www.pdpjournal.com

ISSN 1473-3498

Privacy & Data Protection

Volume 7, Issue 1

October / November 2006

European companies must notify security breaches

European companies will be forced to notify their customers of security breaches, according to a new proposal from the European Commission.

Under the proposed changes, telecoms companies, Internet Service Providers and e-commerce businesses will be required to immediately inform their customers regarding security breaches that result in personal data being made available to others.

Although some European companies already choose voluntarily to inform their customers of security breaches, this new controversial measure, already adopted in several US States, will represent a sea change in Europe.

A similar law in California and other US States has led to several embarrassing admissions (which might not otherwise have come to light) from high profile companies, as well as large claims for compensation.

According to John Whelan, of Dublin law firm A L Goodbody, "the new proposals from the European Commission will have significant consequences for ISPs and telecom operators, and if implemented, would involve a radical change to the current law."

In some respects, according to experts, public awareness of security breaches can actually be damaging. "There are a number of issues which a company may face in the event of a security breach, and being obliged to immediately notify individuals would not always be the most prudent course of action—it could for example prejudice criminal or other disciplinary investigation," said Mr Whelan.

(Continued on page 13)

Foreign outsourcing to be made easier

A new set of model contractual clauses for legitimising international data outsourcing arrangements—for example, transfers of customer records from Ireland or the UK to call centres in India—has been drafted by the International Chamber of Commerce.

At present, the main practical way to legitimise international outsourcing is to use an existing set of contractual clauses, provided by the European Commission in 2002 (available at www.pdpdocuments.com)

The new set of clauses will make it easier for businesses to enter into international outsourcing arrangements, largely because they are less onerous on the importer (also known, in data protection terms, as the 'data processor').

The International Chamber of Commerce has produced the new clauses in conjunction with the Japan Business Council, The American Chamber of Commerce and Federation of European Direct and Interactive Marketing.

Whilst there is still a provision that allows for liability to fall on the data importer (e.g. a processing centre in Bangalore) where an individual is adversely affected by any breach, such 'joint liability' can only arise where the exporter has disappeared or ceased to exist in circumstances where no entity has assumed the legal obligations of the exporter.

Thus where the data exporter is taken over by another company (e.g. a

(Continued on page 13)

Headlines:

- Practical guidance for banks, p.14
- Police data to be shared across the European Union, p.14
- Ebay investigation, p.14
- Starbucks loses staff details, p.15

Inside this issue: