



Book reviews

For anyone wishing to gain an understanding of the privacy scene in the USA, the following publications will be indispensable:-

Compilation of State and Federal Privacy Laws

The eighth edition of the essential USA reference book *Compilation of State and Federal Privacy Laws*, was published in May 1997 by *Privacy Journal* which has tracked privacy issues in the USA for over 20 years. It includes descriptions and legal citations for more than 700 state and federal laws affecting the confidentiality of personal information.

The laws are grouped alphabetically, by state, and in the following categories: criminal records, cable TV, computer crime, credit reporting and credit repair, electronic surveillance, financial records, government and library records, employment, insurance, mailing lists, medical (including AIDS confidentiality), polygraphs, testing in employment (including HIV and genetic testing), privileged communications, the right to publicity, student records, state constitutions, Social Security numbers, tax records, telephone solicitation, and telephone services.

The full texts of major laws are included, as well as a listing of Canadian laws on privacy. Also included is the first published version of the new federal Fair Credit Reporting Act, as revised in 1996.

119 pages Price: \$31 plus postage
ISBN 0 930072-11-1

Directory of Privacy Professionals

Privacy Journal also publishes a *Directory of Privacy Professionals* which lists names and addresses, telephone numbers, specialities and World Wide Web sites for 400 key individuals and organisations in the information-privacy area.

Updated regularly. \$24.50.

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Data Privacy Law - a privacy manual for the USA

The treatment of personal data in the United States is a major concern for the European Union. This is how the two authors, Paul M. Schwartz and Joel R. Reidenberg describe the starting point for their recent book, *Data Privacy Law*. At a time when the EU Data Protection Directive is being implemented, and the USA is interested in developing its information privacy law, the book makes an essential read for anyone who needs to know about data protection in the USA.

The book was originally prepared as a study of American data protection law for the European Commission. The objective was not to provide guidelines for the assessment of *adequacy* of protection of personal data in the USA, but simply an analysis of the conditions under which data is processed. However, the USA being the country that will be most affected by the Directive's requirement for *adequacy* in any transfers of personal data outside the EU, the Commission was keen to see which of the Directive's provisions can be found in the USA.

The study, which was undertaken by two American data protection specialists and lawyers, begins with a comparison of the conceptual framework and legal systems in Europe and the United States. It is noted that in the United States it is customary to speak of *privacy* rather than *data protection*. The authors, however, continue to use the term *data protection* which they regard as more precise than *privacy*.

The analysis then progresses to look at fair information practices in the public and private sectors. Areas covered within the private sector are telecommunications, financial services, direct marketing and employment. Transborder data flows are also mentioned.

Inadequate federal legislation

There are numerous pieces of federal legislation in the USA that address the issue of the government's collection and use of personal data. The two most important ones, according to Schwartz and Reidenberg are:- *the Privacy Act 1974* and *the Freedom of Information Act 1996* (PL&B May 1997 p.10).

The Privacy Act grants some important rights but has, nevertheless, failed to make a real impact. This is mainly due to the problems



relating to its application and compliance. The Privacy Act applies to data controlled by only one part of the government, namely federal agencies, which have not made much effort to change their data processing practices. In addition, the Act does not give federal courts the power to force these changes. However, despite its weaknesses, the Act places some restrictions on the collection and processing of personal data.

No coherent legislation at state level

The legislation at state level is no less complex. Surprisingly, some data protection exists in every state, but the level of regulation varies from state to state. Comprehensive sets of obligations for the public sector are missing in most states. The law in Florida, for example, does not place any restrictions on data matching. In contrast to Florida, California has the most comprehensive data protection framework with a specific reference to privacy. Californians have also used their privacy rights successfully.

Despite hundreds of federal and state laws, and supporting self-regulation, the authors urge the creation of a more comprehensive data protection environment. For this to be achieved, they suggest that a data protection law should be enacted in all states.

Commercial pressure more influential than regulation

While the protection of personal data does not generally match European regulations, limited protection does exist. The existing regulations seem to concentrate on subject access rights and the right to have false data corrected. It is a strong view of the authors that a Federal Data Protection Agency should be established to assist individuals in exercising their rights, and to monitor the rapid changes in information technology.

On the other hand, they recognise that in the USA commercial pressure affects companies to such an extent that they are eager to handle personal information in a manner that compares favourably with European principles. There is already evidence that strong public concern can

quickly lead into new legislation - this was exactly the case with the Video Privacy Protection Act 1988.

European protection for transfers across the Atlantic

The authors conclude by suggesting that strict liability of the data exporter for personal data, and a contractual approach could, in most cases, ensure adequacy of protection in transborder data flows. European companies complying with the national data protection legislation would be likely to require information about the data protection practises of their US trading partners.

It is suggested that the transparency effect, together with audits, and the possibility of individuals able to pursue available remedies under European law, would greatly improve US data protection practices. The authors acknowledge, however, that European actions may not be able to stop unfair foreign processing directly. Eventually, the civil and criminal penalties available under many European data protection laws should act as an incentive for European exporters to require satisfactory compliance.

This approach would give European Data Protection Authorities a significant consultative role. The authorities could, for instance, specify conditions under which transfers would be permitted in a contract situation (PL&B Dec. '96 pp. 6-10, October '97 pp. 4, 9).

Data Privacy Law: A Study of United States Data Protection by Professor Paul M. Schwartz, University of Arkansas School of Law, Fayetteville and Professor Joel R. Reidenberg, Fordham University School of Law, New York. Publisher: Michie, 1996 ISBN 1-55834-377-6 Michie, PO Box 7587, Charlottesville, VA 22907-6094, USA. Price: \$90 plus sales tax, shipping and handling. Tel: 800 562 1197 Fax: 800 643 1280 Internet: <http://www.michie.com>