

World Data Protection Report

International Information for International Businesses

Monthly news and analysis of data protection and privacy issues from around the world

Volume 8, Number 4

April 2008

Commentary

Legislation and Guidance

Argentina: Changes to the Data Protection Act.	3
€1,000,000 fine for distributing unsolicited software.	4
Using extra-European data sub-processors	4
Security breach notification in Europe – coming closer.	6

Personal Data

Electronic health records: data protection issues in Europe	13
Promuscae and Telefonica: Why the European Court of Justice ruled that privacy rights are as strong as copyright	18
ISP data ‘pimping’ – Phorm under fire over privacy concerns for targeted advertising technology	20

News

Legislation and Guidance

Europe: E.U. privacy watchdog calls for further amendments to the e-Privacy Directive	8
Article 29 Committee clarifies the law applying to search engines	9
New binding corporate rules website to be launched	9
Australia: Privacy Commissioner launches consultation on Information Security Breach Notification Guide	9
Privacy awards 2008	9
Hong Kong: Amended data access request form now available.	10
United Kingdom: Information Commissioner issues guidance on data security breaches.	10
Information Commissioner seeks review of the E.U. Directive.	10
United States: Federal Trade Commission settles data security actions against companies TJX, Reed Elsevier and Seisint.	10

News

Personal Data

Europe: Civil liberties group challenge E.U. Data Retention Directive.	22
France: Websites guilty of privacy invasion for posting links.	22
India: Indian government to launch biometric ID scheme by 2011	22
Ireland: Breach on jobs.ie website	22
Netherlands: Dutch Data Protection Authority indicates a change in direction in its latest Annual Report	22
Philippines: IT sector pushing for data privacy law	23
United States: Alaska passes identity theft bill	23



www.bnai.com

Legislation and Guidance

Argentina

Changes to the Data Protection Act

Written by *Gustavo Daniel Tanús*

Email: gustavotanus@fibertel.com.ar

The Argentine legal framework guarantees people their honour and dignity, as well as their privacy and data protection. The 1994 Amendment to the Constitution of Argentina introduced the right of “habeas data” in Section 43, a legal remedy that provides for special and expeditious judicial action to safeguard these constitutional guarantees.

In November 2000, Data Protection Act No. 25.326 (“the Act”) came into force governing the above mentioned constitutional rights. Decree No. 1558/2001 was issued one year later to clarify diverging interpretations of the Data Protection Act and to create a Data Protection Authority – Dirección Nacional de Protección de Datos Personales (“DNPDP”) as a branch of the Ministry of Justice.

Data Protection legislation applies to the public and private sectors, including data of legal entities, and grants the rights of access, correction, blocking, deletion and updating of personal data.

In June 2003, the European Commission recognised that Argentina guarantees an adequate level of protection of personal data.¹

After 1994, there were several cases in which data subjects have requested access, correction and deletion of their personal data. Most of these related to commercial data held by credit information agencies, the most discussed data protection issue in Argentina to date.

Under Section 26 of the Act, providers of information services on creditworthiness and credit may only process personal data obtained from registers and sources of public access set up for that purpose, or based on information provided by the data subjects or with their consent. Processing is also allowed for personal data related to financial obligations provided by the creditors or someone else acting on their behalf.

At the request of a data subject, credit information agency shall communicate all reports, evaluations and appraisals provided about him in the previous six months, including the names and addresses of the persons or bodies to whom the data was disclosed.

As a general rule, Section 5 of the Act states that express consent must be given by data subjects for the processing of their personal data, either in writing or through other similar means. However, Section 26 sets forth that credit reporting will not require the previous consent of the data

subjects for the transfer of their personal data or the notification of such transfer if the information is related to the business or credit activities of the reporting agencies.

The most controversial issue is the so-called “right to forget”. Pursuant to Section 26.4, only significant personal data to evaluate the economic and financial standing of the data subjects may be filed, recorded or transferred during the previous five years when the debt has not been cancelled.

After many debates about the starting point that should be used to calculate the five-year term established as a “right to forget”, both the court and the DNPDP now agree that it must be the time when the debt was contracted.

Moreover, Section 26.4 also states that the above mentioned five-year term must be reduced to two years when the debtor either cancels or pays off the obligation, as long as the creditworthiness databases clearly indicate such a pay off.

This provision works as a strong incentive for the payment of due debts and succeeds in restoring debtors as worthy of credit and business. In addition, it helps to distinguish individuals who had occasional payment problems from individuals who acted fraudulently and therefore do not deserve the application of the shortened term.

Nevertheless, the National Congress of Argentina considered this two-year term improper in the case of debts that were incurred during the 2001/2003 macroeconomic crisis, so changes were introduced so that people who took on a debt in that period and have since repaid it, or were otherwise ready to make a formal commitment to repay it, cannot be named in credit information databases.

On January 8, 2008, Act No. 25.326 was amended by Law No. 26.343, which introduced Section 47 to the Act providing that credit information agencies must delete or leave out from future registry all data related to debts and ratings of people whose commercial commitments fell in arrears from January 1, 2000 to December 10, 2003, provided those debts were cancelled or brought under control at the time the law was enacted or within 180 days of its enactment. This amendment is both an amnesty to people who have paid their debts and also an incentive for those willing to pay.

The two deadlines set by Section 26.4 of the Act will apply again after July 18, 2008 as if nothing ever happened.

¹ Decision C(2003) 1731