

CNIL enters new era

By Judith A Sullivan

THE YEAR 2002 WILL PROVE to be a time of modernisation for France's data protection authority and the law, says its president, Michel Gentot.

For the first time in its 25-year history, the laws governing the Commission Nationale de l'Informatique et des Libertés (CNIL) are to be retooled and revamped for the purposes of both modernisation and to bring it into line with the EU Data Protection Directive. Other efforts are afoot, including a popular effort to combat spam and a revamp of the CNIL's website, which will begin this autumn and be completed next year.

Speaking at PL&B's Annual International Conference in July, CNIL President, Michel Gentot, said he and his colleagues "talk more of modernisation than of upheaval." The legislative changes were due to be voted on in the spring but the recent French elections set the effort back. The CNIL is now hoping for ratification of the law by the French Senate early in the autumn.

One of the hallmarks of the CNIL's efforts will be heightened enforcement powers. Most noticeably, the CNIL can impose fines of up to 150,000 euros, depending upon the severity of the case. Vexatious or repetitive offenders could be fined 300,000 euros or five per cent of their annual turnover.

The CNIL will also be able to "name and shame" offenders who fail to comply with the law. This could prove a valuable incentive to organisations concerned about their public image.

The new law, whose name will not change, imposes greater constraints on public entities and private legal entities that perform public service functions. Gentot explained that, in some cases, the new powers will dispense with the need for prior notification (whereby data controllers register with the

CNIL). Prior notification will, however, be required in the private sector when data covers sensitive areas such as criminal convictions, genetic or biometric information.

Gentot also explained that the new regime bolsters his organisation's 'tech-watch' role. Targeted procedures will enable the CNIL to assess implementation of various privacy enhancing technologies (PETs).

A greater number of complaints-driven audits will also call on the CNIL to have its own audit department, Gentot said.

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TIME FOR MATURITY

In its annual report for last year, CNIL cited 2001 as a time for maturity. The development stems both from the events of September 11th and from the increasingly widespread use of the Internet in France and elsewhere.

Unlike other national data protec-

tion authorities, in 2001 the CNIL saw fewer requests from the public for access to information than in the previous year. For example, the number of requests to eliminate commercial files dropped by a third. This fall (from 144 in 2000 to 94 last year) is attributed to better awareness within the marketing community of what the law entails. Also down last year were requests by French citizens for advice from the CNIL, which the agency itself attributes to a more informative website (see www.cnil.fr).

The 2001 report noted with pride that some activities were on the increase. Requests by citizens to see what CNIL dubs "the file of files" leapt 21 per cent from 208 to 252. These requests, which are free of charge to the public, allow them to see who has files on them, although not the actual content of the files.

However, after a slight dip in 1999-2000, complaints to the CNIL were also up, from 3,399 in 2000 to 3,574 in 2001. Common areas for complaints by the French public related to sectors such as sales prospecting, banking, work and telecommunications services. The most common type of complaint (795) was a desire to oppose listing in a commercial file. Those sectors which have been the subject of complaints seem to be getting the message. The CNIL issued a new warning to organisations last year, but did refer one case to the judicial authorities after sensitive information was revealed on a website. In addition, prosecutors are increasingly citing privacy infringement charges within criminal proceedings (see story on next page).

On July 10th, the CNIL launched an initiative to combat unsolicited e-

mail (spam), the success of which out-paced even its wildest expectations. In less than a month, a "Spam-inbox" on the CNIL's website provoked 63,000 responses from Internet users annoyed at receiving unsolicited communications. The idea is for the CNIL to sift through and organise the information provided and possibly even undertake criminal referrals.

MIXED REACTIONS

Generally speaking, the CNIL's efforts to modernise and adapt are lauded by the community at large. The French marketing association (FEVAD) acknowledges the CNIL's efforts to force the business community to self-police, says Director General, Marc Lolivier. Among other efforts, FEVAD and France's direct marketing group have set up the "Robinson list", a kind of "do not call" register which contains the e-mail addresses of people who do not wish to receive any marketing material whatsoever.

Less enthused is Meryem Markosi, a representative of France's IRIS, a consumer watchdog for the Internet. What perturbs her is the CNIL's failure to publicly condemn France's new anti-terror laws that allow police authorities to directly access information stored by telecoms companies. The CNIL has suggested a three-month maximum retention period be specified in law.

Markosi also suggests that the French population's failure to complain about spam and multiple marketing lists has more to do with apathy than adequate self-policing by industry. "People consider information about them to be a commercial good," she said. Among the current privacy subjects being debated is the issue of digital identity on which the CNIL takes a cautious view, describing it as: "A matter for technicians on a quest for a computerised proof of identity." CNIL couches the debate in philosophical terms. "No one is who he says he is because he says

so. We are who we are because a computerised file confirms it."

Related issues the CNIL hopes to keep an eye on are authentication technologies, such as Microsoft's Net Passport service.



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Privacy violations could land former president's aides in jail

By Judith A Sullivan

They take privacy seriously in France. So much so that they have used privacy laws to undertake what could be one of the most explosive trials of the early 21st century.

In late July, Parisian Procureur de la Republique (similar to a district attorney in the United States), François Cordier, announced the state was taking the first steps towards the criminal trial of 12 people, close associates of President François Mitterrand, who died of cancer in 1996.

The basic allegation is that they were involved in wiretapping for the benefit of the president. The case stands out in that the potential defendants are charged with personal privacy infringement, unlawfully maintaining personal data in computerised databases, intercepting communications and attacking freedom.

These crimes, which are included in the French data protection authority's (the CNIL) legal statutes, can lead to a three year prison sentence and fines as steep as 300,000 euros for "fraudulent, disloyal or illegal" processing of personal data without the subject's consent.

The complex events that led to the charges began in the early 1980s. Essentially they all closely concern the late president, notorious for his suspicious nature. The potential defendants are all charged in one way or another with keeping tabs on individuals – journalists, entertainment personalities and lawyers among them – at Mitterrand's behest.

First revealed in the press in 1993, the allegations have followed a circuitous route to possible trial. They were both

helped and hindered along the way by the creation of the CNCIS in 1991, a commission set up to authorise and regulate the interception of phone calls and electronic communication.

The help came in the very essence of the commission, established to separate frivolous eavesdropping from that required for state security. The hindrance, according to the newspaper *Le Monde*, came from former CNCIS Commissioner, Paul Bouchet, who used the cloak of defence secrets to withhold the conclusions of his inquiry from the judicial authorities. CNCIS is limited in how many surveillance activities it may allow each year. The quota allows 330 for the ministry of defence, 1,190 for the police authorities, and 20 for customs (a total of 1,540).

As to the Mitterrand associates, they are a long way off from trial. Cordier has simply recommended prosecution and a decision on the issue might not occur for months, with a trial at the earliest in 2003. This would be France's second high-profile trial in less than a year involving privacy-related charges.

Prosecutors successfully took on the Ile de France branch of the Church of Scientology on similar charges in February of this year. Convicted in May of privacy law violations and fined euros 8,000, the church now runs the risk of dissolution.