

From: Dr Carsten Gatzke
Sent: Wednesday, 14 September, 2011 4:25 PM
To: MICA DP Public Consultation (MICA)
Subject: Comments on Question 1

Dear Sir/Madam

Our company is in the business of lead generation for direct marketing. I provide feedback from this business perspective. We do this business in 30 countries in Europe, North and South America as well as Asia Pacific.

Comments on Question 1

The DP law should provide for efficient data protection for consumers while enabling legitimate direct marketing through clear rules and enforcement for business.

Currently direct marketing in Singapore is very untargeted and unspecified. Companies contact consumers through email, telemarketing and sms using any type of data that they can get access to. The result is equally frustrating for consumers and businesses. Consumers do get many unsolicited calls that do not target them in any relevant way. They also do not get answers on where direct marketers sourced their data.

At the same time for businesses direct marketing is very ineffective using a very untargeted approach. The result is low sales for a high contact volume. Singapore's direct marketing industry is lacking in productivity compared to markets like Germany, Australia or Korea as a result. Singapore should follow the regulations that have been proven successful in countries like Australia.

In a related area, the Spam Control Act has proven to be rather confusing to both users and businesses. Singapore has chosen a unique approach with non opt-in mass electronic messages are still permissible as long as a message is labelled <ADV>. In practice, this particular Singaporean way has led to confusion and we see both businesses and consumers not being clear about their responsibilities and rights, respectively.

Comments on Question 2

To simplify compliance by businesses the general baseline law should cover as much as possible. Having to be compliant not just with the baseline DP law but also other laws and regulations is putting additional burden on business.

Comments on Question 5

Regarding the private sector there should not be any exceptions in terms of applicability of the law. If the law allows for SME to be excluded this will create loopholes that are going to be exploited, e.g. a larger copartition using a small agent to handle non opt-in data that is not used according to the law applicable to the larger corporation.

Comments on Question 6

It is in my view essential that such law also includes organisations outside of Singapore. We should not end up in a situation where the law can be avoided just by setting up operations in Johor. If companies can continue doing unsolicited telemarketing using data that is collected and stored without compliance to Singapore law just by moving this operation across the Causeway the whole exercise defeats the purpose.

One way to avoid this the DP law should make it illegal for Singapore organisations to use overseas service providers that do not comply with the Singapore DP law.

Comments on Question 11

I strongly believe that explicit opt-in should be the general approach in the DP law. An “opt-out” approach described in paragraph 3.35 is not clear to consumers.

At the same time such opt-out approach puts businesses at a disadvantage that do follow a clear opt-in approach as they have a harder time collecting data. Any “opt-out” approach creates loop holes which will be exploited by some organizations.

Also “implied” consent should be avoided for the same reasons. In the example given in paragraph 3.33 I do not see why the patient cannot be asked to explicitly give consent unless in an emergency situation.

Comments on Question 16

A practical solution would be to prescribe a standard maximum retention period for keeping collected personal data (e.g. 5 years). Business that require longer retention periods would need to be required to specify the retention period (e.g. 10 years).

Comments on Question 21

While I agree that a “sunrise” period makes sense I think a period of one or even two years is too long. The law should be clear enough for businesses to understand and be able to comply quickly. Thus, 6 months sunrise period should be sufficient. If the law allows for a longer sunrise period it will only delay implementation and compliance.

Comments on Question 22

Certainly businesses must be allowed to use existing data in order to service customers for existing product or service contracts.

However, allowing the use of existing data for direct marketing of new products would again create a big loop hole. There are Singapore organisations that have been using illegitimately obtained data for a long time. Allowing these to continue to use this data simply because they already possess it cannot be the intention of the law.

Also it puts new businesses at a big disadvantage. If a new entrant needs to build his database strictly on the basis of opt-in/consent but the incumbents can continue to use non opt-in data this will be a large barrier of entry in some sectors.

Existing data should be allowed to be used for servicing existing customers. Existing data should only be allowed to be used for direct marketing if the customer has given explicit consent in the past.

Comments on Question 24

Set up of a Do-Not-Call registry should not impose additional compliance cost on organisations. It must be done in an efficient way where the registry is easily accessible. Several countries have had this type of registry and Singapore should take the learnings from these to come up with an effective solution.

Despite being on the DNC registry consumers should still be able to give explicit opt-in for receiving telemarketing calls from specific organisations to receive calls with offers that are relevant to them. The law should specifically allow for this.

As the proposed DNC registry is also referring to SMS messages this law does touch areas covered by the Singapore Spam Control Act. My suggestion would be to change the Spam Control Act at the same time and change it to a strict opt-in approach for mass electronic messages.

Other Comments

The law should also take into account new technology such as location based direct marketing. There is no reason why this should be excluded from the opt-in approach of the law.

There needs to be proper enforcement to make this law work. I suggest to take a lesson from Australia where Compliance Officers of the the Australian Communication and Media Authority follow up on specific consumer complaints regarding violations by businesses.

Best regards,

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