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Simplicity, clarity, consistency

On a calm evening, one can hear the haunting, plaintive pleas of chief privacy officers (CPOs) worldwide for “simplicity, clarity and consistency.” Yet often their pleas risk being drowned out by the din of regulators rushing about the international data protection marketplace.

This edition of *PL&B International* carries two stories that highlight the confusing, sometimes contradictory privacy rules facing CPOs and their companies everywhere. The European Industrial Relations Observatory (EIRO) has reported that European businesses carrying out employee monitoring face a complex range of regulatory requirements, including constitutional provisions on privacy, employment law and labour codes, technology-related privacy laws, and mediation with national works councils. It seems that the only ones smiling are the lawyers.

A second story discusses the approach of IMS Health Inc. to managing the potential corporate risk associated with current and emerging privacy legislation. IMS, which provides information, statistical research and analysis to the health sector, faces a far greater data protection compliance challenge than most companies, carrying on business in 100 countries.

As companies expand their global reach and as data protection and privacy concerns evolve to confront advances in technology such as Radio Frequency Identification and genetics, ever more regulation will result. Among the most basic, but important questions we must address as we legislate: Is it better to regulate all privacy aspects of an issue in one piece of legislation (an Employment Privacy Act, for example) than to leave employment privacy rules dispersed throughout a range of other laws - employment standards, general data protection laws, constitutional law and case law, among them? As they make their choice, regulators are well advised to heed that call for “simplicity, clarity and consistency”.

Eugene Oscapella, Associate Editor

PRIVACY LAWS & BUSINESS

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Do you have a case study or opinion you wish us to publish? Contributions to this publication and books for review are always welcome. If you wish to offer reports or news items, please contact Alan Pedersen on Tel: +44 208 423 1300, or E-mail: alan@privacylaws.com.

News in brief

MARKETING

Registrations to the US federal tele-marketing preference service were estimated at over 48 million in early September, according to figures from the Federal Trade Commission (FTC). The so-called do-not-call list, which was launched at the end of June, received 10 million registrations in the first three days alone.

The list, which is operated by the FTC, comes into force on October 1st. Organisations will be required to screen marketing prospects against the list every three months, with fines of up to \$11,000 for each violation of the FTC's rules.

Timothy Muris, chairman of the US Federal Trade Commission, has poured cold water over suggestions that a US do-not-spam list could help in the fight against unsolicited e-mail advertising. Speaking at a technology conference in August, Muris said that consumers would be wasting their time by signing up to such a service, and instead called for ISPs to provide consumers with more tools for combating spam.

The EU Data Protection Working Party has approved a privacy code of practice developed by the Federation of European Direct Marketing (FEDMA). The code provides best practice guidelines on compliance with the EU Data Protection Directive and addresses marketing-specific issues not referred to in the directive - such as marketing preference services, list brokers, and marketing to children. See p.18.

According to law firm Baker & McKenzie, Norway's Consumer Ombudsmen has found that websites targeted at children are offering 'rewards' in return for registering their details. The ombudsmen's report also found that few of the 105 sites investigated request consent from parents before collecting data from their children.

KPN privacy breach, continued from p.1

obscured in fine print and made incomprehensible by legalese. If you give clients this option, it should be simple, clear and easily accessible."

Commenting on the reason for a joint investigation, Broekema said: "Both authorities shared interest and responsibility in resolving these issues. Furthermore, a unified approach - together with CBP's punitive powers - was more effective in emphasising the seriousness with which we take our responsibilities and duties."

In defence of KPN's current opt-out procedure, she said: "KPN regards privacy as an important social issue and ensures that opt-out information is included in its general terms and conditions, readily available from KPN's shops and website. Moreover, as a member of SZDM, the Dutch direct-marketing association, KPN participates in an annual newspaper advertisement that explains how information owners can prevent their personal details from being disclosed to third parties."

However reluctant, KPN is most likely to comply with the investigation's

"KPN's opt-out procedure is cumbersome, obscured in fine print and made incomprehensible by legalese. If you give clients this option, it should be simple, clear and easily accessible."

- Jan Willem Broekema, Dutch Data Protection Commissioner

This investigation has received the endorsement of the Dutch consumer association, Consumentenbond, and subscribers. Maurice Wessling, a privacy activist and founder of Bits of Freedom, also lent it his support: "In the Netherlands, we refer to unlisted numbers as 'secret numbers'. This reflects the inherent expectations of unlisted subscribers regarding their personal privacy. That is why we are indeed pleased with these clear recommendations."

RELUCTANT REFORMER

This privacy-protection case has been reported widely in the popular press in the Netherlands and in at least one local trade-journal, some of which has resulted in adverse publicity for KPN.

Nevertheless, KPN remains sceptical of the investigation's findings: "We do not agree with the findings and were somewhat surprised at the uproar caused by this business practice. Subscribers, after all, often disclose this information, as well as their unlisted number - something we have never done, contrary to what several Dutch dailies have reported - to mail order companies," protested Caroline Ubachs, KPN's press officer.

recommendations: "We are considering an opt-out option in the form of a 'check box' on our unlisted-number application form, or on a freepost card. Another action under consideration is to halt all sales of unlisted-subscriber details. This will be a blow, of course, to the direct-marketing and related industries, which rely considerably on KPN's comprehensive, up-to-date national name-and-address database," concluded Ubachs.

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FURTHER INFORMATION: Guidance (in English) on marketing issues and selling customer data can be found on the Data Protection Commissioner's website: www.cbppweb.nl/en/structuur/en_pag_c_ons.htm
