

# Dutch industry faces tougher privacy sanctions

The Dutch privacy authority has started to clamp down on breaches of the Personal Data Protection Act. But how do Dutch enterprises and privacy activists feel about this law, its implementation and enforcement? **Joe Figueiredo** reports.

The first group of over 200 Dutch organisations have received warning letters from the College Bescherming Persoonsgegevens (CBP), the Dutch Data Protection Authority, reminding them of their reporting obligations under the *Wet Bescherming Persoonsgegevens* (WBP), the Personal Data Protection Act, and warning non-compliant organisations of a possible fine of up to €4,500.

## NOTIFICATION REQUIREMENTS

The WBP, which became law on September 1st 2001 (replacing the *Wet Persoonsregistraties* (WPR), the Personal Data Registration Act) requires Dutch organisations to notify the CBP immediately of their intention to collect and process personal data. They have to provide the authority with information such as the reasons for collecting and processing personal data, and the type of data-security measures in place. Notification details are stored in a public register and made readily accessible through the CBP's website. When the WBP was enacted, organisations were given a year to resubmit notifications that were required under the old WPR, but had become obsolete under the new act.

Enforcing these notification procedures requires the CBP to identify violations. "By analysing past and present notification statistics, we can identify, with some certainty, particular groups of organisations not fulfilling their notification obligations," says Gert Onne van de Klashorst, CBP's public relations officer.

According to a CBP investigation into how the privacy act is working in practice, too many organisations are failing to comply with the notification rules. It reports serious violations among both the public and private sectors.

## UNFAIR AND UNFRIENDLY

VNO-NCW, the Confederation of Dutch Industry and Employers which represents 80 per cent of the Dutch business community, has raised objections to the warnings. "Our members, including some 15 trade associations, were apparently selected on the basis of some sort of statistical analysis, and not on individual proof of non-compliance. Besides, the number of notification exemptions under the WBP could also account for the decrease in the number of notifications," says Bart Rijgwart, VNO-NCW's adviser on information technology policy, including data-security and

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privacy issues. The number of notifications has in fact dropped from around 70,000 under the previous act, to around 25,000 under current legislation.

On the law itself, Rijgwart feels that its 'legalese' makes it too complex for smaller businesses (without legal expertise) to understand. Notification requirements are also too encompassing and increase administrative work. Rijgwart recommends restricting notification to cases where there is an identifiable and significant risk to privacy. Furthermore, the VNO-NCW cannot find any visible evidence from the way the WBP is implemented and regulated that notification procedures help protect data and privacy.

Maurice Wessling who heads Bits of Freedom, a Dutch privacy and citizens'-rights group, agrees on this last point, but for a different reason:

"Citizens, indeed, have the right to know where and how their personal details are being used, and by whom. However, unless the CBP has the means to enforce the law more aggressively - current fines, for example, are not proportionate to the offence and would hardly impact a large business financially - the effectiveness and value of notification could be argued."

Nevertheless, the CBP, which seems bent on continuing with its crackdown on Dutch organisations that breach the privacy law, has scheduled further actions for later this year. "Although we are focusing on notification offences this year, we continue to look at material breaches of the law," says van de Klashorst of the CBP. "Part of our work is case-based, where we investigate complaints brought by individuals, but we are also proactively discussing privacy and other issues with organisations and have planned investigations."

And it looks like the CBP has its work cut out. "The fact that only a hundred privacy officers—most of them in the non-commercial sector—have been appointed in the two years since the WBP has been law, demonstrates the lack of seriousness and enthusiasm shown by Dutch organisations to this law," complains Maurice Wessling.

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