



PRIVACY LAWS & BUSINESS

DATA PROTECTION & PRIVACY INFORMATION WORLDWIDE

US politicians act on offshore privacy fears

Lawmakers in the United States are seeking to curb offshore outsourcing in the name of privacy. But, asks **Eugene Oscapella**, is the US guilty of double standards when it comes to protecting outsourced data?

Observers of United States action (or inaction) on privacy issues at the federal level might be forgiven for raising an eyebrow at new US Senate bills attempting to limit data exports to protect the privacy of Americans. Some might even suggest that the limits are less about protecting privacy than about protecting jobs in a presidential election year.

The US has its concerns over the security of information processed overseas, but equally concerns are now being raised over whether personal data outsourced to the US is at risk from prying government eyes.

OFFSHORING CONTROLS

On April 8th, US Senator Hillary Rodham Clinton introduced the SAFE-ID Act (S.2471) in the US Senate. This was then followed by two more offshoring bills (see p.2). Although the bills will not be adopted this year, Washington attorney Bob Belair told *PL&B International* they are likely to be re-introduced in the 109th Congress in 2005.

The Clinton bill states that it is designed to regulate the transmission of personally identifiable information to foreign affiliates and subcontractors - more commonly known as "outsourcing". The bill allows "business enterprises" - organisations, associations, or ventures established to make a profit - to transmit personally identifiable information regarding US

citizens to any foreign affiliate or subcontractor located in a country with adequate privacy protection.

"Adequate privacy protection" means that the country has been certified by the Federal Trade Commission (FTC) as having a legal system that provides adequate privacy protection for personal data.

Fortunately for most EU member states, countries that have comprehensive privacy laws that meet the requirements of the EU Data Protection Directive are automatically certified under the bill as providing adequate privacy protection. However, the FTC may withhold certification if it determines that such laws are not commonly enforced within a given country.

If the level of data protection in a given country is not adequate, business enterprises may not transmit personal data regarding a citizen of the United States to any foreign affiliate or subcontractor located in that country unless three conditions are met: (1) the business enterprise discloses to the citizen that the country to which the information will be transmitted does not have adequate privacy protection; (2) the business enterprise obtains consent from the citizen, before a consumer relationship is established or before the effective date of the law, to transmit such information to foreign affiliates or subcontractors; and (3) the consent is renewed by the citizen within one year

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