



global privacy roundup

AUSTRALIA

The Federal Privacy Commissioner has published guidance for financial advisors regarding the sharing of personal data between financial dealer groups. See www.privacy.gov.au for more details. The Commissioner has also published his annual report for 2002/3 (see p.11).

The Australian Communications Authority (ACA) has announced plans to introduce new rules to protect consumer data held by telecoms companies. The rules will aim to stop subscriber data contained in telecoms directories from being used for unauthorised purposes. The ACA is due to publish a discussion paper in December 2003 with a final set of rules coming into force next year.

According to the *New Zealand Herald*, a bill proposed by the New South Wales Government will place restrictions on employers' ability to monitor their staff. The Workplace Surveillance Act would require organisations to consult with staff on e-mail and Internet monitoring and also require them to obtain court orders before carrying out covert surveillance.

CANADA

In early November, both houses of Canada's Parliament endorsed the appointment of Jennifer Stoddart as Privacy Commissioner of Canada. Stoddart, currently President of the Commission d'accès à l'information du Québec, replaces Robert Marleau, who was appointed interim commissioner after George Radwanski resigned under a cloud in June 2003. Marleau's term ends on December 31st. Further information: www.privcom.gc.ca

Former Privacy Commissioner George Radwanski became the first Canadian in

90 years to be found guilty of contempt of Parliament. The Speaker of Canada's House of Commons ruled in early November that Radwanski had provided misleading information about his spending to a parliamentary committee.

DENMARK

According to law firm Philip & Dick, the Data Protection Authority has stated that sensitive data should not be sent via e-mail in an unencrypted format. The Authority's decision follows an incident involving the Psychiatric Hospital of Århus in which an employee forwarded unprotected patient data via e-mail to the private address of a hospital consultant. However, due to a virus the e-mail was then automatically forwarded on to a number of other unauthorised addresses. The Authority also stated that sensitive data should not be processed on personal PCs unless an agreement over sufficient safeguards has been reached between the organisation responsible for the data and the person processing the data.

EUROPEAN UNION

The European Commission has called on EU member states to improve notification procedures for organisations transferring data outside the EU. See p.8

On October 31st, the deadline passed for implementing the EU E-Communications Privacy Directive into national law. The directive provides additional data protection safeguards for consumers using the Internet and telecoms networks, and places restrictions on unsolicited e-marketing, the use of website cookies/spyware, and the processing of mobile location data.

EU member states such as the UK, Italy, France and the Netherlands are

expected to enforce their respective versions of the directive in late 2003/early 2004. For more information on European e-privacy rules, see p.18.

The European Court of Justice (ECJ) has delivered a landmark ruling, upholding a decision by a Swedish court to fine a woman who posted the personal details of local parishioners on her website. Although the ECJ agreed that the woman had breached data protection law, it ruled that the charge of illegally transferring data overseas (eg. because the website would be accessible in other countries) was unfounded. See p.12 for full analysis.

A spokesperson for the European Commission has revealed that a draft directive on workplace privacy could be put before the European Parliament and Council of Ministers before the end of November this year. Workers' unions and industry representatives have been split over the proposals for additional legislation which could include specific requirements on the processing of sensitive data, monitoring and surveillance, and medical testing.

Last month, the European Trade Union Congress (ETUC) called for the draft directive to include an outright ban on the use of genetics testing in the workplace (see p.8). For a copy of the European Commission's consultation on workplace privacy see:

http://europa.eu.int/comm/employment_social/soc-dial/labour/docs/secondstageconsultationdataprot_en.pdf

GERMANY

Peter Schaar has been appointed as Germany's new Federal Data Protection Commissioner. He replaces Joachim Jacob whose five-year term

ended in July. Schaar was previously the Deputy Data Protection Commissioner for Hamburg.

GREECE

The Hellenic Data Protection Authority has banned the recording of passenger fingerprints and irises at Athens International Airport. According to *Reuters*, the airport launched the pilot security project in October, but limited the trial to passengers flying to Milan with the Italian airline Alitalia. The Data Protection Authority stated that the project breached the national data protection law.

IRELAND

On 10th November, Ireland implemented the E-communications Privacy Directive into national law. The new regulations will require organisations to obtain consent from individuals before processing location-based data and sending unsolicited e-mail/SMS messages.

There are also tighter controls on the use of cookies and spyware and provisions that will give telephone subscribers greater control over the amount of personal data entered into subscriber directories.

The Data Protection Commissioner is to be given powers to investigate breaches with penalties for sending unsolicited e-marketing including fines of up to €3,000 per e-mail/SMS message.

A copy of the European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations is available from the following URL: www.dcmnr.gov.ie/files/ComsReg_SI_535_of_2003.doc.

ITALY

The Italian Data Protection Authority has ruled that prepaid mobile phone users have the same subject access rights as regular mobile phone subscribers. The decision follows a complaint from one prepaid phone user after a mobile phone company denied the person access to records of their outgoing calls.

MALAYSIA

The Malaysian government is planning to implement a tough new privacy law early next year. According to the *Malaysian Star*, the Personal Data Protection Law could see offenders jailed for up to twelve years for serious offences such as ID theft or illegally accessing data, while less serious offences could warrant three to five years.

The law, is currently being drafted by the Ministry of Energy, Communications and Multimedia (KTKM). According to government minister, Dr Rais Yatim, the law will focus on providing adequate security and privacy to individuals in the handling of personal information.

NETHERLANDS

According to Baker & McKenzie, a revision to the Dutch Telecommunications Act will include a provision allowing consumers to opt-out from receiving unsolicited telemarketing calls. The revised act is expected to enter into force early next year.

NEW ZEALAND

Work and Income, an employment service set up by the Ministry of Social Development (MSD) has apologised after sending 2,700 letters to individuals which revealed the personal details of other people using the service. According to *NZ City*, the MSD's chief executive, Peter Hughes, will submit a report to the Privacy Commissioner detailing the steps which will be taken to tighten security. The incident was put down to an IT error.

SPAIN

On November 5th, the General Law of Telecommunications came into effect. Drawn up by the Ministry of Science & Technology (www.mcyt.es), the law contains a number of provisions relating to e-privacy. The law gives consumers greater rights over the amount of personal data listed in subscriber directories and places restrictions on e-marketing via channels such as e-mail and SMS. The e-marketing rules are similar to Article 13 of the E-communications

Privacy Directive which requires businesses to obtain consent from individuals before sending commercial e-mail, unless they are marketing similar products and services to existing customers.

UNITED KINGDOM

The Information Commissioner's Office has published guidance on the Privacy and Electronic Communications Regulations which enter into force on December 11th. See p.10.

UNITED STATES

On October 11th, the US federal 'Do-Not-Call' telemarketing registry entered into force despite legal challenges from the direct marketing industry. Pending a court ruling that will determine whether the registry violates marketers' right to free speech, businesses will be required to abide by the new rules which allow consumers to stop telemarketing calls by registering onto a national Do-Not-Call suppression list. November figures from the Federal Trade Commission (FTC) revealed that over 63,000 complaints have been made since the registry came into force.

Additionally the Federal Communications Commission has announced that it is pursuing telecoms operator, AT&T, for breaching the Do-Not-Call rules (see p.7).

In late October a US District Court judge threw out a class action lawsuit against TriWest Healthcare Alliance, a contractor for the Department of Defense. The action was brought after an incident last year involving the theft from TriWest of computer equipment containing details on more than half a million Department of Defense staff. Details included names, addresses, social security numbers, and medical claims histories.

The judge, however, ruled that even if TriWest was negligent in its security practices, the plaintiffs' lawsuit had failed to show that Department of Defense staff had suffered damages. See *PL&B International*, August/September 2003, p.26 for more details on the TriWest incident.