



Prescott Report

A N O A K K N O L L L I M I T E D P U B L I C A T I O N

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Editor's Note: What's Inside This Month

Brazil, Privacy, Postal, Environment

The Prescott Report scooped much of the mainstream press and, to a lesser extent, the Administration. Last month we gave our readers an insightful interview with Michael O'Reirdan, Chairman of the Messaging Anti-Abuse Working Group on the state of the war on spam, and he pointed out the severity and sophistication of the actual cyber warfare being conducted today by (probably) some aggressive governments including Russia and China. Within the last two weeks the military has admitted that in its planning documents there is acknowledgement of a cyber attack capability being developed in China, at least, and it is being deployed against the United States. The President's advisor on cyber-security, Melissa Hathaway, in theatrically staged comments before the RSA security conference, hinted that her forthcoming report to the President would call for the engagement of the public and private sectors in protecting the United States from cyber-attacks. Later this same week the President appointed Google CEO Eric Schmidt to his Science and Technology Advisory Council.

Ms Hathaway's final report on the state of cyber security, privacy and assorted other data matters is awaited.

Why do we care? Because the FTC is looking again at behavioral targeting and the so-far essentially unrestrained collection and use of personal data and browsing habits on the Internet. What Ms. Hathaway's report recommends on these subjects in terms of attention, administration focus, and new appointments or offices, could have a significant impact on further development of the powerful tools now rapidly evolving.

In the meantime, in Europe, the European Commission continues to examine this subject, and it is on its agenda for the forthcoming conference on the question of changing the Data Protection Directive adopted in 1994. In a rather puzzling manner, the European Parliament itself seems to be again particularly focused on "cookies". We thought this subject was put



...the FTC is looking again at behavioral targeting and the so-far essentially unrestrained collection and use of personal data and browsing habits on the Internet...

(Editor's Note Continued)

to rest a few years ago when they finally were convinced that having people “opt-in” or “opt-out” at every website they visited would paralyze e-commerce growth.

At that time, I remember meeting a member of the staff of a German Parliamentarian who said their laptops, provided by the German government, all came with browsers set to “reject all cookies”. The younger staffers immediately changed the setting, while the older ones all dutifully and seriously decided at each site what they would do. Guess the latter haven't retired yet.

With respect to privacy, Carlos Perez Sanz, one of Spain's busiest and smartest privacy lawyers helps us understand one of the more bizarre bits of Spanish law, obtaining “implied consent” to having one's data processed. This is harder than just “notice and failure to opt-out”, and Carlos educates us with his usual energy and humor. Spain's consistent efforts to “be more Catholic than the Pope” when it comes to privacy has made it a nightmare country for database marketers. Read Carlos' article and decide if you agree with me that there is a little light shining through the darkness.

Andre Bodowski, an unstoppably energetic force has established the continuity-publishing powerhouse International Masters Publishers in Brazil. Learn how he did it and what the results were. Don't miss the companion piece that provides some “color” about the

government, business and legal environment there.

Ingemar Persson, MD of Post Europe provided my committee at the UPU with a presentation on the environmental impact of direct mail and the post. It's an eye opener and will give you some ammunition for the next time an enviro-guerrilla corners you about “junk mail”. We'll continue to send you ammunition as my committee continues its work on the “sustainable post”.

Finally, two short quizzes on some privacy basics you should know, recent developments in fact, and some fun Readers Trivia questions on the state of the economy around the world, and famous quotes from famous financial industry types.

Happy May Day, fellow laborers.



Special Report: An Optimistic Message from Brazil.

An Optimistic Message from Brazil.

Direct mail sales in Brazil on credit? IMP says, Yes.

International Masters Publishers (IMP) is a highly successful multinational marketer of series products such as recipes, crafts, and health in card and DVD formats, as well as music and one-shot books. It is a major customer of the post in every country in which it does business, and as a continuity product marketer, it obviously gets to know the post's strengths and weaknesses pretty quickly. And it's an entrepreneurial new company in Brazil.

I was fortunate to find IMP's country manager for Brazil, Andre Bodowski, between his trip to Spain and IMP's training center and his onward travel to his responsibility in Brazil, where he spends 50% of his time. Andre was charged with launching the IMP brand and product line in Brazil. This project took him two years and made its first campaign mailing in June of 2008.

Brazil is an attractive market for published products in general and for series works in particular. Import tariffs in Brazil are extremely high. As a result, in protected sectors of the market, such as electronics, heavy equipment and clothing, for example, there is in a plethora of home-grown brands of often world-class quality. The jets of Embraer spring to mind. As a consequence one does not see massive quantities of Chinese manufactured products in Brazil, or from any other country for that matter, because they are "prohibitively expensive". As a consequence IMP has no imported foreign competition. In addition, because its products are all printed, and the print industry in Brazil is sophisticated, it prints its collectible items locally, including its wild life card collection, which it used as its launch product.

Another factor that makes Brazil an interesting market for IMP's product lines is the demographics. According to Andre, "There is something like middle America and the American countryside in Brazil. There are many small towns where people are eager for information and products. The demographics are excellent, and there are no shopping malls or bookstores." Its target market is the middle range at C in a market classified A to F. Given the growth in this demographic during the government of President Lula, this is a promising market indeed. .

Entry Strategy.

IMP promoted its launch with direct mail and magazine inserts. "We discovered that the best magazines for our offers are non-generic and non-weekly magazines with a clear subject matter theme, similar to *Popular Science*, and magazines aimed at teachers, or rural life and farming magazines. Teen and 'tween magazines worked well, also. General interest and news magazines are not successful, but may become so later."

Their offer was similar to that used in Europe and offered the first card in the series and a premium for the price of shipping and handling alone. They had a 50% payment rate on that welcome kit, and the total payment rate thereafter has varied with the campaign. In general, the total payment rate is around 70%, which is a somewhat acceptable KPI level. One can call to cancel at any time.

Direct won't work here.

Every direct marketer who comes to a new market hears two things. First, it won't work here because people like to touch before they buy. And second, you can't be successful selling on credit.

(Continued on next page)

As regards the first, there were some grounds for concern, notes Andre, because there is not a long history of distance selling in the country. In fact, according to Andre, "It seems like direct marketing only really started in Brazil around 2004 at the end of an extended period of inflation. During that time it was impossible to price products in a catalog and then mail it. You couldn't honor the price you'd printed. By the time the catalogue reached the customer the price would have raised by 30% or more. Consequently, there was no history of things like the Sears catalog or home shopping."

In addition, this corresponded with the arrival of the Internet, which has attracted buyers more than has direct mail.

As a result of this history, "There are no "old school" direct marketing agencies," he observed. "Agencies want big projects involving CRM, loyalty programs, integrated campaigns and other sexy stuff. They aren't interested in the messy old stuff like beating control [with a direct mail package]."

As regards the second, credit, to the absolute astonishment of even the Brazilians, the payment rate on the first billing was 70%.

Operations.

The operation of IMP in Brazil has only six people. It is located in a section of Sao Paulo called Alphaville, close to the printers and other vendors. The city of Sao Paulo provides significant benefits to printers and fulfillment houses in this area. Andre feels it is extremely important to be close to vendors in this environment. Personal relationships need to be continually reinforced.

For customer service and inbound order taking the company has outsourced to a call center. Most inbound calls are in response to dunning letters. In stark contrast to the United States, "Brazilians do not wait," observed Andre. "They hang up if the phone is not answered quickly. On the other hand, the talk time is considerably longer in Brazil, more like Latin America and Canada."

Current growth strategy dictated by postal/doing-business constraints

IMP will focus for the near future on a few states in the South and Southwest of Brazil. Under Brazilian regulations and postal rules, it becomes prohibitively expensive for IMP to mail into other States which are a distance away, such as in the north. The post will not allow a mailer established in a state to drop mail directly to postal distribution centers located in other states, unless the mailer has a tax ID in the state it wants to drop mail in (or unless it is a substantial corporate enterprise).

And having multiple tax IDs and subsidiaries in multiple states may be more costly than being able to drop mail deeper into the mail stream. And, not, you cannot truck up your mail, and inject closer to your customers. Post offices can't accept your mail unless you are in their district. On top of this, pricing for flats and parcels is by postal code, weight and size, so if your margins are narrow, the economics may not support nationwide mailing.

Andre observed that there is an upside. "Due to this rigid inflexibility, there are a lot of private carriers who can be very competitive on pricing. However, the national Post becomes more attractive as volumes increase and the discount tables take effect. Smaller magazine publishers use private carriers."

Quality of Service?

Is the post a genuine partner? So frequently in Latin America, one has to avoid the local post, so we asked about the quality of service. "I love them. They are great," said Andre. He continued, "In public polls, the post and the firefighters rank top of the list as the most trusted organizations in the country. However, you must stay constantly aware of the postal workers union plans. For example, they staged a 20-day strike in 2008. We were not prepared for this, and suffered a little bit," observed Andre." If you are in communication with them, you can plan accordingly."

(Continued on next page)

How about the Internet?

According to Andre, Brazilians vie with the Koreans and Japanese in being first in the world in time online. Social media are extremely popular and the Brazilian equivalents of Match.com and Facebook are among the most popular websites. Mobile is a popular marketing medium, and many companies are experimenting with mobile direct-marketing. DRTV is not as developed as in the US, again because of that lack of dm experience.

“As concerns marketing on the Internet, advertisers seem more interested in branding and impressions than click through rates. For Internet marketers, it’s all about eyeballs, not conversion,” Andre theorized.

Results and the future?

Andre says the business has exceeded budget on income and results so far and he predicts he will double the business in the coming year. Why is he so certain? “IMP knows how to execute, communicate and manage continuity like no other company. Also, after some challenges and problems the fulfillment and inventory management is now very tightly controlled,” he proudly and firmly stated.

And the recession? In Andre’s opinion, Brazil will weather the recession pretty well. It is self-sufficient in energy and food. Its banks are well

regulated and didn’t invest in CDO’s and other exotic toxic assets.

I would also add that Brazil is outside the US/European “supply chain” network, which is collapsing as manufacturing slows to a crawl worldwide. Food is a large export line for Brazil, but demand is constant there and the only sector suffering would appear to be iron ore for steel and the highest end products like jets.

IMP’s success is noteworthy since Brazil is an extraordinarily difficult market to penetrate, but not particularly because of the nature of the consumers. Any good marketer can deal with national differences. The bigger issue in Brazil is the weakness of the infrastructure and the completely byzantine legal and regulatory system, or lack of a system. To this Andre would add the regulations relating to use of the post, while at the same time praising their quality of service.

[Don’t miss the accompanying snapshot on the state of the economy, the system and dm development at “Brazil-Always a Surprise”.]



Two piece magazine insert self-mailer inside

Two piece magazine insert self-mailer outside

BRAZIL – ALWAYS A SURPRISE – Doing business in a hyper-bureaucratic, litigious country...

Brazil has shown itself to be one of the most developed countries in the world in database and interactive marketing. Its agencies regularly win Echos and its DMA is very professional. Much of the growth and sophistication in db marketing comes from the publishing and financial sectors, where credit card and other financial services marketing are of a high sophistication. In the publishing sector Abril stands out as a major magazine publisher with front-rank direct marketing skills.

What might be a puzzle is that Brazil ranks 3rd in the BRICs for major dm agency openings, behind both China and India, and ahead of only Russia. This would appear to be due to the fact that the big agencies go where their brand clients go, and they are not going to Brazil.

Why is this? The World Bank's authoritative and well-respected Doing Business Report places Brazil at number 122 of the 188 countries they have surveyed, between Honduras and Indonesia. This report measures a country's hospitality to business start-up and operation across 10 indicators, including the time and expense of accomplishing fundamental business operations such as incorporating, hiring employees, building a warehouse, enforcing a contract, and paying taxes.

Brazil is a very difficult and bureaucratic place to do business, as Andre Bodowski's interview reveals elsewhere in this issue. It takes patience and a

tolerance for ambiguity and risk to do business there. For example, according to the Bank, it takes 152 man-days of work to form a company, versus the OECD average of 15. In New York State it takes about 2 hours.

Brazil is big on inefficient, complex, and confusing government regulation, especially in the tax area, where it ranks among the most complex and time-consuming places on earth just to pay your taxes. It takes 2600 hours a year to calculate

and pay your taxes, about the worst in the world. The average is 180 hours in the OECD countries.

The complex layers of bureaucracy make it easy to make a mistake, and make it easy for the unscrupulous officials to take unlawful advantage of businesses.

Moreover, it appears that Brazil is an extremely litigious society. At the Marketing Commission meeting of the International Chamber of Commerce in Washington DC in January we learned that some 40 million lawsuits are pending in Brazil. In fact, one lawsuit is begun in Brazil every 3 seconds. This problem is so severe that a self-regulatory body, called Conar, has been formed by advertisers and advertising agencies and media to provide advice and recourse to consumers. This organization has been quite successful in engaging the industry in programs to enforce self-regulatory



A sophisticated winning campaign from Brazil promoting sales of...nails! And very successful it was.

codes and provide assurance to the public of honest advertising claims. In fact, 38% of complaints now come from consumers and 41% from members.

Until recently, the Brazilian economy was performing in a spectacular fashion. Chinese demand for iron ore, oranges, soybeans, beef and poultry, and general world demand for Embraer planes reduced Brazil's chronic deficit burden and raised incomes in much of the country. That was last year, however, and Brazil's economy has slumped into recession with the rest of the world.



Embraer aircraft – A major Brazilian export.

The local DMA, ABEMD (Associação Brasileira de Marketing Direto) conducted its first survey of the state of dm in the country in 2005 and this showed the spend on dm was \$5.1 billion, with growth of 11% per year over the 5 years ending in 2005. No doubt during the boom in commodity prices and exports it increased more quickly until this year. ABEMD's work shows major use of telemarketing, with the spend on call centers being nearly 28% of the ad spend, followed by 19.5% for Internet and ecommerce and 16.4% for printing. This last number does not break out direct mail and other print media, however.

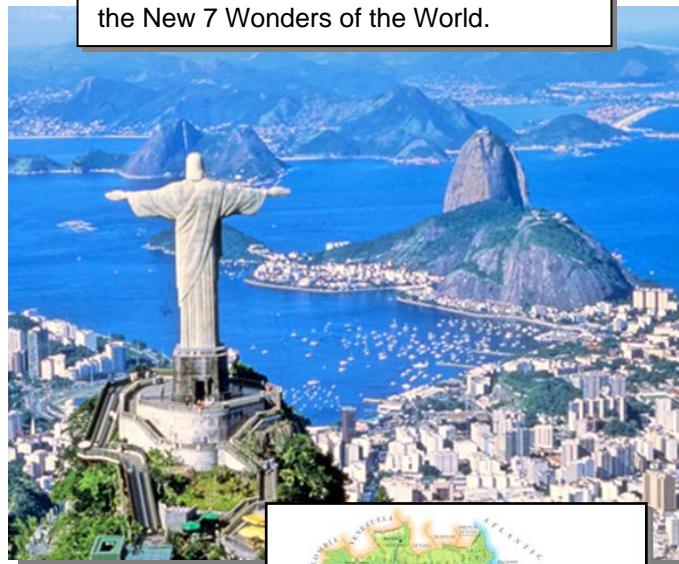
Although ABEMD's survey does not capture direct mail spend directly, there is nevertheless good

news surrounding the postal system. The Post has moved aggressively to promote direct mail and to improve service. It has for example a program to deliver ecommerce packages within metropolitan areas within 8 hours. It has a program to assist small companies to export products abroad – a daunting task in Brazil because of the bureaucracy, and it formed a partnership with a major bank, Banco Bradesco, to have a bank branch in nearly every post office in the country, thus providing money transfer services to support dm, and banking facilities to hundreds of millions of previously unbanked citizens.

When a company with the sophistication of an IMP invests in Brazil, it is probably time for any serious company to take a look at the market. I have numerous contacts in the country and contacts with US government resources here and in Brazil, to help you investigate this market if you have an interest.

– *Charles A. Prescott*

Towering over Rio de Janeiro, the Christ Redeemer statue has been named one of the New 7 Wonders of the World.



Spain and Implied Consent- How to get it, and why it is so hard – a history and a primer

Obtaining Consent for Processing Data in Spain: A Horror Tale to spark Edgar Alan Poe's Imagination. By Carlos Perez Sanz

Before Easter, I received from my friend Charles Prescott an abstract of a regulation recently adopted in Spain, the Real Decreto 1720/2007 (RLOPD). This sets forth in detail regulations on data protection included in the Spanish Act on this subject (Ley Orgánica 15/1999). This new regulation became effective in 2008.

The abstract was about article 14 of the RLOPD, which defines what is legally sufficient as “consent” by data subjects to the processing or “treatment” of their data. *[The Article is archived at www.PrescottReport.com]* Charles’ comment was, “pretty tough, isn’t it?” “Oh”, I replied, “this is nothing, it was much worse before 2008...”

I couldn’t help offering to explain the whole story...

Before describing this amazing nightmare,

which my beloved Edgar Alan Poe would have been proud to sign, let us put things in context. All European data privacy regulations are based on Directive 95/46, which establishes the minimum standards, which the legal regulation of data privacy in every European Union member country must satisfy.

This is where the problem starts: under European law, a Directive is a form of law which “directs” or prescribes the “minimum criteria” for the laws which must be adopted, or “implemented” within the national legal systems of the Member States. This means that if a Member State wants to go further or beyond what the Directive requires, it may do so. Of course, it must at least comply with the minimum standards established by the Directive, such as the data protection level. This is exactly what Spain did when implementing the Directive.

The European Directive includes in its article 7.f a

“legitimate interest principle”, This principle was



intended to provide that a company may transfer personal data to another company, without previous consent of the data subject (that is, an individual), if such transfer is done pursuant to the legitimate interest of both companies and there is no reason to believe that the privacy of the data subject will be diminished. *[A frequent example given by business at the time the Directive was being adopted was the exchange between companies of names and addresses and the fact of having purchased some “non-sensitive” product. In short, justification was given to and accepted by the European Parliament for list rental and exchange, at least in the case of non-sensitive information such as health data or religious beliefs. CAP]*

However, this principle was not included in the Spanish Law of 1999. The consequence was that this transfer of personal data from one company to another, even if the companies belong to the same group and have a completely legitimate reason for the transfer, requires the prior consent of the data subject. As we will see at the end of this article, the new regulation passed in 2008 has tried to solve this problem, but in a very deficient manner.

Within this context, our story begins. Back in 1999, Gas Natural, one of the major Spanish companies within the energy sector, with more than 3 million clients in Spain, wanted to promote to its customers the services of another of the companies within the group (Gas Natural Servicios). In order to do so, they wanted to do a natural thing: transfer the data of these clients to the services company.

Being a serious law-abiding company, Gas Natural knew that it needed to obtain the prior consent of its customers. Their idea was to send a letter to each customer informing them of the company's intention to transfer the data to the services company to promote its services. In addition, the letter stated that if the client did not object to the transfer within one month from the receipt of the letter this would imply that the client

consented to the transfer of data to the services company in order to promote their services.

However, they had a major problem: how could they prove the receipt of the letter by such a huge number of people? The cost of 3 million certified letters would have made the initiative totally impossible from a cost point of view.

The solution adopted was to ask a third company to send the letters and certify the whole process. The thinking was that if a third party certified the process and the company respected the wishes of the clients who did oppose the course of action, that would be enough and it would be a much more reasonable cost. But since Gas Natural knows how severe the Spanish Data Protection Agency (AEPD) can be, they asked for a meeting with the in-house lawyer of this authority to confirm that this process complied with the law. The in-house lawyer confirmed that such process would be valid and only suggested some amendments to the draft of the letter. Gas Natural launched the campaign.

After the campaign, Gas Natural Servicios started to promote its services to the 3 million clients of Gas Natural. Then, two people (out of 3 million!) filed a claim with the AEPD claiming that they had never given consent to the company for the use of their data for promotional purposes.

The AEPD rendered an amazing decision, imposing on Gas Natural a fine of €300, 506.05 for unlawful transfer of data, based on the following arguments:

- The Director of the AEPD stated that according to the law only his decisions are binding and therefore the report from the in-house lawyer confirming the validity of the process was not binding.
- The Director considered that the process did not comply with the law, since the consent for

the use or for the transfer of data must be obtained in an unequivocal [express] manner.

- The Director considered that such unequivocal consent had not been obtained by the company; Gas Natural had only proven that the letters had been sent, but not that they had been received, and since the letter stated that consent would be assumed to have been given one month after receipt (and receipt was not proven), no consent existed.

Obviously, Gas Natural challenged this decision before the courts, but the decision was confirmed by the Audiencia Nacional in June 2004, and reconfirmed by the Supreme Court in 2009. Ten years later! [*Copies in Spanish of both judicial resolutions are available at www.prescottreport.com.*]

There are other things in this astonishing resolution that are worth mentioning, but that fall outside the scope of this report. In any case, the immediate effect was that after this resolution (and until the new regulation passed in 2008), any company that wanted to establish “implied” consent from a data subject (either for the processing or for the transfer of data to a third party), would be forced to use certified mail, or use some other means that unequivocally proved receipt of the communication asking for such consent.

Let’s see the effects of this. Imagine a company that conducted a full review of its databases (customer files), and discovers that some of them do not comply with the law in that they do not show the company obtained the prior consent from the data subject. This company would have to choose between erasing all the data and regularising its use. To do so, it would have to send certified letters to all the data subjects in the database. For some companies the cost of this is totally out of the question. The immediate effect of this is that the company either loses valuable data or faces a possible fine for using the data without consent.

If we apply this to the data aggregators and suppliers in the direct marketing industry, and direct marketing companies who monetize their databases, the effect on them of the new regulation was even worse, as it went to the core of their businesses. These companies make their living by obtaining data and selling it to their clients, which implies a transfer of such data but with the necessary previous consent of the data subject. Any direct marketing company that was not able to prove it had consent for the transfer of such data to third parties (and thus to sell it to its clients), had to seriously consider stopping its activity, due to the high risk of penalty. There are examples of companies which decided to stop operating in the Spanish market due to this risk.

During the discussions before the adoption of the new regulation (RLOPD), this subject obviously became one of the hot topics. As a result of those discussions, article 14 RLOPD established a new regime, which says that, if implied consent is to be obtained, there is no need to prove receipt of a notice, provided that:

- The data subject is given a minimum time of 30 days to object.
- The data controller establishes a means of knowing if the communication to a specific data subject is returned, not having been delivered. If, for example, a letter is returned UAA (undeliverable as addressed), one cannot assume that the individual received notice. Clearly, then, no implied consent will be considered to be given by this data subject.
- The data subject is given an easy and free-of-charge way to object to the use of his data.

This regimen does not apply to sensitive data (such as health data, for example), where express consent is needed. For sensitive data, proof of receipt is still necessary.

This new regime has made things a little better for all companies. Nevertheless, why is it so complicated when, at the very end, in most of the situations the personal data concerned are just names, postal addresses and some additional information?

This is a good example of how careless Spanish authorities are about the economic impact of the regulations and of their decisions, considering especially that the risk of harm to individuals, most of the time, is ridiculously small, especially if we compare it with the possible fines foreseen by the law.

The argument that is constantly used to justify this is that data privacy is a constitutional right (established by article 18 of the Spanish Constitution), and that the protection of a constitutional right must be granted, irrespective of the real harm to the subject. Well, the right to an effective judicial protection is another constitutional right and, as the story shows, sometimes it might take nearly ten years to get to a final judgement, as it did in this case. And no government official gets fined in Spain for such an unjustifiable delay.

At the very end, all this complexity in order to obtain a data subject's consent is due to the fact that the Spanish law does not properly include the "legitimate interest principle". If the Spanish law had properly included this principle from the very start, all this would be unnecessary. This is why most of my European colleagues are amazed when I explain how things work with data privacy in Spain (not to mention my colleagues from outside Europe, who might look at Spain in this subject as if we had all gone crazy...).

The new regulation passed in 2008 tried to include this "legitimate interest principle" within the Spanish legislation, but did it in such an inefficient manner that it would have been better not to do anything about it. Just have a look at article 10.2 RLOPD: the "legitimate interest principle" will

apply... only if foreseen by another applicable law." My opinion here is that, with the inclusion of this article 10.2 RLOPD, the Spanish government just wanted to avoid any possible penalties from the European Union arising from an inadequate transposition of the Directive, and actually did not want to change anything in essence.

That is why you will always hear me say that European legislative harmonisation is a joke. Unfortunately, a bad joke with serious negative effects for marketers in some cases, as the whole story explains.

How to obtain the consent for the treatment of personal data is one of the hardest things to handle according to the Spanish law. There are many other things that we could comment on concerning this subject. For instance, what exceptions apply to the requirement to obtain previous consent, what is the concept of "public source of data" according to the Spanish law, the specific criteria applicable to the content of the consent to be obtained (purpose of treatment, activity of the receiver of the data, etc...? But let's leave these inquisitions for another time.



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Privacy – Did You Knows....



What major G-8 country does not have anti-spam legislation? Hint: The G-8 are the eight largest industrialized countries in the world. This one begins with “C”.



Currently pending before Parliament in Ottawa, Canada, is S-220, An Act respecting commercial electronic messages (the Anti-Spam Act). The bill would make it illegal to send unsolicited commercial e-mail offers. If adopted, it would enable both ISP's and individuals to protect themselves legally against spammers.

The statute would permit ISPs to deny service to suspected spammers without potential liability for termination of service. Individuals would be able to sue those responsible for spam. It would also introduce penalties, such as fines and jail terms for both the spammers and the businesses that use their services.

The Act provides for fines of up to \$500,000 or jail terms of two years on a first offence, with outer limits of fines up to \$1.5 million or five years in jail for repeat offences. A civil right of action is created against spammers by those alleging damages.

The bill contains "public interest" exceptions for instance, charities, political parties, polling firms, and businesses with pre-existing relationships. These may send e-mails unsolicited messages, providing there is an opt-out message and tool in the email.

In my view, at least with respect to the criminal provisions, it would probably not be enforceable in the United States.

This is a “member’s private bill”, sponsored by Senator Yoine Goldstein of the Liberal party, who represents Rigaud, Quebec.

When asked for comment, John Gustavson, President and CEO of the Canadian Marketing Association observed, “As you know, in the parliamentary system these [private bills] have little chance of passing. However with a minority government and an opposition majority in the Senate we're keeping a careful eye on it. We've worked with Senator Goldstein and his staff in the drafting and it may get a hearing before a Senate committee and we'd appear before that committee. This initiative may encourage the government into finally doing something, 4 years after its own commission said we need legislation.”



What European nation recently signed an agreement with the United States concerning the transmission of personal information to the latter?



In December 2008 the US Department of Commerce and the Federal Data Protection and Information Commission of Switzerland completed negotiations for the establishment of the program of safe harbor protection for personal information transmitted to the United States from Switzerland. The system is

similar to the arrangement reached with the European Commission some years ago. The process for self-certifying to the U.S.-Swiss Safe Harbor Framework is identical to that for self-certification to the U.S.-EU Safe Harbor Framework.



Japan recently did a complete about-face on regulation of e-mail marketing. What did they do?



In July 2008, Japan adopted a law on e-mail essentially requiring opt-in. In the first legislative addressing of this problem in 2002, Japan followed the US choice of opt-out. At that time, most spam in Japan was delivered through mobile phones, because nearly 80% of Internet access was by mobile phone.



In principle, in Europe there is an exception to a requirement of opting in for commercial e-mails like the American existing business relationship exception for telemarketing calls. If you are a store that sells clothing and wish to offer discount coupons for a new line of swimsuits to your female customers who have purchased blouses in the last year, in which country may you not make that offer?



You would certainly not have a problem in the Netherlands, where the authorities have already ruled on a similar case. But you most definitely would have a problem in Spain.

The exception to strict opt in for e-mails in Europe is called "soft opt in" and it exists only for the promotion of the "same or similar products" as were in question in the original transaction in which the merchant acquired the e-mail address.

The question has arisen as to as to what was "same or similar". The ever-practical Dutch decided that clothing in general was "same or similar". The extremely strict, Spanish authorities, however, in this case would say you could only use e-mail to offer a new line of swimsuits. In short, they read out of the statute "similar".

Do not be totally discouraged about Spain, however. In Spain as in all of Europe, consent will cure all. The nuance will be in determining in what form such consent must be. In our next issue of *The Prescott Report* we have an answer to that question regarding explicit consent. Implied consent is covered in Carlos Perez's article in this issue.

Since there are a limited number of mobile phone providers in Japan heavy pressure by the government for these providers to self-regulate with respect to the problem was sufficient to address the problem and satisfy the public. Spam as on-line e-mail was less of a problem in Japan at that time, so legislators followed the lead of the US and elected opt-out.

The situation changed in the intervening years and email spam worsened. As a consequence, the new law calls for affirmative opt-in for commercial e-mails sent to or from Japan.

To send e-mails to individuals, the individual must have requested or agreed to receive commercial e-mail, provided the sender with his e-mail address, have an existing business relationship with the sender, or be an individual or group that publicly announced their e-mail address.

The explanation of what "publicly announce" means, as well as certain other areas requiring



**Data
Services
Inc.**

Computer Services for Global Direct Marketing



detailed regulations is the responsibility of the Ministry of Internal Affairs and Communication and is awaited.



True or false, in Europe, financial data is treated similarly to medical information or religious beliefs?

This is a bit of a trick question.

Certainly financial data serves as personal information just as much as medical information or information about an individual's religious beliefs. In that respect such information must be held in confidence and under rigorous security conditions.

On the other hand, certain kinds of information under the Data Protection Directive are deemed to be "sensitive" and subject to increased protection with respect to how it is

acquired and under what conditions it may be used or disclosed.

For example, in principle, in Europe non-sensitive data may be used for marketing purposes, provided the marketing message contains an opt out notice. That is the principle, which has been flagrantly violated by the countries of Spain and Italy. Nevertheless that is supposed to be the "black letter law".

Such sensitive information as the fact you belong to a labor union, visited your dentist last week, or is a Stoic (philosophical beliefs) may not be disclosed or used for marketing purposes without your express consent.

No such limitation is put on financial information, which in principle could be used for marketing purposes. It rarely is, however, for Europeans would react with as much horror as any American to a direct mail piece starting, "Dear overstretched borrower/credit card holder whose balance is \$8562."

Do you shop on-line and buy outside your country?

Why? Why not?

Internet Marketing Retailers World (UK) is researching shoppers' cross-border shopping habits and tendencies.

Please help us by completing a short survey at

<https://ecustomeropinions.com/survey/survey.php?sid=263494297>

The Direct Mail and Postal Value Chain – A Better Value Than You Realized!

The Facts of Our Value Chain

[On March 27, 2009 at the Consultative Committee meeting in the UPU in Switzerland, Ingemar Persson, and Managing Director of PostEurop unpacked the environmental impact of the postal value chain. The reader will find the value chain he spoke to in the accompanying graphic. PostEurop is the leading advocacy group for postal systems in Europe and as such is an authoritative voice of the industry. The following is a summary of Mr. Persson's remarks. Because of the ongoing attacks on direct mail by environmental advocates and policy-makers, we think it important to provide our readers with objective data and sound comparisons to use in defending this medium. CAP.]

Global warming is a reality and human activity is one of the root causes of this phenomenon. And so reducing emissions is the responsibility of all commercial and industrial sectors. How will we continue to support a better and cleaner world while still delivering mail and helping business?

We share a collective responsibility throughout the value chain to preserve the reputation of the value chain, coordinate activities, and reduce our environmental impact.

So, let us look at the true measure of the impact of this value chain on the environment.

First, raw materials. 44% of Europe is now covered with trees. This is an increase in forest area of 30% since 1950. Since 1990 alone the forests in Europe have increased by 805,000 hectares or the equivalent of *one million six hundred thousand soccer fields*. In 2004, the United Nations concluded that the health of forests in Europe was good and improving. And let us not forget that trees are carbon “sinks” and remove CO² from the air

Second, paper production. Paper is produced in Europe from fiber 50% of which is from recovered paper and 50% of which is new or virgin. In fact, most of the virgin fiber would otherwise be potentially wasted for 13% of it comes from wood chips or sawdust and up to 29% from the thinning of the forest or recovery of branches. In addition, in Europe, 54.5% of the energy used in paper mills is green biomass, the highest percentage of all industrial sectors in the European union.

Third, message creation. Direct mail is one of the most valued marketing media. People love it. In Belgium, 97% of the population checks their mail daily and 74% open the mail immediately. Moreover, 80% of all direct mail is opened with an average reading time of two minutes a day. In the United Kingdom, 70% of postal customers keep direct mail they have received for later use. And across Europe, 90% of the paper used in direct marketing campaigns is recycled.

Fourth, message production. Printing itself is not an intensive producer of carbon dioxide, as it amounts to only 10% to 20% of the carbon produced in the entire finished direct mail piece. Printers work in cooperation with other suppliers to reduce CO² emissions along the entire value chain. For example, ensuring a high level of performance for

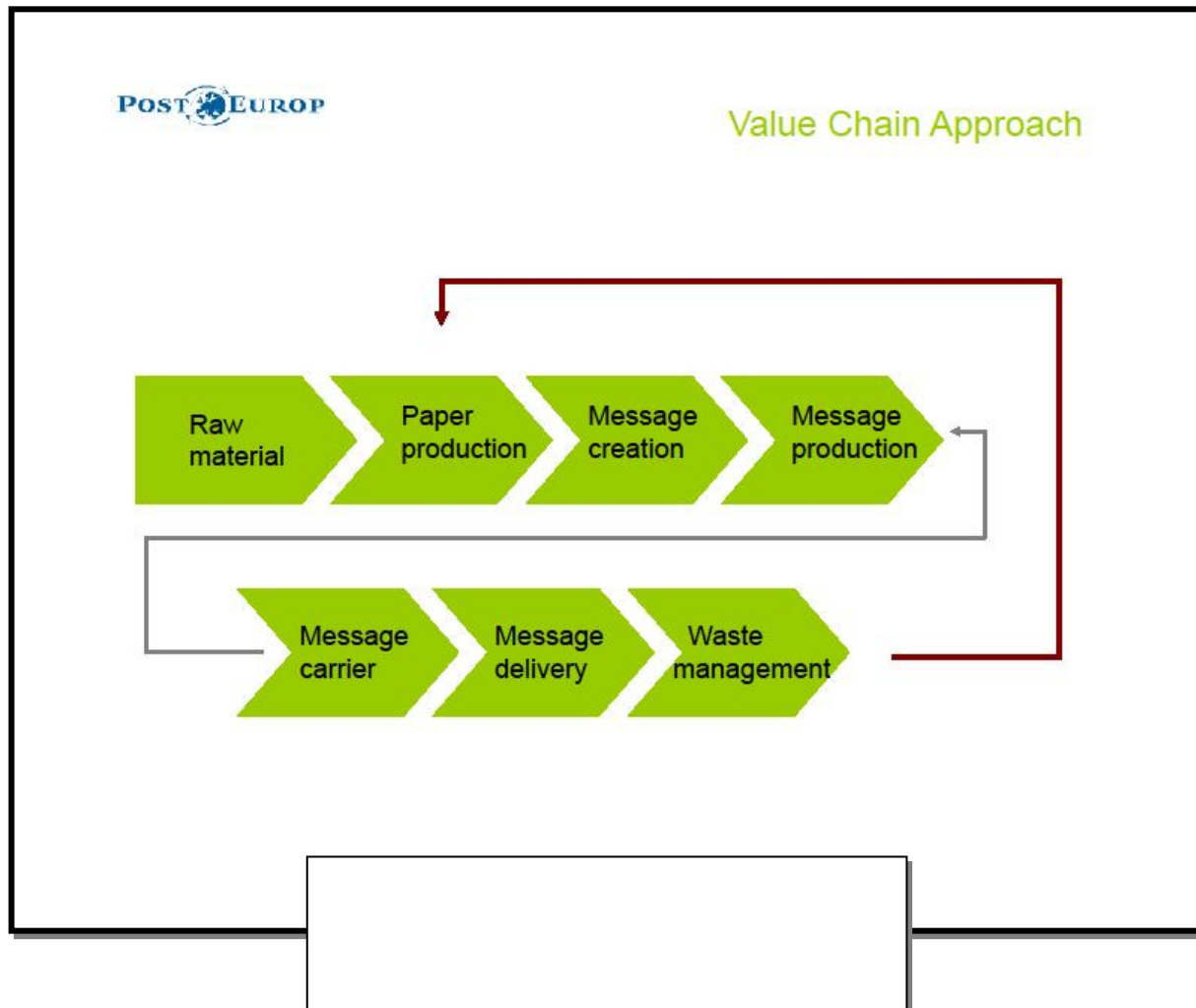
the reader and the safe use of environmentally friendly inks has been a long-term concern of European printers and ink manufacturers.

Fifth, the message carrier. Paper and board packaging are the European Union's champions of recycling. 92% of the fiber used to manufacture paper and board packaging is from recovered paper. The industry currently recycles over 84% of its case material (corrugated boxes) packaging.

Sixth, message delivery. In terms of total household emissions of carbon dioxide mail represents 1/10th of 1%. In short, there is no such thing as junk mail in the postal network in terms of

CO². At the cost of this tiny amount of carbon dioxide emission, the post reaches 100% of the deliverable addresses and every European citizen, nearly every day. In fact, electronic communications are not more environmentally friendly than paper-based communications.

Last, waste management. We strongly dispute the claims made by companies that the IT solution to communications is always more effective and more environmentally friendly. In 2006, the consultancy Gartner estimated that the global ICT industry accounts for 2% of the total global CO² emissions. In addition, Europe itself alone produces 10.3 million tons of electronic waste every year. Compare this to an annual mail volume of approximately 3.4 million tons, a significant and growing part of which is



Readers Trivia: Recession



This country's retail sales growth has plummeted in the last year from an annual rate of 20% to 15.2%. This country will spend the world out of recession.

Is it: India, Brazil, Switzerland, or China?



Yes, not a very hard a question, is it? China's rate of spending on consumer goods is extraordinary, but it has fallen, according to JP Morgan Chase, to a "mere" 15.4% annual growth rate. The World Bank also notes a fall in predicted GDP growth to 6.5% this year. Is this enough to assure the Chinese consumer will save the world's consumer goods manufacturers and bring jobs back to Birmingham, Berlin and Boston?

Hardly. Consumer spending as a percentage of GDP in China is still a modest number compared to Europe and the US. In the latter consumers account for 70% of GDP, while in China that number is only 38% of a lesser amount. China is still a poor country and the average urban disposable income is around \$2,310/year. In the country that number drops to around \$700.

This is not to say that China's growth is not important to the world's economic health for it clearly is. It is only to say that China's role as a goods producer society, as opposed to a consumption society, will remain paramount for the next decade at least.

The government recognizes that it has to encourage its citizens to save less and spend more. It is doing this by addressing the reasons Chinese save: they still are feeling the loss of the "iron rice bowl" that provided jobs, health care, retirement and education. The government is rapidly increasing spending on these issues in order to free up more consumer spending.



When did this mess begin? Looking back, did you notice? Notice the dates as you match the quote to the speaker.

- "The situation is much more serious than any other financial crisis since the end of World War II."
- "It's going to last until consumers are ready to spend again."



- c. "Some banks are going to have to be nationalized. It's going to be bumpy ahead of us."
 d. "Lots of people think that the recession in the US won't have any impact on the world's economy, but that's an illusion. The party's over."

e. "The current financial crisis in the US is likely to be judged in retrospect as the most wrenching since WWII."

a. **George Soros**, January 23, 2008

b. **Herbert Hainer**, CEO of Adidas, March 5, 2008

c. **Nouriel Roubini**, New York University, March 26, 2008

d. **Hans-Werner Sinn**, President of the IFO Institute, a leading German economic research establishment, March 18, 2008

e. **Alan Greenspan**, former chairman of the Federal Reserve, March 17, 2008



Fill in the blanks: The country, which buys the most cars on an annual basis is _____. And, the country in which Mercedes Benz has decided it will NOT attend a major automobile show in the Fall of 2009 is _____.

In the first quarter of 2009, the United States lost its leadership roll as Chinese consumers purchased more vehicles than US consumers. Less impacted by the recession than US consumers, Chinese buyers also bought significantly more fuel-efficient vehicles, many of which are made by US manufacturers but could not be sold in the US because of safety requirements.

All vehicle purchases are taxed in China, but more fuel-efficient cars attract a nearly nominal 1% tax, while the likes of big US-style SUV's attract a 40% tax. GM's jv with Wuling makes an SUV in China that gets 40 mpg in city driving that could not be sold in the US. Most experts say that increasingly, the size and make-up of cars sold worldwide will be determined more by Chinese consumers and companies than US consumers. Interestingly, Chinese cars have roomier and more comfortable back seats because many owners, even of modest-sized cars, hire drivers, who are available for about \$450/month.

Poor Japan keeps losing respect and the interest of major multi-nationals. It has an aging population, an economy that has again ceased growing, and a rather dysfunctional central government that can't seem to break out of the old mold of seeking growth and employment through exports and paving the countryside.



This city used to have the most billionaires in the world. In fact, it had more billionaires than every country in the world but one. Alas, the city and its country have lost out on both counts. Name the city and the country.



Moscow in 2008 had 74 of Russia's 87 billionaires, against New York's 71. Most, if not all, were fortunes built on Russia's vast commodities wealth. All of this has crumbled, of course, and Russia in its entirety only has a "mere" 32 billionaires left out of those 87. The richest individuals in the world, based on earned income, are Bill Gates at \$40 Billion, Warren Buffet at \$36 billion, and Carlos Slim Helu \$35 billion. The wealthiest head of state/political leader is reported by Forbes to be the Sultan of Brunei with an estimated fortune of \$22 Billion.

International Events:

May

NextMarketing 2009

When: May 6 and 7, 2009

Where: Madrid, Spain

Contact: <http://www.nextmarketing.es/>

This will be the second year for FECEMD's new major conference on marketing. Year one (2008) was well received, and this year's event promises to be even better. Note the venue has been changed from Barcelona to Madrid. Please mention *The Prescott Report* when you register.

6th National and International Seminar – "Success and Innovation In Personal Data Protection - Towards the Bicentenary of the Argentine Republic"

When: May 13-14, 2009

Where: Bolsa de Comercio de Buenos Aires, Sarmiento 299, Buenos Aires, Argentina

Contact and register: Registration is free upon request to:

eventosdnmdp@jus.gov.ar. Please send full name, title, affiliation and email address.

Registration is limited due to restricted room capacity. Registration will be confirmed by email.

Alternate contact: Dr. Juan Antonio Travieso, Dir.Nac. de Proteccion de Datos Personales, Argentina.

This 2-day program is organized by the data protection authority of Argentina. Dr. Travieso expects both national and international officials and experts to attend and participate in the program, which is substantive and timely:

Program - subject to possible modification.

Wednesday 13 – May

- Opening – Welcome Cocktail
- WELCOME by Prof. Dr. Travieso National Director - Personal Data Protection
- OPENING by C.p.a. Dr. Anibal Fernández, Minister of Justice, Security and Human Rights

Thursday 14 – May

- Opening Speech
- Panel I: Development and Update of Credit Information
- Conference: Growth and Progress of Data Protection in Spain
- Panel II: Personal Data Protection in the regional, national and international sphere "New and Better Practices".
- Conference: "Good Practices in Privacy Politics for Public Data Files"
- Conference: "Politics on Electronic Information Exchange"
- Personal Data Protection "Do not call" Act.
- Safety and Privacy in Argentinean Football.
- Prevention in Personal Data and Biometrics
- Prevention in Privacy in the Re-offenders National Registry

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International Events - continued

June

Revision of the EU Data Protection Directive 95/46

When: May 19-20, 2009

Where: To be announced; Brussels, Belgium

Contact: http://ec.europa.eu/justice_home/fsj/privacy/news/index_en.htm.

This public meeting to discuss the need (or not) to revise the Data Protection Directive is organized by the body in European Commission responsible for its enforcement, interpretation, and for recommending changes to the Commission or Parliament.

International Senior Management Marketing Programme in Direct, Interactive & Relationship Marketing

When: June 22-25, 2009

Where: ISEC, Madrid, Spain

Contact: <http://www.icemd.com/ismpeNG2009/icemd/home.html>

Held on the campus of ISEC, one of Spain's foremost business schools, on the outskirts of beautiful Madrid, Spain. This intensive and entertaining programme organized by ICEMD and FEDMA brings experienced senior marketers from major companies together for three full days of presentations, interaction, and project work. This is a major learning experience combined with an opportunity to establish relationships with colleagues from all over the world in formal and informal settings. For more information, visit the programme website for complete details and to register. Space is very limited and past attendees have been very grateful they attended. Please mention *The Prescott Report* when you register.

October

European TransPromo Summit

When: October 6-7, 2009

Where: Square Brussels Meeting Centre, Brussels, Belgium

Contact: www.transpromosummiteurope.com

Learn how companies are leveraging the power of bold design, vibrant color and variable data to transform bills and statements into highly individualized customer marketing communications. ---Market education on strategies, techniques and tools.
-Peer-to-peer advice – information sharing and networking to learn what works, what doesn't, and why.
-Technological solution demonstrated by leading-edge vendors and service providers.

Supported by The Prescott Report, FEDMA, PostEurop, Xplor, Xplor Italia, Xplor Spain.

Rendezvous International e-commerce VAD Lille (Sponsored by French Post.)

When: October 13-15, 2009

Where: Grand Palais, Lille, France

Contact: www.vad-ecommerce.com

250 exhibitors, 11,000 visitors. No admission charge. Some excellent presentations, mainly by vendors. Major networking occasion for DM industry in France.

***To Contribute Info***

We welcome contributions, commentary, and suggestions. Please contact us at:

+1.914.533.0208, or e-mail us at: <mailto:Editor@PrescottReport.com>. For editorial guidelines on contributions, email the same address or visit www.PrescottReport.com.

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