



# book reviews

## Hong Kong Data Privacy Law: Territorial Regulation in a Borderless World

*By Mark Berthold and Raymond Wacks*

*2nd Edition, Sweet & Maxwell Asia, 2003*

*Reviewed by Professor Colin J Bennett, University of Victoria Canada*

As the first East Asian country to develop a privacy law, Hong Kong offers some interesting lessons for the rest of the world. Although its 1996 Ordinance is yet to be evaluated as "adequate" under EU standards, there is common consensus that it contains the major fair information principles, and is overseen by an independent supervisory authority, the Office of the Privacy Commissioner for Personal Data (PCO).

As an economy that relies on international commerce, Hong Kong seemed to have little choice but to implement the highest international privacy standards, making it a model for other non-European societies to consider.

This book explains that the Ordinance's provision on international data flows (Section 33 - which is not yet in force), prohibits data exports except in specified circumstances. Those circumstances are similar to the provisions contained in EU law. It is an open question whether the EU will insist on Section 33 being implemented before declaring the Ordinance "adequate". In the absence of an adequacy declaration, organisations importing data from Europe will need to rely on contractual solutions, such as the model contract issued by the PCO in 1997.

Wacks, in particular, writes with great authority on privacy and the common law, analysing how the collection, use or disclosure of personal data may give rise to wrongs under common law. With detailed references to applicable case law, the authors consider issues such as: breach of confidence; emotional distress; defamation; and breach of contract. They conclude that each of these torts may help individuals enforce their rights in certain limited ways, but they also are confident that the Ordinance has not abridged any of these common law principles.

The book contains an in-depth analysis of the provisions of the privacy Ordinance, together with some of the key decisions of the courts, the Administrative Appeals Board and the PCO - providing useful and up-to-date information on the current interpretation of the Ordinance and associated statutes.

The PCO often walks a fine line between competing interests, but prefers mediation and arbitration to effect satisfactory outcomes, rather confrontational measures. The development of a number of industry codes of practice reinforce this policy.

In conclusion, the authors remind us that the law is just one mechanism through which to raise privacy standards. The overall experience in Hong Kong seems to have been a positive one, partially because of the relatively straightforward way in which the Ordinance was drafted.

As one of the rare works to be written on the data protection experiences of just one country, this book should be of interest to privacy scholars and practitioners in many other advanced industrial states.

## The Governance of Privacy: Policy Instruments in Global Perspective

*By Colin J Bennett and Charles D Raab*

*Ashgate Publishing Limited 2003, ISBN 1 85521 473 3*

*Reviewed by Eugene O'Connell*

Tired of always looking at the "trees" when dealing with privacy? Then read this thoughtful and rigorous work by Professors Bennett and Raab. Working from opposite sides of the Atlantic, they carefully examine the privacy "forest". The authors explain that their goal is to address the politics of privacy protection with regard to personal information. Their work is motivated by the argument that privacy-related problems are as much political and public policy issues as they are legal and technological ones.

The book has three parts. The first describes the policy goals relating to privacy. Part II examines the policy instruments that help shape privacy. This international "toolbox" consists of transnational instruments, legal instruments, regulatory agencies, self-regulatory instruments and technological instruments (information technologies, they state, may carry a valence that may be pro-privacy, or pro-surveillance). The third part evaluates the various policy instruments, and discusses how to determine whether privacy protection policy is having its desired effect. The concluding chapter examines the dynamics that might push privacy in different directions - from the "race to the bottom" (leading to a largely surveillance society) to various increasingly palatable worlds: one of an incoherent and fragmented patchwork of privacy protection, another inhabited by "privacy haves and have-nots," and yet another characterised by global privacy standards.

The authors conclude that there may well be a global race, or at least a walk, to improve levels and standards of privacy protection - a "race to the top." But, they argue, the other discernible races to the top are those of the extensive, intensive processing of personal data; the transformation of economic activity through the use of electronic communications and information infrastructures; and the globalisation of law enforcement and security objectives. These other races threaten the various values with which privacy is now associated.

The authors conclude that the governance of privacy has become a complex phenomenon involving a plurality of actors and a range of methods of operation and coordination. "It is the details of those complexities, pluralities and methods that are really important to understand, and to convert into policies and regimes for privacy."

This is not a how-to book about dealing with privacy legislation. It requires mental energy to read, but for anyone remotely involved in developing privacy policy or legislation, that energy will be well spent.