global privacy roundup

AUSTRALIA

The Federal Privacy Commissioner, Malcolm Crompton, has published the findings from two privacy enforcement cases on his website. Both cases revolved around the disclosure of financial information to third parties without the individual's consent.

The Victorian Law Reform Commission is to launch an investigation into workplace privacy. It follows heavy criticism from workers' unions over plans by some corporations (for example, air carrier Qantas and shipbuilder Tenix) to introduce random drug testing.

CANADA

The Privacy Commissioner for Ontario, Dr Ann Cavoukian, has called on CEOs and senior corporate officers to ensure company privacy practices are meeting the required standards. Cavoukian said that companies should be appointing someone with responsibility for privacy, have written privacy and security policies which are communicated to staff, and use audit trails to ensure that data retention policies are met.

An informal online poll conducted by Canada's *Globe and Mail* newspaper in early February found that the general public are not in favour of a national ID card. The poll asked readers: "Do you think Canadians need a national identity card?" Some 62 per cent said no, leaving 38 per cent in favour.

DENMARK

The Data Protection Agency (Datatilsynet) has announced plans to conduct 50 investigations during the first half of 2003. Organisations to be inspected will include government authorities, local councils and credit reference agencies. The authority will investigate compliance issues such as notification, data retention, access rights, and workplace monitoring.

The Minister of Justice, Lene Espersen, is to present a bill before Parliament in April aimed at providing police authorities with greater powers to intercept Internet communications.

EUROPEAN UNION

The European Commission has reached a deal with the US government over the transfer of airline passenger data from the EU to the US (see p.11).

The EU Article 29 Data Protection Working Party has published its agenda for 2003 (see p.13).

The European Commission is examining a new legal approach to the transfer of personal data outside the EU. The proposed 'corporate rules' scheme, which is being piloted by a small group of organisations, is aimed at reducing the administrative burden involved in cross-border data transfers. The scheme could receive approval later this year (see p.1).

FRANCE

On February 24th, the National Assembly approved a draft e-commerce bill which included a ban on unsolicited 'spam' e-mail. The bill will now be passed over to the Senate (upper house).

On April 1st, the Senate approved a new data protection bill which transposes the EU Data Protection Directive into French law (see p.6). The bill will now be passed back to the National Assembly and could be finalised as early as this summer.

The National Data Protection Authority (CNIL) has launched a public consultation on the privacy implications of online shopping. It has already discussed the issue with businesses and consumer associations and is expected to produce a recommendation this summer.

GERMANY

The Berlin Data Protection Authority has published its annual report for 2002. The central issues discussed include the processing of sensitive data, data transfers outside the EU, the privacy implications of DNA investigations, and IT security in the public sector.

According to law firm Baker & McKenzie, the Regional Court of Berlin has ruled that organisations which send unsolicited SMS marketing messages will be violating personal privacy rights.

ITALY

The National Data Protection Authority (IDPA) has stated that harvesting e-mail addresses from the Internet and then using them for marketing purposes is not acceptable. In its online newsletter, the IDPA said: "The ease in obtaining e-mail addresses that the Internet permits does not make it right to use this personal data for ends other than for that which they are present online."

The IDPA had decided to look into the matter following an increase in the number of complaints from consumers over unsolicited marketing e-mails. When questioned about the breaches, the companies responsible indicated they were unaware of having done anything wrong.

The IDPA has ruled that a bank's refusal to delete details referring to a customer's late loan repayments constituted a breach of the national data protection law. The consumer, who eventually repaid the loan, had asked the bank (which was not named by the IDPA) to delete the information referring to him as a late payer.

The IDPA stated that because such information should not be held longer than one year after the repayment of a loan, the data protection law had been breached.

JAPAN

On April 4th, opposition parties presented proposals for amending the government's draft privacy bill. The proposals include stricter controls on the processing of certain categories of sensitive data (such as medical information and criminal records) and preventing information from being used for secondary purposes. The proposals also include taking the responsibility for privacy enforcement out of the government's hands and establishing an independent body that would deal with compliance issues.

Leading mobile operator, NTT DoCoMo has won 6.57 million yen (€51,380) in compensation after suing a Tokyo-based company that sent bulk spam mail over its mobile network. It is the first such case to reach the courts after the introduction of new anti-spam laws last year (see *PL&B Int*, September 2002, p.20).

The Public Management Ministry has warned financial institutions not to use information contained in the national citizens' database for commercial purposes. All individuals listed in the Residential Register Network System (Juki Net) are allocated an 11 digit identity number which could be used by banks to verify the identity of new customers. However, it is against the law to use information on the Juki Net system for non-governmental purposes.

KOREA (SOUTH)

The Ministry of Information and Communications (MIC) has announced that it is to amend its privacy law so that marketers will be required to gain prior consent from consumers before sending bulk commercial e-mails.

LUXEMBOURG

On March 6th, the European Court of Justice ruled that Luxembourg had failed to implement the EU directive on data protection in the telecommunications sector (97/66/EC) into national law. The directive, which has now been replaced by the E-communications Privacy Directive was supposed to be fully transposed by October 2000.

NETHERLANDS

The Dutch Data Protection Authority (CBP) has announced that it will be taking a tougher line against organisations that fail to notify their data processing purposes (see p.10).

NORWAY

The National Data Inspectorate (Datatilsynet) has signaled its opposition to new proposals by the Finance Ministry. The ministry wants to allow financial institutions to automatically share personal data with subsidiary companies within a group. The Data Inspectorate said that unless informed and active consent is gained from consumers, such actions will conflict with the Personal Data Act. The Inspectorate noted that similar proposals in Denmark had previously been defeated.

PHILIPPINES

A new data protection law is to be proposed by the security subcommittee of the Information Technology and E-commerce Council (ITECC). Its co-chairman, Albert P Dela Cruz has indicated that because of the need to improve trade with the European Union, any new law is likely to be heavily based on the EU Data Protection Directive.

SWEDEN

The Data Inspection Board has published its annual report for 2002. The report highlights that complaints have risen 50 per cent over the last year, and that the number of investigations carried out by the Inspection Board has risen by the same number.

SWITZERLAND

From April 1st, Internet service providers (ISPs) will be required to retain e-mail traffic data (including details of senders, recipients, times, dates etc.) for a period of six months. Access will be restricted to law enforcement agencies investigating specific crimes. ISPs will be permitted to charge a small fee for access, but it is unlikely to compensate for the estimated SFr1 million (€670,000) in additional storage costs.

The National Data Protection Authority has published a report and recommendations regarding the legal implications of CCTV monitoring systems used by public sector organisations.

UNITED KINGDOM

The Home Office has published two consultation papers on access to, and retention of, communications data. The first paper involves increasing the number of public authorities that are able to access traffic data under the Regulation of Investigatory Powers Act. The second relates to the introduction of a voluntary code of practice for Internet service providers (ISPs) on data retention. The proposals include retaining e-mail and telephone traffic data for a one-year period. The recommended period for retaining details of visits to Internet sites, however, is only four days.

The Department of Trade & Industry (DTI) has published a consultation paper on the implementation of the EU's E-communications Privacy Directive. Proposals include a ban on unsolicited e-mails and SMS text messaging, and allowing businesses to register with the Telephone Preference Service.

The Lord Chancellor's Department has issued a consultation paper on building public confidence in the way government authorities handle personal data.

UNITED STATES

The government has approved the creation of a national telephone preference service. Consumers will be able to block telemarketing calls by registering their details on a list run by the Federal Trade Commission (FTC). Marketers could be fined up to $11,000 per violation. The service commences operation on July 1st (see p.7).

Two companies, Mrs Fields Cookies and Hershey Foods Corporation, have agreed to pay out a combined total of $185,000 after separate settlements with the FTC. The companies are alleged to have breached the Children's Online Privacy Protection Act (COPPA) by failing to obtain verifiable parental consent before collecting information from children under the age of 13 (see p.16).