach of privacy) will have in practice.

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