

Victoria sets data protection benchmark

A discussion paper released by Multimedia Victoria highlights the Kennett government's approach to electronic commerce development and the delivery of government services in Victoria

Following Alan Stockdale's announcement in June that Victoria would strike out on its own in enacting data protection laws covering the privacy sector, Multimedia Victoria (MMV) has now released a discussion paper outlining the proposals.

The Kennett government has given high priority to the development of electronic commerce and delivery of government services in Victoria. This has required it to address key barriers to the uptake of both privacy and security of information. In 1996, the Data Protection Council investigated the privacy issue in the context of expectations that the federal privacy regime would be extended to the private sector. The federal government's March 1997 announcement that this would not occur was a setback. Subsequently, the Electronic Business Framework Group, appointed in 1997, recommended that Victoria should enact a data protection regime and an electronic framework law.

Alan Stockdale, the Minister for Information Technology and Multimedia, says in his foreword to the discussion paper that the decision to proceed with a Victorian regime with private sector coverage was not taken lightly and that if the federal government develops comprehensive national privacy laws, Victoria will vacate the field. The primary reason advanced for Victoria's stance is the need to develop public confidence in online transactions and electronic service delivery. Reference is also made to privacy's growing significance as a social issue and the benefits to business of meeting international best practice.

The proposed scheme is described as light-handed and primarily educative, with an emphasis on minimising compliance costs. It provides for a voluntary scheme and a default legislative scheme, and will be administered by a Privacy Commissioner. The Commonwealth will be requested to make the services of the federal Privacy Commissioner available to avoid duplication and ensure consistency of standards. If the Commonwealth does not agree, a Victorian Privacy Commissioner will be appointed.

The National Privacy Principles released by the Privacy Commissioner earlier this year provide the benchmark for both the voluntary and legislative schemes. The voluntary scheme envisages that data protection can be incorporated into existing codes of practice and complaints handling procedures. It requires organisations to develop codes of practice to be submitted to the Privacy Commissioner for approval. Such codes can apply to information, organisations, activities or industries; they must be effective in achieving the privacy objectives of the legislation and not contrary to the public interest. Once a code is approved, the legislative scheme does not apply so long as subscribers comply with it. The default legislative scheme consists of privacy princi-

ples based on the National Privacy Principles.

Complaints about failure to comply with a code provision or a privacy principle must first be made to the organisation concerned. Voluntary schemes must provide a complaints handling process and a mechanism for appeal. Under the legislative scheme, a complaint can be made to the Privacy Commissioner if a complainant has received an unsatisfactory response to his or her initial complaint.

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The Privacy Commissioner will have powers to investigate, conciliate and resolve complaints, and can issue a determination or refer complaints to the new Victorian Civil and Administrative Tribunal. There is an emphasis on remedies other than compensation and penalties will be restricted to cases of serious breaches or hindrance of investigation.

The Privacy Commissioner will conduct audits randomly to assess com-

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been done in Australia, the U.S. and Europe on technological systems for managing copyright over networks. Developers often express frustration with the nuances of copyright law. Copyright is seen as a "problem" blocking the rapid development of more efficient online commerce. But the legal intricacies often define the limits of fair dealing or fair use.

"Solutions" which compromise them in order to streamline an automated system will in fact set the clock back. Expert systems are probably capable of dealing with intellectual property; users need to ensure that they do not discount the public interest.

What the Australian Digital Alliance will do

The main aim of the Alliance is to promote its principles to government, the public and the media. It seeks a part in the key debates over copyright law and policy, drawing on academic, industry and public sector expertise. It aims to present a unified user's response to proposed legislation which may act as a counterweight to well-organised and experienced lobbyists such as the rights-holding

industry organisations, the collecting societies and the Copyright Council.

The challenge for the Alliance will be to bring the diverse voices of information users together in a way that is not simply antagonistic to the interests of the creative community. Material resources need to be mustered from heterogeneous institutions; a corporate structure and system of governance needs to be settled; and the lines of communication between the component parts need to be maintained. If it can achieve its aims, the Alliance will play a valuable role in Australian copyright policy. There are serious challenges now facing the cause of "balanced copyright". Many of these come to Australia from the real centres of power in intellectual property, U.S. and European industry and government agencies. The challenges include new European laws providing special protection for databases, and changes to U.S. commercial law which would give greater legal scope to restrictive shrink-wrap and click-through licensing commonplace software licences for packaged and online material, respectively). A considered

national response to these issues will benefit from a clearer users' perspective.

There are also issues which are driven more by the conflicts within Australia's own copyright culture, notably the arguments over parallel importation. The recent debate over compact discs demonstrates the political heat which can be generated by intellectual property law, and the importance of moving beyond slogans. Although many will see the outcome in the case of CDs as a straight win for the public interest, the fortuitous and fragile character of the Senate vote underlines the problems with a crude "industry versus consumers" politics.

A more sophisticated approach may be needed when the debate shifts to books, software, or any of the other import issues. The Alliance hopes to play a productive role in shaping Australian responses to these and other upheavals in intellectual property.

For further information about the Australian Digital Alliance, contact Annabelle Herd. tel (02) 6262 1273, or email aherd@nla.gov.au

Julian Thomas <

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pliance with voluntary codes or the legislative scheme, or where the pattern of complaints indicates a persistent or systemic problem.

Issues flagged for further detailed consideration include public records, health information and employee records. The media will not be covered by the regime in so far as its news gathering and reporting activities are concerned.

MMV is seeking comment on the

discussion paper, and is also consulting with community groups prior to the release of draft legislation. One such consultation, organised by the Communications Law Centre in Melbourne was held on July 21, 1998. Three representatives of MMV addressed and received comments from an audience including representatives from the Victorian Council of Social Services, Liberty, Australian Pensioners and Superannuants,

Older Persons Action Centre, Consumer Credit Legal Service, Health Issues Centre, People Living With HIV/AIDS and Electronic Frontiers Australia. <

Jenny Mullaly

Multimedia Victoria, *Information Privacy in Victoria: Data Protection Bill*, Discussion Paper, July 1998.