

Spain imposes strict controls on direct marketing

By Rosa Barcelo

THE SPANISH PARLIAMENT has unanimously adopted a decision to draft an amendment to its data protection law that will ensure “opt-in” consent is gained before personal data collected from the electoral roll database is used by direct marketers.

Article 31 of the Spanish Data Protection Act provides for the creation of a marketing registry, which includes the details of all individuals listed on Spain’s electoral roll. The National Statistical Institute (NIS), which was tasked with creating and regulating the registry, can make the list publicly available to “those involved, either permanently or occasionally in compiling addresses, disseminating documents, publicity, distance selling, market research or other similar activities.” Unless an individual specifically requests to be excluded from the list, his or her details will be accessible by direct marketers.

Since the Act came into force in 1999, there has been no action taken to create the marketing registry or to regulate its use. However, the NIS publicly announced its intention to send letters to each citizen listed on the electoral roll, informing them of the new registry, its purpose, and to provide them with the opportunity to opt-out from the list. The news received a negative reception from the Spanish public, which felt the move portrayed an unfair use of personal data. Some found it outrageous that non-response to the letter would be deemed as positive consent and that their details would automatically be included in the marketing database. Furthermore, because Article 31 of the Act allows the NIS to receive a fee for providing access to the registry, many felt that this amounted to unlawful commerce in personal data.

However, the situation is not very different from regulations governing

some of the existing databases. According to Article 3 (j) of the Spanish Data Protection Act, telephone directories or lists of people belonging to professional associations are already deemed as “sources accessible to the public,” allowing companies to use the information for marketing purposes. This use is conditional upon informing individuals of the origin of the data (eg. “your data has been retrieved from the list of members of the Barcelona Bar”), the identity of the data controller, and the rights available to the data subjects. Thus, the indignation of the public did not arise because of something completely new in the law, but rather because, with the creation of the official marketing registry, citizens became aware that the opt-out rule was the default approach for the use of personal data.

The problem was discussed by Spain’s Parliament at a meeting on October 29th 2002. The NIS decision, endorsed by the Data Protection Authority, to use the data upon obtaining opt-out consent from citizens was in line with the current Data Protection Act. The question was how to solve the current problem. Various political parties submitted proposals to amend the language of Article 31 of the Data Protection Act to request that express opt-in consent be required for the marketing list. However, the Government party (Popular Party), which has a majority in Parliament, did not accept these proposals. Instead, a watered-down solution proposed by the Government party was unanimously approved. According to the proposal, a

separate regulation concerning the creation and functioning of the marketing registry will be drafted. The regulation will set forth the obligation to obtain express (opt-in) consent from citizens to be included on the list. So, instead of amending the Data Protection Act, the desired effect will be achieved through a regulation developing the Act.

While the measure has been received very positively among citizens in general, direct marketers see the measure as a real constraint on their business. They expect that most citizens will not return the letter requesting that their data be included in the marketing registry. In effect, the size and usefulness of the database will be radically diminished. Companies that rely on the use of acquired databases are also concerned about the increased difficulty of reaching potential customers with whom there is no previous contractual relationship.



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The next meeting of the European Privacy Officers Network, featuring a presentation from Spain’s new Data Protection Commissioner, takes place in Madrid on April 29th. See www.privacylaws.com for more details.