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Warning from the Data Protection Commissioner

Companies must ensure that security and privacy specifications are incorporated into their information systems when they are being designed. They must also incorporate data protection into their induction and training systems as well as possess a data protection policy and have audit arrangements and plans in place for reacting to security breaches. These recommendations from the Irish Data Protection Commissioner, Billy Hawkes are contained in his annual report for 2007 ("the Report").

According to the Report, the Data Protection Office received 1,037 complaints in 2007 which was a substantial increase on the previous year. This figure refers only to the complaints that were formally investigated. It does not include complaints resolved through the Office's help desk without requiring an investigation. Last year, the help desk responded to 20,000 telephone enquiries together with 4,000 email enquiries and a small number of postal enquiries. Of the 1,037 complaints, 52% related to unsolicited text messages, phone calls and emails.

For the first year, the Report includes what the Office considers to be the top 10 threats to an individual's privacy as identified by its staff based on issues which they have encountered over the past year. The top 10 threats to privacy are as follows:

1. Lack of proper procedures in public and private sector bodies to limit access to personal data on a "need to know" basis.
2. The increasing requirement for personal data to be handed over to law enforcement by data controllers when requested to do so.
3. The extended use of the Personal Public Service Number ("PPSN"). The PPSN is provided to every individual by the Government to identify individuals during certain transactions with public bodies. It appears that plans are afoot to require the private sector to collect it for certain transactions.
4. Excessive personal data being sought in relation to international travel.
5. The collection and retention of excessive amounts of personal data.
6. Publication and availability of personal data on the internet.
7. The exploitation of mobile phone numbers for marketing purposes.
8. The increasing use of biometrics in the workplace and in schools.
9. The continued lack of awareness amongst data controllers of their data protection obligations.
10. The continued lack of awareness and complacency on the part of the general public in giving away personal information too easily.

The above (unscientific) list will be renewed and revised each year by the Office.

The Data Protection Commissioner has indicated that he will have no hesitation in using the full legal powers available to him in the event that companies fail to fully co-operate with his Office in relation to its investigations. The Commissioner has stated that he expects companies to take their data protection responsibilities seriously, having adequate security arrangements and data protection policy in place as well as proactively auditing access to the personal data to detect any irregular patterns of access or use of the data by employees.

Although the Data Protection Commissioner welcomed the increasing trend among companies to notify him of accidental disclosure, he stated that this is not a substitute for properly designed information systems that keep personal data secure from accidental disclosure to third parties.

Compliance with data protection legislation is important for all companies because failure to do so can have not only financial consequences but can also damage a company's reputation particularly if the breach is reported in the media as well as mentioned in the Data Protection Commissioner's annual report. Accordingly, it is essential that companies have a high standard of protection for personal data. Companies should therefore review their operations to ensure that they are data protection compliant. There is no time like the present to do a "spring clean". Talk to your legal advisors today.



Illegal download action rolls on

In a recent TABS Update, we reported on the case instigated by four record companies (“the Record Companies”) against Eircom (the largest broadband ISP in Ireland) who are seeking orders restraining Eircom from infringing copyright in sound recordings owned by, or exclusively licensed to them by making copies available to the public.

The current status of the case is that it is at the discovery stage which is when the parties request of each other and exchange documents which are relevant to the issues to be tried. While the documents to be discovered have been agreed between the parties, the Commercial Court has ordered that discovery should await the outcome of the exchange of information between experts in the hope that it may narrow the issues in the action and reduce the number of documents that need to be discovered.

Experts have been instructed to advise on the operation of filtering or blocking systems intended to deter the illegal downloading of music. The Record Companies argue that specialised software such as that provided by Audible Magic Corporation can (and should be used by Eircom to) filter peer-to-peer traffic and prevent specified recordings from being shared. However, Eircom have advised that it is not in a position to run Audible Magic’s software on its servers.

The above action reflects the growing concern within the music industry about the scale and cost of illegal downloading. It is estimated that 20 billion music files were illegally downloaded worldwide in 2006. The Irish market for sound recordings suffered a decline in total sales falling from €146 million in 2006 to €102 million in 2007, a fall of 30%. It is believed that a substantial portion of that decline was due to illegal peer-to-peer downloading services.

Watch this space for further updates on the progress and outcome of the action. In the meantime, ISPs should review their networks to ensure that they are not being used to infringe the intellectual property rights of third parties. There is no time to lose – talk to your legal advisors immediately!

In the Press & on the Lecture Circuit

Maureen Daly, Partner and Head of the Technology & Intellectual Property Unit was the legal contributor to an article entitled “*The Price of Intellectual Property*” in Enterprise Ireland’s eNewsletter, “*eBusiness Live*” on 22nd April 2008. The article examined the importance of intellectual property rights for all businesses (irrespective of their size). If you have queries on the issues raised in the article, please contact Maureen Daly (m.daly@beauchamps.ie) or any member of the Technology & Intellectual Property Unit.

In addition, on 12th May 2008, Maureen Daly lectured on “*The Law of Trade Marks and Passing Off*” on the Law Society of Ireland’s Professional Practice Course (Part Two) at Blackhall Place, Dublin 7. The lecture was attended by trainee solicitors who have an interest in intellectual property.

And Finally....

The Technology & Intellectual Property Unit and its head, Maureen Daly have been recognised for their information technology and intellectual property work by independent international guide, Chambers Europe 2008.

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