

August Media Law Update

Privacy and Data Subject Rights

An EHRC-commissioned report says UK Privacy law is characterised by gaps and contradictions and it is too difficult for the public to understand and use. See the Report at http://www.equalityhumanrights.com/uploaded_files/research/rr69.pdf

We agree. We have made a number of Subject Access Requests under the Data Protection Act. Compliance is patchy at best. Complaints to the ICO in one case resulted in the weary response that the relevant department was a notorious offender. Key principles –e.g. that data should only be processed for as long as necessary ---have no real remedy. There is no right to deletion unless harm and distress can be proved (see below on the new right to be forgotten).

If contemplating making a request—it pays to first see how others have fared using the very good resource at www.whatdotheyknow.com.

The Right to be forgotten

A Spanish case against Google tests the new right to be forgotten and its relationship to freedom of expression: http://www.nytimes.com/2011/08/10/world/europe/10spain.html?_r=2&pagewanted=2&partner=rss&emc=rss

RIPA and Riots

The Regulation of Investigatory Powers Act (RIPA) has been in the spotlight. These powers were employed to force the Blackberry and Twitter messaging system operators to hand over logs to Law Enforcement. You may recall that this draconian act was introduced to deal with ‘Terrorism’ and was later used by councils to enforce school admissions policies and fly-tipping. Law enforcement agencies, such as the police and MI5, can force telecoms companies to hand over customers' details in order to tap phone, internet or email communications to “*protect the UK's national security interests, prevent and detect terrorism and serious crime or to safeguard the UK's economic well-being.*” Designated officials at law enforcement bodies can authorise those interceptions of communications---rather than a court.

Bill of Rights

Should the UK finally have one? This is out for consultation until November and we will be submitting a response –see <http://www.justice.gov.uk/about/cbr/index.htm>. It's a complex topic as the Human Rights Act incorporating the European Convention on Human Rights (ECHR) (and its jurisprudence) now pre-empts the field.

Domain Name Suspension

Nominet's issues group has released recommendations--see <http://www.nominet.org.uk/policy/issuegroups/current/criminalactivity/>

The key recommendations are as follows:

- Nominet should be able to act under an expedited process to suspend domain names associated with serious crime when requested by a law enforcement agency.
- An expedited procedure to suspend domain names should only be available where a) it is the last resort in dealing with the domain name, following requests with registrar, ISPs etc in the first instance or b) it is the most viable option to prevent imminent or ongoing serious consumer harm.
- The policy should exclude suspension where issues of freedom of expression are central aspects of the disputed issue.
- Nominet will consider establishing a registrant appeal mechanism.

The issues group will meet again on 21 September and now seeks feedback from stakeholders before finalising the draft recommendations.

Media Reform

See the insiders' views in the Frontline Club survey on phone hacking at <http://www.frontlineclub.com/news/2011/08/full-results-frontline-club-phone-hacking-survey.html>

ECJ rules on environmental information disclosure exceptions

Ofcom was ordered to disclose information on mobile-phone base stations provided by mobile-network operators by the Information Commissioner. The ECJ has now ruled under the directive on public access to environmental information (2003/4/EC), that a public authority may, when weighing the public interests served by disclosure against the interests served by refusal to disclose, take into account cumulatively a number of the grounds for refusal set out in the Directive.

Twitter

ICO advised that Data Protection subject-access requests made via Twitter are valid.

Gene Patents

In a long-awaited decision, a United States federal appeals court has decided that US companies can patent breast cancer genes, reversing a previous ruling see <http://www.ip->

watch.org/weblog/?p=16952&utm_source=weekly&utm_medium=email&utm_campaign=alerts. We recommend the Immortal life of Henrietta Lacks –which touches on the issues in patenting cells and genes –see <http://www.amazon.co.uk/Immortal-Life-Henrietta-Lacks/dp/0230748694>.

Louboutain and the red sole

A New York court struck out Louboutain's claims for trademark infringement, unfair competition and false designation of origin against YSL – the judge agreed that Louboutin's red sole mark was famous and well known, but in the fashion industry one ought not to be able to use a single color as a trademark. <http://www.google.com/hostednews/afp/article/ALeqM5hW03fuKR7eBBpHYbs90xKWQSAavg?docId=CNG.d1c504bf387227a7f8244a7ff8064da3.521>

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