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Business Information Industry Association

REGULATION, REGULATION AND MORE REGULATION....

....BUT DON'T FORGET DATA PROTECTION

At a time of potential new EU data protection regulations - as well as the ever-shifting sand and challenges faced by our members at country level and emanating from the EU Commission or other cross-geography regulators - BIIA's expert advisor on global privacy and data protection, Mike Bradford, offers his perspective on what we could be doing to give ourselves a privacy 'health-check' - and at the same time ensure we are seen by our stakeholders as being responsible and trusted custodians of data.

Firstly may I congratulate those of you have even read beyond the headline into the first sentence! Over the past few months there have been as many articles about credit industry regulation in the trade press as around more business-orientated topics! A sign of the times.

But while we perhaps run the risk of regulatory overload it is something we ignore at our peril.

The 'naughtiest' (as the past decade has perhaps ironically come to be known) has been far from plain sailing for the credit industry with pressures coming at a local country level and the European Commission (putting aside the minor irritation of the global credit crisis).

I can personally vouch from many weeks and months in my previous life as Director of Regulatory and Consumer Affairs at Experian navigating the corridors of power in Brussels trying to get a degree of common sense built into the Consumer Credit Directive; and latterly, with as much political diplomacy as I could muster, suggesting that the Commission's vision of a single European credit market was not something that either the consumer or industry had as a high priority...!

And this year we have seen the start of what will be an inevitable and potentially painful journey to new data protection regulations across the EU affecting both consumer and business credit information providers, so perhaps the overarching feeling in the industry in terms of regulation is one of uncertainty.

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But one thing is a given. And that is that there are significant legal, commercial and reputational risks for organizations irrespective of size in today's highly regulated marketplace in failing to embed core governance disciplines into business practice and corporate culture at all levels – and being perceived by our stakeholders as failing to do so.

But there is also an upside and a proven correlation between investing in governance and winning regulator, customer and market confidence, directly leading to enhanced organizational performance and collateral and shareholder value. A reputation for trust and integrity is hard earned but very easily lost. At the heart of compliance across all businesses, and in particular the credit sector where there are literally millions of highly sensitive personal records, is data protection and this serves to show the importance of taking regulation seriously at the top of any organization. Accountability lies in the Boardroom not with the compliance department.

So how sensitive are our customers - and the Information Commissioner (or indeed other data protection regulators across the EU) - to data protection in the credit industry?

While the points made below draw on specific UK examples, they apply equally to businesses and organization operating both within the EU and globally.

In the UK, the Information Commissioner's Annual Report for 2010/11 brings out some critical points for BIIA members and the industry as a whole - and at the time of writing we are expecting this year's report which I can confidently predict will say more of the same:

- Lenders and the credit industry again topped the sector attracting most complaints at 13% and organisations found to be in breach are named in the public domain.
- The second most requested publication was 'Credit Explained' at 22,000 copies.
- 89% of people are aware of their data protection rights, compared to the baseline of 74% in 2004. And an even higher number of young people at 95% - potentially those starting out on their credit journey - are aware of their rights.

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- The Information Commissioner is targeting increased awareness and consumer education as key objectives for this year.
- And the Information Commissioner can now fine up to £500k for breach of the data protection Principles, recently extended to cover breaches of the electronic marketing regulations.

I would argue that the facts speak for themselves. Jeopardizing consumer trust by being less than responsible with their personal information will go to the heart of our compliance obligations and customer relationships.

Meeting our legal requirements is essential - but with the right approach we can actually ***build competitive differential and enhance our customers' experience*** at a time of increasing consumer and regulator concerns - and media interest - in data protection, privacy and the ever-present fear of a data loss or breach.

And if we are not legally compliant, it can lead to ***action*** by the Information Commissioner under the Data Protection Act 1998 and Privacy and Electronic Communications Regulations - as well as ***commercial and reputational damage*** through being seen by our customers and the market as being irresponsible with personal information.

The ***Information Commissioner's view*** (source: The Privacy Dividend: the business case for investing in proactive privacy protection) is that:

- Protecting personal privacy makes good business sense.
- It should bring real and significant benefits that far outweigh the effort privacy protection requires.
- The alternative, of ignoring privacy and leaving personal information inadequately protected, has significant downsides.

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Commercial success therefore needs consumer confidence and data protection is really just good business practice for any organization. It need not stop us doing legitimate and innovative things with data but what it does is to ensure that when doing this we respect the rights of the individuals whose data we are processing.

And I would argue that in the UK on the whole we enjoy a balanced data protection regime - unlike some other EU countries operating under the same Data Protection Directive, for example France, where interpretation is far more skewed to privacy per se.

While the new EU data protection regulations aim to increase harmonization of approach across EU Member States, UK business and those operating in similarly 'pragmatic' geographies should not jeopardize their position through reckless or careless handling of personal information.

So the future of credit industry regulation in many countries is in a constant state of evolution and flux, in particular against the global recession in which we operate, perhaps it is a good time to 'health-check' our data protection compliance - as much for business reasons as for regulatory compliance.

A quick checklist which in itself won't guarantee compliance but will focus on the key areas would include:

- Who is responsible in our business to ensure we are compliant with the data protection law - and changes that come into effect - and that our staff are aware of and trained in our obligations?
- Is our register entry with the regulator accurate and up-to-date? It is a criminal offence not to have this in place in the UK.
- Is our application form wording compliant to cover, for example, assessing the credit application; performing a credit search with a credit reference agency; sharing data with other lenders; and additional uses of that data, for example fraud prevention, money laundering checks and debtor tracing?

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- What measures do we have in place around data security, including destroying information no longer used?
- Do we have a plan in place should any of our customer's information be lost or stolen?
- If we outsource any processing are these contracts compliant with the Directive and do we adequately vet our sub-contractors?
- Is any information processed overseas? What controls do we have in place to ensure compliance with the law's requirements for transfers outside the European Economic Area (EEA)?
- How do we ensure we keep our customer data accurate and up-to-date - a critical requirement of the Directive? Inaccurate data was the second highest number of complaints received by the UK Information Commissioner's Office in 2010/11 at 15% of the total.
- Does all our staff know how to handle a data subject access request - this has a statutory turnaround time of 40 days under the UK Act? In 2010/11 complaints about this ran at 28% - the highest number of complaints raised with the Information Commissioner's Office.
- Do we comply with requirements around automated processing and the consumer's right to object to direct marketing?
- Is our website compliant in terms of its privacy statement, marketing opt-ins/outs, channel preferences and most recently consent for cookies?

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And I could go on....

But addressing the above would be time well spent and at the very least give peace of mind. And some organizations are increasingly using their approach and commitment to data protection as a competitive differentiator and have publicly signed up to the Information Commissioner's Personal Information Promise in the UK as a board-level statement to this effect.

Data protection is one regulatory challenge - and opportunity - where we can 'tick the box' now.

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Mike Bradford is BIIA's Expert Advisor on Privacy and Regulatory Affairs. We thank Mike Bradford for his latest contribution.



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