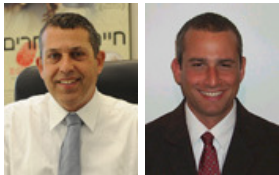




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Eyes on Israel

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Israel has been an active player on the world's privacy stage in recent years, and the momentum is expected to continue. Later this year, the nation's data protection authority—the Israeli Law, Information, and Technology Authority (ILITA)—will host the 32nd annual International Conference of Data Protection and Privacy Commissioners in Jerusalem. The Privacy Advisor spoke with ILITA chief Yoram Hacohen and Omer Tene, associate professor at the College of Management School of Law and head of the conference steering committee, about recent developments and the upcoming international event.

Privacy Advisor: ILITA has exercised its new fining powers recently. Have you seen an uptick in attention being paid to data protection issues on the part of public and private sector entities as a result of this?

Omer Tene: The latest fines have certainly created a stir in the market. ILITA is currently very much “on the radar” of compliance officers, particularly in big corporations in the financial services, telecoms and health sectors. In addition, multinational companies operating in Israel have taken account of the Article 29 adequacy decision and the pickup in enforcement activities. We see an increasing number of companies looking to get the house in order by implementing internal audits and reviewing data protection policies and practices.

Yoram Hacohen: I would like to emphasize that hand in hand with our enforcement actions we have increased “soft enforcement” by launching a series of market guidance notes and public consultations. For example, we have issued market guidance on the identification of customers for the purposes of providing access to personal data. In addition, we distributed new data security regulations in draft form for public comment and have received significant feedback from the market. As part of our EU-funded Twinning Project with our Spanish colleagues from the AEPD, we have had a series of workshops which were open to the public and well attended by both industry and government actors.

Privacy Advisor: The Knesset is considering a bill to increase the amount ILITA could fine and to increase search and seizure powers. What steps should Israeli businesses take to prepare for the potential passage of this bill?

Yoram Hacohen: The proposed legislation is the result of a realization among market regulators, in Israel and abroad, that the civil/criminal dichotomy is not sensitive enough to ensure effective enforcement. The criminal process is lengthy and onerous on both the regulator and the accused. We therefore look to buttress our powers with administrative sanctions, including civil penalties and enforcement notices, allowing us to swiftly settle enforcement actions for violations which are less severe. In addition, given that our mandate concerns computerized data, we are looking to obtain the authority to search computer files, including, in limited circumstances, without a court warrant. Already today, ILITA enjoys a broad range of enforcement powers, positioning it among the strongest supervisory authorities in the field. The Knesset recently increased the maximum fines ILITA can levy almost tenfold. With the legislative reforms in place, we will have the full spectrum of powers, from civil through administrative to criminal. In addition, we strongly encourage individual enforcement, including class action lawsuits.

Omer Tene: Regardless of when the bill is passed in the Knesset, businesses should prepare to prove compliance with privacy and data protection law. ILITA is already authorized to issue stiff fines. In addition, certain violations of the Privacy Protection Act constitute strict liability criminal offenses as well as civil torts. We are witnessing an increase in individual enforcement, including class actions, so I would not advise businesses to wait idly to see the result of the legislative process.

Privacy Advisor: Europe's Article 29 Working Party released an opinion that Israel “guarantees an adequate level of protection” under the European Data Protection Directive. Has Israel received official “adequacy” status? What does this mean for Israel?

Yoram Hacohen: We are delighted to have obtained the adequacy decision from the Article 29 working party. To officially gain adequacy status, we need to also get the approval of the Article 31 Working Party, which consists of political level officials. We hope that this will be achieved before the

start of the 32nd annual International Conference of Data Protection and Privacy Commissioners in October. The adequacy decision means that for purposes of data transfers from controllers subject to the EU Directive, Israel is equivalent to an EU Member State. Thus data can be transferred to Israel without need to resort to expensive and bureaucratic model clauses or binding corporate rules. Hopefully, this will reinforce the use of Israeli facilities for data storage, processing and computing services. Clearly, Israel has the technological facility and know-how to attract international investments and transactions; now we expect to also have the regulatory seal of approval.

Omer Tene: Clearly, the opinion of the 27 national EU regulators is that Israeli law is “adequate” as judged against the European framework. I think that this carries much weight even before the process is finalized, since controllers exporting personal data from the EU to Israel now know the regulators’ positions concerning Israel’s adequacy. It’s hard to envisage an EU regulator challenging a data transfer to Israel on the basis that Israel’s regime is not “adequate” after having publicly opined that it is. This also means that multinationals operating in Israel should integrate Israel into their European data protection compliance strategy, given that European regulators see Israeli law as providing equivalent protection.

Privacy Advisor: Can you give us an update on the 2007 Schoffman Report? Have all of the report’s recommendations been acted upon?

Yoram Hacoen: The Ministry of Justice is working to integrate the recommendations of the Schoffman Report into a series of legislative amendments, the first of which, concerning ILITA’s enforcement powers, has already been made public. The second part of the reform will substitute database registration (notification) with internal audit and documentation requirements. Finally, we intend to replace the existing data protection statute, Chapter B of the Privacy Protection Act, with a new, modern data protection act. These changes come at a time when not only Israel, but also the EU, OECD and FTC, are rethinking the current privacy paradigm. This complicates the thought process, since such comprehensive revisions to the statute are not frequent and we want to get it right.

Privacy Advisor: ILITA will host the 32nd annual International Conference of Data Protection and Privacy Commissioners in October. Tell us about the event. Is there a theme or focus?

Yoram Hacoen: The main theme for the Jerusalem conference is Privacy: Generations. It fits both the uniqueness of Jerusalem as a city more than 4,000 years old and the current state of privacy and data protection law. A new generation of technologies—including, first and foremost, cutting-edge Internet applications but also mobile, personalized medicine, smart grid, smart transportation, cloud computing, biometrics and RFID—have disrupted the existing data protection framework. A new generation of users keen to post content online and communicate via various media channels is challenging the applicability of conventional wisdom concerning privacy. This inevitably leads to a new generation of governance and regulation. The conference will explore these three themes. It will be preceded by an OECD event marking the 30th anniversary of the OECD privacy guidelines. Needless to say, it’s also a good opportunity for the community to visit Israel during the fall—a great season to come here.

Omer Tene: The conference comes at a special point in time, a critical juncture for privacy and data protection. With all the fundamental review processes taking place in the EU, OECD and U.S., it constitutes a unique opportunity for the global community to meet and reflect on where we have come from and where we are going. We tried to capture this in the conference theme and sessions, and Jerusalem is certainly a good location for historical reflection. We have a wonderful lineup of speakers, including thought leaders Danah Boyd and Viktor Mayer-Schönberger; technology leaders such as Adi Shamir, Kim Cameron and Cynthia Dwork; policy leaders including Assistant Secretary Larry Strickling, and industry leaders including Linda Avey and Jeff Jonas. We have academic giants such as Alan Westin and Spiros Simitis, and current stars Alessandro Acquisti, Lorrie Cranor and Paul Ohm as well. We look forward to seeing you there.

The 32nd annual International Conference of Data Protection and Privacy Commissioners takes place October 27-29 in Jerusalem, Israel. (October 29 is the closed session for regulators.) For more information, visit: <http://www.privacyconference2010.org/>.