

## Data Protection Comes of Age

### The Data Protection Act

For the many businesses with established databases as at 24 October 1998, the Data Protection Act 1998 seemed a remote concern when it came into effect in March 2000. They could enjoy the transitional provisions, granting until midnight on 23 October 2001 to comply with the Act.

Media reports earlier that year declared some 50% of medium to large UK corporations to be in breach of the Act. Upon closer inspection it became obvious that whilst that would be the case if they were subject to the Act, in view of the size of organisations researched, it was highly likely that they were still enjoying the benefit of the transitional provisions.

### Coverage of the Act

By way of reminder, the Act covers some manual records as well as computer records - e.g. employee records, contacts databases and so on. More specifically, it relates to the acquisition, storage and use of "personal data" (defined as data that either alone or with access to information reasonably within the company's reach enables one to identify a living being). Thus it does not apply to company names but it does cover records of named individuals who may be the contact at a particular company.

### Possibility of Fines

Besides facing fines, you now face the possibility of being sued for damages by anyone whose information you use in breach of the Act. Previously the law was under-enforced as only the Data Protection Registrar ("Information Commissioner" as she is now known) could take action and her resources were very limited, which is one reason why so few people bothered about the Act. To ignore the new Act would be extreme folly, especially for those involved on the Internet, whose transgressions will be far more transparent.

Some businesses may not need to register under the Act but even if they do not, it does not exempt one from compliance. Where the business is already registered, it may not need to renew but make sure you have disclosed all the uses to which it will put the information - your registration may need updating if you now take information on-line but did not do so when you first registered. The Information Commissioner's web site is a valuable source of free information:  
[www.dataprotection.gov.uk](http://www.dataprotection.gov.uk).

### Application of the Data Protection Act

In simple terms, the Act states that where any information you use includes information on one or more human beings, you must ensure:

- That the information has been obtained legally - if you buy mailing lists it is especially important to get a warranty that the information has been obtained legally and can be used for the purposes for which you will be using the information;
- That the information is used fairly and lawfully - this sounds innocuous but means, for instance, that you cannot use a database to market products from other companies in the same group as yours unless you have each person's consent;
- That you only keep the bare minimum amount of information necessary for your purposes;
- That the person whose information you hold is used only in accordance with their consent (which can be withdrawn at any time);
- That the information is accurate and, where necessary, kept up-to-date and deleted when no longer required;
- That you keep the information safe and secure at all times;
- That you do not transfer the data outside Europe unless it is to a country where there are adequate data protection laws - that includes transfers to other offices within your own company or other companies within the same group.

In fact, the detailed rules are far more complex than these simple points and it can be easy to transgress. It is not enough to register - in many cases detailed staff training may be needed. Above all, you would be very well advised get a thorough "data protection audit" undertaken by an expert to see what you need to do - in many cases this should be simple and cheap and, in any event, a lot cheaper than the likely consequences of non-compliance.

### **NEED TO KNOW MORE?**

For further information on trade mark protection, contact Maitland Kalton. Should you prefer to telephone, call us on +44 (0)207 278 1817.

Kaltons Solicitors, 9 White Lion Street, London N1 9PD, UK.  
Telephone +44 (0)207 278 1817; Fax: +44 (0)207 278 1835.