

Global privacy survey identifies jurisdictional concerns

Report by Alan Pedersen

AS ORGANISATIONS EXPAND THEIR REACH across more and more countries, there is an increasing need to adopt a harmonised approach to business practice. However, a recent survey finds that privacy legislation is hampering their efforts to achieve this goal.

Published in April by law firm White & Case, *Global Privacy Law: A survey of 15 major jurisdictions* highlights the increasing difficulties that multinational companies face in their efforts to comply with privacy and data protection legislation. The survey details the results of a “side-by-side comparative analysis of national privacy regimes” from countries in Europe, North and Latin America, and the Asia-Pacific region. Areas examined included enforcement, public access rights, and data transfer restrictions.

The survey found that whilst there is a fair degree of harmonisation across legislation, it is not occurring in a consistent or uniform manner. One key finding was the instability of the various privacy laws, with eight of the fifteen jurisdictions surveyed currently dealing with proposals to change the existing laws. For large corporations, dealing with a multitude of privacy laws is a daunting task. The fact that legislation is constantly changing is an added burden. “For multinational companies, compliance with the assortment of national privacy laws demands constant diligence and focus,” says Robert L Raskopf, New York Partner and Head of White & Case’s Internet, Media and Technology practice group.

The survey reveals that in areas where there is harmonisation, there are still small anomalies which could

easily be missed. For example, all jurisdictions with data protection laws require consent from data subjects when processing data for secondary uses. But, the UK law differs in that consent is one of six options that can be used to satisfy secondary processing. There is also an exception in the French law as it applies the consent rule to sensitive data only.

In other areas, there is greater disparity between privacy laws. Nine of the fifteen jurisdictions allow businesses to monitor employee e-mail and Internet use. Countries such as Germany, Mexico and Brazil, however, prohibit such practices. Those countries that do allow monitoring either place differing limitations on the surveillance practices that businesses use, or have no procedures in place at all. This, added to complexities over cross-border data transfers, could make it very difficult for multinational companies to implement a global HR policy.

David Bender, Counsel for White & Case in New York, says that because of the disparities that exist, “multinationals will be hit the hardest.” He explains that there are huge administrative difficulties in trying to adopt a one-size-fits-all approach to issues such as data transfers and handling customer databases. “In some situations, I think it can’t be done” he says.

Bender says that some data protection authorities have indicated that the “honeymoon is more or less over”. He therefore suggests that there is now a pressing need for organisations to “stay abreast of the privacy laws of jurisdictions in which they are interested.”



Jurisdictions included in the survey were: Australia, Brazil, Chile, China, France, Germany, Hong Kong, Japan, Mexico, Russia, Singapore, Spain, Sweden, the United Kingdom, and the United States

*A full copy is available in PDF format from the following address:
www.whitecase.com/pr_wc_privacy_law_survey.html*

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