



Privacy & Data Protection

Volume 2, Issue 7

July/August 2002

Headlines:

- Angus Deayton gets injunction , p.14
- Euro Commission considering new 'safe' countries, p.15
- Identity Cards imminent, p.16

Inside this issue:

New Facelift for European Data Privacy	3
How to draft opt-in / opt-out clauses	7
The use of Cookies in Europe	8
Data disclosures to Local Authorities	11
The opt-in / opt-out debate in the US	13
News	14

Europe nears agreement on new Data Protection laws

After months of wrangling, European law makers have finally agreed to a raft of new data protection measures that will apply to electronic communications.

On June 25th, the Council of Ministers agreed the new provisions which must be brought into effect by Member States within the new shorter implementation period of 15 months from when the new measures are agreed.

The most significant change is that businesses will be put under considerable restrictions concerning the use of emails for marketing purposes—

opt-in, rather than opt-out consent will now be required. The only exception to this is where the targeted persons are existing customers, such customers' data were collected in accordance with existing data protection law and they have been given an opportunity to opt-out in each and every communication from the relevant business.

The requirement for opt-in consent for email marketing is expected to cause disruption to IT systems that could take years to overhaul in order to make them compatible with the new requirements.

As Eduardo Ustaran of Berwin Leighton Paisner says, "virtually all commercial websites will have to be changed as a result of the new law, because the way personal information is collected today relies on 'opt-out' in the vast majority of cases."

Arguments over the new Data Protection Directive had caused legislative delay to a set of directives (known as the 'Telecoms Package') aimed at regulating the information society. The two main sticking points had been the use of cookies and email marketing. The Euro Parliament had

(Continued on page 14)

Most data transfers to the US are unlawful

The European Commission has expressed concern that the vast majority of transfers of personal data from EU companies to the US are unlawful under data protection law.

The Eighth Data Protection Principle outlaws the transmission of personal data, such as names and contact information of employees or customers, without certain legal requirements first being met. One such requirement is that the consent of the relevant indi-

viduals has been obtained.

Jason Saiban, IT lawyer at Charles Russell, says that, "in the vast majority of cases it simply is not practical for global organisations to obtain consent for foreign data transfers. For exports to the US we have to look at safe harbor, model contract clauses, or possibly codes of conduct."

The US is the only country to benefit from its own specific, Commission-

approved, exemption to the data export ban. The Safe Harbor rules allow transfers from UK and other EU-based businesses to any US company that has certified compliance with the rules.

"So far only 208 companies have certified compliance with safe harbor," says Saiban. "We need to improve on this figure so that more companies can take advantage of this easy route to compliance. The

(Continued on page 14)