

**DATA PROTECTION AUTHORITIES**

Australia, Hong Kong, Japan, South Korea and New Zealand have all established dedicated civil authorities to oversee compliance with legislation on personal data protection. Necessarily, their constitutional status and operational methodology differ, depending on local conditions and the background to their respective privacy regime being established. Hong Kong, for example, has created the PCO as an independent statutory body. Others may have closer ties to local government, which is not necessarily a bad thing, provided the authority is able to regulate and discharge its function in an independent manner.

**TACKLING THE COMMON ISSUES**

There are issues common to all jurisdictions. Spam and unsolicited e-mails are obvious examples. Their common occurrence is matched by a common inability, so far, to come up with solutions. Some jurisdictions attempt to tackle the nuisance via legislation. Korea, for example, has enacted legislation, and Hong Kong is thinking about it. But how successful that legislation will be as a workable solution remains to be seen.

Progressively, the concept of promoting regional privacy guidelines and model regulatory structures with an emphasis on cross-border cooperation is being viewed with favour. Once again, prospects of regional prosperity will provide the incentive to move this concept forward.

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**FURTHER INFORMATION:** There will be a full report in the next *PL&B International* on the work of APEC, the APT, and the Asia Pacific Forum and their attempts to produce Asia-Pacific Guidelines.

*Privacy Laws & Business* is planning an Asia Privacy conference to take place in Hong Kong in 2004. Anyone interested in helping sponsor, support or organise this conference should contact Stewart Dresner at the *Privacy Laws & Business* office or e-mail: [stewart@privacylaws.com](mailto:stewart@privacylaws.com).

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# Data Protection as liberating legislation

At the PL&B/Arthur Cox conference in Dublin on November 11th, Irish Justice Minister, Michael McDowell, explained how he saw data protection law as a driver for economic activity.

“It is my belief that in a liberal society which is enterprising and which is job creating, we should interpret our laws in a way which is consistent with our legal obligations under EU law in a way which is consistent with the kind of society which has proved successful in the past. Data protection is not supposed to be a damp towel flung across an ordinary society inhibiting all sorts of activities. It is there for the protection of individuals. It should never become an end in itself. It should never be exaggerated beyond its original purpose. It is not an alternative religion. It is not a new way for people to earn money at the expense of others. It is not intended as a new code which has the objective of control everywhere. Its purpose is the opposite. It is simply to protect individuals.

We have to approach everything philosophically from a liberal perspective especially in relation to a measure which is supposed to be liberal in character. And we have to approach it in its implementation in a manner which encourages economic activity, encourages people to be innovative, encourages people to advertise their goods, encourages people to offer services to others, encourages people to bring price competition and other matters to people's notice, encourages people to seek out consumers of their products, encourages people to put other people in touch with material which could be of use to them. That's liberating.

And you know it's a bit like mobile phones - there's a certain class in the community who, for the past three to five years have been writing in letters to the papers saying how they hate seeing people talk into a mobile phone while walking down the street, who see any change as a challenge to their preconceived view of the world. I'm saying that there's a danger, as a lot of people are saying, 'How dare

people have data on me. I want to live in a world where nobody knows anything about me, my privacy is sacrosanct.' The real world is moving on ahead of that in ways that knowledge and data processing and the like is a liberating force. All I'm saying is we have to implement the law, progressively, positively, and what I like about the new legislation is the emphasis on consultation, codes of practice, self-regulation, self-starting, addressing the issue on a spontaneous basis rather than waiting for society to come and whack you over the head because you've been doing something wrong.

That's my message - don't let's make this into another obstacle to doing business in Ireland, or another obstacle to good ideas. Don't let's make our data protection law an inhibiting factor or a constraining factor which goes far beyond its original purpose which is to liberate people from oppressive intelligence being gathered about them. If we keep that in mind, that this is intended to be liberating and positive legislation in its approach, then we won't go wrong. But if we go down the other road of making this legislation an end in itself, much as in many other spheres, particularly lawyers - and I'm one of them - tend to create an entire cathedral of difficulty for clients in the real world, based on very modest foundations - if we go down that road, this Act [ie. Ireland's new data protection law] will turn out to be a negative, when it should be a positive.”

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**FURTHER INFORMATION:** Papers from the conference are available from *Privacy Laws & Business*. Please contact Glenn Daif-Burns at: [glenn@privacylaws.com](mailto:glenn@privacylaws.com).

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